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RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT  
WITH OTAY RANCH, L.P.

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## RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT

THIS RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT ("Agreement") is made effective on the date hereinafter set forth below by and between THE OTAY RANCH, L.P., a California limited partnership, ("Developer") and THE CITY OF CHULA VISTA, a municipal corporation, who agree as follows:

1. RECITALS. This Agreement is made with respect to the following facts:

1.0 Previous Agreement. The City and Developer entered into a Pre-Annexation Development Agreement, dated June 25, 1996, by Ordinance No. 2679. This Agreement expired as of January 1, 1997, because the annexation proceeding was not completed by that date. The parties now wish to reinstate this Agreement.

1.1 Owner. The owners of the properties subject to this Agreement (hereinafter collectively referred to as "Owner" or as "Developer") are as follows:

1.1.1 Otay Ranch, L.P. is the owner of approximately 3,545 acres of undeveloped real property in the unincorporated area of the County of San Diego ("County"), described in Exhibits "A" and "F", attached hereto and incorporated herein by this reference.

1.2 City. The City of Chula Vista is a municipal corporation and an incorporated city within the County.

1.3 Code Authorization and Acknowledgments.

1.3.1 City is authorized pursuant to California Government Code sections 65864 through 65869.5 to enter into development agreements for the purpose of establishing certainty for both City and owners of real property in the development process.

1.3.2 Government Code section 65865 expressly authorizes a city to enter into a development agreement with any person having a legal or equitable interest in real property in unincorporated territory within that city's sphere of influence for the development of property as provided in the Development Agreement Law; provided that the agreement shall not become operative unless annexation proceedings annexing the property to the city are completed within the time specified by the agreement.

1.3.3 City enters into this Agreement pursuant to the provisions of the California Government Code, its home-

rule powers, and applicable City ordinances, rules, regulations and policies.

1.3.4 City and Owner acknowledge: City and Owner acknowledge this Agreement will provide:

1.3.4.1 Certainty in the planning process so that the property can be developed efficiently. This will avoid unnecessary waste of resources and increases in housing and other development costs. The Agreement will allow comprehensive planning of a large property so as to make maximum efficient utilization of resources at the least economic cost to the public;

1.3.4.2 To provide and assure to the City the participation of Developer in the accelerated, coordinated and more economic construction, funding and dedication to the public of certain needed public facilities and benefits, and to provide for anticipated levels of service to residents and populations of the property, the City, and adjacent areas;

1.3.4.3 To provide and assure that the City receive sales tax revenues, increase in the property tax base, residential housing and other development, sewer, water and street facilities;

1.3.4.4 To provide and assure that the City receives public facilities in excess of project generated impacts and such facilities shall be of supplemental size, number capacity or length, which shall be provide earlier than could be provided either by funds from the City or than would strictly be necessary to mitigate project related impacts at any development phase;

1.3.4.5 To provide Developer assurances regarding the entitlements and regulations that will be applicable to the development of the property consistent with the Chula Vista General Plan and the Otay Ranch General Development Plan/Subregional Plan;

1.3.4.6 To provide the City the opportunity to secure immediate annexation of the lands depicted in Attachment "C" and secure a related tax revenue sharing agreement with the County of San Diego to assure that development of the properties will generate sufficient tax revenues to offset the costs of providing services to the properties;

1.3.4.7 To enable the City to secure title to the land with the boundaries of the property necessary to complete the Chula Vista greenbelt system as defined in the Chula Vista General Plan;

1.3.4.8 To enable the City to advance its stated goal to identify and secure a site for a potential four year university;

1.3.4.9 To assure the City that the Developer will dedicate right-of-way for SR-125, a route which when constructed will substantially alleviate congestion on I-805 and I-5, and also will facilitate the economic development of Chula Vista; and

1.3.4.10 To enable the City to prepare and adopt a Habitat Conservation Plan consistent with the requirements of the Natural Communities Conservation Act, including the phased conveyance of open space land to the Otay Ranch Preserve.

1.4 The Annexation. On July 1, 1996, the Local Agency Formation Commission ("LAFCO") approved annexation of Sphere of Influence Planning Area 1 "The Otay Parcel", Planning Area 2 "Inverted L" and the Mary Patrick Estate Parcel (see Attachment "C").

1.5 Sphere of Influence. On February 5, 1996 and July 1, 1996 the Local Agency Formation Commission approved the inclusion of Planning Area 1, "The Otay Parcel", into the City Sphere of Influence (Sphere of Influence Planning Area 1 "The Otay Parcel", Planning Area 2 "Inverted L" and the Mary Patrick Estate Parcel - see Attachment "C").

1.6 Planning Documents. On October 28, 1993, City and County adopted the Otay Ranch General Development Plan/Subregional Plan ("the GDP") which includes the Otay Ranch Village Phasing Plan, Facility Implementation Plan, Resource Management Plan and Service Revenue Plan, for approximately 23,000 acres of the Otay Ranch, including the Otay Valley Parcel and the SNMB, Jewels and Foundation Properties. The City amended the GDP on June 4, 1996.

1.6.1 SPA One Plan. On June 4, 1996, the Chula Vista City Council approved the Otay Ranch Sectional Planning Area (SPA) One Plan including the Planned Community District Regulations, Overall Design Plan, Village Design Plan, Public Facilities Plan, Parks, Recreation, Open Space and Trails Plan, Regional Facilities Report, Phase 2 Resource Management Plan, Non-renewable Energy Conservation Plan, Ranch-wide Affordable Housing Plan, SPA One Affordable Housing Plan, and Geotechnical Report.

1.7 Owner Consent. City desires to have the cooperation and consent of Owner to include the Property in the Annexation in order to better plan, finance, construct and maintain the infrastructure for the Otay Valley Parcel; and the Otay Ranch L.P., a California limited partnership, desire to give their cooperation and consent, provided that they obtain certain assurances, as set forth in this Agreement.

1.8 City Ordinance. MARCH 4, 1997 is the date of adoption by the City Council of Ordinance No. 2695 approving this Agreement. The ordinance shall take effect and be in full force on the effective date of Annexation.

2. Definitions. In this Agreement, unless the context otherwise requires:

2.1 "Annexation" means the proposed annexation of that portion of the Otay Ranch into the City as depicted on Exhibit "D".

2.2 "City" means the City of Chula Vista, in the County of San Diego, State of California.

2.3 "County" means the County of San Diego, State of California.

2.4 "Development Plan" means the GDP.

2.5 "GDP" means the General Development Plan/Subregional Plan for the Otay Ranch, described in Paragraph 1.6, above.

2.6 "Owner" or "Developer" means the person, persons, or entity having a legal and equitable interest in the Property, or parts thereof, and includes Owner's successors-in-interest.

2.7 "Project" means the physical development of the private and public improvements on the Property as provided for in the Existing Project Approvals and as may be authorized by the City in Future Discretionary Approvals.

2.8 "Property" means the real property described in Paragraphs 1.1.1 and 1.1.3.

2.9 The "Term" of this Agreement means the period defined in Paragraph 3, below.

2.10 "Builder" means developer to whom Developer has sold or conveyed property within the Property for purposes of its improvement for residential, commercial, industrial or other use.

2.11 "CEQA" means the California Environmental Quality Act, California Public Resources Code section 21000, et seq.

2.12 "City Council" means the City of Chula Vista City Council.

2.13 "Commit" or "Committed" means all of the following requirements have been met with respect to any public facility:

2.13.1 For a public facility within the City's jurisdictional boundaries and a responsibility of the developer.

2.13.1.1 All discretionary permits required of the Developer have been obtained for construction of the public facility;

2.13.1.2 Plans for the construction of the public facility have all the necessary governmental approvals; and

2.13.1.3 Adequate funds (i.e., letters of credit, cash deposits, performance bonds or land secured public financing, including facility benefit assessments, Mello-Roos assessment districts of similar assessment mechanism) are available such that the City can construct the public facility if construction has not commenced within thirty (30) days of issuance of a notice to proceed by the Director of Public Works, or construction is not progressing towards completion in a reasonable manner as reasonably deemed by the Director of Public Works.

2.13.2 For a public facility within the City's jurisdictional boundaries, but to be provided by other than Developer.

2.13.2.1 Developer's proportionate share of the cost of such public facility as defined in the existing Project Approvals and Future Discretionary Approvals has been provided or assured by Developer through the payment or impositions of development impact fee or other similar exaction mechanism.

2.13.3 For public facility not within City's jurisdictional boundaries:

2.13.3.1 Developer's proportionate share of the cost of such public facility as defined in the existing Project Approvals and Future Discretionary Approvals has been provided for or otherwise assured by Developer to the reasonable satisfaction of the Director of Public Works.

2.14 "Development Impact Fee (DIF)" means fees imposed upon new development pursuant to the City of Chula Vista Development Impact Fee Program, for example, including but not limited to the Transportation Development Impact Fee Program, the Interim SR-125 Development Impact Fee Program, the Salt Creek Sewer DIF and the Public Facilities DIF.

2.15 "Existing Project Approvals" means all discretionary approvals affecting the Project which have been approved or established in conjunction with, or preceding, the effective date consisting of, but not limited to the GDP, the Chula Vista General Plan, the Otay Ranch Reserve Fund Program adopted pursuant to Resolution 18288, the SPA One Plan and the Phase II Resource

Management Plan (RMP), as may be amended from time to time consistent with this agreement.

2.16 "Final Map(s)" means any final subdivision map for all or any portion of the Property other than the Superblock Final Map ("A" Maps).

2.17 "Future Discretionary Approvals" means all permits and approvals by the City granted after the effective date and excluding existing Project Approvals, including, but not limited to: (i) grading permits; (ii) site plan reviews; (iii) design guidelines and reviews; (iv) precise plan reviews; (v) subdivisions of the Property or re-subdivisions of the Property previously subdivided pursuant to the Subdivision Map Act; (vi) conditional use permits; (vii) variances; (viii) encroachment permits; (ix) Sectional Planning Area plans; (x) all other reviews, permits, and approvals of any type which may be required from time to time to authorize public or private on- or off-site facilities which are a part of the Project.

