RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF CHULA VISTA
276 Fourth Ave.
Chula Vista, CA 91910

Attention: City Clerk

(Space Above For Recorder's Use)

**FIRST AMENDMENT TO RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT**

This FIRST AMENDMENT TO RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT ("First Amendment") is entered into and effective as of _____, 2014, by and between SSBT LCRE V, LLC, a Delaware limited liability company (Owner) and the City of Chula Vista, a political subdivision of the State of California (City).

**RECITALS**

A. On or about March 18, 1997, City and SNMB, LTD entered into that certain Amended and Restated Pre-Annexation Development Agreement ("Development Agreement") as approved by the City of Chula Vista by Ordinance No. 2700, attached hereto as "Exhibit 1."

B. On or about May 20, 2008, City and JJJ&K Investments Two, LLC; OV Three Two LLC; and RR Quarry, LLC (referred to collectively as the "Previous Owners") entered into that certain Land Offer Agreement (LOA) recorded in the San Diego County Recorder's Office on June 19, 2008, as Document No. 2008-0329779 and subsequently amended on or about August 17, 2010, recorded in the San Diego County Recorder's Office on September 1, 2010, as Document No. 2010-0458263. Owner succeeded Previous Owners to the LOA and subsequently amendment the LOA a third time on or about July 8, 2014, recorded in the San Diego County Recorder's Office on July 29, 2014, as Document No. 2014-0319703.

C. Owner has also succeeded SNMB, LTD as the owner of the property subject to the Development Agreement through various mesne conveyances.

D. City and Owner wish to amend the Development Agreement in accordance with the terms and provisions of the LOA and record this First Amendment as set forth in the Legal Description attached hereto as "Exhibit 2."

E. Unless otherwise defined herein, capitalized terms as used herein shall have the same meaning as given thereto in the Development Agreement.

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and City agree as follows:

1. Term. The following language shall be added after the phrase "twenty (20 years" and before the phrase "(the term)" in the fourth sentence of Section 3 of the Development Agreement:

> "from December 3, 2014, the date upon which the City may accept the Offers of Dedication in Sections 3.3 of that certain "Land Offer Agreement" by and between the City and SSBT LCRE V, LLC, a Delaware limited liability company, approved by the City Council on or about July 8, 2014."

2. Tentative Map/Permit Duration. Section 6.2 of the existing Development Agreement, entitled "Length of Validity of Tentative Subdivision Maps," is hereby deleted in its entirety and replaced with the following:

> "6.2 Tentative Map/Permit Duration." Pursuant to California Government Code section 66452.6, any tentative subdivision map, parcel map or other map authorized by the State Subdivision Map Act that is approved for the Project shall remain valid for a period of time equal to a term of this Agreement. In addition, notwithstanding any condition or provision to the contrary, every permit and approval for the Project other than ministerial approvals shall remain valid for a period of time equal to the term of this Agreement."

3. Growth Management. The second full paragraph of Section 5.2 of the existing Development Agreement, entitled "Development of Property," which begins "Notwithstanding the foregoing," shall be deleted in its entirety and replaced with the following:

> "Notwithstanding any provision of this Agreement to the contrary, the City's Growth Management program, as set forth in the Growth Management Element of the City General Plan, applicable to the Project shall be those in effect on the date the City approves the Land Offer Agreement referenced in Section 3 hereof."

4. Modifications to Existing Project Approvals. The following sentence of the existing Development Agreement shall be added to the end of Section 5.2.3 of the existing Development Agreement:

> "The parties agree that they accept the modifications to the Existing Project Approvals approved by the City Council on December 2, 2014."

5. Reimbursement. At the end of the first sentence of Section 7.5 of the existing Development Agreement, entitled "Facilities Which are the Obligations of Another Party, or are of Excessive Size, Capacity, Length or Number," a new sentence shall be inserted as follows:

"City shall not require such monies or improvements unless City provides reasonable assurance of funding or reimbursement in accordance with State law and/or the City's ordinances."

6. Owner. Owner is the successor to the rights and obligations of SNMB, LTD under the Development Agreement. The addresses for notices to Owner in Section 16.3 of the Development Agreement are changed to:

SSBT LCRE V, LLC
c/o State Street Bank and Trust
One Lincoln Street (SFC9)
Boston, MA 02111-2900
Attention: Q. Sophie Yang and Paul J. Selian
Facsimile No: (617) 664-3555

with a copy to:
SSBT LCRE V, LLC
c/o State Street Bank and Trust
One Lincoln Street (SFC9)
Boston, MA 02111-2900
Attention: Al Uluatam, Senior Counsel
Facsimile: (617) 664 4747

And a copy to:
Bingham McCutchen
Three Embarcadero Center
San Francisco, CA 94111-4067
Attention: Edward S. Merrill
Facsimile: (415) 262-9228

7. No Further Modification. Except as set forth in this First Amendment, all of the terms and provisions of the Development Agreement shall remain unmodified and in full force and effect.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, this First Amendment to Restated and Amended Pre-Annexation Development Agreement has been executed as of the day and year first above written.

