PROJECT DEVELOPMENT COOPERATION AGREEMENT

This Project Development Cooperation Agreement (Agreement) is made and entered as of _____, 2019, by and between the City of Chula Vista, a chartered municipal corporation (City), and Lakeview I, LLC, a California limited liability company, Lakeview II, LLC, a California limited liability company, and Moller Otay Lakes Investment, LLC, a Delaware limited liability company (Owners). City and Owners are collectively referred to herein as the Parties. This Agreement is made and entered with reference to the following facts:

RECITALS

A. Owners are the project applicants for the Otay Ranch Resort Village 13 (Project). The Project would implement a master-planned community consisting of residential uses, commercial uses, an elementary school, a fire station and a Village Core connected through a system of roadways, public parks, trails, open space, and private recreational amenities. The Project also would include conveyance of approximately 787 acres of land (1.188 acres for every developed acre) to the Otay Ranch Resource Management Plan (RMP) Preserve. The Project is located within unincorporated San Diego County (County), approximately 0.25 miles east of the Chula Vista city limits. The Project area encompasses approximately 1,869 acres and is located primarily northeast of Otay Lakes Road. The County is the lead agency with regard to the Project. The Project's legal description is attached hereto as **Exhibit A** and made a part of this Agreement. In addition, the Project Area Map is attached hereto as **Exhibit B** and made a part of this Agreement.

B. The Project is a part of the approximately 23,000-acre Otay Ranch General Development Plan/Otay Subregional Plan (GDP/SRP), which the County and City jointly processed and approved in 1993. The GDP/SRP sets forth a comprehensive plan for Otay Ranch, including Villages and Planning Areas, which is currently being implemented. The GDP/SRP anticipated timely provision of public facilities concurrent with need.

C. The City and Owners have identified areas where residents of the Project residing in the County may benefit from facilities provided by the City. The Parties desire to resolve disputes between the Parties that arose during the County's planning and environmental review process of the Project. Therefore, the Parties desire to enter into this Agreement to provide for the payment of benefit contributions to the City in support of facilities provided by City.

D. The City owns, operates, and maintains the Salt Creek Sewer Interceptor for the purpose of collecting and transporting sewage for treatment and disposal. The Salt Creek Interceptor was sized with capacity to accommodate the Project and flows from the Project are not expected to impact the capacity of the Salt Creek Interceptor. A Sewage Transportation Agreement for the Salt Creek Interceptor between the San Diego County Sanitation District (SDCSD), the County, and the City, dated July 1, 2016 (Transportation Flow Agreement), allows flows from the Project to be conveyed to the Salt Creek Interceptor, and requires the Project to

pay the Salt Creek Interceptor Development Impact Fee (DIF) that is in effect at the time of building permit issuance. Sewer service can be provided to the Project by constructing offsite sewer facilities to convey flows to the Salt Creek Interceptor.

E. The Project implements City and County circulation roadways that were analyzed in the 1993 GDP/SRP Program Environmental Impact Report (EIR), as updated by subsequent planning actions, and as further refined by the Project's site-specific development concept and technical analyses. The segment of Otay Lakes Road from Lake Crest Drive to the City/County boundary (Otay Lakes Road Segment) is within the responsibility and jurisdiction of the City; the County does not have concurrent jurisdiction to permit or implement any improvements to this road segment.

F. The Project's EIR (pending certification) determined that mitigation measures within the City are considered feasible because they are or will be funded by the City's Eastern Area Transportation Development Impact Fee (TDIF) Program and the Project could pay its fair share. Owners have agreed to construct the Otay Lakes Road Segment in lieu of paying any fees. Accordingly, this Agreement is to provide for all feasible coordination between the City and Owners to improve the Otay Lakes Road Segment within the City. In addition, this Agreement is to provide for the construction of, and processing of an amendment of the TDIF program for the Otay Lakes Road Segment. Specifically, on the terms set forth herein (1) Owners agree to construct the Otay Lakes Road Segment, as a Boulevard with Intermittent Turn Lanes (Modified) and the signalization of the intersection of Otay Lakes Road and Wueste Road, as designed on the Project Vesting Tentative Map PDS2004-3100-5361-RPL-1 (VTM) and as a Project VTM condition of approval on the Project; and (2) City agrees to process an amendment of the TDIF that will allow the reimbursement of the Owners for the actual costs for all City TDIF eligible costs of constructing the Otay Lakes Road Segment.

G. This Agreement is to provide support and cooperation between the Parties with respect to the development of the Project.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owners agree as follows:

1. Benefit Contributions.

1.1 Owners shall make financial contributions to the City (each "Benefit Contribution" and collectively, the "Benefit Contributions") in the amount of $5,500 per residential dwelling unit constructed within the Project.

1.2 The escrow instructions for each of the Project's residential dwelling units shall include a provision for the Benefit Contribution payment to the City, to the satisfaction of the City Manager and City Attorney. Notwithstanding the aforementioned escrow instructions, upon written demand to Owners, the City shall have the right to: (i) acquire each corresponding Benefit Contribution from the Owners upon close of escrow for each residential unit; or (ii) receive from the Owners audit/sales information of the Project's residential dwelling units every

six months from the close of escrow of the first residential unit, as well as the Benefit Contributions associated with those units for said six-month period.

2. Salt Creek Interceptor.

2.1 Owners shall pay the City's Salt Creek Interceptor DIF fees that are in effect at the time of building permit issuance in accordance with the terms of the Transportation Flow Agreement. Owners shall construct, at its own expense, the facilities necessary to connect the Project to the existing Salt Creek Interceptor public sewer located in Otay Lakes Road west of Woods Drive, which will provide for the conveyance of sewer flows from the Project to the Salt Creek Interceptor (Connection Facilities). The Connection Facilities shall be constructed in accordance with the sewer design as shown on the Project VTM as approved by the County in consultation with the City and all applicable laws and standards consistent therewith.

2.2 City shall timely implement all terms of the Transportation Flow Agreement necessary for the permitting construction, maintenance and operation of the improvements within the City that provide for the conveyance of sewer flows from the Project to the Salt Creek Interceptor. No later than six (6) months after approval of the Project VTM, the City shall update the Salt Creek Interceptor DIF to include the Project's land uses into the DIF fee calculation.

3. Otay Lakes Road Construction and Reimbursement.

3.1. Owners shall design and construct Otay Lakes Road in the City, from Lake Crest Drive to the City/County boundary (Otay Lakes Road Segment), as a Boulevard with Intermittent Turn Lanes (Modified) and the signalization of the intersection of Otay Lakes Road and Wueste Road as designed on the Project VTM (PDS2004-3100-5361-RPL-1) as approved by the County and in accordance with all other applicable laws on standards consistent therewith.

3.2 City shall support and take all actions necessary for acquisition of right-of-way required to implement the road design as described in Section 3.1. and timely accept applicable offers of dedication for any required right-of-way for the Otay Lakes Road Segment without any objection or compensation as anticipated in final forms approved by the City Engineer and City Attorney. Owners shall pay all costs associated with right-of-way acquisition.

3.3 City shall timely review and process approval of any necessary construction and improvement plans, permits, access, easements, and/or other actions or documents necessary for the construction and operation of the Otay Lakes Road Segment, including all related utilities, landscaping and trail improvements in accordance with applicable City laws, and standards. Notwithstanding the foregoing, the Parties agree and acknowledge that construction of the Otay Lakes Road Segment shall be consistent with the design shown on the Project VTM (PDS2004-3100-5361-RPL-1) and City shall issue permits upon compliance with all conditions, design requirements, regulations and mitigation measures.

3.4 City shall cooperate with the addition of the Otay Lakes Road segment from Wueste Drive to the City County boundary to the TDIF Program. Once the segment is added, City shall reimburse Owners for actual costs for all TDIF eligible costs, including but not

limited to costs associated with right-of-way acquisition and eligible costs associated with required traffic signals, for constructing the Otay Lakes Road Segment. Estimated TDIF eligible costs are calculated based upon the latest update to the City's transportation development impact fee program. In order to receive reimbursement for TDIF eligible costs, Owners shall enter into a reimbursement agreement with the City in accordance with Chula Vista Municipal Code Chapter 3.54 for the construction of the Otay Lakes Road Segment. The reimbursement agreement shall be substantially in the form of **Exhibit C**. Owners shall receive credit against the Benefit Contributions set forth in Section 1, above, in the amount of any unreimbursed TDIF eligible costs that Owners incurred for constructing the Otay Lakes Road Segment.

3.5 City shall cooperate with and reasonably facilitate any mitigation as per the Chula Vista Multiple Species Conservation Program (MSCP) as well as any other mitigation of impacts deemed necessary for approval of permits and construction of the Otay Lakes Road Segment. City shall cooperate with and reasonably facilitate any other permits deemed necessary, including but not limited to a U.S. Army Corps of Engineers Clean Water Act Section 404 permit, a Regional Water Quality Control Board Clean Water Act Section 401 Water Quality Certification, and a municipal separate storm sewer system (MS4) permit. City shall cooperate with Owners' request to utilize the SANDAG Environmental Mitigation Program (EMP) to satisfy any and all eligible mitigation required for impacts to biological resources for the Otay Lakes Road Segment.

3.6 Except as expressly provided herein, Owners shall not assume Ownership, title, or control, or the right or obligation to operate or maintain, the Otay Lakes Road Segment. In accordance with City standards, as applied in City's sole discretion, City shall maintain the portion of Otay Lakes Road located within the City including all landscaping associated with the Otay Lakes Road Segment. Owners may elect to maintain the landscaping, trail, and median landscaping by entering into a Grant of Easement, License and Maintenance Agreement with the City substantially in the form of **Exhibit D**, subject to approval by City in its sole discretion.

4. Further Support and Cooperation.

4.1 Should it be requested by the County, City agrees to cooperate with the County to provide interim Fire Protection and Emergency Services to the Project per a separate agreement with the County Fire Authority. If the City provides interim Fire Protection and Emergency Services, City and Owner will enter into an agreement regarding Owners responsibility to fund such services.

4.2 City shall continue to work on the timely implementation of the Otay River Restoration Project Final Habitat Mitigation and Monitoring Plan and approval of the Otay River Mitigation Bank currently being processed by HomeFed Corporation and not oppose the Project's pursuit of mitigation within the mitigation bank. In the event the Mitigation Bank is unavailable or infeasible to meet the mitigation requirements of Village 13, City shall cooperate with Owners to make available City land in the Otay River Valley or other mutually agreeable location for implementation of a permittee responsible Habitat Mitigation and Monitoring Plan (HMMP). Should City land not be available, City shall cooperate with the Owners acquisition of

other public/private land or mitigation bank for the HMMP. City shall not oppose the Project's pursuit of mitigation within the mitigation bank or other viable mitigation option.

4.3 City shall allow future Project residents to use the recreational facilities in the City; and City reserves the right to charge Project residents non-resident rates.

4.4 City accepts that Otay Lakes Road standards within the County's jurisdiction shall be at the discretion, and to the satisfaction of the County.

4.5 City shall cooperatively and timely work with the County to process any Otay Ranch Resource Management Plan (RMP) updates or other Otay Ranch collaborative policy and/or planning efforts.