2.18 "Planning Commission" means the Planning Commission of the City of Chula Vista.

2.19 "Preserve Conveyance Plan" means a plan that sets forth policies and identifies land to be transferred and/or fees to be paid to insure the orderly conveyance of the Otay Ranch land to the Preserve Owner Manager. The purpose of the plan is to fulfill the obligations to convey resource sensitive land, per the criteria contained in the phase I and II Resource Management Plans and to mitigate environmental impacts of the Otay Ranch Project.

2.20 "Public Facility" or "Public Facilities" means those public facilities described in the Otay Ranch Facility Implementation Plan.

2.20.1 "SPA One Plan" means The Otay Ranch Sectional Planning Area (SPA) One Plan approved by the City of Chula Vista on June 4, 1996, including the Planned Community District Regulations, Overall Design Plan, Village Design Plan, Public Facilities Finance Plan, Parks, Recreation, Open Space and Trails Plan, Regional Facilities Report, Phase 2 Resource Management Plan, Non-renewable Energy Conservation Plan, Ranch-wide Affordable Housing Plan, SPA One Affordable Housing Plan, and Geotechnical Report.

2.21 "Subdivision Map Act" means the California Subdivision Map Act, Government Code section 66410, et seq., and its amendments as may from time to time be adopted.

2.22 "Substantial Compliance" means that the party charged with the performance of a covenant herein has sufficiently followed the terms of this Agreement so as to carry out the intent of the parties in entering into this Agreement.

2.23 "Threshold" means the facility thresholds set forth in the City's Municipal Code Section 19.19.040.

3. Term. This Agreement shall become effective as a development agreement upon the effective date of the Annexation (the "Effective Date"); provided, however, that if the Annexation does not occur on or before July 1, 1997, this Agreement shall become null and void unless the annexation proceedings have been extended by LAFCO. If the annexation proceedings have been extended, this Agreement shall become effective upon the effective date of such Annexation; provided, however, if the annexation does not occur by the end of such extension(s), this Agreement shall become null and void. Any of the foregoing to the contrary notwithstanding, from the date of first reading of the ordinance approving this Agreement, and unless or until this Agreement becomes null and void, Owner shall be bound by the terms of Paragraph 4. The Term of this Agreement for purposes other than Paragraph 4 shall begin upon the Effective Date, and shall continue for a period of twenty (20) years ("the Term").

The term shall also be extended for any period of time during which issuance of building permits to Developer is suspended for any reason other than the default of Developer, and for a period of time equal to the period of time during which any action by the City or court action limits the processing of future discretionary approvals, issuance of building permits or any other development of the property consistent with this Agreement.

4. Owner Consent to Annexation. Owner hereby consents to and shall cooperate with the applications of City to declare that the land depicted in Exhibit "C" is within City's sphere of influence and to annex the land depicted in Exhibit "C" to the City; provided, however, that Owner may withdraw such consent and withhold further cooperation if the City, prior to the Effective Date, adopts rules, regulations, ordinances, policies, conditions, environmental regulations, phasing controls, exactions, entitlements, assessments or fees applicable to and governing development of the Property which are inconsistent with, or render impractical development of the Property according to, the Development Plan.

5. Vested Rights. Notwithstanding any future action or inaction of the City during the term of this Agreement, whether such action is by ordinance, resolution or policy of the City, Owner and Developer shall have a vested right, provided however the developer is not in default of its obligations under this Agreement, and except as may be otherwise provided in this Section 5, to construct the Project in accordance with:

5.1. Existing Project Approvals.

5.2. Development of Property. The development of the Property will be governed by this Agreement and Existing Project Approvals and such development shall comply and be governed by all rules, regulations, policies, resolutions, ordinances, and standards in effect as of the Effective Date subject to the



provisions of Section 5.2.1 below. The City shall retain its discretionary authority as to Future Discretionary Approvals, provided however, such Future Discretionary Approvals shall be regulated by the Existing Project Approvals, this Agreement, and City rules, regulations, standards, ordinances, resolutions and policies in effect on the Effective Date of this Agreement and subject to Section 5.2.1.

Notwithstanding the foregoing, the City may make such changes to the City's Growth Management Ordinance applicable to the Project as are reasonable and consistent with the purpose and intent of the existing Growth Management Ordinance and which are generally applicable to all private projects citywide or east of I-805 or within a specific benefit, fee or reimbursement district created pursuant to the California Government Code.

5.2.1 New or Amended Rules, Regulations, Policies, Standards, Ordinances and Resolutions. The City may apply to the Project, including Future Discretionary Approvals, new or amended rules, laws, regulations, policies, ordinances, resolutions and standards generally applicable to all private projects east of I-805 or within a specific benefit fee or reimbursement district created pursuant to the California Government Code. The application of such new rules, or amended laws, regulations, resolutions, policies, ordinances and standards will not unreasonably prevent or unreasonably delay development of the Property to the uses, densities or intensities of development specified herein or as authorized by the Existing Project Approvals. The City may also apply changes in City laws, regulations, ordinances, standards or policies specifically mandated by changes in state or federal law in compliance with Section 13.3 herein.

5.2.2 Developer may elect with City's consent, to have applied to the project any rules, regulations, policies, ordinances or standards enacted after the date of this Agreement. Such an election has to be made in a manner consistent with Section 5.2 of this Agreement.

5.2.3 Modifications to Existing Project Approvals. It is contemplated by the parties to this Agreement that the City and Developer may mutually seek and agree to modifications to the Existing Project Approvals. Such modifications are contemplated as within the scope of this Agreement, and shall, upon written acceptance by all parties, constitute for all purposes an Existing Project Approval. The parties agree that any such modifications may not constitute an amendment to this Agreement nor require an amendment to the Agreement.

5.2.4 Future Discretionary Approvals. It is contemplated by the parties to this Agreement that the City and Developer may agree to Future Discretionary Approvals. The parties agree that any such Future Approvals may not constitute an amendment to this Agreement nor require an amendment to the Agreement. Developer agrees to reasonably cooperate

with any amendments to Existing and Future Discretionary Approvals as may be requested by the City from time to time.

5.3 Dedication and Reservation of Land for Public Purposes. Except as expressly required by this Agreement or the Existing Project Approvals and Future Discretionary Approvals (excepting dedications required within the boundaries of any parcel created by the subsequent subdivision of the Property as required by the Subdivision Map Act), no dedication or reservation of real property within or outside the Property shall be required by City or Developer in conjunction with the Project. Any dedications and reservations of land imposed shall be in accordance with Section 7.2 and Section 7.8 herein.

5.4 Time for Construction and Completion of Project. Because the California Supreme Court held in Pardee Construction Company v. City of Camarillo (1984) 27 Cal.3d 465, that the failure of the parties to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' Agreement, it is the intention of the parties to this Agreement to cure that deficiency by specifically acknowledging that timing and phasing of development is completely and exclusively governed by the Existing Project Approvals, including the Chula Vista Growth Management Ordinance. The purpose of the Chula Vista Growth Management Ordinance is to "control the timing and location of development by tying the pace of development to the provision of public facilities and improvements to conform to the City's threshold standards." (Municipal Code Section 19.09.010A.7) The findings in support of the Growth Management Ordinance conclude that the ordinance "does not affect the number of houses which may be built." (Municipal Code Section 19.09.010B.3) Therefore, the parties acknowledge that the Chula Vista Growth Management Ordinance completely occupies the topic of development timing and phasing and expressly precludes the adoption of housing caps, urban reserves or any other means by which the rate of development may be controlled or regulated. The City agrees that the Developer shall be entitled to, apply for and receive all permits necessary for the development of property, consistent with the Growth Management Ordinance, Existing Project Approvals, Future Discretionary Approvals and this Agreement.

5.5 Benefit of Vesting. Nothing in this Agreement will be construed as limiting or impairing Developer's vested right, if any, to proceed with the development and use of the Property pursuant to the Federal and State Constitutions, and pursuant to statutory and decisional law.

5.6 Vesting of Entitlements. All rights conferred by this Agreement vest with the Effective Date hereof. The approval of Future Discretionary approvals shall not be deemed to limit Developer's rights authorized by this Agreement, and once such approvals are obtained they shall be vested to the same extent as the Existing Project Approvals.

## 6. DEVELOPMENT PROGRAM.

6.1 Processing of Future Discretionary Approvals. City will accept and diligently process development applications and requests for Future Discretionary Approvals, or other entitlements with respect to the development and use of the Property, provided said applications and requests are in accordance with this Agreement. City costs for processing work related to the Project, including hiring of additional City personnel and/or the retaining of professional consultants, will be reimbursed to City by Developer.

6.2 Length of Validity of Tentative Subdivision Maps. Government Code Section 66452.6 provides that tentative subdivision map(s) may remain valid for a length up to the term of a Development Agreement. The City agrees that tentative subdivision maps for the Property shall be for a term of six (6) years and may be extended by the City Council for a period of time not to exceed a total of twenty (20) years and in no event beyond the term of this Agreement.

6.3 Pre-Final Map Development. If Developer desires to do certain work on the Property after approval of a tentative map (for example, grading) prior to the recordation of a final map, it may do so by obtaining a grading and/or other required approvals from the City which are authorized by the City prior to recordation of a final map. The permit may be approved or denied by the City in accordance with the City's Municipal Code, regulations and policies and provided Developer is in compliance with this Agreement and with the terms of all Existing and Future Discretionary Approvals. In addition, the Developer shall be required to post a bond or other reasonably adequate security required by City in an amount determined by the City to assure the rehabilitation of the land if the applicable final map does not record.