CITY OF CHULA VISTA, a political subdivision of the State of California

By:

_____
Cheryl Cox, Mayor

Attested By:

_____
Donna Norris, City Clerk

APPROVED AS TO FORM:

_____
Glen R. Googins, City Attorney

SSBT LCRE V, LLC,
a Delaware limited liability company

By: SSBT LCRE HOLDCO, LLC, a Delaware limited liability company, its sole member

By: STATE STREET BANK AND TRUST COMPANY, a Massachusetts trust company, its sole member

By: _____
Q. Sophie Yang
Vice President

J:\Attorney\MichaelSh\LandOfferAgts\DA\JPB-DA-Amendment\DA\SSBTAmendmentToSNMBDA-11.4.14-FINAL.docx

EXHIBIT LIST

EXHIBIT 1 AMENDED AND RESTATED PRE-ANNEXATION DEVELOPMENT AGREEMENT BETWEEN CITY OF CHULA VISTA AND SNMB, LTD

EXHIBIT 2 LEGAL DESCRIPTION AND PLAT

EXHIBIT 1

AMENDED AND RESTATED PRE-ANNEXATION DEVELOPMENT AGREEMENT
BETWEEN CITY OF CHULA VISTA AND SNMB, LTD.

ORDINANCE NO. 2700

AN ORDINANCE OF THE CITY OF CHULA VISTA ADOPTING THE RESTATED AND AMENDED PRE-ANNEXATION DEVELOPMENT AGREEMENT WITH SNMB, LTD.

WHEREAS, on August 6, 1996, the City Council approved Ordinance 2688 on first reading, which adopted the Pre-Annexation Development Agreement between the City of Chula Vista and SNMB, Ltd. ("Previously Negotiated Agreement"); and

WHEREAS, the Previously Negotiated Agreement was not executed by SNMB, Ltd. so no second reading of the ordinance was held and therefore no agreement is currently in existence; and

WHEREAS, there is now a mutual desire by the City and SNMB, Ltd. to restate and amend the Previously Negotiated Agreement in order for the Previously Negotiated Agreement to become effective ("Restated Agreement"); and

WHEREAS, on February 19, 1997, the Planning Commission reviewed the Restated Agreement and voted to approve same.

NOW, THEREFORE, the City Council of the City of Chula Vista ordains as follows:

SECTION I: The City Council does hereby adopt, amend and restate the Restated and Amended Pre-Annexation Development Agreement with SNMB, Ltd. on file in the office of the City Clerk as Document No. C097-014.

SECTION II: The Mayor of the City of Chula Vista is hereby authorized and directed to execute said Restated Agreement for and on behalf of the City of Chula Vista.

SECTION III: This ordinance shall take effect and be of full force on the effective date of annexation as set forth in the Restated Agreement, Document No. C097-014.

Presented by

George Krempl
Deputy City Manager

Approved as to form by

John M. Kaheny
City Attorney

AMENDED AND RESTATED
PRE-ANNEXATION DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED PRE-ANNEXATION DEVELOPMENT AGREEMENT ("Agreement") is made effective on the date hereinafter set forth below by and among the CITY OF CHULA VISTA ("City") and SNMB, LTD. ("SNMB"), who agree as follows:

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

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 SNMB is the owner of approximately 1,827 acres of undeveloped real property ("the SNMB Property") in the unincorporated area of the County of San Diego ("County"), described in Exhibits "A" and "E, attached hereto and incorporated herein by this reference.

1.1.2 The SNMB Property (the "Property") is part of a larger area commonly known, and referred to herein, as "the Otay Valley Parcel of Otay Ranch." Portions of SNMB Property are located in Villages 2, 3, 4, 7, 8, 9 and Planning Areas 12 and 18B of the Otay Ranch Property.

1.2 City. The City of Chula Vista is a municipal corporation with Charter City powers incorporated within the County.

1.3 Code Authorization and Acknowledgments.

1.3.1 City is authorized pursuant to its charter, self-rule powers and 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.



C097-014

1.3.4 City and Owner intend to enter into this agreement for the following purposes:

1.3.4.1 To assure adequate public facilities at the time of development.

1.3.4.2 To assure development in accordance with City's capital improvement plans.

1.3.4.3 To provide certainty to Owner in the development approval process by vesting the permitted use(s), density, intensity of use, and the timing and phasing of development as described in the Development Plan, which is defined in Paragraph 2.4 of this Agreement, in exchange for Owner's entering into this Agreement and for its commitment to support the Annexation described below.

1.3.4.4 To permit achievement of City growth management goals and objectives.

1.3.4.5 To allow City to realize significant economic, recreational, park, open space, social, and public facilities benefits for the City, some of which are of regional significance.

1.3.4.6 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.

1.3.4.7 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 provided 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.

1.3.4.8 To provide the City the developer's support to secure annexation of the lands depicted in Exhibit "B".

1.3.4.9 To enable the City to secure title to the land within the boundaries of the Property necessary to complete the Chula Vista greenbelt system as defined in the Chula Vista General Plan.

