

LICENSE AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH  
AND DCOR, LLC  
FOR BOOSTER PUMP FACILITY AT PCH/WARNER

Table of Contents

<u>SECTION</u>	<u>PAGE</u>
1 Permission .....	2
2 Term .....	2
3 License Fee.....	2
4 Late Charge and Penalty .....	2
5 Superseding of Prior License Agreements .....	2
6 Reservations, Encumbrances and Rights-of-Way .....	2
7 Time of Essence .....	3
8 Extension.....	3
9 Reserved .....	4
10 Termination .....	4
11 Maintenance .....	4
12 Control of Equipment.....	4
13 Removal of the Facility Upon Termination .....	5
14 Additions, Alterations and Removal .....	5
15 City's Contract Administrator.....	5
16 Indemnification, Defense and Hold Harmless .....	5
17 Workers' Compensation Insurance.....	6
18 General Public Liability Insurance.....	6
19 Certificates of Insurance; Additional Insured Endorsements.....	7
20 Insurance Hazards .....	7
21 Release .....	8
22 Waste.....	8
23 Damage, Destruction or Nuisance.....	8
24 Payment of Obligations.....	9
25 Utilities and Services.....	9
26 Signs and Advertising .....	9
27 Assignment.....	9
28 Terms Binding on Success .....	11
29 Default.....	11
30 Remedies .....	12
31 Waiver of Claims .....	14
32 Hazardous Substances .....	14
33 Nondiscrimination.....	15
34 Destruction .....	16
35 Eminent Domain .....	17
36 City's Option to Close the Property.....	17
37 Conflict of Interest .....	18

38	No Title Interest .....	18
39	Notice .....	18
40	Compliance with Laws .....	19
41	Interpretation of this License Agreement .....	20
42	Survival .....	20
43	Modification .....	20
44	Section Headings .....	20
45	Attorney's Fees .....	21
46	Governing Law .....	21
47	Duplicate Original .....	21
48	Entirety .....	21

LICENSE AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH  
AND DCOR, LLC FOR BOOSTER  
PUMP FACILITY AT PCH/WARNER

This License Agreement is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("CITY") and DCOR, LLC, a Texas limited liability company ("LICENSEE").

WHEREAS, CITY is the owner of certain real property located on the north side of Warner Avenue, east of Pacific Coast Highway in the parking lot just west of the Warner Fire Station in the City of Huntington Beach, Orange County, California (hereafter referred to as "the Property"); and

LICENSEE desires to maintain and operate the Booster Pump Facility at PCH/Warner (hereafter referred to as "the Facility") on the Property under the terms contained in this License Agreement; and

CITY desires to grant LICENSEE a license (hereafter referred to as "the License") to maintain and operate the Facility on the Property in the manner set forth in this License Agreement; and

CITY and LICENSEE wish to enter into this LICENSE AGREEMENT defining their respective rights and responsibilities concerning said License.

NOW, THEREFORE, in consideration of the promises and Agreements hereinafter made and exchanged, the CITY and LICENSEE covenant and agree as follows:

SECTION 1. PERMISSION

Permission is hereby given to LICENSEE to enter upon the Property for the purpose of operating and maintaining the Facility.

## SECTION 2. TERM

This License shall commence upon its approval by CITY and shall terminate five (5) years thereafter, unless extended, or sooner terminated, as provided for herein.

## SECTION 3. LICENSE FEE

In consideration of this License, LICENSEE agrees to pay to CITY a fee ("License Fee") of Eight Thousand One Hundred Dollars (\$8,100.00) per year for the use of the Property so that it may operate the Facility. The License Fee shall increase annually each June 1<sup>st</sup> by that percentage increase which occurred in the Consumer Price Index (all items base 1982-84 = 100) as published by the United States Department of Labor Statistics for all consumers for the Los Angeles, Anaheim, Riverside Metropolitan Statistical Area. LICENSEE shall pay the License Fee annually in advance on or before October 1<sup>st</sup> of each year during the term of this LICENSE AGREEMENT to the CITY at the City Treasurer's Office, P.O. Box 711, Huntington Beach, California, 92648, or at such other place or places as CITY may from time-to-time designate by written notice delivered to LICENSEE in the manner set forth in Section 39 of this License Agreement.

## SECTION 4. LATE CHARGE AND PENALTY

If the License Fee is not received by the City Treasurer by October 10<sup>th</sup> of each year during the term of this LICENSE AGREEMENT, or the next business day if October 10<sup>th</sup> falls on a weekend or holiday, LICENSEE shall pay the following late charge and penalty: (1) a late charge of ten percent (10%) shall be applied to any outstanding balance after any payment hereunder is due but unpaid; and (2) one and a half percent (1 ½%) penalty per month shall be added for each month the License Fee is due but unpaid.

## SECTION 5. SUPERSEDING OF PRIOR LICENSE AGREEMENTS

This LICENSE AGREEMENT shall supersede and replace any prior agreement(s) for the Property relating to the Facility entered into by and between the parties or their predecessors-in-interest.