4.6 Should the Owners' development plan for the Project change, Exhibits A and B to this Agreement shall be deemed to be modified and effective immediately, to reflect the changed development plan. Neither the signature, consent, nor any other action of City is required for such modification; however, City shall provide such signature or consent within 7 days following any written request by Owners.

5. Further Assurances. The Parties shall execute all documents and instruments, and take all actions reasonably necessary or appropriate to carry out the purposes and intent of this Agreement. The City and Owners shall each use reasonable efforts to cooperate fully with the other with respect to the matters covered by this Agreement. City's reasonable cooperation and facility obligations under specific sections of this Agreement and this section shall not impose upon the City any obligation to incur costs or make payments to Owners or any third parties, except as explicitly set forth in this Agreement. This agreement also shall not impose on the Owner's any obligation to incur costs or make payments to the City or any third parties, except as explicitly set forth in this Agreement.

6. Non-Opposition to Project. City and/or any person authorized or directed to act on behalf of City, including but not limited to its City Council, elected and appointed officers, directors, employees, agents, and representatives (collectively, City Personnel) shall not oppose, challenge, or object to the Project, the development plan for the Project, or any item necessary to the implementation of the Project. City shall consult with Owners prior to any City Personnel submitting or making any public correspondence or comments relating to the Project. Concurrent with the execution of this Agreement, City shall provide to Owners a letter regarding the City's non-opposition to the Project.

7. Mutual Release and Waiver.

7.1 This Agreement is a compromise of all claims — known, unknown, actual, and potential — among the Parties to this Agreement. This Agreement shall not be construed as an admission by any of the Parties of any wrongdoing or liability of any kind, or an admission by them of any violation of the rights of the Parties or any other person or entity, or violation of any order, law, statute, duty or contract on the part of the Parties. The Parties intend merely to avoid potential litigation.

7.2 Owners and City, and each of them, on behalf of themselves, their successors-in-interest, assigns, and all others who may take any interest in the matter herein released, do hereby fully mutually release and discharge each other, and each other's respective partners, officers, directors, shareholders, servants, employees, agents, managing agents, affiliated or related entities, administrators, assigns, attorneys, insurers, sureties, representatives, beneficiaries and successors from any and all claims, lawsuits, demands, liabilities, damages, causes of action, or actions of every kind or nature whatsoever, which they each presently have, had, or claim to have arising from or connected with this Agreement and/or the Project (Released Claims). This release shall be a complete and absolute bar to any and all future claims and administrative or judicial actions based upon, contesting, or challenging on any basis the development of the Project or any Project approvals to facilitate implementation and/or development of the Project, except to the extent such action is not prohibited by a specific provision of this Agreement.

7.3 It is the intention of the Parties that this Agreement shall be effective as a full and final accord and satisfactory release of each and every matter specifically and generally referred to in the releases set forth in this Section 7. With respect to the Released Claims, it is the intention of the Parties to expressly, knowingly, and voluntarily waive any and all rights and benefits conferred upon them by Section 1542 of the California Civil Code, which states as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

7.4 Nothing in this Section 7 shall apply to the rights, duties, and obligations undertaken or created by this Agreement.

8. Force Majeure. A Party shall not be deemed to be in default or liable for any failure to perform its obligations pursuant to this Agreement if such failure to perform results from: strikes; lockouts; labor troubles; inability to procure materials; failure of power, sewer or water; restrictive governmental laws, regulations, or moratoria; riots; insurrection; war; litigation over the adequacy of the Project or the Project's environmental impact report (EIR); or other reasons of a like nature beyond the control of such Party. In addition, if the County does not approve the Project, this agreement is hereby null and void.

9. Notices. Any notice, demand, or other communication given pursuant to this Agreement shall be in writing and shall be given either by personal delivery, e-mail, or mail provided that such delivery is evidenced by electronic confirmation of delivery to the noticed party, by delivery to an overnight delivery service, or by deposit in the United States mail, postage paid, by certified or registered mail, return receipt requested, correctly addressed to the Parties as follows:

City: City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: Gary Halbert, City Manager
E-mail: ghalbert@chulavista.gov

With a copy to:

City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910
Attention: Glen Googins, City Attorney
E-mail: ggoogins@chulavistaca.gov

Owner: Lakeview I, LLC & Lakeview II, LLC
20 Corporate Plaza Drive
Newport Beach, California 92660
Attention: Cheryl Hill
E-mail: chill@baldwinsons.com

With a copy to:

Baldwin & Sons
610 West Ash, Suite 1500
San Diego, California 92101
Attention: Nick Lee
619-515-9115
Email: nlee@baldwinsons.com

Owner: Moller Otay Lakes Investments, LLC
6591 Collins Drive, Suite E-11
Moorpark, California 93021
Attention: Chuck Miller
805-299-8214
E-mail: cmiller@danskig.com

10. Successors and Assigns. All of the terms and provisions of this Agreement shall inure to the benefit of and shall be binding upon City and Owners and their successors and assigns, including, without limitation, successor-in-interest master developers and merchant builders, and each person or entity acquiring the Project, or any interest therein, whether voluntarily, involuntarily, by operation of law, or otherwise, such as by deed in lieu of foreclosure or by foreclosure sale. Owners shall at all times have the right to assign any right or delegate any obligation set forth in this Agreement, and the assignee shall automatically assume its proportionate share of the obligations set forth in this Agreement. Any such assignment and/or delegation must be in writing and, as between the Parties and for purposes of this

Agreement, shall have no force or effect unless and until Owners provides a copy of the written assignment and/or delegation to the City. Subject to the foregoing, any right of Owners set forth in this Agreement may be exercised by an assignee of that right to the same extent that Owners could have exercised that right. No such assignment shall relieve Owners of any of its obligations under this Agreement without the City's written consent.

11. Entire Agreement; Miscellaneous. This Agreement constitutes the entire Agreement between the Parties and shall supersede all other oral or written agreements between the Parties respecting the subject matter of this Agreement. This Agreement may only be modified or amended by written instrument executed by both Parties. This Agreement shall be governed by the laws of the State of California and shall be construed as if it were prepared jointly by the Parties.

12. Indemnification. Owners agrees to defend, indemnify, protect and hold harmless the City, its elected and appointed officers, employees, and other persons working on behalf of the City from and against all third-party claims, suits, actions or proceedings whether judicial or administrative, writs, orders, injunctions or other relief, damages, liability, cost and expense (including without limitation attorneys' fees) (collectively, Claims) incurred by the City arising from the City entering into this Agreement, or any City actions in processing or issuing any permits resulting from or as described in this Agreement, provided said Claims do not arise from the City's sole negligence, gross negligence, or willful misconduct. Defense obligations incurred by this paragraph shall be complied with by counsel of Owners' choosing, subject to oversight by the City Attorney, and City's consent with respect to any resolution, compromise, or settlement that may affect City's interests, which consent shall not be unreasonably withheld.

13. Enforcement Remedies. Owners' contract enforcement remedies shall be limited to specific performance, with no right to pursue monetary or consequential damages.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable laws, but should any provision of this Agreement be prohibited or invalid under such laws, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any other provision of this Agreement, provided the objectives of this Agreement still can be accomplished without such severed provisions.

15. No Third-Party Beneficiaries. Except for the assignment provisions of Section 10 herein, this Agreement and every provision hereof is for the exclusive benefit of the Parties and not for the benefit of any third party. Nothing contained in this Agreement shall create a contractual relationship with or a contractual claim in favor of a third party or entity against the City or Owners.

16. Counterparts. This Agreement may be executed in counterparts, a complete set of which shall be deemed to be an original and all of which together shall comprise but a single instrument. Signatures may be given via e-mail and shall be deemed given as of the date of the transmission of this Agreement by e-mail to the other party.

17. Authority. By signing below, the undersigned represents, warrants, and certifies that he or she is authorized to execute this Agreement and is taking this action with full authority from the principal.

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

City:

The City of Chula Vista

By: _____

Name: _____

Title: _____

Owner:

Lakeview I LLC

By: _____

Name: _____

Title: _____

Owner:

Lakeview II LLC

By: _____

Name: _____

Title: _____

Owner:

Moller Otay Lakes Investment. LLC

By: _____

Name: _____

Title: _____

Approved as to Form:

By: _____
Glen Googins, City Attorney

** Owners to provide signature authority*

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EXHIBIT A

[Project legal description]

BASED ON A COMMITMENT FOR TITLE INSURANCE PREPARED BY CHICAGO TITLE COMPANY AS ORDER NO. 930015403-U50 DATED SEPTEMBER 30, 2009.

PARCEL A:

PARCEL 2 OF CERTIFICATE OF COMPLIANCE, RECORDED JULY 22, 2009 AS INSTRUMENT NO. 2009-405517 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO JANAL ACCORDING TO THE UNITED STATES PATENT MAP THEREOF RECORDED IN BOOK 1, OF PATENTS, PAGE 89 ON JULY 29, 1872, DESCRIBED AS PARCEL 99 OF GRANT DEED TO OTAY PROJECT, LLC, PER INSTRUMENT RECORDED AUGUST 26, 1997 AS INSTRUMENT NO. 1997-411919 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND AS SHOWN AND DESCRIBED ON RECORD OF SURVEY NO. 14295, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY RECORDER SEPTEMBER 2, 1993.

EXCEPTING THEREFROM, THAT PORTION OF THE HEREINABOVE DESCRIBED LAND LYING EASTERLY AND SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 30, TOWNSHIP 17 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN AS SHOWN AND DESCRIBED ON SAID RECORD OF SURVEY NO. 14295, SAID POINT BEING ON THE NORTHERLY BOUNDARY OF SAID RANCHO JANAL; THENCE LEAVING SAID NORTHERLY RANCHO BOUNDARY SOUTH 65°51'00" EAST, 900.14 FEET; THENCE SOUTH 13°19'00" EAST, 444.12 FEET; THENCE SOUTH 40°37'00" WEST, 216.00 FEET; THENCE SOUTH 06°23'00" EAST, 899.00 FEET; THENCE SOUTH 43°26'00" WEST, 113.00 FEET; THENCE SOUTH 04°07'00" EAST, 287.00 FEET; THENCE SOUTH 74°21'00" EAST 100.19 FEET; THENCE SOUTH 46°53'00" EAST, 879.63 FEET; THENCE SOUTH 43°06'40" WEST, 559.72 FEET; THENCE SOUTH 36°20'42" WEST, 28.26 FEET; TO THE BEGINNING OF A 478.00 FOOT RADIUS CURVE CONCAVE EASTERLY THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°35'02" A DISTANCE OF 688.97 FEET TO A POINT ON THE NORTHERLY LINE OF PARCEL 1 OF COUNTY OF SAN DIEGO BOUNDARY ADJUSTMENT BC09-0027; THENCE ALONG SAID NORTHERLY LINE, SOUTH 43°46'00" WEST, 16.99 FEET; THENCE NORTH 83°55'00" WEST, 61.56 FEET; THENCE SOUTH 72°09'00" WEST, 78.40 FEET; THENCE SOUTH 65°19'00" WEST, 316.60 FEET; THENCE SOUTH 83°55'00" WEST, 78.09 FEET; THENCE NORTH 63°05'00" WEST, 109.17 FEET; THENCE NORTH 23°29'00" WEST, 66.94 FEET; THENCE SOUTH 57°30'00" WEST, 204.19 FEET TO A POINT ON THE NORTHEASTERLY RIGHT OF WAY OF COUNTY ROAD SURVEY NO. 558 AS SHOWN AND DESCRIBED ON SAID RECORD OF SURVEY NO. 14295, AND THE POINT OF TERMINUS.