1.3.4.10 To assure the City that the Developer will dedicate rights-of-way to the City 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.

1.3.4.11 Because of the complexities of the financing of the infrastructure, park, open space, and other dedications, and regional and community facilities, and the significant nature of such facilities, certainty in the development process is an absolute necessity. The phasing, timing, and development of public infrastructure necessitate a significant commitment of resources, planning, and effort by Owner for the public facilities financing, construction, and dedication to be successfully completed. In return for Owner's participation and commitment to these significant contributions of private resources for public purposes and for Owner's consent to the Annexation described below, City is willing to exercise its authority to enter into this Agreement and to make a commitment of certainty for the development process for the Property.

1.3.4.12 In consideration of Owner's agreement to provide the significant benefits and for Owner's consent to the Annexation described below, City hereby grants Owner assurances that it can proceed with development of the Property in accordance with City's ordinances, rules, regulations, and policies existing as of the effective date of this Agreement subject to Section 5.2.1 below. Owner would not enter into this Agreement or agree to provide the public benefits and improvements described in this Agreement if it were not for the commitment of City that the Property subject to this Agreement can be developed in accordance with City's ordinances, rules, regulations, and policies existing as of the effective date of this Agreement subject to Section 5.2.1 below.

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 "B").

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 "B").

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 property.

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 SNMB desires to give their cooperation and consent, provided that they obtain certain assurances, as set forth in this Agreement.

1.8 City Ordinance. _____, 1997 is the date of adoption by the City Council of Ordinance No. _____ 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 Paragraph 1.1.1.

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; and

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, and the Phase I and 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) Preserve Conveyance Plan and (xi) 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 will, when adopted, set forth policies and identify the schedule for transfer of land 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.

2.21 "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 be 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 the 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 Owner is suspended for any reason other than the default of Owner, and for a period of time equal to the period of time during which any action by 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 Otay Valley Parcel is within City's sphere of influence and to annex the Otay Valley Parcel 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 or the additional commitments of City set forth in Paragraphs 5.1.1 through 5.1.8, below. Owner also agrees not to challenge the annexation of the Otay Valley Parcel into the City.

4.1 The Developer understands and agrees that this Agreement shall become effective and valid only upon the Effective Date of the annexation proceedings, as more fully described in paragraph 3 of this Agreement. Developer further understands that as a condition precedent to the completion of annexation proceedings, and this Agreement becoming effective, certain property owners such as SNMB, Ltd., are required to provide certain easements and subordination agreements satisfactory to the County. Developer agrees that the City's second reading of the Ordinance approving this Agreement shall not occur unless and until said subordination agreements have been accepted by the County. No terms of this Agreement shall be subject to renegotiation between the first and second reading of the ordinance approving this Agreement except by mutual consent of the parties to this Agreement.

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, except as may be otherwise provided in this Section 5, to construct the Project in accordance with:

5.1 Existing Project Approvals, subject to the following requests for modifications if approved by the City:

5.1.1 City shall reasonably consider in its discretion and with proper environmental review, a request to increase the residential density of Villages 2, 4, and 8, up to the number of residential units provided in Village 3 by the County adopted GDP.

5.1.2 City shall reasonably consider in its discretion and with proper environmental review a request to change the primary land use designation for Village 3 from Industrial to commercial, recreational, visitor-serving, and some residential uses in addition to the Industrial use. The exact acreages of the residential, industrial, commercial, or other uses, shall be agreed upon and set forth in a general plan amendment.

5.1.3 If the interchange improvements at Otay Valley Road and I-805 are needed to serve the Project, the City will hold appropriate hearings to consider an amendment to its Transportation Phasing Plan (TPP) and Development Impact Fee (DIF) Program to include said improvements as may be deemed appropriate by the City to accommodate the project phasing. The City agrees to reasonably cooperate and work with CALTRANS to complete plans for said interchange improvement.

5.1.4 City shall initiate contact and diligently pursue discussions with the County of San Diego and the City of San Diego to determine the number, scheduling and financing of the Otay River road and bridge crossings.

5.1.5 City shall allow the owner for purposes of processing entitlements to proceed with planning of the Property on a first come first served basis, with other properties in the area of the Annexation. In addition, if necessary the City shall, with proper environmental review, consider in its discretion an amendment to the Village Phasing Plan to facilitate the planning and development of the properties covered by this Agreement.

5.1.6 To the extent any of the foregoing changes are embodied in the Development Plan or the rules, regulations, ordinances, policies, conditions, environmental regulations, phasing controls, exactions, entitlements, assessments, and fees applicable to and governing development of the Property, whether adopted before or after the Effective

Date, such changes shall be deemed applicable to the Property without change to this Agreement.

5.1.7 City shall diligently process any amendments, applications, maps, or other development applications.

5.1.8 City shall diligently process and reasonably consider in its discretion with proper environmental review a request to expand the development areas of Villages 2, 3, 4 and 8 in the event future environmental studies indicate that areas once considered environmentally constrained can be developed without significant, unmitigable environmental impacts.