## SECTION 6. RESERVATIONS, ENCUMBRANCES AND RIGHTS-OF-WAY

- (a) CITY expressly reserves all rights to any natural resources in, on, or two hundred fifty (250) feet under the Property, including, without limitation, oil, coal, natural gas and other hydrocarbons, minerals, aggregates, timber and other geothermal resources, as well as the right to grant any other leases, licenses, or other contractual arrangements in and over the Property for the extraction of such natural resources. However, such leasing, licensing, or other arrangement shall be neither inconsistent nor incompatible with the rights or privileges of LICENSEE under this LICENSE AGREEMENT.
- (b) CITY expressly reserves the right to convey or encumber the Property, in whole or in part, for any purpose not inconsistent or incompatible with the rights or privileges of LICENSEE under this LICENSE AGREEMENT. In addition, LICENSEE agrees to subordinate this LICENSE to any existing or future CITY financing regarding the Property or any portion thereof. LICENSEE also agrees to cooperate and provide any documentation necessary for CITY to obtain any such financing.
- (c) The License is subject to pre-existing contracts, licenses, easements, encumbrances and claims affecting the Property, if any, and it is made without warranty by CITY of title, condition or fitness of the land for the stated or intended use.

#### SECTION 7. TIME OF ESSENCE

Time shall be of the essence of this LICENSE AGREEMENT and each and all of its terms, covenants or conditions in which performance is a factor.

#### SECTION 8. EXTENSION

This LICENSE AGREEMENT may be extended for one term of five (5) years. Written notice of LICENSEE's request to extend the term must be provided to the Deputy Director of Economic Development of CITY for approval no fewer than six (6) months prior to the expiration of the current license term, or extension thereof. The Deputy Deputy Director of Economic Development at his or her sole discretion will decide whether LICENSEE's request for such extension will be granted or denied, and will notify LICENSEE of his decision no later than 45 days after receiving the request for extension. If the request for an extension is denied, this LICENSE will automatically terminate at the end of its current term. If the request for an extension is granted, this LICENSE will automatically be extended for an additional five year period.

#### SECTION 9. RESERVED

#### SECTION 10. TERMINATION

This LICENSE AGREEMENT may be terminated by either party without cause on sixty (60) days written notice delivered to the other party to this LICENSE AGREEMENT in the manner set forth in Section 39 of this License Agreement.

#### SECTION 11. MAINTENANCE

LICENSEE agrees to care for and maintain the Facility, at LICENSEE's sole cost and expense, during the entire term of this LICENSE AGREEMENT or any extension thereof, in good and satisfactory condition as acceptable to the CITY. In the event LICENSEE does not maintain the Property in a satisfactory manner, LICENSEE authorizes CITY to perform such maintenance on



LICENSEE's behalf. All costs incurred performing said maintenance shall be assessed to and billed directly to the LICENSEE. LICENSEE agrees to pay such costs within ten (10) days of billing.

#### SECTION 12. CONTROL OF EQUIPMENT

LICENSEE shall keep any equipment used or brought onto the Property for the purposes of operating or maintaining the Facility under its absolute and complete control at all times and said equipment shall be used on the Property at the sole risk of LICENSEE.

#### SECTION 13. REMOVAL OF THE FACILITY UPON TERMINATION

Upon termination of this LICENSE AGREEMENT, LICENSEE will remove the Facility placed on the property and restore the Property to its natural condition to the satisfaction of, and at no cost to, the CITY.

#### SECTION 14. ADDITIONS, ALTERATIONS AND REMOVAL

- (a) No modifications, alterations or additions to the Property or Facility, including, without limitation, landscape design, construction of additional structures or changes to the structural design of the Facility, shall be constructed or made by LICENSEE without first obtaining the prior written approval of CITY, which may be withheld by CITY in its sole and complete discretion.
- (b) Except as provided under this LICENSE AGREEMENT, no alteration or removal of the Facility or natural features of the Property shall be undertaken without LICENSEE first obtaining the prior written approval of CITY.
- (c) LICENSEE's obligation to obtain CITY's prior written approval is separate and independent of LICENSEE's obligation to obtain any permits from CITY, such as, without limitation, a building permit.

#### SECTION 15. CITY'S CONTRACT ADMINISTRATOR

CITY's Deputy Deputy Director of Economic Development, or his designee, shall be CITY's Contract Administrator for this LICENSE AGREEMENT with the authority to act on behalf of CITY for the purposes of this LICENSE AGREEMENT, and all CITY approvals and notices required to be given herein to CITY shall be so directed and addressed.

#### SECTION 16. INDEMNIFICATION, DEFENSE AND HOLD HARMLESS

LICENSEE hereby agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising directly or indirectly out of the grant of the License under this LICENSE AGREEMENT including that arising from the passive concurrent negligence of CITY, but save and except those which arise out of the active concurrent negligence, sole negligence, or the sole willful misconduct of CITY. LICENSEE will conduct all defense at its sole cost and CITY shall approve selection of LICENSEE's counsel. The CITY shall be reimbursed by LICENSEE for all costs and attorney's fees incurred by CITY in enforcing the obligations set forth in this Section. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by LICENSEE.