6.4 Final Maps.

6.4.1 "A" Maps and "B" Maps. Developer shall process a master subdivision or parcel map ("A" Map) for each Village showing "Super Block" lots and backbone street dedications. "Super Block" lots shall be consistent with the GDP and subsequent Sectional Plan Area plans, and shall not subdivide land into individual single-family lots. All "Super Blocks" created shall have access to dedicated public streets. The City shall not require improvement plans in order to record a final map for any "A" Map lots. Following the approval by City of any final map for an "A" Map lot and its recordation, Developer may convey the "Super Block" lot. The buyer of a "Super Block" lot shall then process final improvement plans and grading plans and a final map ("B" Map) for each "Super Block" lot which the City shall process if such documents are in compliance with the City's Municipal Code, standard policies, and the applicable tentative map. The "B" Maps shall be in substantial conformance with the related approved "A" Map. In the instance of the multi-family dwelling unit areas, a separate tentative subdivision map may be submitted to the City and the "B" Map(s) for these areas

may be submitted to the City after the City Planning Commission approves said tentative subdivision map.

6.4.2 Recordation of Final Subdivision Map in Name of Builder or Third Party. Developer may, if it so elects, convey to a Builder or third party any "super block" lot(s) shown on the recorded Superblock Final Map. In such case, the Builder or third party will (i) process any necessary final improvement and grading plans and a final map for each such "super block" lot ("B" map), which map City shall accept and process if such map is in compliance with the City's Municipal Code, standard policies, the applicable tentative map, and the provisions of 7.1 of this Agreement if applicable as subsequent phases in a multi-phase project, (ii) enter into a subdivision improvement agreement with City with respect to the subdivision improvements which are required for such super block lot, (iii) provide security and insurance satisfactory to City for the completion of the subdivision improvements, and (iv) agree, in such case, with the City's consent to comply with the obligations set forth in 7.1.

6.4.3 Recordation of Final Subdivision Map in Developer's Name; Transfer of Obligations Under Subdivision Improvement Agreement(s). If Developer so elects, it may defer the conveyance of any super block lot to a Builder or third party until after the final map of such super block lot has been recorded. If Developer elects to proceed in this manner, it will enter into City's standard subdivision improvement agreement(s) with City for the improvements required as a condition to the approval of such map(s). Upon sale to a Builder or third party, if such Builder or third party assumes Developer's obligations with the City's consent under the improvement agreement and provides its own security and insurance for the completion of the subdivision improvements satisfactory to the City and as approved by the City, Developer shall be released from liability under the subdivision improvement agreement(s) and Developer's security shall be released.

6.4.4 Transfer of Rights and Obligations of Development. Whenever Developer conveys a portion of the Property, the rights and obligations of this Agreement shall transfer in accordance with Section 15 herein.

## 7. DEVELOPER'S OBLIGATIONS.

7.1 Condition to Developer's Obligations to Dedicate, Fund or Construct Public Facilities. Developer agrees to develop or provide the public improvements, facilities, dedications, or reservations of land and satisfy other exactions conditioning the development of the Property which are set forth hereinbelow. In addition to any other obligations the Developer may have, Developer as its sole and separate responsibility, covenants and agrees to bond and provide or finance the cost of backbone facilities as identified on the appropriate Tentative Map and

required by any final map (including "B" Maps). This requirement may be satisfied through the construction or financing of said facilities or with the City's approval of any of the following: the establishment of a reimbursement mechanism, a development impact fee program, an assessment mechanism, or other equitable facility financing program within the City's discretion. This requirement shall be deemed satisfied in the event that the Builder(s) of a "B" Map expressly assume the obligations with the consent of the City to provide said backbone facilities. For purposes of Tentative Map No. PCS 96-04, Developer shall provide, prior to the approval of the first final "B" map, adequate security as determined by the City Engineer for the construction of those certain backbone facilities set forth in the conditions of approval for said tentative map. Developer acknowledges that as to any future tentative maps, Developer may be required by City to provide such security at various times during the development process including prior to the first final "A" map in accordance with City's ordinances, policies or regulations. For purposes of this Section, backbone facilities mean those facilities such as water, sewer, storm drain and public streets necessary to serve demands generated for the backbone facility beyond that of any single "B" map, but are not included within a wider area City development improvement fee program.

The obligations of the Developer, pursuant to this Agreement, are conditioned upon: (i) the city not being in default of its obligations under this agreement; and (ii) the City not unreasonably preventing or unreasonably delaying the development of the property; and (iii) if the Agreement has been suspended in response to changes in state or federal law or due to said obligations being suspended pursuant to Section 13.2, said obligations of Developer shall be suspended for the same period of time.

7.2 Dedications and Reservations of Land for Public Purposes. The policies by which property will be required to be reserved, dedicated or improved for public purposes are identified in the Existing Project Approvals. A more precise delineation of the property to be preserved, dedicated or improved for public purposes shall occur as part of Future Discretionary Approvals, consistent with development of property as set forth in Section 5.2 herein.

7.2.1 Dedication of Land for SR 125. Developer agrees to dedicate land for right-of-way purposes and property owned by the Developer that is reasonably necessary for the SR-125 configuration that is generally depicted in the SR-125 draft Environmental Impact Report/Statement and as revised in the Final Environmental Impact Report/Statement to respond to engineering, design, environmental and similar constraints. The dedications shall be to the City or by an alternate method acceptable to the City at such time as requested by the City.

City agrees that in the event City shall negotiate with California Transportation Ventures (CTV) or other toll road builder any participation or advantages to City that City

shall share such rights with subsequent owner/resident of the property.

7.2.2 Landfill Nuisance Easements. Developer shall grant to the County by July 1, 1996 "Landfill Nuisance Easements" substantially in the form attached as Exhibit E. The Easement shall cover all land which is within the Otay Landfill Buffer Area of Villages 2, 3 and Planning Area 18B of the Otay Ranch GDPP as shown on Exhibit E hereto.

In addition, Developer agrees to enter into subordination agreements, acceptable to the County, with all lienholders having an interest in the Property subject to the Landfill Nuisance Easements to ensure that this easement has a priority position over all other liens. The subordination agreements shall be delivered to the City prior to the second reading of the Ordinance approving the Agreement. If there is no second reading of this Agreement, the City shall return said subordination agreements to the Developer. If the County Board of Supervisors does not accept or approve said easements, this Agreement shall be automatically terminated with neither party bearing any liability hereunder.

7.2.3 Preserve Conveyance Plan. The Developer shall comply with any existing or yet to be adopted Preserve Conveyance Plan and convey property as set forth in such Plan.

7.3 Growth Management Ordinance. Developer shall commit the public facilities and City shall issue building permits as provided in this Section and in accordance with Existing Project Approvals and Future Discretionary Approvals. The City shall have the right to withhold the issuance of building permits any time after the City reasonably determines a Threshold has been exceeded, unless and until the Developer has mitigated the deficiency in accordance with the City's Growth Management Ordinance.

Developer agrees that building permits may be withheld where the public facilities described in the Existing Project Approvals/ Future Discretionary Approvals required for a particular Threshold have not been committed.

In the event a Threshold is not met and future building permit issuance may be withheld, the notice provisions and procedures contained in Section 19.09.100C of the Municipal Code will be followed. In the event the issuance of building permits is suspended pursuant to the provisions herein, such suspension shall not constitute a breach of the terms of this Agreement by Developer. Furthermore, any such suspension which is not caused by the actions or omissions of the Developer, shall toll the term of this Agreement as provided for in Section 16.12 of this Agreement, and suspend the Developer's obligations pursuant to this Agreement.

7.3.1 Required Condemnation. The City and Developer recognize that certain portions of the Resource Preserve and of the public facilities identified in the Existing Project

Approvals/Future Discretionary Approvals and required to comply with a threshold are located on properties which neither the Developer nor the City has, or will have, title to or control of. The City shall identify such property or properties and at the time of filing of the final map commence timely negotiations or, where the property is within the City's jurisdiction, commence timely proceedings pursuant to Title 7 (commencing with § 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the property or properties. Developer's share of the cost involved in any such acquisition shall be based on its proportionate share of the public facility as defined in the Existing Project Approvals/Future Discretionary Approvals. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to preclude the City from requiring the Developer to pay the cost of acquiring such off-site land. For that portion of the cost beyond the Developer's fair share responsibility, the City shall take all reasonable steps to establish a procedure whereby the developer is reimbursed for such costs beyond its fair share.

7.3.2 Information Regarding Thresholds. Upon Developer's written requests of the City Manager, the City will provide Developer with information regarding the current status of a Threshold. Developer shall be responsible for any staff costs incurred in providing said written response.

7.4 Improvements Required by a Tentative Subdivision Map. As may be required pursuant to the terms of a tentative subdivision map approval, it shall be the responsibility of Developer to construct the improvements required by the subdivision map. Where Developer is required to construct a public improvement which has been identified as the responsibility of another party or to provide public improvements of supplemental size, capacity, number or length benefiting property not within the tentative subdivision map, City shall process for consideration to approve or deny in its sole discretion a reimbursement agreement to the Developer in accordance with the City's Municipal Code and Article 6 of Chapter 4 of the Subdivision Map Act, commencing with Government Code section 66485, and Section 7.5, below. This does not preclude the Developer or the City from considering alternative financing mechanisms.

7.5 Facilities Which Are the Obligations of Another Party, or Are of Excessive Size, Capacity, Length or Number. Developer may offer to advance monies and/or construct public improvements which are the responsibility of another land owner, or outside the City's jurisdictional boundaries, or which are of supplemental size, capacity, number or length for the benefit of land not within the Property. City, where requesting such funding or construction of oversized public improvements, shall consider after a public hearing, contemporaneous with the imposition of the obligation, the formation of a reimbursement district, assessment

district, facility benefit assessment, or reimbursement agreement or other reimbursement mechanism.