PARCEL B:

PARCEL 3 OF CERTIFICATE OF COMPLIANCE, RECORDED JULY 22, 2009 AS INSTRUMENT NO. 2009-405517 OF OFFICIAL RECORDS AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THAT PORTION OF SECTIONS 4, 5 AND 6, TOWNSHIP 18 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, DESCRIBED AS PARCEL 50 OF GRANT DEED TO OTAY PROJECT, LLC, PER INSTRUMENT RECORDED AUGUST 26,1997, AS DOCUMENT NO. 1997-0411919 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. TOGETHER WITH THAT PORTION OF THE RANCHO JANAL, ACCORDING TO THE UNITED STATES PATENT MAP THEREOF RECORDED IN BOOK 1, OF PATENTS, PAGE 89 ON JULY 29, 1872, DESCRIBED AS PARCEL 99 OF GRANT DEED TO OTAY PROJECT, LLC, PER INSTRUMENT RECORDED AUGUST 26, 1997, AS DOCUMENT NO. 1997-0411919 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. TOGETHER WITH THAT PORTION OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 32, TOWNSHIP 17 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, LOTS 3 AND 4 OF SECTION 31, TOWNSHIP 17 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN AND LOT 4 OF SECTION 5, TOWNSHIP 18 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, ALL DESCRIBED AS PARCEL 92 OF GRANT DEED TO OTAY PROJECT, LLC, PER INSTRUMENT RECORDED AUGUST 26, 1997, AS DOCUMENT NO. 1997-0411919 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY. ALL BEING IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AND BEING SHOWN AND DESCRIBED ON RECORD OF SURVEY NO. 14295, FILED IN THE OFFICE OF THE SAN DIEGO COUNTY RECORDER SEPTEMBER 02, 1993.

EXCEPTING THEREFROM THAT PORTION OF THE HEREINABOVE DESCRIBED LAND LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 4 OF SECTION 5, TOWNSHIP 18 SOUTH, RANGE 1 EAST, AS SHOWN AND DESCRIBED ON SAID RECORD OF SURVEY NO. 14295; THENCE WESTERLY ALONG THE NORTHERLY LINE OF SAID LOT 4 NORTH 89°39'25" WEST (NORTH 89°38'54" WEST PER ROS 14295), 440.35 FEET; THENCE LEAVING SAID NORTHERLY LINE OF LOT 4, NORTH 27°25'00" WEST, 242.21 FEET; THENCE NORTH 80°06'00" WEST, 797.02 FEET; THENCE SOUTH 33°49'00" WEST, 551.14 FEET TO THE BEGINNING OF A 484.50 FOOT RADIUS CURVE CONCAVE NORTHERLY; A RADIAL LINE TO SAID POINT BEARS SOUTH 15°38'41" EAST; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24°37'02" A DISTANCE OF 208.17 FEET; THENCE NORTH 81°01'39" WEST, 295.89 FEET TO THE BEGINNING OF A 964.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 52°40'40" A DISTANCE OF 886.30 FEET; THENCE NORTH 28°20'59" WEST, 335.73 FEET TO THE BEGINNING OF A 1286.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°59'29" A DISTANCE OF 493.59 FEET; THENCE SOUTH 42°12'38" WEST, 92.74 FEET; THENCE SOUTH 38°06'58" WEST, 221.48 FEET TO THE BEGINNING OF A 478.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 14°42'57" A DISTANCE OF 122.77 FEET; THENCE SOUTH 37°10'05" EAST, 79.01 FEET; THENCE SOUTH 16°32'00" EAST, 165.91 FEET TO THE BEGINNING OF A 48.00 FOOT RADIUS CURVE CONCAVE SOUTHWESTERLY; A RADIAL LINE TO SAID POINT BEARS NORTH 21°29'38" WEST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 152°10'55" A DISTANCE OF 127.49 FEET TO THE BEGINNING OF A 27.00 FOOT RADIUS REVERSE CURVE CONCAVE EASTERLY; A RADIAL LINE TO SAID POINT BEARS NORTH 49°18'44" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 62°10'55" A DISTANCE OF 29.30 FEET; THENCE SOUTH 21°29'38" EAST, 213.62 FEET TO THE BEGINNING OF A 172.00 FOOT RADIUS CURVE CONCAVE NORTHEASTERLY; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°53'05" A DISTANCE OF 143.75 FEET; THENCE SOUTH 69°22'44" EAST, 338.89 FEET TO THE BEGINNING OF A 932.00 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY; A RADIAL LINE TO SAID POINT BEARS NORTH 48°53'22" WEST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 16°00'21" A DISTANCE OF 260.36 FEET; THENCE SOUTH 25°06'17" WEST, 117.70 FEET TO THE BEGINNING OF A 718.00 FOOT RADIUS CURVE CONCAVE NORTHWESTERLY; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 50°08'28" A DISTANCE OF 628.34 FEET; THENCE SOUTH 75°14'45" WEST, 139.61 FEET TO THE BEGINNING OF A 832.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 04°11'52" A DISTANCE OF 60.95 FEET; THENCE NORTH 27°53'00" WEST, 398.27 FEET; THENCE NORTH 70°51'00" WEST, 261.57 FEET; THENCE SOUTH 57°22'00" WEST, 536.98 FEET; THENCE SOUTH 86°07'00" WEST, 244.03 FEET; THENCE SOUTH 29°23'00" WEST, 63.95 FEET; THENCE SOUTH 11°36'00" EAST, 90.60 FEET; THENCE SOUTH 17°21'00" WEST, 3154 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF COUNTY ROAD SURVEY NO. 558 AS SHOWN AND DESCRIBED ON SAID RECORD OF SURVEY NO. 14295, SAID POINT BEING THE POINT OF TERMINUS.

PARCEL C:

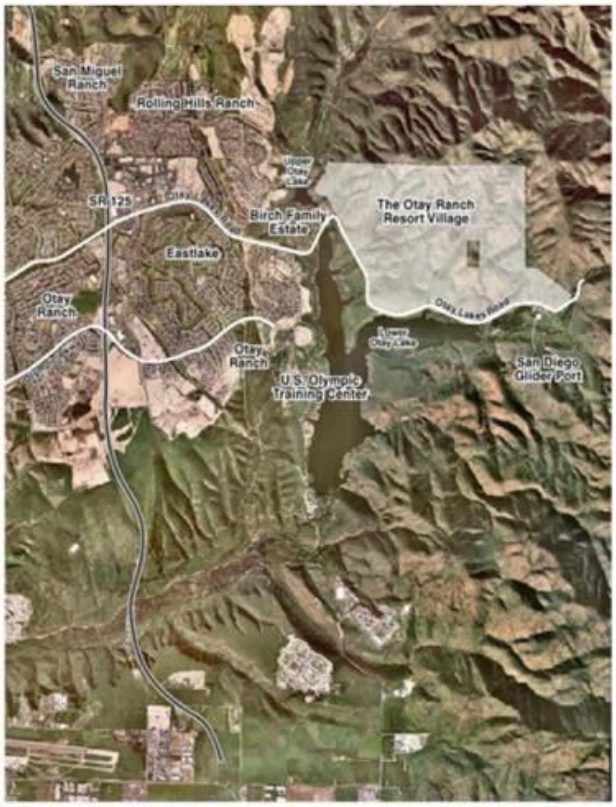
LOTS 1 & 2 IN SECTION 31 AND THE NORTH HALF OF THE NORTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 32, ALL IN TOWNSHIP 17 SOUTH, RANGE 1 EAST, BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING T OFFICIAL PLAT THEREOF

EXCEPTING THEREFROM ALL THE COAL AND OTHER MINERALS, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE SAME, PURSUANT TO THE PROVISIONS AND LIMITATIONS OF THE ACT OF CONGRESS OF DECEMBER 29, 1916 (39 STAT. 862), AS EXCEPTED AND RESERVED TO THE UNITED STATES OF AMERICA IN THE PATENT FOR SAID LAND, ISSUED AUGUST 11, 1933 AND RECORDED APRIL 8, 1935 IN BOOK 384, PAGE 430 OF OFFICIAL RECORDS.

EXHIBIT B

[Project location map]

Exhibit 1
Regional Location Map



Lenska Aerial Photos: Flown 2006 Not to Scale

Exhibit 2
Surrounding Land Uses

EXHIBIT C

[Reimbursement Agreement to Construct Improvements]

CITY OF CHULA VISTA
REIMBURSEMENT AGREEMENT
WITH [Company]
TO CONSTRUCT [DESCRIBE IMPROVEMENTS TO BE CONSTRUCTED**]**
IMPROVEMENTS

This REIMBURSEMENT AGREEMENT ("Agreement") is entered into as of this _____ day of _____, 20____ (the "Effective Date") by and among the City of Chula Vista, a chartered municipal corporation ("City") and [Company], a [State] [corporate entity type] ("Developer") (collectively, the "Parties" and, individually, a "Party") with reference to the following Recitals:

RECITALS

A. WHEREAS, [insert recital establishing obligation to construct the improvements (e.g. per map condition, development agreement, etc.)]; and

B. WHEREAS, [insert recital referencing above obligation and listing specific improvements to be constructed] (the "Project Improvements" or "Project"), to be funded by [Funding Source]; and

C. WHEREAS, [describe Funding Source]; and

D. WHEREAS, [describe eligible uses of Funding Source]; and

E. WHEREAS, the Project Improvements are eligible for reimbursement from the [Funding Source]; and

F. WHEREAS, the City has sufficient funds in the [Funding Source] Fund to reimburse Developer for the design and construction of the Project Improvements; and

G. WHEREAS, Developer desires to enter into this Agreement with the City, so that it may obtain reimbursement for the eligible costs of designing and constructing the Project Improvements.

AGREEMENT

NOW THEREFORE, in consideration of the above Recitals, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, City and Developer agree as follows:

ARTICLE I. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following terms and phrases shall have the following meanings:

1.1. Acceptance. "Acceptance" means Project Improvement acceptance pursuant to standard City practices.

1.2. Agreement. "Agreement" means this Reimbursement Agreement between the City and the Developer. The term "Agreement" shall include any amendment to the Agreement properly approved and executed pursuant to the terms of this Agreement.

1.3. Approved Drawings and Specifications. "Approved Drawings and Specifications" means the drawings and specifications for the Project Improvements as approved and permitted by the City.

1.4. CEQA. "CEQA" means the California Environmental Quality Act.

1.5. City. "City" means the City of Chula Vista. Unless specifically provided otherwise, whenever this Agreement requires an action or approval by City, that action or approval shall be performed by the City representative designated by the Agreement.

1.6. City Council. "City Council" means the governing body of the City.

1.7. City Manager. "City Manager" means the City Manager of City or his or her designee.

1.8. City's Project Administration Costs. "City's Project Administration Costs" means the charges that the City incurs to: (i) review and approve the plans and specifications for the Project Improvements and (ii) inspect the Project Improvements during construction, until completion and Acceptance of the Project Improvements.