#### SECTION 17. WORKERS' COMPENSATION INSURANCE.

Pursuant to the *California Labor Code* Section 1861, LICENSEE acknowledges awareness of Section 3700 et seq. of said code, which requires every employer to be insured against liability for workers' compensation; LICENSEE covenants that it will comply with all such laws and provisions prior operating the Facility on the Property pursuant to this license.



LICENSEE shall maintain such Workers' Compensation Insurance in an amount of not less than One Hundred Thousand Dollars (\$100,000) bodily injury by accident, each occurrence, One Hundred Thousand Dollars (\$100,000) bodily injury by disease, each employee, and Two Hundred Fifty Thousand Dollars (\$250,000) bodily injury by disease, policy limit, at all times incident hereto, in forms and underwritten by insurance companies satisfactory to CITY.

#### SECTION 18. GENERAL LIABILITY INSURANCE

In addition to LICENSEE's covenant to defend, hold harmless and indemnify CITY, LICENSEE shall carry at all times, on all activities to be performed on the Property and/or the Facility as contemplated herein, general liability insurance, including coverage for bodily injury and property damage. All insurance shall be underwritten by insurance companies in forms satisfactory to CITY. Said insurance shall name the CITY, its officers, agents and employees and all public agencies as determined by the CITY as Additional Insureds. LICENSEE shall subscribe for and maintain said insurance policies in full force and effect during the life of this License Agreement, in an amount of not less than One Million Dollars (\$1,000,000) combined single limit coverage. If coverage is provided under a form which includes a designated general aggregate limit, such limit shall be not less than One Million Dollars (\$1,000,000). In the event of aggregate coverage, LICENSEE shall immediately notify CITY of any known depletion of limits. LICENSEE shall require its insurer to waive its subrogation rights against CITY and agrees to provide certificates evidencing the same. Under no circumstances shall said above-mentioned insurance contain a self-insured retention, or a "deductible" or any other similar form of limitation on the required coverage.

#### SECTION 19. CERTIFICATES OF INSURANCE; ADDITIONAL INSURED

##### ENDORSEMENT

LICENSEE shall furnish to CITY certificates of insurance subject to approval of the City Attorney evidencing the foregoing insurance coverages as required by this License Agreement; said

certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall promise to provide that such policies will not be canceled without thirty (30) days prior written notice to CITY. LICENSEE shall maintain the foregoing insurance coverages in force until this License Agreement is terminated.

The requirement for carrying the foregoing insurance shall not derogate from the provisions for indemnification of CITY by LICENSEE under this License Agreement. CITY or its representative shall at all times have the right to demand the original or a copy of all said policies of insurance. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

A separate copy of the additional insured endorsement to each of LICENSEE'S insurance policies, naming the CITY, its officers and employees as Additional Insureds shall be provided to the City Attorney for approval upon execution of this License Agreement by LICENSEE.

#### SECTION 20. INSURANCE HAZARDS

LICENSEE shall not commit or permit the commission of any acts on the Property or Facility nor use or permit the use of the Property or Facility in any manner that will increase the existing rates for, or cause the cancellation of any liability, property, or other insurance policy for the Property required by this LICENSE AGREEMENT. LICENSEE shall, at its sole cost and expense, comply with all requirements of any insurance carrier providing any insurance policy for the Property and/or Facility or required by this LICENSE AGREEMENT necessary for the continued maintenance of these policies at reasonable rates.

#### SECTION 21. RELEASE

LICENSEE hereby releases and forever discharges CITY of and from any and all claims, demands, actions or causes of action whatsoever which LICENSEE may have, or may hereafter have, against the CITY specifically arising out of the matter of the entry of LICENSEE onto the

Property or the operation of the Facility. This is a complete and final release and shall be binding upon LICENSEE and the heirs, executors, administrators, successors and assigns of LICENSEE'S use of the Property and Facility under this LICENSE AGREEMENT. LICENSEE hereby expressly waives any rights under or benefit of any law of any jurisdiction whatsoever providing to the contrary. Neither the acceptance of this RELEASE nor any payment made hereunder shall constitute any admission of any liability of CITY.

#### SECTION 22. WASTE

LICENSEE shall not alter, damage or commit any kind of waste upon the Property of Facility or any improvement, equipment or personal property thereon and shall not interfere in any manner with the operations or activities of CITY. LICENSEE shall not cause any workmen's or materialmen's liens to be placed upon the Property or Facility and agrees to indemnify and hold CITY harmless against any such liens including but not limited to the payment of attorneys' fees.

#### SECTION 23. DAMAGE, DESTRUCTION OR NUISANCE

LICENSEE shall not commit or permit the commission by others of any damage or destruction of, on, or to the Property or Facility. LICENSEE shall not maintain, commit or permit the maintenance or commission of any nuisance as defined in Section 3479 and/or Section 3480 of the *California Civil Code* on the Property; and LICENSEE shall not use or permit the use of the Property or Facility for any unlawful purpose.