7.6 Pioneering of Facilities. To the extent Developer itself constructs (i.e., "Pioneers") any public facilities or public improvements which are covered by a DIF Program, Developer shall be given a credit against DIFs otherwise payable, subject to the City's Director of Public Works reasonable determination that such costs are allowable under the applicable DIF Program. It is specifically intended that Developer be given DIF credit for the DIF Program improvements it makes. The fact that such improvements may be financed by an assessment district or other financing mechanism, shall not prevent DIF credit from being given to the extent that such costs are allowed under the applicable DIF Program

7.7 Insurance. Developer shall name City as additional insured for all insurance policies obtained by Developer for the Project as pertains to the Developer's activities and operation on the Project.

7.8 Other Land Owners. Developer hereby agrees to dedicate adequate rights-of-way within the boundaries of the Property for other land owners to "Pioneer" public facilities on the Property; provided, however, as follows: (i) dedications shall be restricted to those reasonably necessary for the construction of facilities identified in the City's adopted public facility plans; (ii) this provision shall not be binding on the successors-in-interest or assignees of Developer following recordation of the final "Super Block" or "A" Map; and (iii) the City shall use its reasonable best efforts to obtain agreements similar to this subsection from other developers and to obtain equitable reimbursement for Developer for any excess dedications.

7.9 Construction of East-West Access. Pursuant to City's requirements, Developer is required to pay Transportation Development Fees (TDIF) for a variety of purposes including construction of east-west arterial access through the Property connecting to I-805. Alternatively, the Developer may be required to actually construct all or portions of such access if, at the time of need, the TDIF fund does not contain sufficient revenues to finance the construction of the needed facilities. Such east-west arterial access from SPA One to I-805 could occur on either East Orange Avenue or on East Palomar Street. It is not now possible to determine with certainty when it will be necessary to actually construct the arterials in order to comply with the threshold requirements because the rate and location of future development is unknown. The total cost and length of the arterial, which might be constructed by the Developer, are unknown at this time because it cannot be determined if and when development west of the property (Sunbow) will construct the Western portion of the arterials. Such uncertainty makes it difficult to plan and finance the orderly development of the property and needed on-site and off-site facilities. To provide greater certainty as to the timing and construction of east-west arterial access, the City agrees to reasonably consider in good faith a traffic capacity agreement with



Developer which would reserve traffic capacity for all or part of SPA One in exchange for Developer's agreement to pioneer all or part of planned east-west access to SPA One.

7.10 Assurances of Compliance. Owner acknowledges that the City is not required to and will not take any action on any of Owner's applications for Future Discretionary Approvals under this Agreement, or any modifications or amendments thereof, until and unless the City Manager determines that the Owner is not in default of its obligations under this Agreement including but not limited to those set forth in Section 7.11 and 14.

7.11 Complete Construction. Developer/Builder or any third party agree to diligently complete construction once a building permit has been issued for Property which is covered by this Agreement. Should construction stop once the building permits have been issued by the City, which the City in its sole discretion determines has created a nuisance or fire or safety hazard, the Developer agrees to take such steps necessary to cure the nuisance or hazard. Should Developer fail to do so to the City's satisfaction, the City may take what steps it deems necessary to cure the nuisance or hazard at Developer's sole cost and expense.

## 8. DEVELOPMENT IMPACT FEES.

8.1 Existing Development Impact Fee Program Payments. Developer shall pay to the City a DIF, or construct improvements in lieu of payment, for improvements which are conditions of a tentative subdivision map upon the issuance of building permits(s), or at a later time as specified by City ordinance, the Subdivision Map Act, or Public Facility Financing Plan (PFFP). The DIF will be in the amount in effect at the time payment is made and may only be increased pursuant to Section 8.6 herein.

8.2 Other Undeveloped Properties. The City will use its reasonable best efforts to impose and collect, or cause the imposition and collection of, the same DIF program on all the undeveloped real properties which benefit from the provision of the public facility through the DIF program, or provided as a condition of Project Approvals.

8.3 Use of Development Impact Fee Program. The DIF amounts paid to the City by Developer and others with respect to the Area of Benefit shall be placed by the City in a capital facility fund account established pursuant to California Government Code sections 66000-66009. The City shall expend such funds only for the Projects described in the adopted fee program as may be modified from time to time. The City will use its reasonable best efforts to cause such Projects to be completed as soon as practicable; however, the City shall not be obligated to use its general funds for such Projects.

8.4 Withholding of Permits. Developer agrees that City shall have the right to withhold issuance of the building permit

for any structure or improvement on the Property unless and until the DIF is paid for such structure or improvement.

8.5 Development Impact Fee Credit. Upon the completion and acceptance by the City of any public facility, the City shall immediately credit Developer with the appropriate amount of cash credits ("EDUs") as determined by Developer and City. However, if the improvements are paid for through an Assessment District, the City shall credit the Developer with the appropriate number of Equivalent Dwelling Unit Credits (EDU's). Developer shall be entitled to apply any and all credits accrued pursuant to this subsection toward the required payment of future DIF for any phase, stage or increment of development of the Project.

8.6 Modification of Development Impact Fees. The parties recognize that from time to time during the duration of the Agreement it will be necessary for the City to update and modify its DIF fees. Such reasonable modifications are contemplated by the City and the Developer and shall not constitute a modification to the Agreement so long as: (i) the modification incorporates the reasonable costs of providing facilities identified in the Existing or Future Project Approvals; (ii) are based upon methodologies in substantial compliance with the methodology contained in the existing DIF programs; or other methodology approved by the City Council following a public hearing; (iii) complies with the provisions of Government Code sections 66000-66009.

8.7 Standards for Financing Obligations of Owner. In connection with the development of the Property, the following standards regarding the financing of public improvements shall apply:

8.7.1 Owner shall participate in the DIF Program for the Otay Valley Parcel with other owners in proportion to the total dwelling units or equivalent dwelling units allowed on the Property as compared with the total of such units allowed on properties in that particular DIF or by some other equitable methodology decided by the City Council.

8.7.2 The City shall diligently pursue the requirements that the Eastern Territories' DIF requires offsite third parties and adjacent jurisdictions to bear their fair share of all Otay River Valley crossings.

## 9. CITY OBLIGATIONS.

9.1 Urban Infrastructure. To the extent it is within the authority and ability of the City to provide, City shall accommodate urban infrastructure to the project, consistent with Existing Project Approvals. Where it is necessary to utilize City property to provide urban infrastructure consistent with the Existing Project Approvals, the City agrees to make such land available for such uses, provided that the City if it so chooses is compensated at fair market value for the property. To the extent that the provision of urban infrastructure is within the authority

of another public or quasi-public agency or utility, the City agrees to fully cooperate with such agency or agencies to accommodate the urban infrastructure, consistent with Existing Project Approvals. Urban infrastructure shall include, but not be limited to gas, electricity, telephone, cable and facilities identified in the Otay Ranch Facility Implementation Plan.

9.2 Sewer Capacity. The City agrees to provide adequate sewer capacity for the project, upon the payment of ordinary and necessary sewer connection, capacity and/or service fees.

9.3 Nuisance Easement. The City shall reasonably consider with proper environmental review a request to amend the Otay Ranch GDP to relocate, within the property, the land uses affected by the execution of a "nuisance easement" pursuant to the Otay Ranch Landfill Agreement, (dated May 15, 1996). This GDP amendment shall be processed prior to or concurrent with the GDP amendment covering the landfill buffer area required by the Landfill Agreement. The amendment shall be deemed vested to the same extent as Existing Project Approvals and shall not require or constitute an amendment to this Agreement. The Developer agrees to pay the reasonable City cost for processing the amendments.

## 10. ANNUAL REVIEW.

10.1 City and Owner Responsibilities. City will, at least every twelve (12) months during the Term of this Agreement, pursuant to California Government Code §65865.1, review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Pursuant to California Government Code section 65865.1, as amended, Owner shall have the duty to demonstrate by substantial evidence its good faith compliance with the terms of this Agreement at the periodic review. Either City or Owner may address any requirement of the Agreement during the review.

10.2 Evidence. The parties recognize that this Agreement and the documents incorporated herein could be deemed to contain hundreds of requirements and that evidence of each and every requirement would be a wasteful exercise of the parties' resources. Accordingly, Developer shall be deemed to have satisfied its good faith compliance when it presents evidence of substantial compliance with the major provisions of this Agreement. Generalized evidence or statements shall be accepted in the absence of any evidence that such evidence is untrue.

10.3 Review Letter. If Owner is found to be in compliance with this Agreement after the annual review, City shall, within forty-five (45) days after Owner's written request, issue a review letter in recordable form to Owner ("Letter") stating that based upon information known or made known to the Council, the City Planning Commission and/or the City Planning Director, this Agreement remains in effect and Owner is not in default. Owner may record the Letter in the Official Records of the County of San Diego.

10.4 Failure of Periodic Review. City's failure to review at least annually Owner's compliance with the terms and conditions of this Agreement shall not constitute, or be asserted by City or Owner as, a breach of the Agreement.

11. DEFAULT.

11.1 Events of Default. A default under this Agreement shall be deemed to have occurred upon the happening of one or more of the following events or conditions:

11.1.1 A warranty, representation or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made.

11.1.2 A finding and determination by City made following a periodic review under the procedure provided for in California Government Code section 65865.1 that upon the basis of substantial evidence Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

11.1.3 City does not accept, timely review, or consider requested development permits or entitlements submitted in accordance with the provisions of this Agreement.