1.9. Contract Documents. "Contract Documents" includes, but is not limited to: the Subcontract(s), Subcontract(s) Exhibits and Addenda, Notice Inviting Bids, Instructions to Bidders, Bid (including documentation accompanying Bid and any post-bid documentation submitted prior to Notice of Award), the Bonds, the general conditions, permits from other agencies, the Special Provisions, the Plans, Standard Plans, Standard Specifications, Reference Specifications, the Approved Drawings and Specifications, and all modifications issued after the execution of the Subcontract(s).

1.10. Cutoff Date. "Cutoff Date" means one (1) year from the date of Acceptance of the Project Improvements.

1.11. Defective Work. "Defective Work" means all work, material, or equipment that is unsatisfactory, faulty, incomplete, or does not substantially conform to the Approved Drawings and Specifications.

1.12. Director of Development Services. "Director of Development Services" means the Director of Development Services of City or his or her designee.

1.13. Estimated Cost. "Estimated Cost" means the total cost of the Project Improvements, as estimated by preliminary engineering studies to total **[$ estimated cost]**, as shown in

Exhibit B, attached hereto. As Estimated Cost is not initially the result of competitive bids for the actual design and construction, it is subject to change during the competitive bid process as well as during the design and construction phases, subject to approval of the Parties.

1.14. Greenbook. "Greenbook" means the 2012 edition of the Standard Specifications for Public Works Construction.

1.15. Hazardous Materials. "Hazardous Materials" means hazardous waste or hazardous substances as defined in any federal, state, or local statue, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42) United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 united States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum or petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

1.16. Holiday. "Holiday" means the City-observed holidays listed below (if any holiday listed falls on a Saturday, then the Saturday and the preceding Friday are both legal holidays. If the holiday should fall on a Sunday, then the Sunday and the following Monday are both legal holidays):

Holiday	Observed On
New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
Caesar Chavez Day	March 31
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Day Friday	Friday after Thanksgiving
Christmas Day	December 25

1.17. Maximum Reimbursement Amount. "Maximum Reimbursement Amount" means the lesser of the Estimated Cost, as may be amended from time to time, or the amount calculated during the Final Accounting.

1.18. Milestones. "Milestones" means the dates shown on the Project Schedule by which Developer shall complete major tasks either during design or construction of the Project Improvements.

1.19. NEPA. "NEPA" means the National Environmental Policy Act.

1.20. Non-Reimbursable Costs. "Non-Reimbursable Costs" means costs that shall not be eligible for reimbursement under this Agreement, including: Loss During Delivery, Costs Incurred Due to Negligence, or Unapproved Costs, as further defined in Section 9.1.5.2.

1.21. Payment Date. "Payment Date" means twenty (20) business days following the date on which Developer submits a complete Reimbursement Request (as reasonably determined by the Director of Development Services).

1.22. Project Improvements. "Project Improvements" or "Project" has the meaning given to such term in the Recitals.

1.23. Reimbursement Request. "Reimbursement Request" means a reimbursement request package submitted to the City containing the items listed in Section 9.1.3.1.

1.24. [Funding Source] Eligible Expenses. "[Funding Source] Eligible Expenses" means costs that the City shall reimburse Developer from the [Funding Source] Fund for work identified in Approved Drawings and Specifications, not to exceed the Estimated Costs.

1.25. Reimbursable Costs. "Reimbursable Costs" means costs of the Project Improvements that have been expended and approved by the City through approval procedures described in the Agreement.

1.26. Standard Specifications. "Standard Specifications" means the Greenbook, the local standard special provisions referenced in the Approved Drawings and Specifications, and any amendments thereto.

1.27. Subcontractor. "Subcontractor" means a party or parties under contract with Developer to perform the work or provide supplies for the Project Improvements.

1.28. Working Day(s). "Working Day(s)" means Monday through Friday, excluding Holidays.

ARTICLE II. SUBJECT OF THE AGREEMENT - GENERALLY

The above-listed Recitals are true and correct and are hereby incorporated by this reference. All attachments to this Agreement as Exhibits are incorporated into this Agreement by this reference.

2.1. Project Improvements. Except as expressly provided in this Agreement, Developer shall cause the design and construction of the Project Improvements in accordance with [reference provisions of original obligation to construct].

2.2. Complete and Functional Improvements. Developer shall provide complete and functional Project Improvements meeting the standards identified herein.

2.3. Maintain Until Acceptance. Following the completion of the Project Improvements, Developer shall maintain the Project Improvements until as Acceptance of the Project Improvements by City.

2.4. City Payment. City shall reimburse Developer, subject to the terms and conditions herein, for the [Funding Source] Eligible Expenses of design and construction of the Project Improvements. City acknowledges and agrees that all of the Estimated Costs identified in Exhibit B are [Funding Source] Eligible Expenses.

ARTICLE III. DURATION OF AGREEMENT

3.1. Term of Agreement. This Agreement shall be effective on the Effective Date following City Council approval by Resolution, and the term shall extend until such time as all executory terms have been completed or it is early terminated according to the termination provisions herein.

ARTICLE IV. PROJECT COSTS

4.1. Estimated Cost. The Estimated Cost of the Project Improvements is [one million dollars ($1,000,000)], as shown in Exhibit B, attached hereto.

4.2. Adjustment to Estimated Cost. Estimated Cost is subject to change by the methods identified below and those established elsewhere in this Agreement.

4.2.1. *Revisions to the Estimated Cost*. In the event that the City Manager reviews the Project Improvements and determines that the cost of design and construction will exceed the then current Estimated Cost, the Estimated Cost shall be increased to reflect the revised estimate.

4.2.2. *Adjustments Based on Other Cost Increases*. The Estimated Cost may be increased due to: (i) acts of God, acts of any governmental authority, the elements, war, litigation, shortages of material, labor strikes, inflation, later commonly accepted or adopted higher standards and specifications of construction, concealed or unknown conditions encountered in the completion of the Project Improvements, or other cause beyond Developer's control; (ii) actual bids received being greater than estimated; or (iii) other factors not the result of

unreasonable conduct by Developer. The Estimated Cost may be increased by the amount of such increases, subject to approval by the City Manager.

4.2.3. *Failure to Obtain Approval of Increase*. In any case where City Manager approval is required for an increase in the Estimated Cost and such approval is not obtained, Developer shall have no obligation to incur costs in excess of the Estimated Cost. In such case, the Project Improvements shall be revised through deductive changes approved by the City Manager, such that the Project Improvements, as revised, can be completed for the Estimated Cost.

4.3. Notification of Increased Costs. If, at any time, Developer anticipates that the amount expended on the Project Improvements will exceed the Estimated Cost, Developer shall immediately, not more than ten (10) Working Days from becoming aware of the potential increase, notify the City in writing. This written notification shall include an itemized cost estimate and a list of recommended revisions (e.g., deductive changes) which Developer believes will bring the construction cost to within the Estimated Costs. The City may either: (i) approve an increase in Estimated Cost; or (ii) delineate a project which may be constructed for the Estimated Cost; or (iii) any combination of (i) and (ii).

ARTICLE V. PROJECT SCHEDULE

5.1. Project Schedule. Developer shall perform and complete the work for the Project Improvements by [insert date].

5.2. Milestones. [describe any milestones, if applicable].

5.3. Unavoidable Delay. Each Party shall be entitled to an extension of the date of any performance required of such Party under this Agreement if the failure of the Party to duly perform was because of a cause beyond the Party's reasonable control.

ARTICLE VI. COMPETITIVE BIDDING AND EQUAL OPPORTUNITY

6.1. Compliance. Developer shall bid and award contracts to complete Project Improvements in accordance with all applicable public contract laws, rules, and regulations, including but not limited to those set forth in the City of Chula Vista Charter and Municipal Code, including CVMC §2.56.160(H).

6.1.1. *Proof of Advertising*. Developer shall provide the City with proof that it solicited competitive bids in accordance with CVMC §2.56.160(H)(2)(c).

6.1.2. *Prevailing Wage*. Developer shall advertise the Project Improvements as requiring the payment of Prevailing Wage and include all provisions in the advertisement as required by the California Department of Industrial Relations.

6.2. Bid Opening and Award of Contract. Developer shall provide City with a copy of the tabulation of competitive bid results. Contract(s) for the construction of Project Improvements shall be awarded by Developer pursuant to CVMC §2.56.160(H)(2)(d). In the event that the best qualified contractor's bid, combined with a reasonable amount for contingencies, exceeds the Estimated Cost, the increase in the costs must be approved by City Manager pursuant to Section 4.2.3 prior to awarding the contract. In the event the City Manager does not approve the increased cost, this Agreement, at the City's option, may be terminated, or Project Improvements may be rebid and/or redesigned. In the event that the Agreement is terminated, the design costs will be reimbursed to Developer from the [Funding Source] Fund. City shall reimburse Developer with cash reimbursement for the Reimbursable Costs related to engineering and design expended by Developer prior to termination of this Agreement pursuant to Article XVI. Developer shall provide City with copies of all executed contracts.

6.3. Equal Employment Opportunities and Equal Opportunity Contracting.

6.3.1. *Equal Employment Opportunity Nondiscrimination*. Developer shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Developer shall provide equal opportunity in all employment practices. Developer shall instruct its consultants, subconsultants, prime contractors, and their subcontractors, to comply with this program. Nothing in this section shall be interpreted to hold Developer or a prime contractor liable for any discriminatory practice of its subcontractors or any other party.

6.3.2. *Equal Employment Opportunity Certification*. Bidders shall submit signed Equal Employment Opportunity Certifications with their bid packages.

6.3.3. *Equal Opportunity Contracting Nondiscrimination*. Developer shall not discriminate on the basis of race, gender, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Developer shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Developer understands and agrees that violation of this Subsection shall be considered a material breach of this Agreement and may result in contract termination, debarment, or other sanctions. The language in this Subsection shall be inserted in contracts between Developer and any subcontractors, vendors, or suppliers.

ARTICLE VII. DESIGN AND CONSTRUCTION STANDARDS

7.1. Standard of Care. Developer agrees that the services provided as part of this Agreement shall be performed in accordance with the standards customarily adhered to by

experienced and competent professional architectural, engineering, landscape architecture, and construction firms using the degree of care and skill ordinarily exercised by reputable professionals practicing in the same field of service in the State of California.

7.2. Compliance with all Laws. Developer shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with all laws, including but not limited to:

7.2.1. All local, City, County, State, and Federal laws, codes and regulations, ordinances and policies, including, but not limited to, Development Services Department permits, hazardous material permits, site safety, state and local Building Codes, stormwater regulations, etc.

7.3. Compliance with Design and Construction Standards. Developer shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with the most current editions of Design and Construction Standards.