#### SECTION 24. PAYMENT OF OBLIGATIONS

LICENSEE shall promptly pay, at its sole cost and expense, before they become delinquent, any and all bills, debts, liabilities and obligations incurred by LICENSEE in connection with LICENSEE's use of the Property and operation of the Facility. Upon request, LICENSEE shall promptly furnish to CITY satisfactory evidence establishing such payment.

## SECTION 25. UTILITIES AND SERVICES

LICENSEE shall be responsible for the payment of all utility charges, including, without limitation, gas, electricity, water, telephone service, cable TV service, and the furnishing of all necessary refuse and garbage containers and the removal and disposal of all rubbish, refuse and garbage resulting from the operation of the Facility. All such rubbish, refuse and garbage removed shall be disposed of in accordance with applicable laws and local ordinances. All trash containers and/or trash bins shall be adequately screened and located to the satisfaction of CITY. For the purposes of this Section, sewage disposal shall be construed as a utility. All such charges shall be paid by LICENSEE directly to the provider of the service and shall be paid as they become due and payable. Upon request, LICENSEE shall promptly furnish to CITY satisfactory evidence establishing such payment.

## SECTION 26. SIGNS AND ADVERTISING

CITY shall have the right to approve in its sole discretion and at any time require LICENSEE to change or remove signs, names, placards, decorations or advertising placed on, or inscribed, painted or affixed upon the Facility. Should CITY approve of any sign, name, placard, decoration or advertising, LICENSEE shall maintain the same at all times during the entire term of this LICENSE AGREEMENT or any renewals or extensions thereof. All signs, names, placards, decorations or advertising must comply with all requirements of any governmental authority with jurisdiction.

## SECTION 27. ASSIGNMENT

- (a) Prohibition of Assignment. The parties acknowledge that CITY is entering into this LICENSE AGREEMENT in reliance upon the experience and abilities of LICENSEE and its principals. Consequently, LICENSEE shall not voluntarily assign, encumber or otherwise transfer its interest in the LICENSE AGREEMENT

or allow any other person or entity (except LICENSEE's authorized representatives) to occupy or use all or any part of the Property or Facility without the prior written consent of CITY, which consent may be withheld at CITY's sole discretion. Provided, however, that CITY's consent shall not relieve LICENSEE from any and all of its obligations, liabilities, duties or responsibilities under this LICENSE AGREEMENT. Any assignment, encumbrance, occupation or use of the Property or Facility without such consent shall be voidable and, at CITY's sole discretion, shall constitute a Default of this LICENSE AGREEMENT.

- (b) Consent to Transfer. CITY's consent to any assignment, use, or other transfer the rights under this LICENSE AGREEMENT is subject to LICENSEE providing CITY with evidence satisfactory to CITY that the proposed, assignee, user, or other transferee has suitable financial strength, experience and character for operation and control of the Facility and that the use of the Property by the proposed assignee, user, or other transferee is consistent with that specified herein, and is commercially reasonable. Any proposed assignee, user, or other transferee shall agree to abide by the terms and conditions of the LICENSE AGREEMENT including, without limitation, all the obligations, liabilities, duties and responsibilities of LICENSEE, and other conditions imposed upon it pursuant to law. An approval by CITY to one assignment, use, or other transfer shall not be deemed to be an approval to any other assignment, or other transfer.
- (c) Voluntary assignment defined. Except as otherwise expressly provided herein, any dissolution, merger, consolidation or reorganization of LICENSEE, or the sale or other transfer resulting in a transfer of a controlling percentage of the capital stock of LICENSEE shall be deemed a voluntary assignment.

## SECTION 28. TERMS BINDING ON SUCCESSORS

All the terms, covenants and conditions of this LICENSE AGREEMENT shall inure to the benefit of, and be binding upon, the parties and their successors, including, without limitation, their assignees, users, or other transferees. The provisions of this Section shall not be deemed as a (1) waiver of any of the prohibitions and conditions against assignments, or uses, or other transfers hereinbefore set forth, or (2) CITY's consent thereto.

## SECTION 29. DEFAULT

The occurrence of any one or more of the following events shall constitute a material default and breach ("Default") of this LICENSE AGREEMENT by LICENSEE:

- (a) LICENSEE's failure to make any payment of the License Fee or other payment required to be made by LICENSEE at the time required for payment under this LICENSE AGREEMENT.
- (b) LICENSEE's failure to obtain or maintain the insurance required under this LICENSE AGREEMENT.
- (c) LICENSEE's vacating or abandonment of the Facility during the entire term of this LICENSE AGREEMENT or any renewals or extensions thereof, during any holdover period.
- (d) LICENSEE's violation of Section 16 (Indemnification, Defense and Hold Harmless), Section 27 (Assignment), Section 32 (Hazardous Substances), Section 33 (Nondiscrimination), Section 37 (Conflict of Interest) or Section 40 (Compliance with Laws).
- (e) The insolvency of LICENSEE as evidenced by a receiver being appointed to take possession of all or substantially all of LICENSEE's assets located at or on the Property or of LICENSEE's interest in this LICENSE AGREEMENT, or the making



by LICENSEE of a general arrangement or assignment for the benefit of creditors, or LICENSEE's filing a petition in bankruptcy, whether voluntary or involuntary, or the attachment, execution or the judicial seizure of substantially all of LICENSEE's assets located at or on the Property or of LICENSEE's interest in the LICENSE AGREEMENT.