11.2 Procedure Upon Default.

11.2.1 Upon the occurrence of default by the other party, City or Owner may terminate this Agreement after providing the other party thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, this Agreement may be terminated. In the event that City's or Owner's default is not subject to cure within the thirty (30) day period, City or Owner shall be deemed not to remain in default in the event that City or Owner commences to cure within such thirty (30) day period and diligently prosecutes such cure to completion. Failure or delay in giving notice of any default shall not constitute a waiver of any default, nor shall it change the time of default. Notwithstanding any other provision of this Agreement, City reserves the right to formulate and propose to Owner options for curing any defaults under this Agreement for which a cure is not specified in this Agreement. In the event of Developer's default under this agreement, the City shall provide notice of such default as described in this section to all lenders who have delivered to the City a subordination agreement pursuant to Section 12.5.

11.2.2 City does not waive any claim of defect in performance by Owner if, on periodic review, City does not propose to modify or terminate this Agreement.

11.2.3 Subject to Paragraph 16.12 of this Agreement, the failure of a third person shall not excuse a party's nonperformance under this agreement.

11.2.4 All remedies at law or in equity which are consistent with the provisions of this Agreement are available to City and Owner to pursue in the event there is a breach provided, however, neither party shall have the remedy of monetary damages against the other except for an award of litigation costs and attorneys fees.

12. ENCUMBRANCES AND RELEASES ON PROPERTY.

12.1 Discretion to Encumber. This Agreement shall not prevent or limit Owner in any manner at Owner's sole discretion, from encumbering the Property, or any portion of the Property, or any improvement on the Property, by any mortgage, deed of trust, or other security device securing financing with respect to the Property or its improvement.

12.2 Mortgagee Rights and Obligations. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Owner of the performance of Owner's obligations under the Agreement which has not been cured within thirty (30) days following the date of default.

12.3 Releases. City agrees that upon written request of Owner and payment of all fees and performance of the requirements and conditions required of Owner by this Agreement with respect to the Property, or any portion thereof, City may execute and deliver to Owner appropriate release(s) of further obligations imposed by this Agreement in form and substance acceptable to the San Diego County Recorder and title insurance company, if any, or as may otherwise be necessary to effect the release. City Manager shall not unreasonably withhold approval of such release(s). In addition, at such time as an individual home buyer purchases a home on a subdivided lot within the Property, the City covenants and agrees that it shall release said lot from the lien of this agreement.

12.4 Obligation to Modify. City acknowledges that the lenders providing financing for the Project may require certain modifications to this Agreement and City agrees, upon request from time to time, to meet with Owner and/or representatives of such lenders to negotiate in good faith any such requirement for modification. City will not unreasonably withhold its consent to any such requested modification.

12.5 Subordination. Developer agrees to enter into subordination agreements with all lenders having a lien on the Property to ensure that the provisions of this Agreement bind such

lienholders should they take title to all or part of the property through quit claim deed, sale, foreclosure or any other means of transfer of property. As a condition precedent to obtaining the benefits that accrue to the Developer or the Property under this Agreement, this Agreement by and through said subordination agreements shall be prior and superior to such liens on said Property. Developer shall deliver to the City the fully executed subordination agreements for the Property within SPA One, in a form acceptable to the City Attorney and suitable for recording, prior to the second reading of the ordinance adopting the Development Agreement. Developer shall deliver to the city a fully executed subordination agreement for Property within subsequently approved SPA plans in a form acceptable to the city attorney on or before approval of each SPA Plan for said Property. In the event of Developer's default under this agreement, the City shall provide notice of such fault as described in Section 11 of this agreement to all lenders who have delivered to the City a subordination agreement pursuant to this section.

### 13. MODIFICATION OR SUSPENSION.

13.1 Modification to Agreement by Mutual Consent. This Agreement may be modified, from time to time, by the mutual consent of the parties only in the same manner as its adoption by an ordinance as set forth in California Government Code sections 65867, 65867.5 and 65868. The term, "this Agreement" as used in this Agreement, will include any such modification properly approved and executed.

13.2 Unforeseen Health or Safety Circumstances. If, as a result of facts, events, or circumstances presently unknown, unforeseeable, and which could not have been known to the parties prior to the commencement of this Agreement, City finds that failure to suspend this Agreement would pose an immediate threat to the health or safety of the City's residents or the City. The following shall occur:

13.2.1 Notification of Unforeseen Circumstances. Notify Developer of (i) City's determination; and (ii) the reasons for City's determination, and all facts upon which such reasons are based;

13.2.2 Notice of Hearing. Notify Developer in writing at least fourteen (14) days prior to the date, of the date, time and place of the hearing and forward to Developer a minimum of ten (10) days prior to the hearings described in Section 13.2.3, all documents related to such determination and reasons therefor; and

13.2.3 Hearing. Hold a hearing on the determination, at which hearing Developer will have the right to address the City Council. At the conclusion of said hearing, City may take action to suspend this Agreement as provided herein. The City may suspend this Agreement if, at the conclusion of said hearing, based upon the evidence presented by the parties, the City finds failure to suspend would pose

an immediate threat to the health or safety of the City's residents or the City.

13.3 Change in State or Federal Law or Regulations. If any state or federal law or regulation enacted during the Term of this Agreement, or the action or inaction of any other affected governmental jurisdiction, precludes compliance with one or more provisions of this Agreement, or requires changes in plans, maps, or permits approved by City, the parties will act pursuant to Sections 13.3.1 and 13.3.2, below.

13.3.1 Notice; Meeting. The party first becoming aware of such enactment or action or inaction will provide the other party(ies) with written notice of such state or federal law or regulation and provide a copy of such law or regulation and a statement regarding its conflict with the provisions of this Agreement. The parties will promptly meet and confer in a good faith and reasonable attempt to modify or suspend this Agreement to comply with such federal or state law or regulation.

13.3.2 Hearing. If an agreed upon modification or suspension would not require an amendment to this Agreement, no hearing shall be held. Otherwise, the matter of such federal or state law or regulation will be scheduled for hearing before the City. Fifteen (15) days' written notice of such hearing shall be provided to Developer, and the City, at such hearing, will determine and issue findings on the modification or suspension which is required by such federal or state law or regulation. Developer, at the hearing, shall have the right to offer testimony and other evidence. If the parties fail to agree after said hearing, the matter may be submitted to mediation pursuant to subsection 13.3.3, below. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the City. Any suspension or modification may be subject to judicial review in conformance with subsection 16.19 of this Agreement.

13.3.3 Mediation of Disputes. In the event the dispute between the parties with respect to the provisions of this paragraph has not been resolved to the satisfaction of both parties following the City hearing required by subsection 13.3.2, the matter shall be submitted to mediation prior to the filing of any legal action by any party. The mediation will be conducted by the San Diego Mediation Center; if San Diego Mediation Center is unable to conduct the mediation, the parties shall submit the dispute for mediation to the Judicial Arbitration and Mediation Service or similar organization and make a good faith effort to resolve the dispute. The cost of any such mediation shall be divided equally between the Developer and City.

13.4 Natural Communities Conservation Act (NCCP). The parties recognize that Developer and the City are individually negotiating agreements with the United States Fish and Wildlife

Service ("USF&W") and the California Department of Fish and Game pursuant to the ongoing regional effort to implement the Natural Communities Conservation Act ("NCCP"), locally proposed to be implemented through the Multi-Species Conservation Program ("MSCP"). The parties further recognize that implementation of the agreements may necessitate modification to the Existing Project Approvals. The City agrees to utilize its best efforts to implement these agreements, once executed, through the timely processing of modifications to the Existing Project Approvals as such modifications apply to Developer's property. The Developer agrees to pay the reasonable City cost for processing work related to the modifications. Once such modifications are obtained they shall be vested to the same extent as Existing Project Approvals. Such modifications shall be substantially similar to the provisions contained in Exhibit "F", the May 17, 1996 Administrative draft of the City of Chula Vista SubArea Plan for the Multi-Species Conservation Program, except for the proposed deletion of the Maritime Succulent Scrub restoration requirement [Section 3(b) of the SubArea Plan (page 27)].

#### 14. DISTRICTS, PUBLIC FINANCING MECHANISMS.

This Agreement and the Existing Project Approvals recognize that assessment districts, community facility districts, or other public financing mechanisms, may be necessary to finance the cost of public improvements borne by this Project. If Developer, pursuant to the Existing Project Approvals/Future Discretionary Approvals, is required by the City to install improvements through the use of assessment districts, or other public financing mechanisms, the City shall initiate and take final action to approve or deny appropriate proceedings for the formation of such financing district or funding mechanism, under applicable laws, ordinances, or policies. Developer may request that the City, but the City is not obligated to, utilize any other financing methods which may become available under City laws or ordinances. All costs associated with the consideration and formation of such financing districts or funding mechanisms shall be paid by Developer subject to reimbursement, as may be legally authorized out of the proceeds of any financing district or funding mechanism.

Developer shall comply with the terms of any assessment districts or other financing mechanisms so approved by the City for Property covered by this Agreement and shall make timely payments as required by said financing mechanism. The City retains its rights to take any action it deems reasonably appropriate to guarantee payment.

#### 15. ASSIGNMENT AND DELEGATION.

15.1 Assignment. Owner shall have the right to transfer or assign its interest in the Property, in whole or in part, to any persons, partnership, joint venture, firm, or corporation at any time during the Term of this Agreement without the consent of City. Owner also shall have the right to assign or transfer all or any portion of its interest or rights under this Agreement to third



parties acquiring an interest or estate in the Property at any time during the Term of this Agreement without the consent of City.

15.2 Delegation. In addition, Owner shall have the right to delegate or transfer its obligations under this Agreement to third parties acquiring an interest or estate in the Property provided the owner is in compliance with the terms of this Agreement and after receiving the prior written consent of the City Manager, which consent shall not be unreasonably withheld or delayed or conditioned. Provided, however, the City may deny such release if the City determines that the performance of such obligation would be jeopardized by such transfer. Once the City Manager has consented to a transfer, delivery to and acceptance by the City Manager of an unqualified written assumption of Owner's obligations under this Agreement by such transferee shall relieve Owner of the obligations under this Agreement to the extent the obligations have been expressly assumed by the transferee and as approved by the City. Such transferee shall not be entitled to amend this Agreement without the written consent of the entity that, as of the Effective Date, is Owner, which consent shall not be unreasonably withheld, delayed, or conditioned. The entity that is Owner as of the Effective Date, however, shall be entitled to amend this Agreement without the written consent of such transferee.