5.1.9. City may make such modifications or amendments to the Existing Project Approvals/Future Discretionary Approvals, as may be ordered by a court of competent jurisdiction in an action in which the Developer is a party or has had an opportunity to appear or has been provided notice of such action by the City.

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 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.

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 map(s) 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. Such permit shall be issued to Developer, or its contractor, upon Developer's application, approval, and provided Developer posts a bond or other reasonably adequate security required by City in an amount 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. If Developer so elects, the City shall accept and process a master subdivision or parcel map ("A" Map) 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, but the City shall require bonding for the completion of backbone facilities prior to recording in an amount to be determined by the City. 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. 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, which map City shall accept and process 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, and (iii) provide security and insurance satisfactory to City for the completion of the subdivision improvements.

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 under the improvement agreement and provides its own security and insurance for the completion of the subdivision improvements 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. 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 preventing or unreasonably delaying the development of the property; and (iii) the Agreement having not been suspended in response to changes in state or federal law; and (iv) the City's obligations having not been suspended pursuant to Section 13.2.

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 the Existing Project Approvals.

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 selected by CALTRANS and depicted: (1) generally in the GDP or (2) that alignment identified as the Brown Field Modified Alignment which 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.

Notwithstanding the foregoing, should CALTRANS not select alignment (1) or (2) above, the Developer shall dedicate land for any such alternate SR-125 configuration only on the condition that the City agree to relocate any land uses displaced by such alternate Freeway alignment.

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. The parties to this Agreement understand and acknowledge that the "Landfill Nuisance Easement" is an integral part of this Agreement. Developer shall deliver to the City "Landfill Nuisance Easements" in the form attached as Exhibit "C" and satisfactory to the County of San Diego 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 easements 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 City shall reasonably consider in its discretion and with proper environmental review, a request to relocate all land uses which may be eliminated as a result of an unknown relocation of SR-125 from the route currently depicted in the GDP.

7.3 Growth Management Ordinance. Developer shall commit the public facilities and City shall issue building permits as provided in this Section. 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 or City. 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 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. 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 Subdivision Map. As may be required pursuant to the terms of a subdivision map, it shall be the responsibility of Developer to construct the improvements required by a 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 subdivision, City shall process a reimbursement agreement to the Developer in accordance with Article 6 of Chapter 4 of the Subdivision Map Act, commencing with Government Code section 66485, and Section 7.5, below.

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.

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 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 pay its fair share for the interchanges described in Paragraph 5.1.3, based upon the number of dwelling units or equivalent dwellings of development allowed on the Property as compared to the total dwelling units or equivalent dwelling units allowed on properties served by such interchanges.

8.7.2 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.

8.7.3 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 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.

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.

11.1.4 Any other act or omission by City or Owner which materially interferes with the terms 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.

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 Remedies Upon Default. In the event of a default by either party to this Agreement, the parties shall have the remedies of specific performance, mandamus, injunction and other equitable remedies without having to first prove there is an inadequate remedy at law. Neither party shall have the remedy of monetary damages against the other; provided, however, that the award of costs of litigation and attorneys' fees shall not constitute damage.

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).

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.

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 place the residents of City in a severe and immediate emergency to their health or safety.

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 place the residents of the City in a severe and immediate emergency to their health or safety.

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 parties agree to utilize their best efforts to implement these agreements, once executed, through the timely processing of modifications to the Existing Project Approvals as they relate to the 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.

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 to install improvements through the use of assessment districts, community facility districts, or other public financing mechanisms, the City shall initiate and conclude appropriate proceedings for the formation of such financing district or funding mechanism, under applicable laws or ordinances. Developer may request that the City 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.

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 after receiving the prior written consent of the City Manager, which consent shall not be unreasonably withheld, delayed, or conditioned. 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. 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: SNMB, LTD.
7811 La Mesa Boulevard
Suite B-3
La Mesa, CA 91941
Attention: Christopher Patek

With a Copy to: STEPHENSON, WORLEY, GARRATT
SCHWARTZ, HEIDEL & PRAIRIE
101 West Broadway, Suite 1300
San Diego, CA 92101
Attention: Donald R. Worley, Esq.

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 with neither party bearing any liability hereunder. Notwithstanding the foregoing, within 15 days after such provision is held invalid, if the party holding rights under the invalidated provision affirms the balance of this Agreement in writing this Agreement shall not be terminated. 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 as allowed by this Agreement 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.

17. AUTHORITY

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 or other actions have been taken so as to enable it to enter into this Agreement.

SIGNATURE PAGE TO PRE-ANNEXATION DEVELOPMENT AGREEMENT.

Dated this 18th day of MARCH, 1997.

"CITY"

CITY OF CHULA VISTA

By: Shirley Horton
SHIRLEY HORTON, MAYOR

"OWNER"

SNMB, LTD.

By: _____, General Partner

I hereby approve the form and legality of the foregoing Pre-Annexation Development Agreement this ____ day of _____, 1997.