- (f) LICENSEE's failure to observe or perform any other term, covenant, obligation, duty, responsibility or condition of this LICENSE AGREEMENT to be observed or performed by LICENSEE when such failure shall continue for a period of thirty (30) days after CITY's giving written notice to LICENSEE, or such earlier period if specifically set forth in this LICENSE AGREEMENT; however, if the nature of such failure is such that more than thirty (30) days are reasonably required for its cure, then LICENSEE shall not be deemed to be in Default if LICENSEE notifies CITY of the length of the additional time required to cure and receives CITY's written approval of the additional time required, which approval will not be unreasonably withheld, and commences such cure within such thirty (30) day period and diligently proceeds with such cure to completion during such additional time period approved by CITY.

#### SECTION 30. REMEDIES

- (a) Cumulative Nature of Remedies. In the event of any Default by LICENSEE, CITY shall have the remedies described in this Section in addition to all other rights and remedies provided by law or equity, to which CITY may resort cumulatively or in the alternative:
- (1) Termination. In the event of a Default by LICENSEE, CITY may at CITY's sole discretion terminate this LICENSE AGREEMENT by

giving LICENSEE written notice of termination. In the event CITY terminates this LICENSE AGREEMENT, LICENSEE is obligated to remove the Facility as provided hereunder. If LICENSEE fails to remove Facility within ten (10) days, CITY may remove the Facility. CITY also shall be entitled to recover as damages all of the following:

(A) The worth at the time of the award of any unpaid LICENSEE FEE or other charges which have been earned at the time of termination;

(B) Any other amount necessary to compensate CITY for the detriment proximately caused by LICENSEE's failure to perform its obligations, liabilities, duties or responsibilities under this LICENSE AGREEMENT; and

(C) At CITY's sole discretion, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by applicable California law.

- (b) Election of Remedy. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.
- (c) Right to Cure. Upon continuance of any Default, CITY may in its sole discretion, but is not obligated to, cure such Default at LICENSEE's sole cost and expense. If CITY at any time, by reason of such Default by LICENSEE, pays any sum or does any act, the sum paid by CITY plus the reasonable cost of performing such act, together with a penalty thereon at the penalty rate set forth in Section 4 above from the date the costs were incurred or the act

performed by CITY to the date they are reimbursed to CITY by LICENSEE, shall be due not later than five (5) days after service of a written demand therefor on LICENSEE, including reasonably detailed documentation of the amount owed. No such payment or act shall constitute a waiver of Default or of any remedy for Default or render CITY liable for any loss or damage resulting from any such act.

- (d) Other Rights. No act of CITY, including, without limitation, CITY's entry on the Property, efforts to lease the Property, or maintenance of the Property, shall be construed as an election to terminate this LICENSE AGREEMENT unless a written notice of such intention is given to LICENSEE by CITY or unless the termination thereof is decreed by a court of competent jurisdiction. Notwithstanding if CITY elects to continue the LICENSE AGREEMENT in full force and effect after a Default by LICENSEE, CITY may at any time elect to terminate this LICENSE AGREEMENT for any such Default.

#### SECTION 31. WAIVER OF CLAIMS

LICENSEE hereby waives any claim against CITY, its officers, elected or appointed officials, employees, agents or volunteers for damage or loss caused by any suit or proceeding directly or indirectly attacking the validity of this LICENSE AGREEMENT, or any part thereof, or caused by any judgment or award in any suit or proceeding declaring this LICENSE AGREEMENT null, void or voidable, or delaying the LICENSE AGREEMENT or any part thereof from being carried out.

#### SECTION 32. HAZARDOUS SUBSTANCES

LICENSEE represents and warrants that its use of the Property or operation or maintenance of the Facility shall not generate any Hazardous Substance (as defined below in this Section), and

that LICENSEE shall not store or dispose on the Property nor transport to or over the Property any Hazardous Substance during the entire term of this LICENSE AGREEMENT or any extensions thereof. The foregoing restrictions shall not be deemed to restrict or prohibit the use by LICENSEE of ordinary cleaning products as customarily used in LICENSEE's ordinary course of operation or maintenance of the Facility, provided that LICENSEE complies with all provisions of law as to the use, storage and disposal of such products. LICENSEE further agrees to clean up and remediate any such Hazardous Substance on the Property, and agrees to protect, defend, indemnify and hold harmless CITY, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, judgments, demands and defense costs (including, without limitation, costs and fees of litigation (including arbitration) of every nature or liability of any kind or nature) arising out of or in connection with any such Hazardous Substance and any damage, loss, or expense or liability resulting from any such Hazardous Substance including, without limitation, all attorney's fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or willful misconduct of CITY. CITY shall be reimbursed by LICENSEE for all costs and attorney's fees incurred by CITY in enforcing LICENSEE's obligations set forth in this Section. LICENSEE will conduct all defense at its sole cost and expense and CITY shall approve selection of LICENSEE's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by LICENSEE. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as a hazardous or toxic waste, hazardous or toxic material, hazardous or toxic or radioactive substance, or other similar term, by any Federal, State or local environmental law, regulation or rule presently in effect or promulgated in the future, as such law, regulation or rule may be amended from time to time; and it shall be interpreted to include, without limitation, any

substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.