16. MISCELLANEOUS PROVISIONS.

16.1 Binding Effect of Agreement. Except to the extent otherwise provided in this Agreement, the burdens of this Agreement bind, and the benefits of this Agreement inure, to City's and Owner's successors-in-interest and shall run with the land.

16.2 Relationship of City and Owner. The contractual relationship between City and Owner arising out of this Agreement is one of independent contractor and not agency. This Agreement does not create any third-party beneficiary rights.

16.3 Notices. All notices, demands, and correspondence required or permitted by this Agreement shall be in writing and delivered in person, or mailed by first-class or certified mail, postage prepaid, addressed as follows:

If to City, to:           City of Chula Vista  
                                  276 Fourth Avenue  
                                  Chula Vista, CA 91910  
                                  Attention: City Manager

If to Owner, to:         Jim Baldwin  
                                  Otay Ranch, L.P.  
                                  Newport Center Dr., Suite 700  
                                  Newport Beach, CA 92660

With a Copy to:         Kim John Kilkenny  
                                  Otay Ranch, L.P.  
                                  11975 El Camino Real, Suite 104  
                                  San Diego, CA 92130

City or Owner may change its address by giving notice in writing to the other. Thereafter, notices, demands, and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery, or, if mailed, two (2) business days following deposit in the United States mail.

16.4 Rules of Construction. In this Agreement, the use of the singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory; "may" is permissive.

16.5 Entire Agreement, Waivers, and Recorded Statement. This Agreement constitutes the entire understanding and agreement of City and Owner with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between City and Owner respecting this Agreement. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of City and Owner. Upon the completion of performance of this Agreement, or its revocation or termination, a statement evidencing completion, revocation, or termination signed by the appropriate agents of City shall be recorded in the Official Records of San Diego County, California.

16.6 Project as a Private Undertaking. It is specifically understood by City and Owner that (i) the Project is a private development; (ii) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements pursuant to the provisions of the Agreement or in connection with subdivision map approvals; and (iii) Owner shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

16.7 Incorporation of Recitals. The recitals set forth in Paragraph 1 of this Agreement are part of this Agreement.

16.8 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify, or aid in the interpretation, construction, or meaning of any of the provisions of this Agreement.

16.9 Consent. Where the consent or approval of City or Owner is required or necessary under this Agreement, the consent or approval shall not be unreasonably withheld, delayed, or conditioned.

16.10 Covenant of Cooperation. City and Owner shall cooperate and deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

16.11 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of San Diego County, California, within ten (10) days following the Effective Date.

16.12 Delay, Extension of Time for Performance. In addition to any specific provision of this Agreement, performance by either City or Owner of its obligations hereunder shall be excused, and the Term of this Agreement and the Development Plan extended, during any period of delay caused at any time by reason of any event beyond the control of City or Owner which prevents or delays and impacts City's or Owner's ability to perform obligations under this Agreement, including, but not limited to, acts of God, enactment of new conflicting federal or state laws or regulations (example: listing of a species as threatened or endangered), judicial actions such as the issuance of restraining orders and injunctions, riots, strikes, or damage to work in process by reason of fire, floods, earthquake, or other such casualties. If City or Owner seeks excuse from performance, it shall provide written notice of such delay to the other within thirty (30) days of the commencement of such delay. If the delay or default is beyond the control of City or Owner, and is excused, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

16.13 Covenant of Good Faith and Fair Dealings. No party shall do anything which shall have the effect of harming or injuring the right of the other parties to receive the benefits of this Agreement; each party shall refrain from doing anything which would render its performance under this Agreement impossible; and each party shall do everything which this Agreement contemplates that such party shall do in order to accomplish the objectives and purposes of this Agreement.

16.14 Operating Memorandum. The parties acknowledge that the provisions of this Agreement require a close degree of cooperation between City and Developer, and that the refinements and further development of the Project may demonstrate that minor changes are appropriate with respect to the details of performance of the parties. The parties, therefore, retain a certain degree of flexibility with respect to those items covered in general under this Agreement. When and if the parties mutually find that minor changes or adjustments are necessary or appropriate, they may effectuate changes or adjustments through operating memoranda approved by the parties. For purposes of this Section 16.14, the City Manager, or his designee, shall have the authority to approve the operating memoranda on behalf of City. No operating memoranda shall require notice or hearing or constitute an amendment to this Agreement.

16.15 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

16.16 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled by the mutual consent of City and Owner only in the same manner as its adoption, by an ordinance as set forth in California Government Code section 65868, and shall be in a form suitable for recording in the Official Records of San Diego County, California. The term

"Agreement" shall include any such amendment properly approved and executed. City and Owner acknowledge that the provisions of this Agreement require a close degree of cooperation between them, and that minor or insubstantial changes to the Project and the Development Plan may be required from time to time to accommodate design changes, engineering changes, and other refinements. Accordingly, changes to the Project and the Development Plan that do not result in a change in use, an increase in density or intensity of use, cause new or increased environmental impacts, or violate any applicable health and safety regulations, may be considered minor or insubstantial by the City Manager and made without amending this Agreement.

16.17 Estoppel Certificate. Within 30 calendar days following a written request by any of the parties, the other parties to this Agreement shall execute and deliver to the requesting party a statement certifying that (i) this Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications; (ii) there are no known current uncured defaults under this Agreement, or specifying the dates and nature of any such default; and (iii) any other reasonable information requested. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification, except as may be represented by the requesting party, and that there are no uncured defaults in the performance of the requesting party, except as may be represented by the requesting party.

16.18 Severability. If any material provision of this Agreement is held invalid, this Agreement will be automatically terminated unless within 15 days after such provision is held invalid the party holding rights under the invalidated provision affirms the balance of this Agreement in writing. This provision will not affect the right of the parties to modify or suspend this Agreement by mutual consent pursuant to Paragraph 12.4.

16.19 Institution of Legal Proceeding. In addition to any other rights or remedies, any party may institute legal action to cure, correct, or remedy any default, to enforce any covenants or agreements herein, or to enjoin any threatened or attempted violation thereof; to recover damages for any default or to obtain any remedies consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of San Diego, State of California.

16.20 Attorneys' Fees and Costs. If any party commences litigation or other proceedings (including, without limitation, arbitration) for the interpretation, reformation, enforcement, or rescission of this Agreement, the prevailing party, as determined by the court, will be entitled to its reasonable attorneys' fees and costs.

16.21 Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees and representatives harmless from liability for damage or claims for damage for personal injury, including death, and claims for property damage which may arise from the direct or indirect operations of Developer or those of its contractors, subcontractors, agents, employees or other persons acting on Developer's behalf which relate to the Project. Developer agrees to and shall defend City and its officers, agents, employees and representatives from actions for damage caused or alleged to have been caused by reason of Developer's activities in connection with the Project. Developer agrees to indemnify, hold harmless, pay all costs and provide a defense for City in any legal action filed in a court of competent jurisdiction by a third party challenging the validity of this Agreement. The provisions of this Section 16.21 shall not apply to the extent such damage, liability or claim is caused by the intentional or negligent act or omission of City, its officers, agents, employees or representatives.

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SIGNATURE PAGE TO RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT

Dated this 4<sup>th</sup> day of MARCH, 1997.

"CITY"

CITY OF CHULA VISTA

By: Shirley Horton

Its: Mayor

"OWNER"

THE OTAY RANCH, L.P.  
a California limited partnership,

by Sky Communities, Inc.  
a California corporation,  
its general partner

By: James P. Baldwin  
James P. Baldwin, President

I hereby approve the form and legality of the foregoing Restated and Amended Pre-Annexation Development Agreement this 4<sup>th</sup> day of March, 1997.