John M. Kaheny, City Attorney

By: Ann Moore
Ann Moore
Assistant City Attorney

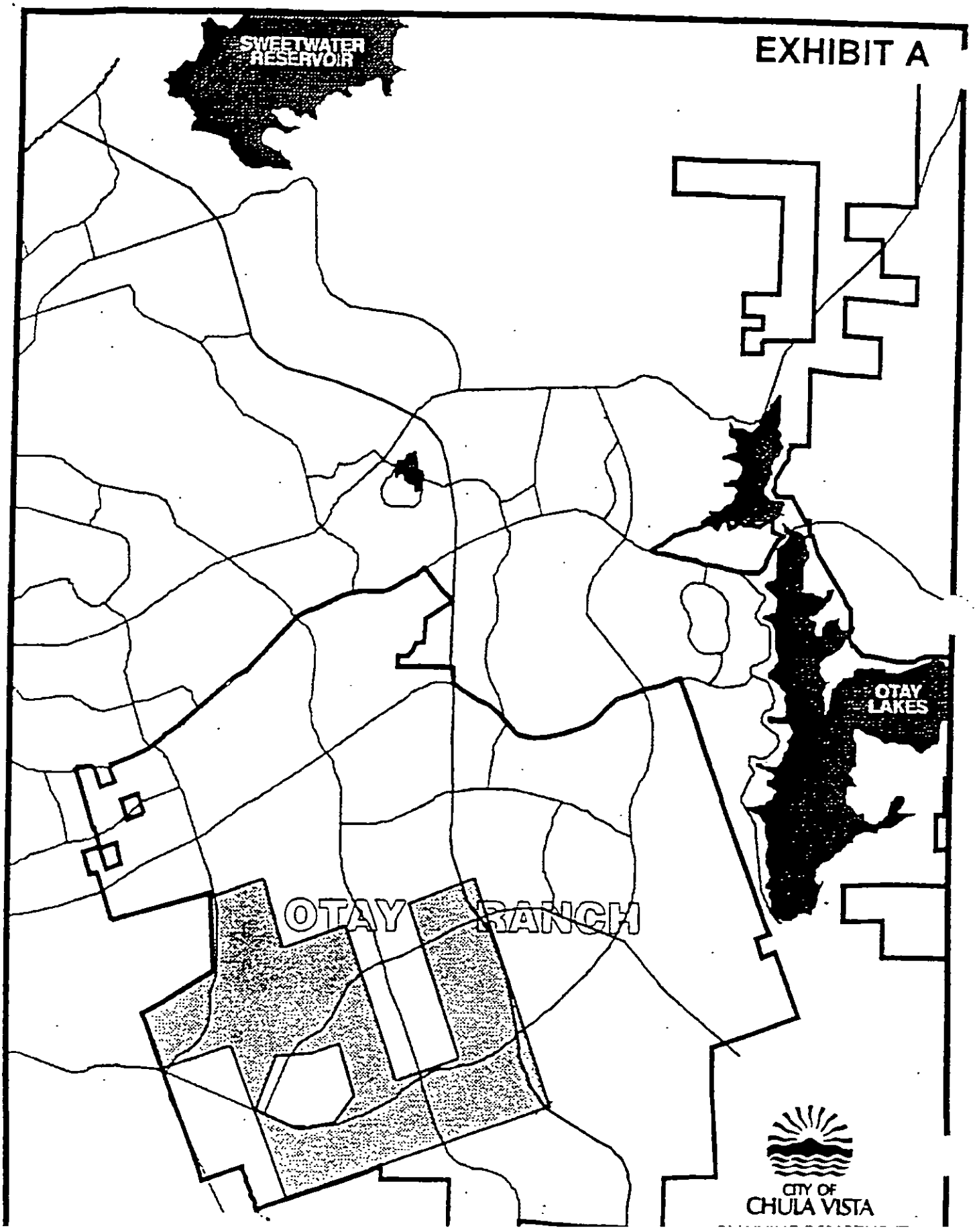


EXHIBIT A
SWEETWATER RESERVOIR
OTAY LAKES
OTAY RANCH
CITY OF CHULA VISTA

# Exhibit B
# City of Chula Vista
# tay Ranch Reorganization No. 1

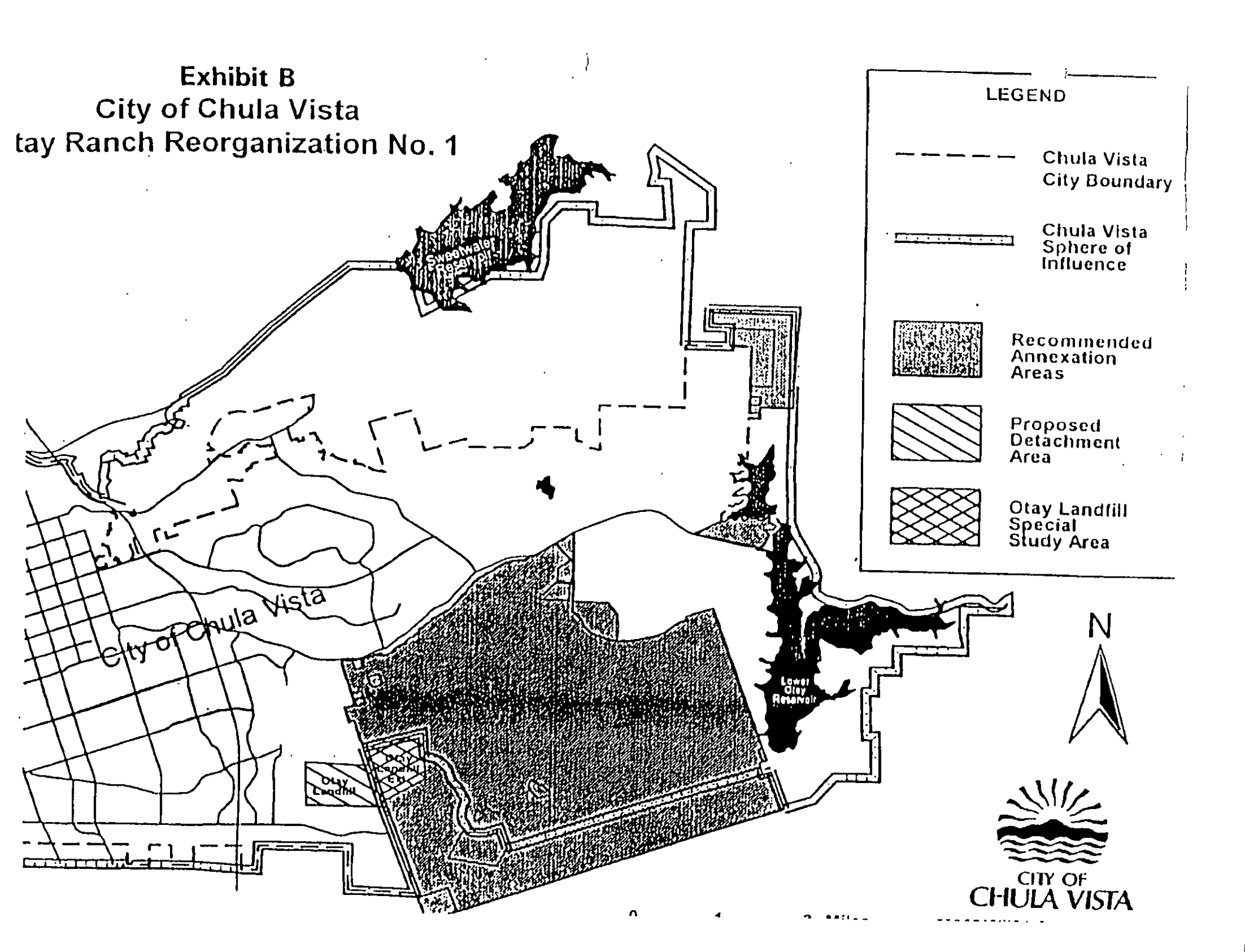


EXHIBIT "C"

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 referre to as "Grantee") as the owner of that 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

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. Inquiries 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.