### SECTION 33. NONDISCRIMINATION

In the performance of this LICENSE AGREEMENT, LICENSEE shall not discriminate against any employee hired by LICENSEE to operate or maintain the Facility, because of race, religion, color, ancestry, sex, age, national origin or physical handicap. LICENSEE shall take affirmative action to ensure that all such employees are employed and that employees are treated during employment, without regard to their race, religion, color, ancestry, sex, age, national origin or physical handicap. Such action shall include, without limitation, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including, without limitation, apprenticeship.

LICENSEE shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by CITY, the State Fair Employment Practices Commission or any other agency with jurisdiction over these matters, for the purpose of investigation to ascertain compliance with this Section.

CITY may determine a violation of this Section to have occurred upon receipt of a final judgment having that effect from a court in an action to which LICENSEE was a party, or upon receipt of a written notice from the State Fair Employment Practices Commission or other government agency with jurisdiction over these matters that it has investigated and determined that LICENSEE has violated the Fair Employment Practices Act or other applicable discrimination law and has issued an order which has become final, or obtained an injunction. In the event of violation of this Section, CITY shall have the right to terminate this LICENSE AGREEMENT, and any loss

of revenue sustained by CITY by reason thereof shall be borne and paid for by LICENSEE, at its sole cost and expense.

#### SECTION 34. DESTRUCTION

Should the Property or Facility be partially destroyed, this LICENSE AGREEMENT shall continue in full force and effect, and LICENSEE, at LICENSEE's sole cost and expense, shall complete the work of repairing and restoring the Property and Facility to their prior condition providing such work can be accomplished under all applicable governmental laws and regulations within one hundred eighty (180) days. Should the Property or Facility be so far destroyed that in CITY's reasonable judgment they cannot be repaired or restored to their former condition within one hundred eighty (180) days, CITY shall give LICENSEE notice of such determination in writing and each party may, in that party's sole discretion:

- (a) Continue this LICENSE AGREEMENT in full force and effect in which case LICENSEE shall repair and restore, at LICENSEE's sole cost and expense, the Property and Facility to their former condition; or
- (b) Terminate this LICENSE AGREEMENT by giving the other party thirty (30) days' written notice of its election to terminate the LICENSE AGREEMENT. In the event that either party elects to terminate this LICENSE AGREEMENT, the entire amount of any insurance proceeds, if any, shall be paid to CITY. The proceeds of any such insurance payable to CITY may be used, in the sole discretion of CITY, for rebuilding or repair as necessary to restore the Property or for any other such purpose(s) as CITY sees fit. In addition, if LICENSEE elects to terminate the LICENSE AGREEMENT, LICENSEE must still comply with all of its obligations, liabilities, duties and responsibilities under the LICENSE AGREEMENT, including, without limitation, paying any License Fee up to the time of termination.



### SECTION 35. EMINENT DOMAIN

If, during the term of this LICENSE AGREEMENT or any renewals or extensions thereof or during any holdover period, the Property is taken in eminent domain, the entire award (that is, all forms) of compensation, other than as provided herein, shall belong to and be paid to CITY. In the event of condemnation, LICENSEE shall not be entitled to an award of compensation from the condemning authority including any: compensation for loss of business goodwill; compensation for the value of any of this License Agreement; compensation for the value of any of LICENSEE's personal property; compensation for the value of any of LICENSEE's trade inventory; and compensation for relocation benefits as authorized by law. All compensation shall belong to and be paid to CITY. In the event of condemnation, unless LICENSEE is allowed by the condemning authority to continue its operations on the Property, the LICENSE AGREEMENT shall terminate on the earliest of the following dates: the date the condemning authority obtains a prejudgment order for possession; the date title to the Property vests in the condemning authority; or the date when LICENSEE is required by the condemning authority to cease its operations.

### SECTION 36. CITY'S OPTION TO CLOSE THE PROPERTY

CITY may close the Property without liability and without advance notice to LICENSEE therefor at any time as CITY in its sole discretion deems necessary for the protection of life, limb or property, or for public health, safety or welfare purposes, or upon reasonable notice to effect any repair, remodeling or rebuilding deemed necessary by CITY in its sole discretion. The length of time of any closing of the Property by CITY longer than two (2) weeks during a period when the Facility would otherwise be operating shall extend the term of the LICENSE AGREEMENT by the same amount of time. If this occurs, LICENSEE and CITY shall memorialize this extension in writing.