7.3.1. *Standard Specifications*. Developer shall comply and ensure compliance by any of its contractors, subcontractors, employees, and agents with the most current editions of the following reference specifications when designing and constructing the Project Improvements, including:

7.3.1.1. The Greenbook, including the Regional and any local Supplement Amendments.

7.3.2. *City Standards*. Developer's professional services shall be provided in conformance with the professional standards of practice established by City. This includes amendments and revisions of these standards as adopted by City. The professional standards of practice established by City include, but are not limited to, the following:

7.3.2.1. The Standard Specifications and the Approved Drawings and Specifications.

7.4. Changes to Standards. Developer shall be responsible for complying with all amendments or updates to standards and knowledge of all amendments or updates to standards, whether local, state, or federal, will be imputed to Developer to the extent allowed by law; provided, however, that all costs of compliance with the changed or updated standards shall be [Funding Source] Fund Eligible Expenses and the Estimated Cost shall be increased to reflect such increased costs of compliance with such changes.

7.5. City Approval Not a Waiver of Obligations. Where approval by the City, the City Manager, or other representatives of City is required, it is understood to be general approval only and does not relieve Developer of responsibility for complying with all applicable laws, codes, and good consulting, design, or construction practices and is not an assumption of liability by the City. Nor shall City, through approval, become an insurer or surety of work associated with the approvals.

ARTICLE VIII. CONSTRUCTION

8.1. Site Safety, Security, and Compliance. Developer shall be responsible for site safety, security, and compliance with all related laws and regulations.

8.1.1. *Persons*. Developer shall be fully responsible for the safety and security of its officers, agents, and employees authorized by Developer to access the Project site.

8.1.2. *Other*. Developer is responsible for Project site, materials, equipment, and all other incidentals until the completed Project has been accepted by the City pursuant to Article X.

8.1.3. *Environment*. Developer shall comply with all environmental laws and regulations, including the Clean Air Act of 1970, the Clean Water Act, Executive Order number 11738, and the Stormwater Management and Discharge Control Ordinance No. 0-17988 and any and all Best Management Practice (BMP) guidelines and pollution elimination requirements as may be established by an enforcement official. Furthermore, Developer shall prepare and incorporate into the Construction Drawings a Stormwater Pollution Prevention Plan (SWPPP) to be implemented by Developer during Project construction and maintenance. Where applicable, the SWPPP shall comply with both the California Regional Water Quality Control Board Statewide General Construction Storm Water permit and National Pollution Discharge Elimination System permit requirements and shall be in conformance with the City of Chula Vista BMP Design Manual and CVMC Chapter 14.20.

8.2. Access to Project Site. City officers, agents, and employees with Project related business shall have the right to enter the Project site at any time for Project related purposes.

8.3. Public Right-of-Way. All work, including materials testing, special testing, and surveying to be conducted in the Public right-of-way shall be coordinated with the City.

8.3.1. *Follow all Laws, Rules, and Regulations*. Developer agrees to follow all City standards and regulations while working in the Public right-of-way, including, but not limited to, utilizing proper traffic control and obtaining necessary permits.

8.4. Traffic Control. Developer shall comply with all traffic control requirements for Project, including, if applicable, all traffic control plans and/or notes.

8.5. Maintenance. Developer shall maintain and be responsible for the Project Improvements and the Project site until Acceptance, including ongoing erosion prevention measures. Upon Acceptance of the Project, City shall be responsible for maintenance of the Project Improvements.

ARTICLE IX. REIMBURSEMENT/PAYMENT OF COSTS AND EXPENSES

9.1. Payment of Costs Associated with Project

9.1.1. *Maximum Reimbursement Amount*. The maximum amount of reimbursement for Project shall not exceed the Maximum Reimbursement Amount. Neither Developer nor Subcontractor shall be entitled to payment in excess of the Maximum Reimbursement Amount.

9.1.1.1. Reductions to the Maximum Reimbursement Amount. City's Project Administration Costs included in the Estimated Cost as shown in Exhibit B that are not charged to Developer shall be deducted from the Maximum Reimbursement Amount. Any anticipated increase in the total City's Project Administration Costs identified in Exhibit B shall be handled in accordance with Section 4.2.

9.1.2. *Funds for Payment of Costs/Expenses*. The source of funds for the payment of costs/expenses associated with Project shall be limited to those listed below. No other City fund, or monies held by, owed to, or in trust for the City, shall be used by the City or sought to be collected by Developer, its employees, agents, contractors, or subcontractors other than those identified in Section 9.1.2.1.

9.1.2.1. Funds for Project. Funds for payment of costs/expenses for Project shall be limited to the [describe the funding source and any limitations on the funds to be reimbursed].

9.1.3. *Prerequisites to Payment*.

9.1.3.1. Reimbursement Request. Prior to reimbursement of any expenses, Developer shall provide the City with a Reimbursement Request containing the following:

a. Invoices. Developer shall provide the Director of Development Services all invoices for costs/expenses associated with Project, not previously paid by the City, immediately upon receipt thereof.

b. Proof of Payment. Developer shall provide the Director of Development Services with proof of payment of all invoices submitted.

c. Lien Releases/Stop Notices. Developer shall provide the Director of Development Services with lien/stop notice releases associated with all work performed or supplies provided in a form satisfactory to the City Attorney.

d. Certification of Payment. Developer shall provide the Director of Development Services with a written certification that all trades and soft costs for which they are seeking reimbursement have been paid.

e. Acknowledgement of Subcontractors. Developer shall provide the Director of Development Services with a letter from each firm (e.g. civil, survey, and geotechnical) acknowledging that eligible soft costs included in the relevant invoices have been paid.

f. Time sheets. Developer shall provide the Director of Development Services with time sheets from the construction manager to justify the project management costs.

g. Graphics. Developer shall provide the Director of Development Services with a graphic depicting the areas within the Project for which the Reimbursement Request is being submitted.

h. Other Documents. Developer shall provide the Director of Development Services with any other documents that may be needed to evaluate the eligibility of the expense as determined necessary by the Director of Development Services in his/her sole discretion.

City shall not have an obligation to make payment to Developer unless and until Developer provides the Director of Development Services with a Reimbursement Request containing all of the above and such Reimbursement Request is approved by the Director of Development Services as provided below.

9.1.3.2. Inspection. The Project shall be subject to City inspection as provided in section 2-11 of the Greenbook. Developer shall ensure that all persons and entities providing work or services for the Project comply with the inspection requirements provided in section 2-11 of the Greenbook.

9.1.3.3. City Approval. The Director of Development Services shall review each Reimbursement Request and the supporting documentation. If the Director of Development Services finds that any such payment request is incomplete, improper, or otherwise not suitable for reimbursement, the Director of Development Services shall inform Developer in writing within fifteen (15) business days after receipt thereof, the reasons for his finding. Developer shall have the right to respond to this finding by submitting further documentation after receipt of said findings. The Director of Development Services shall review any further documentation received from Developer in support of the payment request and inform Developer of his approval or denial of the payment request within ten (10) business days after receipt of the supplemental documentation.

9.1.4. *Time of Payment*. City shall reimburse Developer for the approved costs associated with each Reimbursement Request by the Payment Date. If the Payment Date falls on a weekend or holiday, the Payment Date shall be extended to the next business day.

9.1.4.1. Additional Costs. Any costs that may accrue, such as interest on late payments to Developer's contractors, subcontractors, or suppliers, shall not be the obligation of the City if the City has not received a complete Reimbursement Request. Such additional charges shall be the obligation of the Developer and not eligible for reimbursement.

9.1.5. *Reimbursement Amount per Reimbursement Request*. The City shall pay Developer approved amounts in the Reimbursement Request, less any Non-Reimbursable Costs and Contested Charges on or before the Payment Date.

9.1.5.1. Withholding. Subcontracts for the Project may provide for withholding from each payment to the Subcontractor until Acceptance of the work by the City. Except as otherwise provided in this Agreement or at law, the City shall not withhold any additional amounts from the Reimbursement Requests submitted by Developer, beyond the actual Subcontractor withholding amount.

a. Payment and Invoicing for Withholding. Developer shall not pay the Subcontractors the amounts withheld until (1) forty-five (45) calendar days from recordation of the Notice of Completion, and (2) confirmation has been submitted to the Director of Development Services by Developer that no Stop Notices or

Mechanic's Liens have been filed and not released and the following work has been completed:

i. All Project improvements have been installed.
ii. As-builts have been submitted to the City.
iii. Form PWE106 is completed.
iv. The final punch list is complete.

Where a stop Notice or Mechanic's Lien has been filed following the recordation of the Notice of Completion, Developer shall continue to withhold the amount in controversy until a fully executed release of Stop Notice or Mechanic's Lien or a bond releasing the Stop Notice or Mechanic's Lien has been filed and a conformed copy delivered to the City.

9.1.5.2. Non-Reimbursable Costs. The following costs shall not be eligible for reimbursement under this Agreement.

a. Loss During Delivery. Developer shall assign risk of loss related to the delivery of project supplies, materials, and equipment to shipper as FOB Destination. Any loss incurred prior to delivery shall not be a reimbursable expense.

b. Costs Incurred Due to Negligence. Developer shall not be entitled to payment for any cost or expenditures incurred due to negligent acts, omissions, or willful misconduct of Developer or the Subcontractor, or any of their respective contractors, subcontractors, employees, or agents.

c. Unapproved Costs. Developer shall not be entitled to reimbursement for any cost or expenditure that has not been approved by the City in the manner required by this Agreement.

9.1.5.3. Contested Charges. In the event that the City contests any charge on an invoice received ("Contested Charge"), the City shall provide Developer a written statement of the Contested Charges, the reason that the charges are contested, and a proposed resolution.

a. Appeal to City Manager. Developer may appeal the City's determination that certain costs are not reimbursable. The appeal must be received prior to the Payment Date for the Reimbursement Request in which the Contested Charges are contained. During the appeal period, and as long as the charges remain disputed,

Developer shall proceed with the work, and the City shall compensate Developer for the undisputed amounts. If, following the appeal, the City Manager determines that any previously unpaid amounts are eligible for reimbursement, such amounts shall be included in the next payment to Developer.

9.1.6. *Cutoff for Submission of Invoices*. Developer shall submit its final Reimbursement Request not later than the Cutoff Date. Any Reimbursement Requests submitted after the Cutoff Date shall not be reviewed or included in Reimbursable Cost. The final payment by the City for the Project will be made only after Developer has submitted all documentation reasonably necessary to substantiate the cost of construction and completing the Improvements associated with that phase, lien free, in accordance with the Plans. Final inspection and sign-off by the City's inspectors with associated mechanic's lien releases (or bonds releasing contested liens) shall be sufficient evidence of the lien free completion of the Improvements.

9.1.7. *Final Accounting*. Following completion of the Project, Developer shall submit a final accounting to the City in order to determine the cost of design, engineering, construction, and related work thereto to complete the Improvements. Developer shall also submit all supporting information reasonably necessary to document expenditures on the Improvements, including specific details on the costs and work attributable to the Improvements, including third-party invoices, billings, and receipts for construction surveying, soil testing, blue printing, actual construction costs, and similar expenses.

9.1.7.1. True-up Payments. Following a Final Accounting, the City shall determine whether the actual payments made to Developer equal the audited approved expenditures. In the event that the amount of the approved expenditures exceeds the amount of the actual payments, the City shall make a true-up payment to Developer for the difference; however, in no event shall the true-up payment cause the total amount paid per phase to exceed the Maximum Reimbursement Amount. If the Final Accounting shows that the amount of actual payments to Developer exceeds the amount of the approved expenditures, Developer shall remit or cause the remittance of the difference to the City within twenty (20) business days of a notice of deficiency.