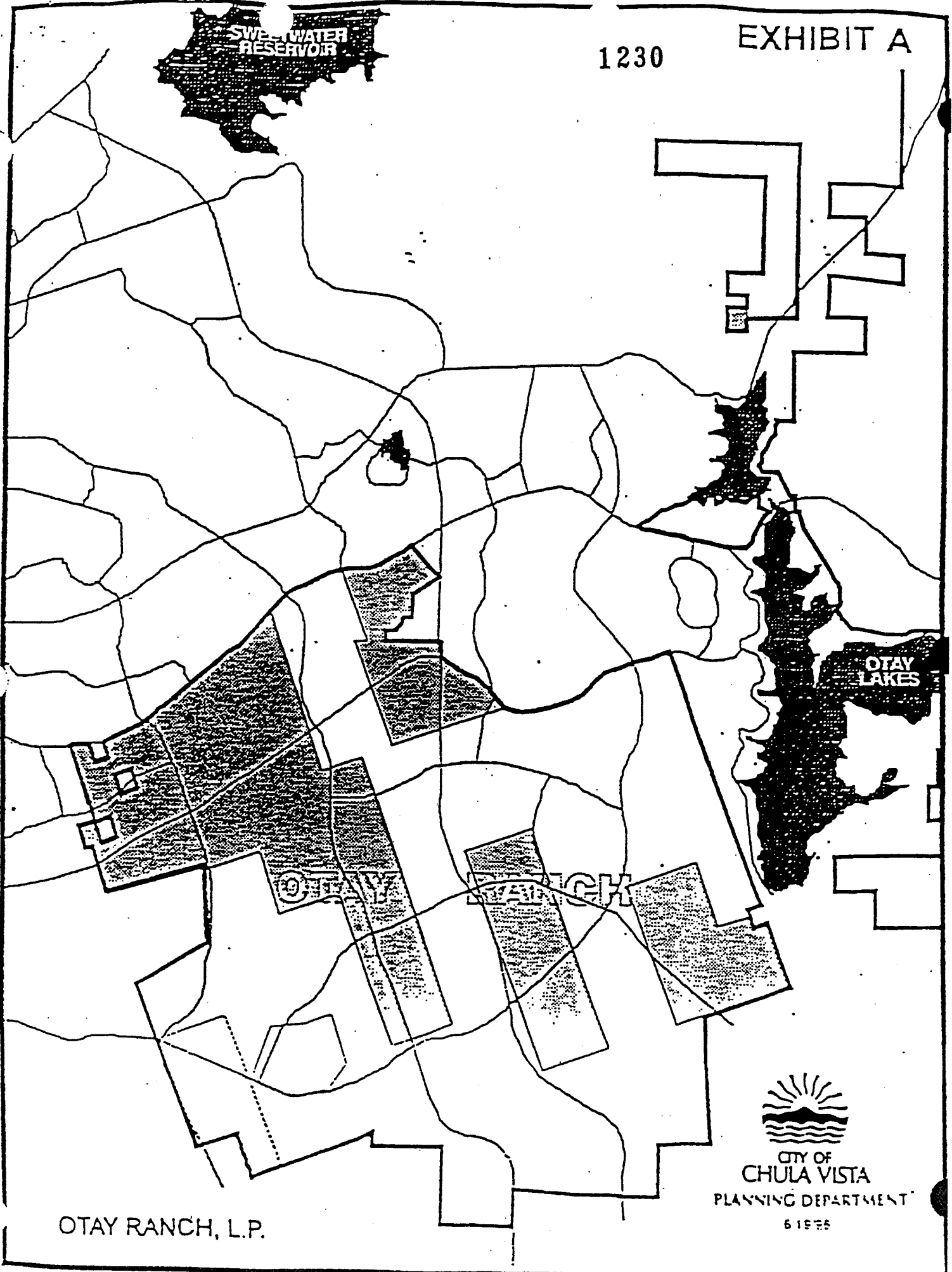
John M. Kaheny

By: Ann Moore  
Ann Moore  
Assistant City Attorney

SWEETWATER  
RESERVOIR

1230

EXHIBIT A



OTAY RANCH, L.P.



CITY OF  
CHULA VISTA  
PLANNING DEPARTMENT  
6 1975

1231

EXHIBIT B NO LONGER PERTINENT TO THIS AGREEMENT.  
DELETED AS ATTACHMENT MARCH 4, 1997.

J

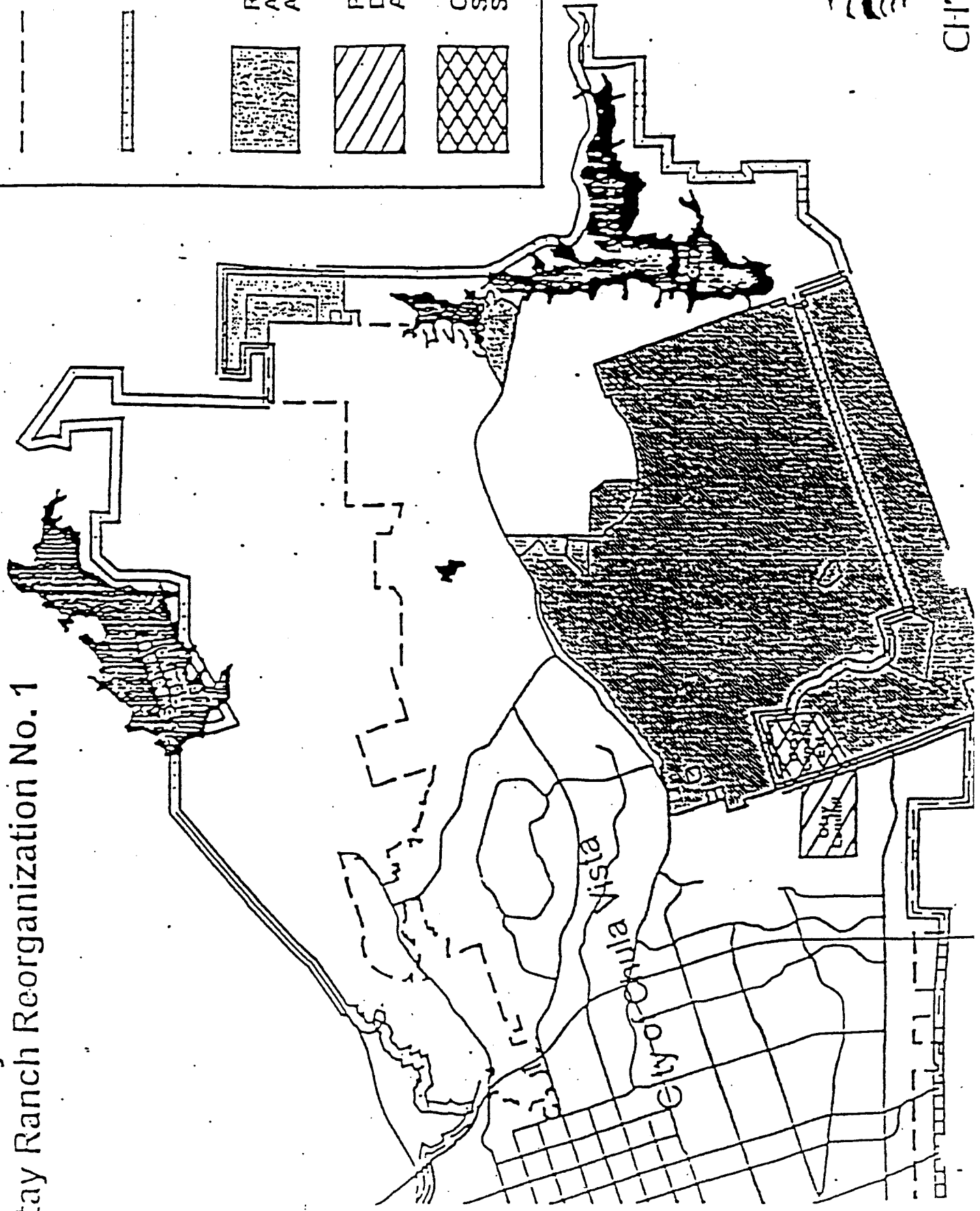
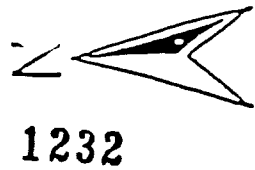


# City of Chula Vista Otay Ranch Reorganization No. 1

14A-77

Legend:

- Chula Vista City Bound
- Chula Vista Sphere of Influence
- Recomm. Annexation Areas
- Proposed Detachment Area
- Otay Landfill Special Study Area



1233

Recording Requested By, and When  
Recorded Please Return to:

Chief Administrative Officer  
County of San Diego  
1600 Pacific Hwy.  
San Diego, CA 92101

[Space above for Recorder's Use]

LANDFILL NUISANCE EASEMENT  
AND  
COVENANTS RUNNING WITH THE LAND

(hereinafter referred to as "Grantor"), for valuable consideration, does hereby GRANT to the COUNTY OF SAN DIEGO, a political subdivision of the State of California (hereinafter referred to as "Grantee") as the owner of the real property located in the County of San Diego, California known as the "Otay Landfill" which is more particularly described in "Exhibit A" hereto (hereinafter referred to as the "Dominant Tenement") and its successors in interest to the Dominant Tenement, an EASEMENT (hereinafter referred to as "Nuisance Easement") over all that real property located in the County of San Diego, California described in "Exhibit B" hereto. (hereinafter referred to as the "Servient Tenement").

This Nuisance Easement is for the use and benefit of Grantee and its successors in interest and invited guests in the conduct of solid waste landfilling operations on the Dominant Tenement, for the free and unobstructed passage on, onto, in, through, and across the surface and airspace above the surface of the Servient Tenement of the following things (hereinafter referred to as "Nuisance Items"):

dust; noise; vibrations; any and all chemicals or particles suspended (permanently or temporarily) in the air and wind including but not limited to methane gas; odors; fumes; fuel particles; seagulls and other scavenger birds and the excrement droppings therefrom; and the unobstructed passage below the surface of leachate and other pollutants; and for each, every and all effects as may be caused by or result from the operation of a landfill which is now in existence or which may be developed in the future,

together with the continuing right to cause or allow in all of such Servient Tenement such Nuisance Items, it being understood and agreed that Grantee, or its successors in interest, intends to develop, maintain and expand the landfill on the adjacent Dominant Tenement in such a manner that said landfill and the easement granted herein will be used at all times in compliance with all applicable State and Federal laws and the lawful orders

14A-34

of State and Federal agencies regulating environmental factors, toxic and/or hazardous waste, and the operation of the landfill.

Grantor, for itself and its successors and assigns, does hereby fully waive and release any right or cause of action which they or any of them may now have or may have in the future against Grantee, its successors and assigns, on account of or arising out of such Nuisance Items heretofore and hereafter caused by the operation of a landfill.

Grantor, for itself and its successors and assigns, covenants and agrees, with the understanding and intent that such shall run with the land, and which shall run with the land, that neither they nor any of them will commence or maintain a suit, action, writ, arbitration, or other legal or equitable proceeding against Grantee or its successors or assigns wherein the relief sought is the cessation or limitation on the use of the Dominant Tenement as a landfill. Grantor, for itself and its successors and assigns, covenants and agrees, with the understanding and intent that such shall run with the land, and which shall run with the land, that in the event that they violate the above covenants of the foregoing sentence, they shall pay to Grantee such attorneys' fees and costs as may be determined to be reasonable by a Court of competent jurisdiction. Inquires or requests for enforcement made by Grantor, its successors or assigns to State or Federal agencies with regulatory authority over the operation of landfills shall not be considered a violation of this paragraph.