### SECTION 37. CONFLICT OF INTEREST

LICENSEE warrants and covenants that no official or employee of CITY, nor any business entity in which an official or employee of CITY is interested, (1) has been employed or retained by LICENSEE to solicit or aid in the procuring of this LICENSE AGREEMENT; or (2) shall be employed by LICENSEE in the performance of this LICENSE AGREEMENT without the immediate written divulgence of such fact to CITY. In the event CITY determines that the employment of any such official, employee or business entity is not compatible with such official's or employee's duties as an official or employee of CITY, LICENSEE, upon request of CITY, shall terminate such employment immediately. For breaches or violation of this Section, CITY shall have the right both to terminate this LICENSE AGREEMENT without liability and, in its discretion, recover the full amount of any such compensation paid to such official, employee or business entity. No official or employee of CITY shall have any financial interest in this LICENSE AGREEMENT in violation of the applicable provisions of the California Government Code.

### SECTION 38. NO TITLE INTEREST

No title interest of any kind is hereby given and LICENSEE shall never assert any claim or title to the Property.

### SECTION 39. NOTICE

All notices, certificates, or other communications required to be given hereunder shall be in writing and made in the following manner, and shall be sufficiently given and deemed received when (a) personally delivered; or (b) three (3) business days after being sent via United States certified mail – return receipt requested; or (c) one (1) business day after being sent by reputable overnight courier, in each case to the addresses specified below; provided that CITY and LICENSEE, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent:

CITY:

LICENSEE:

City of Huntington Beach  
ATTN: Office of Business Development  
2000 Main Street, P.O. Box 190  
Huntington Beach, CA 92648

DCOR, LLC  
David C. McDermott, General Counsel  
290 Maple Court, Suite 290  
Ventura, CA 93003

SECTION 40. COMPLIANCE WITH LAWS

LICENSEE, at its sole cost and expense, shall comply with all statutes, ordinances, regulations and requirements of all governmental entities, including, without limitation, Federal, State, county or municipal, relating to LICENSEE's use of the Property and/or operation of the Facility whether such statutes, ordinances, regulations and requirements be now in force or hereinafter enacted. This LICENSE AGREEMENT is expressly subject to the laws, regulations and policies of CITY. LICENSEE shall deliver to CITY a copy of any notice from any governmental entity received by LICENSEE regarding any alleged violation of law regarding the LICENSE AGREEMENT, the Property or the Facility or from any person allegedly entitled to give notice under any conditions, covenants, or restrictions binding or affecting the Property or Facility. The judgment of any court of competent jurisdiction, or the admission by LICENSEE in a proceeding brought against LICENSEE by any government entity, that LICENSEE has violated any such statute, ordinance, regulation or requirement shall be conclusive as between CITY and LICENSEE and shall be grounds for termination of this LICENSE AGREEMENT by CITY.

SECTION 41. INTERPRETATION OF THIS LICENSE AGREEMENT

The language of all parts of this LICENSE AGREEMENT shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against any of the parties. If any provision of this LICENSE AGREEMENT is held by an arbitrator or court of competent jurisdiction to be unenforceable, void, illegal or invalid, such holding shall not invalidate or affect the remaining covenants and provisions of this LICENSE AGREEMENT. No covenant or provision shall be deemed dependent upon any other unless so expressly provided here. As used in

this LICENSE AGREEMENT, the masculine or neuter gender and singular or plural number shall be deemed to include the other whenever the context so indicates or requires. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the parties have no right to contract, then the latter shall prevail, and the provision of this LICENSE AGREEMENT which is hereby affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

#### SECTION 42. SURVIVAL

Terms and conditions of this LICENSE AGREEMENT, which by their sense and context survive the expiration or termination of this LICENSE AGREEMENT, shall so survive.

#### SECTION 43. MODIFICATION

No waiver or modification of any language in this LICENSE AGREEMENT shall be valid unless in writing and duly executed by both parties.

#### SECTION 44. SECTION HEADINGS

The titles, captions, section, paragraph and subject headings, and descriptive phrases at the beginning of the various sections in this LICENSE AGREEMENT are merely descriptive and are included solely for convenience of reference only and are not representative of matters included or excluded from such provisions, and do not interpret, define, limit or describe, or construe the intent of the parties or affect the construction or interpretation of any provision of this LICENSE AGREEMENT.

#### SECTION 45. ATTORNEY'S FEES

Except as expressly set herein, in the event suit is brought by either party to construe, interpret and/or enforce the terms and/or provisions of this LICENSE AGREEMENT or to secure

the performance hereof, each party shall bear its own attorney's fees, such that the prevailing party shall not be entitled to recover its attorney's fees from the non-prevailing party.

SECTION 46. GOVERNING LAW

This LICENSE AGREEMENT shall be governed and construed in accordance with the laws of the State of California.

SECTION 47. DUPLICATE ORIGINAL

The original of this LICENSE AGREEMENT and one or more copies hereto have been prepared and signed in counterparts as duplicate originals, each of which so executed shall, irrespective of the date of its execution and delivery, be deemed an original. Each duplicate original shall be deemed an original instrument as against any party who signed it.