ARTICLE X. PROJECT ACCEPTANCE AND FINAL COMPLETION

10.1. No Waiver. Developer shall perform and complete the work in strict accordance with the Contract Documents, as reasonably determined by the City Engineer and the Director of Development Services. Neither recommendation of any progress payment or acceptance of work, nor any payment by City to Developer under this Agreement, nor any use or occupancy of the Improvements or any part thereof by the City, nor any act of acceptance by the City, nor any failure to act, nor any review of a shop drawing or sample submittal, will constitute an acceptance of work, which is not substantially in accordance with the Contract Documents.

ARTICLE XI. WARRANTIES

11.1. Enforcement of Warranties. Developer shall enforce for the City's benefit all warranties provided in the Contract Documents and any other implicit or explicit warranties or guarantees required or implied by law.

11.1.1. *Materials and Workmanship*. Developer shall guarantee, and shall require its Subcontractor(s) and agents to guarantee, all work on the Project against defective workmanship and materials furnished by Developer for a period of one (1) year from the date of Acceptance.

11.1.2. *New Materials and Equipment*. Developer shall warrant and guarantee, and shall require its Subcontractor(s) and agents to warrant and guarantee to City that all materials and equipment incorporated into the Project are new unless otherwise specified.

11.1.3. *Design, Construction, and Other Defects*. Developer shall warrant and guarantee, and shall require its Subcontractor(s) and agents to warrant and guarantee to City that all work is in accordance with the Contract Documents and is not defective in any way in design, construction, or otherwise.

11.2. Term of Warranties. Unless otherwise specified or provided by law, warranties shall extend for a term of one (1) year from the date of Acceptance.

ARTICLE XII. DEFECTIVE WORK

12.1. Correction, Removal, or Replacement. If, within the designated warranty period, or such additional period as may be required by law or regulation, the City determines the Project contains defective work ("Defective Work"), Developer shall promptly and in accordance with the City's written instructions and within the reasonable time limits stated therein, either correct , repair, or replace the Defective Work, or if it has been rejected by City, remove it from the site and replace it with non-defective and conforming work.

12.2. City's Right to Correct. If circumstances warrant, including but not limited to an emergency or Developer's failure to adhere to Section 12.1, City may correct, remove, or replace the Defective Work. In such circumstances, Developer or its contractors or subcontractors, as applicable, shall not recover costs associated with the Defective Work.

12.3. Non-Reimbursable Costs. All costs incurred by Developer or Developer's agents to remedy defects are Non-Reimbursable Costs. If the City has already reimbursed Developer or Developer's contractors or subcontractors for the defective work, City is entitled to an appropriate decrease in Reimbursable Costs, to withhold a setoff against the amount, or to make a claim against Developer's bond, if Developer or Developer's contractors or subcontractors, as applicable, have been paid in full, until the defects are remedied.

12.4. Extension of Warranty. When Defective Work, or damage therefrom, has been corrected, removed, or replaced during the warranty period, the one (1) year, or relevant warranty period, will be extended for an additional time period equal to that of the initial warranty period, from the date of the satisfactory completion of the correction, removal, or replacement.

12.5. No Limitation on Other Remedies. Exercise of the remedies for defects pursuant to this Article shall not limit the remedies City may pursue under this Agreement or law.

12.6. Disputes. If Developer and City are unable to reach agreement on disputed work, City may direct Developer to proceed with the work and compensate Developer for undisputed amounts. Payment of disputed amounts shall be as later determined in accordance with 9.1.5.2(c). Developer shall maintain and keep all records relating to disputed work for a period of three (3) years in accordance with Article XVII.

ARTICLE XIII. SECURITY FOR CONSTRUCTION

13.1. Bond. The Contract Documents shall require the contractor or Subcontractor to provide a payment bond and a performance bond for the construction of the Project. The City shall be named as a co-obligee of the bonds. The bonds shall be maintained until such time as the Project is complete and Accepted by the City.

13.2. Insolvency or Bankruptcy. If the surety on the above-mentioned bond is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located, Developer shall within five (5) business days thereafter substitute or require the substitution of another bond and surety, acceptable to the City.

13.3. Calling the Bond. Developer acknowledges and agrees that if Developer's construction of the Improvements has not been commenced, has not been completed in accordance

with the Project Schedule, has not been performed in accordance with the Approved Drawings and Specifications, or if the Developer has failed to cure any defects within the time specified with a Notice of Defect, the City may use the security referenced in 13.1 above to complete the Improvements. This remedy is not a limitation on remedies of the City and is in addition to any other remedy that the City may have at law or in equity.

ARTICLE XIV. INDEMNITY AND DUTY TO DEFEND

14.1. Defense, Indemnity, and Hold Harmless.

14.1.1. *General Requirement*. Developer shall defend, indemnify, protect, and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property, including takings claims, or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees arising out of or in connection with the Project or this Agreement.

This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officers, or employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees.

14.1.1.1. Damage to Downstream or Adjacent Properties. Such indemnification and agreement to hold harmless shall extend to damages to adjacent or downstream properties or the taking of property from owners of such adjacent or downstream properties as a result of and to the extent of negligence by Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees in the construction of the Improvements in accordance with the Contract Documents as provided herein. It shall also extend to damages resulting from diversion of waters, change in the volume of flow, modification of the velocity of the water, erosion or siltation, or the modification of the point of discharge as the result of and to the extent of negligence by Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees in the construction of the Improvements in accordance with the Contract Documents.

14.1.2. *Hazardous Materials*. Indemnification for Hazardous Materials. Developer agrees to defend, indemnify, and hold harmless, the City, its agents, officers and employees from and against any and all costs, damages, claims, and liabilities, including reasonable attorney fees, foreseeable or unforeseeable, directly or indirectly, arising from or related to the release of Hazardous Materials by Developer, its officials, officers, Subcontractor(s), contractors, agents, or employees in association with the construction, maintenance, or repair of the Project, or any act taken or omission under the Agreement. Developer expressly preserves its rights against other parties and does not release or waive its rights to contribution against any other party.

14.1.2.1. Hazardous Materials. Hazardous waste or hazardous substance as defined in any federal, state, or local statute, ordinance, rule, or regulation applicable to the Property, including, without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 of United States Code sections 6901-6992k), the Carpenter Presley-Tanner Hazardous Substance Account Act (Health and Safety Code sections 25300-25395.15), and the Hazardous Waste Control Law (Health and Safety Code sections 25100-25250.25). "Hazardous Materials" shall also include asbestos or asbestos containing materials, radon gas, and petroleum fractions, whether or not defined as hazardous waste or hazardous substance in any such statute, ordinance, rule, or regulation.

14.1.3. *Illegal Discharge to Storm Drains*. Developer shall defend, indemnify, protect, and hold harmless City, its agents, officers, and employees, from and against all claims asserted, or liability established for damages or injuries to any person or property resulting from a discharge to public storm drains in violation of applicable laws to the extent arising out of the construction of the Improvements (an "Illegal Discharge") caused by any action or failure of Developer, its officials, officers, contractors, Subcontractor(s), agents, or employees = to take reasonable measures to prevent an Illegal Discharge. Developer shall also be responsible for payment of any fines or penalties assessed against City for an Illegal Discharge. Developer's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of City, its agents or employees.

14.1.4. *Costs of Defense and Award*. Included in the obligations in sections 14.1.1 through 14.1.4 above is Developer's obligation to defend, at Developer's own cost, expense and risk, any and all suits, actions, or other legal proceedings that may be brought or instituted against the City, its directors, officials, officers, employees,

agents, and/or volunteers, subject to the limitations in sections 14.1.1 and 14.1.2. Developer shall pay and satisfy any judgement, award, or decree that may be rendered against City or its directors, officials, officers, employees, agents, and/or volunteers, for any and all related legal expense and costs incurred by each of them to the extent of Developer's actual determined negligence, subject to the limitations in Sections 14.1.1 and 14.1.2. The City may, in their sole and absolute discretion, participate in the defense of any and all suits, actions, or other legal proceedings that may be brought or instituted against the City, its directors, officials, officers, employees, agents, and/or volunteers, but the Developer shall have no obligation to reimburse the City for any costs of defense incurred by the City, including, without limitation, reimbursement for attorneys' fees, experts' fees and other costs. The City's participation shall not relieve the Developer of any of its obligations under this Article XIV.

14.1.5. *Insurance Proceeds*. Developer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents, and/or volunteers.

14.1.6. *No Use of Security*. The security identified in Article XIII shall not be used to satisfy the obligations of Developer under this Article XIV.

14.1.7. *Declarations*. Developer's obligations under Article XIV shall not be limited by any prior or subsequent declaration by Developer.

14.1.8. *Enforcement of Costs*. Developer agrees to pay any and all costs, including attorneys' fees, City incurs enforcing the indemnity and defense provisions set forth in Article XIV.

14.1.9. *Survival*. Developer's obligations under Article XIV shall survive the expiration and/or termination of this Agreement.

ARTICLE XV. RECORDS AND AUDITS

14.2. Retention of Records. Developer shall maintain data and records related to this Agreement for a period of not less than three (3) years following receipt of final payment under this Agreement.

14.3. Audit of Records. At any time during normal business hours and as often as the City deems necessary, Developer and any or all of Developer's contractors and subcontractors shall make available to the City for examination at reasonable locations within the City/County of San Diego all of the data and records with respect to all matters covered by this Agreement. Developer and all contractors and subcontractors will permit the City

to make audits of all invoices, materials, payrolls, records of personnel, and other data and media relating to all matters covered by this Agreement. If records are not made available within the City/County of San Diego, then Developer shall pay all the City's travel related costs to audit the records associated with this Agreement at the location where the records are maintained. Such costs will not be Reimbursable Costs.

14.3.1. *Costs*. Developer and Developer's agents shall allow City to audit and examine books, records, documents, and any and all evidence and accounting procedures and practices that City determines are necessary to discover and verify all costs of whatever nature, which are claimed to have been incurred, anticipated to be incurred, or for which a claim for additional compensation or for Extra Work have been submitted under this Agreement.

ARTICLE XVI. MISCELLANEOUS PROVISIONS

15.1. Notices**.** All notices and demands given pursuant to this Agreement shall be written. They shall be deemed served (i) immediately, upon personal delivery; (ii) the next business day, if sent prepaid by recognized overnight service such as FedEx for delivery the next business day; or (iii) three (3) business days after deposit in the United States mail, certified or registered mail, return receipt requested, first-class postage prepaid. Until notice of a change of address is properly given, notice shall be given:

If to City:
City of Chula Vista
Attn: City Manager
276 Fourth Avenue
Chula Vista, California 91910

With a copy to:
Office of the City Attorney
Attn: City Attorney
276 Fourth Avenue
Chula Vista, California 91910

If to Developer:
[Company]
Attn:
Street Address 1
Street Address 2
City, State, Zip

With a copy to:
Name
Attn:
Street Address 1
Street Address 2
City, State, Zip

15.2. Captions. Captions in this Agreement are inserted for convenience of reference. They do not define, describe or limit any term of this Agreement.