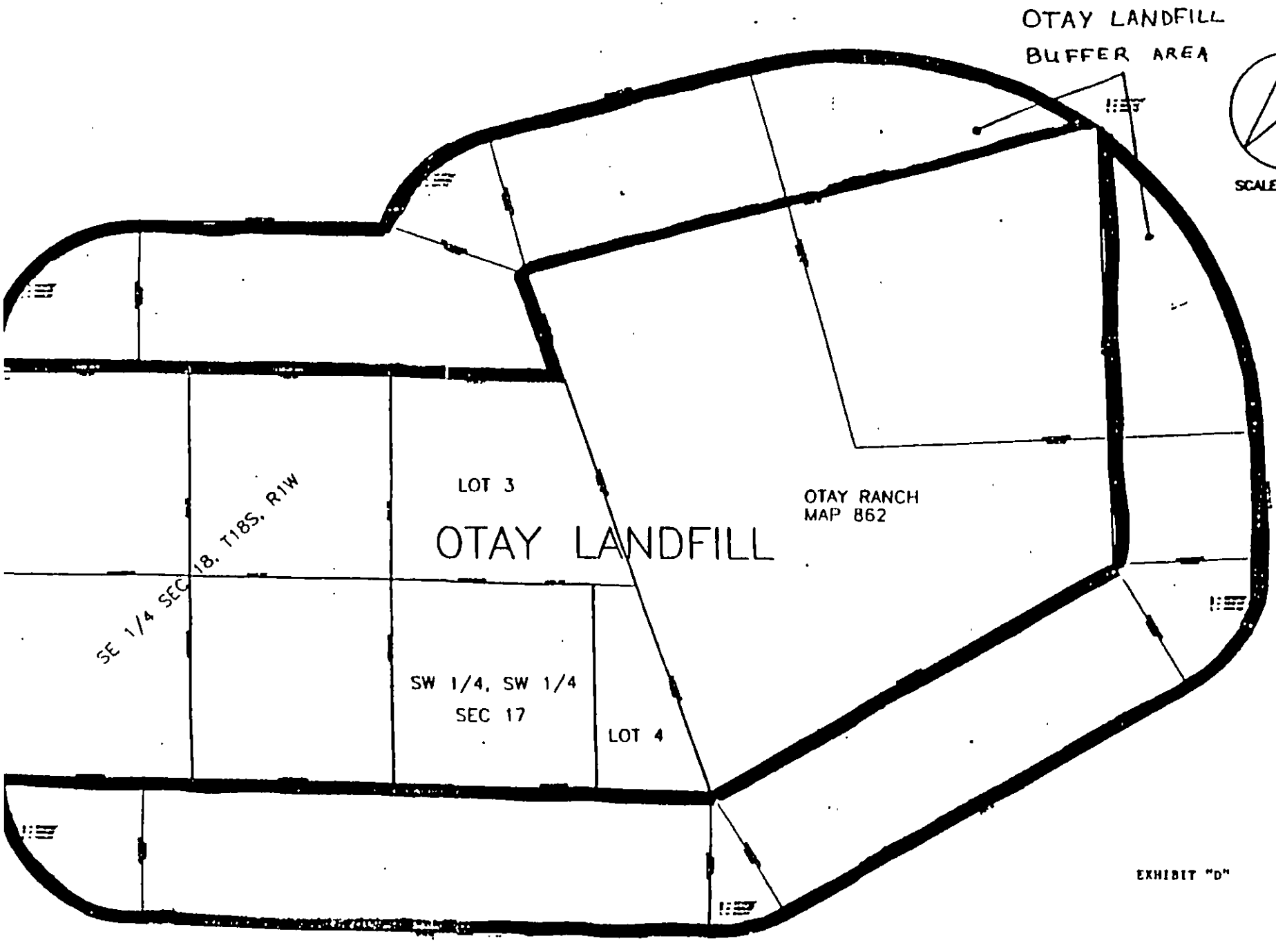
GRANTOR

_____

_____

_____

# OTAY LANDFILL AND BUFFER PARCEL 96-0078-A




159-34

| EXHIBIT "E" | | | | |
|---|---|---|---|---|
| Pre-annexation Development Agreement | | | | |
| | | | | |
| Planning Area | Assessor Parcel Numbers | Ownership | Acreage | |
| | | | | |
| Otay Valley Parcel | 644-030-07 | S N M B Ltd. | 134.25 | |
| Otay Valley Parcel | 644-060-07 | S N M B Ltd. | 159.18 | |
| Otay Valley Parcel | 644-060-08 | S N M B Ltd. | 80.00 | |
| Otay Valley Parcel | 644-060-09 | S N M B Ltd. | 80.00 | |
| Otay Valley Parcel | 644-060-10 | S N M B Ltd. | 289.70 | |
| Otay Valley Parcel | 644-060-12 | S N M B Ltd. | 82.20 | |
| Otay Valley Parcel | 644-070-08 | S N M B Ltd. | 313.28 | |
| Otay Valley Parcel | 645-030-19 | S N M B Ltd. | 335.34 | |
| Otay Valley Parcel | 646-010-02 | S N M B Ltd. | 352.70 | |
| | | | 1,826.65 | Total |

# EXHIBIT 2

## LEGAL DESCRIPTION

PARCEL A

LOT 43 OF OTAY RANCH, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 862, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1900.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT 43 LYING WITHIN THE FOLLOWING DESCRIBED LAND:

COMMENCING AT THE SOUTHWEST CORNER OF FRACTIONAL SECTION 17, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, IN SAID SAN DIEGO COUNTY, ACCORDING TO LICENSED SURVEYOR'S MAP THEREOF NO. 275, A PLAT OF WHICH IS FILED IN THE OFFICE OF THE COUNTY RECORDER NOVEMBER 5, 1936; THENCE ALONG THE SOUTHERLY LINE OF SAID FRACTIONAL SECTION 17, SOUTH 88°55'00" EAST, A DISTANCE OF 2,071.03 FEET (2,074.27 PER SAID LICENSED SURVEYOR'S MAP NO. 275) TO A POINT ON THE WESTERLY BOUNDARY OF SAID OTAY RANCH, SAID POINT BEING ALSO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHERLY LINE, NORTH 19°00'00" WEST, ALONG SAID WESTERLY BOUNDARY, A DISTANCE OF 2,893.65 FEET (2,893.04 FEET PER SAID LICENSED SURVEYOR'S MAP NO. 