Upon the termination of use of the Dominant Tenement for landfill purposes, (including completion of active landfill operations and all closure and post-closure activities), Grantor, its successors or assigns may request that Grantee, its successors or assigns, through the applicable legal procedure, vacate or terminate this easement, which request will not be unreasonably withheld.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 1996, at San Diego, California.

GRANTOR

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

OTAY LANDFILL AND BUFFER

PARCEL 96-00/8-1

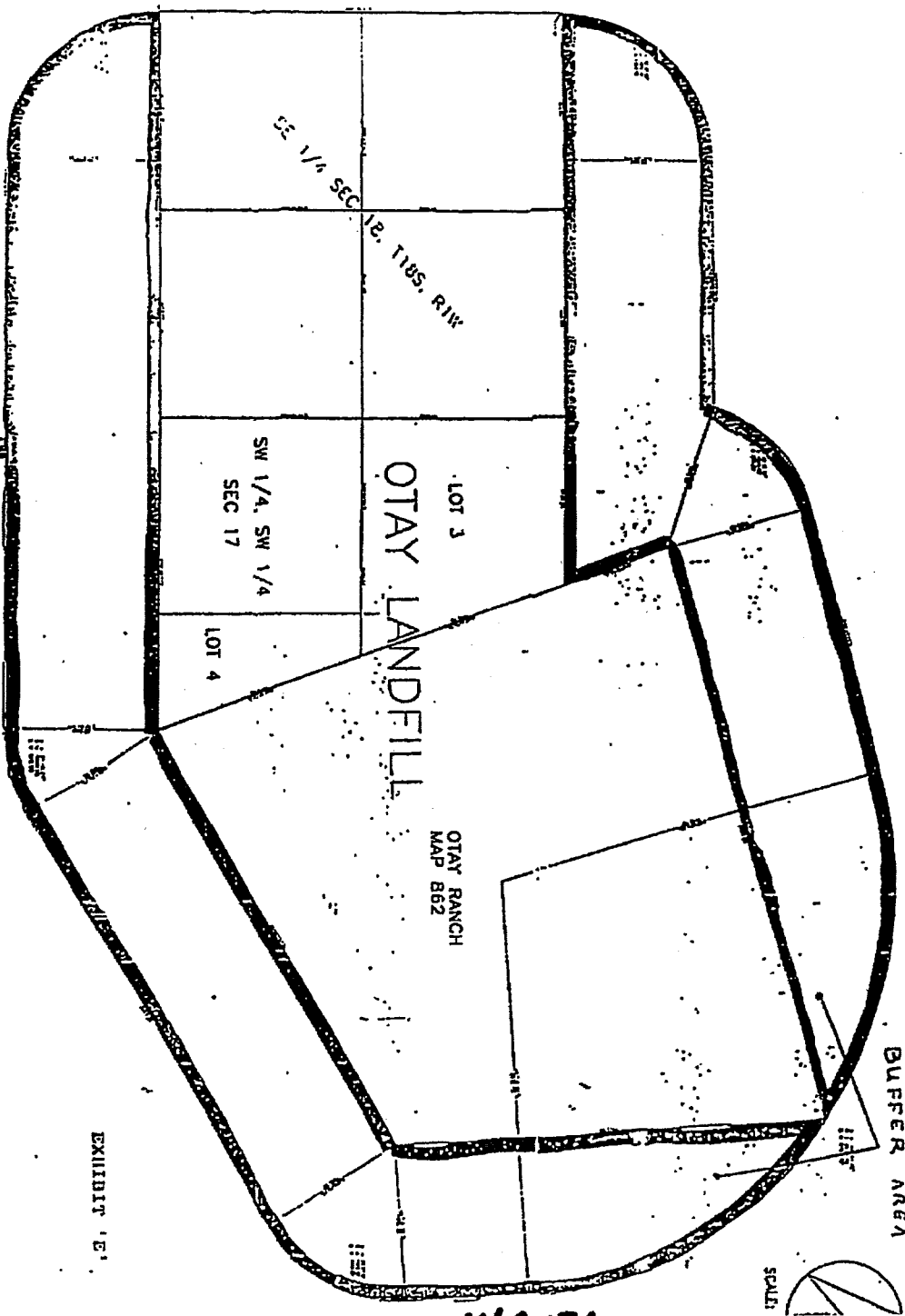


EXHIBIT 'E'

OTAY LANDFILL  
BUFFER AREA



EXHIBIT "F"			
PRE-ANNEXATION DEVELOPMENT AGREEMENT			
Planning Area	Assessor	Ownership	Acreage
	Parcel Numbers		
Otay Valley Parcel	595-070-33	Otay Ranch L.P.	15.39
Otay Valley Parcel	641-020-15	Otay Ranch L.P.	21.89
Otay Valley Parcel	641-020-18	Otay Ranch L.P.	10.00
Otay Valley Parcel	641-030-13	Otay Ranch L.P.	97.36
Otay Valley Parcel	641-040-05	Otay Ranch L.P.	151.17
Otay Valley Parcel	641-060-04	Otay Ranch L.P.	8.16
Otay Valley Parcel	641-060-06	Otay Ranch L.P.	17.91
Otay Valley Parcel	641-070-01	Otay Ranch L.P.	87.86
Otay Valley Parcel	641-080-01	Otay Ranch L.P.	88.89
Otay Valley Parcel	642-040-16	Otay Ranch L.P.	13.99
Otay Valley Parcel	642-050-14	Otay Ranch L.P.	44.62
Otay Valley Parcel	642-050-24	Otay Ranch L.P.	29.36
Otay Valley Parcel	642-070-01	Otay Ranch L.P.	160.00
Otay Valley Parcel	642-090-01	Otay Ranch L.P.	92.78
Otay Valley Parcel	643-010-03	Otay Ranch L.P.	19.92
Otay Valley Parcel	643-010-09	Otay Ranch L.P.	51.63
Otay Valley Parcel	643-020-10	Otay Ranch L.P.	159.37
Otay Valley Parcel	643-020-28	Otay Ranch L.P.	48.13
Otay Valley Parcel	643-020-32	Otay Ranch L.P.	32.70
Otay Valley Parcel	643-050-01	Otay Ranch L.P.	53.51
Otay Valley Parcel	643-060-04	Otay Ranch L.P.	268.55
Otay Valley Parcel	644-030-01	Otay Ranch L.P.	311.03
Otay Valley Parcel	644-030-06	Otay Ranch L.P.	255.85
Otay Valley Parcel	644-060-11	Otay Ranch L.P.	159.18
Otay Valley Parcel	644-070-01	Otay Ranch L.P.	313.52
Otay Valley Parcel	644-070-07	Otay Ranch L.P.	285.85
Otay Valley Parcel	644-080-09	Otay Ranch L.P.	152.40
Otay Valley Parcel	644-090-02	Otay Ranch L.P.	299.60
Otay Valley Parcel	645-030-15	Otay Ranch L.P.	16.89
Otay Valley Parcel	645-030-18	Otay Ranch L.P.	102.10
Otay Valley Parcel	646-010-03	Otay Ranch L.P.	175.14
			3,544.75 Total

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

1237

State of California )  
County of San Diego )

On 3/18/97 before me, Beverly A. Authelet, City Clerk  
personally appeared Shirley Norton

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



WITNESS my hand and official seal.

Beverly A. Authelet  
Signature of Notary

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- Individual
  - Corporate Officer
- Mayor  
Title(s)
- Partners(s)       Limited
  - General
  - Attorney-in-Fact
  - Trustee(s)
  - Guardian/Conservator
  - Other: \_\_\_\_\_

DESCRIPTION OF ATTACHED DOCUMENT

Rentated & Amended Pre-Association Development Agree  
Title or Type of Document

36  
Number of Pages

3/4/97  
Date of Document

SIGNER IS REPRESENTING:

Name of Person(s) or Entity(ies)  
City of Chula Vista

Otay Ranch L.P.  
Signer(s) Other Than Named Above

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

1238

County of San Diego

On April 24, 1997 before me, Mora Kay Keller

Date

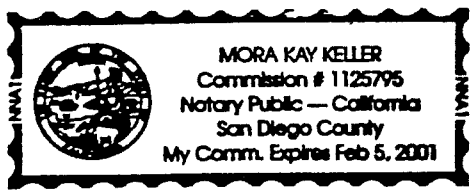
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared James P. Baldwin

Name(s) of Signer(s)

- personally known to me
- proved to me on the basis of satisfactory evidence

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



WITNESS my hand and official seal.

Mora Kay Keller  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Restated & Amended Re-Annexation Development Agreement

Document Date: 3-4-97 Number of Pages: 36

Signer(s) Other Than Named Above: Shirley Norton, Mayor - City of CV

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: James P. Baldwin

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

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

Signer Is Representing:  
The Otay Ranch LP

Signer's Name: \_\_\_\_\_

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

RIGHT THUMBPRINT OF SIGNER  
Top of thumb here

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

# OTAY LAND COMPANY, LLC

A HomeFed Communities Development

1903 Wright Place, Suite 220  
Carlsbad, CA 92008

*E-Mail Address: [Otay@AccretiveInvestments.com](mailto:Otay@AccretiveInvestments.com)  
760/918-8202 Fax: 760/918-8205*

Paul J. Borden 602-3780 R. Randy Goodson 602-3766 Simon G. Malk 602-3767

November 17, 1999

Ms. Gabrielle Holley  
Pillsbury Madison & Sutro, LLP  
101 West Broadway, Suite 1800  
San Diego, CA 92101-8219

Dear Ms. Holley:

Enclosed is a copy of the Restated & Amended Pre-Annexation Development Agreement with Otay Ranch, L.P.

Thank You,  
Patricia Saglin