15.3. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties regarding the subject matter hereof. No prior or contemporaneous oral or written representations, agreements, understandings and/or statements regarding its subject matter shall have any force or effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted. However, all previous written agreements remain in full force and effect except to the extent they conflict with this Agreement.

15.4. Severability. If any provision of this Agreement or its particular application is held invalid or unenforceable, the remaining provisions of this Agreement, and their application, shall remain in full force and effect, unless a party's consideration materially fails as a result.

15.5. Recordation. The City may record this Agreement in the Office of the County Recorder of San Diego County, California.

15.6. Preparation of Agreement. No inference, assumption or presumption shall be drawn from the fact that a Party or its attorney drafted this Agreement. It shall be conclusively presumed that all Parties participated equally in drafting this Agreement.

15.7. Authority. Each Party warrants and represents that it has legal authority and capacity to enter into this Agreement, and that it has taken all necessary action to authorize its entry into this Agreement. Each individual signing this Agreement on behalf of an entity warrants that his/her principal has duly authorized him/her to sign this Agreement on its behalf so as to bind his/her principal.

15.8. Modification. This Agreement may not be modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the Parties hereto, their successors or assigns.

15.9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action arising under or relating to this Agreement shall be brought only in the federal or state courts located in San Diego County, State of California, and if applicable, the City of Chula Vista, or as close thereto as possible. Venue for this Agreement shall be the City of San Diego.

15.10. Administrative Claims. *Requirements and Procedures*. No suit or arbitration shall be brought arising out of this Agreement against the City unless a claim has first been presented in writing and filed with the City and acted upon by the City in accordance

with the procedures set forth in Chapter 1.34 of the CVMC, as same may from time to time be amended (the provisions of which are incorporated by this reference as if fully set forth herein), and such policies and procedures used by City in the implementation of same.

15.11. Non-liability of City Officials and Employees. No member, official, employee or consultant of the City shall be personally liable to Developer in the event of any default or breach by City, or for any amount which may become due to Developer, or on any obligations under the terms of this Agreement.

15.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be the original and all of which shall constitute one and the same document.

[End of page. Signature page follows this page.]

IN WITNESS WHEREOF, this Reimbursement Agreement is executed as of the day and year first set forth above.

CITY

CITY OF CHULA VISTA, a California charter city and municipal corporation

By:_____

Gary Halbert, City Manager

ATTEST:

By:_____

Kerry Bigelow, City Clerk

APPROVED AS TO FORM:

By:_____

Glen R. Googins, City Attorney

DEVELOPER

[Company], a [State] [corporate entity type]

By:_____*

* Signatories to provide signature authority for signatory.

EXHIBIT D

[Grant of Easement, License and Maintenance Agreement]

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

City Clerk

City of Chula Vista

276 Fourth Avenue

Chula Vista, CA 91910

No transfer tax is due as this is a conveyance to a public agency for less than a fee interest for which no cash consideration has been paid or received

ABOVE SPACE FOR RECORDER'S USE

CCV File No.

GRANT OF EASEMENTS, LICENSE AND MAINTENANCE AGREEMENT

PROJECT NAME

(DEDICATED EASEMENTS)

THIS GRANT OF EASEMENTS, LICENSE AND MAINTENANCE AGREEMENT ("**Agreement**") is made as of this _____ day of _____, 20___, by and between the CITY OF CHULA VISTA, a Municipal Corporation ("**City**"), and DEVELOPER ("**Owner**").

RECITALS

A. This Agreement concerns and affects certain improvements within a portion of the real property located in Chula Vista, California, more particularly described in **Exhibit "A"** attached hereto and incorporated herein ("**Property**"). The Property is part of the Otay Ranch Master Planned Community and is commonly known as "NAME"; For purposes of this Agreement, the terms "Millenia Phase 2" or "Project" shall refer to the NAMEproperty.

B. Owner is the owner of the Property and the Declarant under that certain Declaration of Covenants, Conditions and Restrictions of Millenia filed, or to be filed, in the County Recorder's Office of San Diego County, of the state of California ("**Community Declaration**"). The Community Declaration provides for the "ASSOCIATION, a California Nonprofit Mutual Benefit Corporation ("**Association**") to maintain certain areas in the

Community. Futhermore, one or more subassociations may be formed ("**Subassociations**") for particular areas within the Community; the purposes of which would include the maintenance of certain amenities within the area over which the Subassociation has jurisdiction.

C. The Property as described on **Exhibit "A"** is, or will become, covered by certain Public Improvements ("**Improvements**").

D. In order for Owner to obtain the Improvements for NAME and for the City to have assurance that the maintenance of certain areas within the Community would be provided for, the City and Owner have or will entered into a this Agreement whereby the Owner agrees that maintenance of such areas shall be accomplished by the creation of the Association. The Parcels will be shown on **Exhibit "B"**, attached hereto, and describe those particular areas which were dedicated to the public on one or more Improvement plans to be maintained by the Association. The public areas to be maintained by the Association are collectively referred to as the "Association Maintained Public Areas".

E. The City desires to grant to Owner easements for landscape maintenance purposes upon, over, and across the Association Maintained Public Areas as shown on **Exhibit "B"**, in order to facilite the performance by Owner of the obligations as set forth in this agreement, adopted pursuant to the City Resoulution.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as set forth below.

1. **Grant of Easements**. The City hereby grants to Owner and its agents, successors, and assigns, non-exclusive easements and right-of-way over and across the Association Maintained Public Areas for the purpose of maintaining, reparing, and replacing landscaping and other improvements located thereon as described on **Exhibit "C"**. The grants are made without any warranties of any kind, express or implied, other than the warranty stated in **Paragraph 14(f)** below.

2. **Maintenance Obligations**.

(a) **Owner to Initially Maintain**. Owner hereby covenants and agrees, at its sole cost and expense, to maintain, repair, and replace, or cause to be maintained, repaired, or replaced, those improvements within the Association Maintained Public Areas which are described on **Exhibit "C"** attached hereto, at a level equal to or better than the level of maintenance which is acceptable to the Director of Public Works, at his/her discretion and equivalent to City or Community Facilities District Maintained right-of-way facilities. For purposes of this Agreement, the term "Maintenance", or "Maintain" shall mean the maintenance, repair, the provision of water and replacement obligations described herein and on **Exhibit "C"** hereto and shall also include repair and replacement at no cost to the City of any City-owned property that is damaged as a result of the activity of Owner, or the Association or any other Transferee (as described below) during the performance of the maintenance responsibilities pursuant to this Agreement. **Exhibit "C"** also refers to the maintenance responsibilities of the City which the City shall perform.

(b) **Transfer to Association or Other Transfers**. Upon Owner's transfer of maintenance obligations to the Association, (i) the Association shall become obligated to perform the obligations so transferred, and (ii) subject to the City determining that the requirements of **Paragraph 3** below have been satisfied, Owner shall be released from such obligation. Transfer of maintenance obligations to the Association may be phased (that is, there may be multiple transfers).

Owner represents to City that it intends to, and has the authority to, unilaterally transfer all or some of the maintenance obligations either (i) to the Association and that such transfer has been provided for in the Community Declaration, and that such document(s) include the provisions described in **Paragraph 3(a)(ii)** below, or alternatively (ii) to a new homeowners association ("**New Association**") established for maintenance of the open space and thoroughfare median areas in the Property, and that such transfer shall be provided for in the declaration of restrictions ("**New Declaration**") for the New Association, and that such document(s) shall include the provisions described in **Paragraph 3(a)(ii)** below. References below in this Agreement to the "Association" shall include the New Association and "Declaration" shall include the New Declaration if Owner elects to form a new homeowners association for all or a portion of the Property. Alternatively, Owner shall have the right to unilaterally transfer all or some of the obligations hereunder to a Transferee (as described in **Subsection (c)** below) or to any other person or entity who acquires all or a portion of Owner's interest in the community as provided in **Section 10**. Upon any such transfer by Owner to a Transferee, Owner shall be released from any future obligations arising after the transfer and the assignee shall assume the obligations arising after the date of the transfer.

(c) **Transfer by Association**. The Association shall have the right to transfer Maintenance obligations to a Subassociation or to the owner of an apartment project ("**Transferee**"). Upon the Association's transfer of Maintenance obligations to a Transferee, (i) the Transferee shall become obligated to perform the obligation so transferred, (ii) the Association shall retain the right to perform the Maintenance should the Transferee fail to do so, and (iii) the Association shall be released from the obligations so transferred subject to the City determining that the requirements of Paragraph 4 below have been satisfied.

3. Assignment and Release of Owner.

(a) **Assignment**. Upon Owner's transfer of the Maintenance obligations to the Association, it is intended by the parties that the Association shall perform the Maintenance obligations either itself or by contractors. Such transfer to the Association will release Owner from its obligations only if all of the following occur:

(i) Association Accepts Obligation. The Association has unconditionally accepted and assumed all of Owner's obligations under this Agreement in writing arising after the date of the assignment and such assignment provides that the burden of this Agreement remains a covenant running with the land, and the assignee expressly assumes the obligations of Owner under this Agreement arising after the date of the assignment. The assignment shall also have been approved by the appropriate governing body of the Association by resolution or similar procedural method and approved as to form and content by the City Attorney. The City shall not unreasonably withhold or delay its consent to such assignment.

(ii) Association's Community Declaration. The City has confirmed that there have been no modifications to the recorded Community Declaration previously approved by the City, to any of the following provisions: the Association shall be responsible for the maintenance of the Association Maintained Public Areas, the Association shall indemnify City for all claims, demands, causes of action, liability or loss related to or arising from the maintenance activities by the Association except to the extent caused by the negligence or misconduct of the City, and the Association shall not seek to be released by City from the maintenance obligations of this Agreement, without the prior consent of City and one hundred percent (100%) of the holders of first mortgages or owners of the Property.

(iii) Association Insurance. The Association procures and formally resolves to maintain at its sole cost and expense, commencing no later than the City's release of all of Owner's landscape maintenance bonds, a policy of public liability insurance which at least meets the requirements of **Section 5.1(a)** of the Community Declaration which reads as follows:

(b) **General Liability Insurance**. The Master Association shall obtain a comprehensive general liability and property damage insurance policy insuring the Master Association and the Owners against liability incident to ownership or use of the Master Association Property. The limits of such insurance shall not be less than three million dollars ($3,000,000.00) covering all claims for death, personal injury and property damage arising out of a single occurrence. The Aggregate Limit will not be less than two times the Combined BI/PD "per occurrence" Limit of Liability, or not less than $6,000,000. The insurer issuing such insurance shall have rating by A. M. Best of "A, Class V" or better with no modified occurrences and as admitted by Best's Insurance Guide. Such insurance shall include the following additional provisions provided they are available on a commercially reasonable basis:

(i) The City of Chula Vista shall be named as a Liability Additional Insured to such insurance on a Primary basis, and the Liability Additional Insured Endorsement shall not exclude products/completed operations hazard pursuant to the City's requirements to the Master Association to do so;

(ii) The policy shall not contain a cross-suit exclusion clause which would abrogate coverage should litigation ensue between insureds;

(iii) The policy shall contain the following severability clause (or language which is substantially the same): "The coverage shall apply separately to each insured except with respect to the limits of liability" **Section 5.1(a)** may not be amended without the written consent of the City Attorney and Development Services Director.