275) TO THE MOST NORTHERLY NORTHEAST CORNER OF THAT LAND DESCRIBED IN DEED TO THE COUNTY OF SAN DIEGO, RECORDED APRIL 16, 1962 AS FILE NO. 64315 OF OFFICIAL RECORDS, IN THE OFFICE OF SAID COUNTY RECORDER; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY NORTH 19°00'00" WEST, A DISTANCE OF 741.41 FEET; THENCE LEAVING SAID WESTERLY BOUNDARY, NORTH 74°23'37" EAST, A DISTANCE OF 3,829.24 FEET; THENCE SOUTH 02°44'38" EAST, A DISTANCE OF 2,922.46 FEET; THENCE SOUTH 59°39'21" WEST, A DISTANCE OF 3,064.30 FEET TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LOT 43 DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF FRACTIONAL SECTION 20, TOWNSHIP 18 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, AS SHOWN ON OTAY INDUSTRIAL PARK, MAP NO. 8147, FILED IN THE OFFICE OF THE COUNTY RECORDER; THENCE ALONG THE EASTERLY LINE OF SAID FRACTIONAL SECTION 20, BEING ALSO THE WESTERLY BOUNDARY LINE OF SAID OTAY RANCH, NORTH 18°37'06" WEST 650.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID RANCH BOUNDARY NORTH 71°22'54" EAST 55.00 FEET; THENCE LEAVING SAID RANCH BOUNDARY NORTH 71°22'54" EAST 55.00 FEET; THENCE NORTH 18°37'06" WEST, PARALLEL WITH SAID RANCH BOUNDARY LINE 200.00 FEET; THENCE SOUTH 71°22'54" WEST 55.00 FEET TO SAID RANCH BOUNDARY LINE; THENCE ALONG SAID LINE SOUTH 18°37'06" EAST 200.00 FEET TO SAID POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LOT 43 DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RANCH OTAY BOUNDARY DISTANT SOUTH 18°37'10" EAST 499.12 FEET ALONG SAID OTAY RANCH BOUNDARY FROM THE SOUTHEAST CORNER OF LOT 17 OF MAP NO. 8147; THENCE LEAVING SAID OTAY RANCH BOUNDARY EASTERLY ALONG A NON-TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 157.00 FEET, A RADIAL TO SAID POINT BEARS NORTH 34°56'19" WEST; THENCE ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 49°41'39" AN ARC LENGTH OF 136.17 FEET; THENCE