The Association shall provide the City with a Certificate of Insurance, and Liability Additional Insured Endorsement designating, "City of Chula Vista", upon procurement of the policy as set forth above.

(c) **Release**. When all conditions precedent in **Paragraph 3(a)** are fulfilled, Owner shall be released from its obligations under this Agreement, including its security and insurance requirements. Owner acknowledges that it has a contractual obligation to

perform the terms and conditions of this Agreement until released by the City from this Agreement. At least sixty (60) days prior to such transfer, Owner shall give a notice to the City of Owner's intent to transfer its Maintenance obligations herein and provide the City with the appropriate documents listed in **Paragraph 3(a)**. The City acknowledges that Owner may transfer its obligations in Phases and in such case, Owner shall be released as to the obligations so transferred.

4. Assignment and Release of Association.

(a) **Assignment**. Upon Association's transfer of the Maintenance obligations to a Transferee, it is intended by the parties that the Transferee shall perform the Maintenance obligations either itself or by contractors. Such transfer will release Association from its obligations only if all of the following occur:

(i) **Transferee Accepts Obligation**. The Transferee has unconditionally accepted and assumed all of Association's obligations under this Agreement in writing, such assignment provides that the burden of this Agreement remains a covenant running with the land, and the assignee expressly assumes the obligations of Association under this Agreement. If the Transferee is a Subassociation, the assignment shall also have been approved by the appropriate governing body of the Subassociation by resolution or similar procedural method and approved as to form and content by the City Attorney. The City shall not unreasonably withhold its consent to such assignment.

(ii) **Subassociation's Declaration of Restrictions**. If the Transferee is a Subassociation, the City has reviewed and approved the Subassociation's recorded Declaration of Restrictions to confirm that said document contains appropriate maintenance and insurance provisions.

(iii) **Subassociation Insurance**. The Transferee procures and formally resolves to Maintain at its sole cost and expense, a policy of public liability insurance which meets the requirements set forth in **Paragraph 3(a)(iii)** above. The Subassociation shall provide the City with a Certificate of Insurance upon acceptance of the transfer of the Maintenance obligations herein.

(b) **Release**. When all conditions precedent in **Paragraph 4(a)** are fulfilled, the Association shall be released from its obligations under this Agreement, including its security and insurance requirements. At least sixty (60) days prior to such transfer, Association shall give notice to the City of Association's intent to transfer its Maintenance obligations herein and provide the City with the appropriate documents listed in **Paragraph 4(a)**.

5. Owner's Insurance. Until such time as the Association has obtained the general liability insurance required under the Community Declaration, Owner agrees to procure and formally resolves to maintain at its sole expense, commencing no later than the date that the landscape architect of record has submitted a letter of substantial conformance pertaining to work being completed to the Development Services Director, or his designee, has deemed the work complete and satisfactory, a policy of public liability insurance that would include, but is not limited to the following:

(a) **General Liability Insurance**. Owner shall obtain a comprehensive general liability and property damage insurance policy insuring Owner against liability incident to ownership or use of Property. The limits of such insurance shall not be less than Three Million Dollars ($3,000,000.00) covering all claims for death, personal injury and propety damages arising out of a single occurrence. The Aggregate Limit will not be less than two times the Combined BI/PD "per occurrence" Limit of Liability, or not less than $6,000,000. The insurer issuing such insurance shall have rating by A.M. Best "A, Class V', or better with modified occurences and as admitted by Best's Insurance Guide. Such insurance shall include the following additional provisions provided they are available on a commercially reasonable basis:

(i) The City of Chula Vista shall be named as a Liability Additional Insured to such insurance on a Primary basis, and Liability Additional Insured Endorsement shall not exclude products / completed operations hazard pursuant to the City's requirements for Owner to do so;

(ii) The policy shall not contain a cross-suit exclusion clause which would abrogate coverage should litigation ensue between insured and;

(iii) The policy shall contain the following Severability clause (or language which is substantially the same): "The coverage shall apply separately to each insured except with respect to the limits of liability".

Owner shall provide the City with a Certificate of Insurance and Liability Additional Insured Endorsement designating, "City of Chula Vista", upon procurement of the policy as set forth above.

6. Indemnity. Owner shall indemnify, defend and hold City, its officers, agents, employees, subcontractors and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of Owner, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (Owner's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated by this Agreement, including, but not limited to, the use, maintenance, or repair of the Association Maintained Public Areas, save and except for liability or claims arising through the active negligence or willful misconduct of City. Owner shall defend, at its expense, including attorneys' fees, City, its officers, agents, employees, subcontractors and independent contractors in any legal or equitable action based upon such alleged acts or omissions, save and except liability or claims arising through the active negligence of willful misconduct of City.

7. Indemnity of Transferee. The document whereby Owner transfers a Maintenance obligation to a Transferee shall be signed by both Owner and the Transferee and shall set forth an express assumption of Maintenance and other obligations hereunder and shall include the following indemnification provision:

Indemnity. Transferee shall indemnify, defend and hold City, its officers, agents, employees, subcontractors and independent contractors free and harmless from any liability whatsoever, based or

asserted upon any act or omission of Transferee, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (Transferee's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated by this Agreement, including, but not limited to, the use, maintenance, or repair of the Association Maintained Public Areas, save and except for liability or claims arising through the active negligence or willful misconduct of City. Transferee shall defend, at its expense, including attorneys' fees, City, its officers, agents, employees, subcontractors and independent contractors in any legal or equitable action based upon such alleged acts or omissions, save and except liability or claims arising through the active negligence of willful misconduct of City. Notwithstanding the foregoing, Transferee shall not have any liability under this paragraph by reason of another party's failure to maintain. It is specifically intended that the City shall have the right to enforce this paragraph. This paragraph may not be amended without the written consent of the City Attorney and the Director of Development Services.

8. **Agreement Binding Upon any Successive Parties**. This Agreement shall be binding upon Owner and any successive Declarant under the Community Declaration. This Agreement shall be binding upon the Association and any Transferees upon transfer of Maintenance obligations to the Association or Transferee, respectively. This Agreement shall inure to the benefit of the successors, assigns and interests of the parties as to any or all of the Property.

9. **Agreement Runs with the Land**. The burden of the covenants contained in this Agreement ("**Burden**") is for the benefit of the Property and the City, its successors and assigns, and any successor-in-interest thereto. The City is deemed the beneficiary of such covenants for and in its own right and for the purposes of protecting the interest of the community and other parties, public or private, in whose favor and for whose benefit such covenants running with the land have been provided, without regard to whether the City has been, remained or are owners of any particular land or interest therein. If such covenants are breached, the City shall have the right to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach to which it or any other beneficiaries of this Agreement and the covenants may be entitled.

10. **Assignment**. Owner, or its successor in interest, shall have the right to assign its rights and delegate some or all of its obligations under this Agreement, but only to another master developer it so identifies to City who agrees in writing to fulfill Owner's role with regard thereto. City retains the right to consent or not consent to such change, but City's consent shall not be unreasonably withheld and shall be limited to confirming the financial resources of the successor necessary to fulfill its role under this Agreement.

11. **Governing Laws**. This Agreement shall be governed and construed in accordance with the laws of the State of California.

12. **Effective Date**. The terms and conditions of this Agreement shall be effective as of the date this Agreement is recorded in the Office of the County Recorder of the San Diego County.

13. **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be original and all of which shall constitute one and the same document.

14. **Recording**. The parties shall cause this Agreement to be recorded in the Office of the County Recorder of San Diego County within thirty (30) days after this Agreement has been approved by the City Council.

15. **Miscellaneous Provisions**.

(a) **Notices**. Unless otherwise provided in this Agreement or by law, any and all notices required or permitted by this Agreement or by law to be served on or delivered to either party shall be in writing and shall be deemed duly served, delivered and received when personally delivered to the party to whom it is directed or, in lieu thereof, when three (3) business days have elapsed following deposit in the United States Mail, certified or registered mail, return receipt requested, first-class postage prepaid, addressed to the address indicated in this Agreement. A party may change such address for the purpose of this Paragraph by giving written notice of such change to the other party.

City:
City of Chula Vista
Development Services Department
Land Development Division
276 Fourth Avenue
Chula Vista, California 91910

Owner:
Address:
Attn:

With a copy to:
Address:
Attn:

(b) **Captions**. Captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of its terms.

(c) **Entire Agreement**. This Agreement, together with any other written document referred to herein, embody the entire agreement and understanding between the parties regarding the subject matter hereof, and any and all prior or contemporaneous oral or written representations, agreements, understandings and/or statements shall be of no force and effect. This Agreement is not intended to supersede or amend any other agreement between the parties unless expressly noted.

(d) **Recitals; Exhibits**. Any recitals set forth above and any attached exhibits are incorporated by reference into this Agreement.

(e) **Compliance with Laws**. In the performance of its obligations under this Agreement, Owner, its agents and employees, shall comply with any and all applicable federal, state and local rules, regulations, ordinances, policies, permits and approvals.

(f) **Authority of Signatories**. Each signatory and party hereto hereby warrants and represents to the other party that it has legal authority and capacity and direction from its principal to enter into this Agreement, and that all resolutions and/or other actions have been taken so as to enable said signatory to enter into this Agreement.

(g) **Modification**. This Agreement may not be modified, terminated or rescinded, in whole or in part, except by written instrument duly executed and acknowledged by the parties hereto, their successors or assigns, and duly recorded in the Office of the County Recorder of San Diego County.

(h) **Preparation of Agreement**. No inference, assumption or presumption shall be drawn from the fact that a party or its attorney prepared and/or drafted this Agreement. It shall be conclusively presumed that both parties participated equally in the preparation and/or drafting of this Agreement.

(i) **Approvals**. When any approvals or corrections are requested to be obtained from the City hereunder, the failure of the City to deliver notice of disapproval of any such request meeting all the provisions of this agreement as determined by the City Manager within one hundred eighty (180) days after receipt of notice of such request to the City Attorney and Development Services Director shall constitute approval thereof.

End of page (next page is signature page)

SIGNATURE PAGE 1 OF 2 FOR
GRANT OF EASEMENTS, LICENSE AND MAINTENANCE AGREEMENT

PROJECT

IN WITNESS WHEREOF, the parties hereto caused this Agreement to be executed the day and year first set forth above.

CITY OF CHULA VISTA:

_____
Mary Casillas Salas, City Mayor

APPROVED AS TO FORM:

_____
Glen R. Googins, City Attorney

ATTEST:

_____
Kerry Bigelow, City Clerk

SIGNATURE PAGE 2 OF 2 FOR
GRANT OF EASEMENTS, LICENSE AND MAINTENANCE AGREEMENT

CHULA VISTA TRACT NO. 09-03
OTAY RANCH NAME(EASTERN URBAN CENTER)

OWNER:

OWNER,

By:

By:

By:

By:_____
Name:_____
Title:_____

(Notary to attach acknowledgment for each signature.)
(Corporate Authority required for each Signatory, if applicable.)

Attachments:

Exhibit “A”: Legal Description of Property

Exhibit “B”: Plat Showing Public Area to be Maintained

Exhibit “C”: Maintenance Responsibilities