TANGENT TO SAID CURVE SOUTH 75°14'40" EAST 179.58 FEET; THENCE SOUTH 14°45'20" WEST 62.00 FEET; THENCE NORTH 75°14'40" WEST 45.61 FEET TO THE BEGINNING OF A TANGENT 95.00 FOOT RADIUS CURVE CONCAVE SOUTHERLY; THENCE WESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 107°28'43" A LENGTH OF 178.21 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 44 OF OTAY RANCH; THENCE DEPARTING THE ARC OF SAID CURVE NON-RADIALLY SOUTH 71°58'08" WEST 9.63 FEET ALONG THE NORTHERLY LINE OF SAID LOT 44 TO THE EASTERLY LINE OF THAT EASEMENT FOR COUNTY HIGHWAY RECORDED APRIL 9, 1979 AS FILE NO. 79-144675 OF OFFICIAL RECORDS; THENCE NORTH 18°37'10" WEST 78.39 FEET ALONG THE EASTERLY LINE OF SAID EASEMENT FOR COUNTY HIGHWAY; THENCE SOUTH 71°22'50" WEST 55.00 FEET ALONG THE NORTHERLY LINE OF SAID EASEMENT FOR COUNTY HIGHWAY TO A POINT OF INTERSECTION WITH SAID RANCH BOUNDARY; THENCE ALONG SAID RANCH BOUNDARY NORTH 18°37'10" WEST 119.86 FEET TO THE POINT OF BEGINNING.

PARCEL B

PARCEL 3 OF PARCEL MAP NO. 19923, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, JANUARY 18, 2006.

PARCEL C

PARCEL 4 OF PARCEL MAP NO. 20264, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, JUNE 1, 2007.

PARCEL D

LOTS 25 AND 26 IN OTAY RANCHO, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 862, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1900.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT 25 CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JUNE 21, 2006 AS DOCUMENT NO. 2006-0437364, OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF LOT 25 IN OTAY RANCHO, IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 862, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 07, 1900, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 25; THENCE ALONG THE EASTERLY LINE OF SAID LOT 25 NORTH 18°40'35" WEST, 1756.49 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID EASTERLY LINE SOUTH 63°42'23" WEST, 712.12 FEET; THENCE SOUTH 74°46'02" WEST, 790.86 FEET TO A POINT IN THE EASTERLY SIDELINE OF STATE HIGHWAY 125 DEDICATED PER DOCUMENT RECORDED JUNE 21, 2008 AS DOC. NO. 2008-0437364 OF OFFICIAL RECORDS, BEING ALSO THE BEGINNING OF A 5124.33 FOOT RADIUS NON-TANGENT CURVE CONCAVE EASTERLY, A RADIAL LINE TO SAID POINT BEARS NORTH 76°23'06" WEST, THENCE NORTHERLY ALONG SAID EASTERLY SIDELINE OF SAID STATE HIGHWAY AND THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 02°35'07" A DISTANCE OF 231.21 FEET; THENCE NORTH 16°12'01" EAST, 516.13 FEET TO THE BEGINNING OF A 208.85 FOOT RADIUS NON-TANGENT CURVE CONCAVE NORTHWESTERLY A RADIAL LINE TO SAID POINT BEARS SOUTH 01°41'11" EAST, THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 76°00'20" A DISTANCE OF 277.05 FEET; THENCE