SECTION 48. ENTIRETY

The parties acknowledge and agree that they are entering into this LICENSE AGREEMENT freely and voluntarily following extensive arm's length negotiations, and that each has had the opportunity to consult with legal counsel prior to executing this LICENSE AGREEMENT. The parties also acknowledge and agree that no representations, inducements, promises, License Agreements or warranties, oral or otherwise, have been made by that party, or anyone acting on that party's behalf, which are not embodied in this LICENSE AGREEMENT, and that that party has not executed this LICENSE AGREEMENT in reliance on any representation, inducement, promise, License Agreement, warranty, fact or circumstance not expressly set forth in this LICENSE AGREEMENT. This LICENSE AGREEMENT, and the attached exhibits, contain the entire License Agreement between the parties respecting the subject matter of this LICENSE AGREEMENT, the Property, Facility, or the LICENSE created under this LICENSE AGREEMENT and supercede all prior understandings and License Agreements, whether oral or in writing between the parties respecting the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this LICENSE AGREEMENT to be executed by and through their authorized officers on \_\_\_\_\_, 2008 18.

DCOR, LLC, a Texas Limited Liability Company

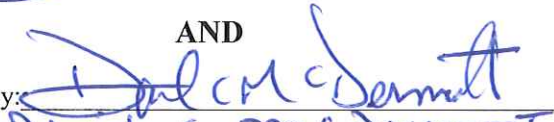
By:

  
Alan Templeton  
print name

ITS: (circle one) Chairman/President/Vice President / Manager / Member

AND

By:

  
DAVID C. McDERMOTT  
print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary – Treasurer / Manager / Member

CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

INITIATED AND APPROVED:

  
Deputy Director of Business Development

REVIEWED AND APPROVED:

\_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney





# SECTIONAL DISTRICT MAP

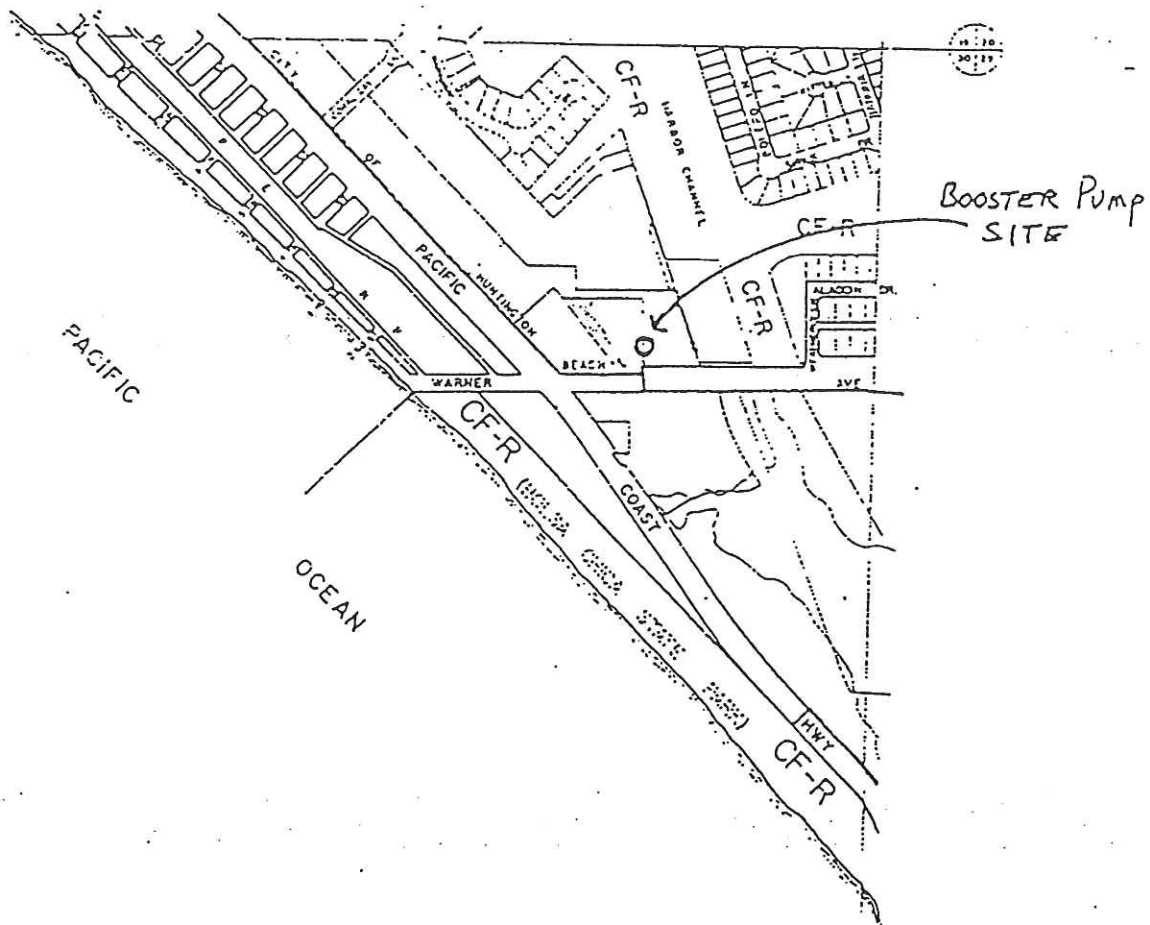
30-5-11



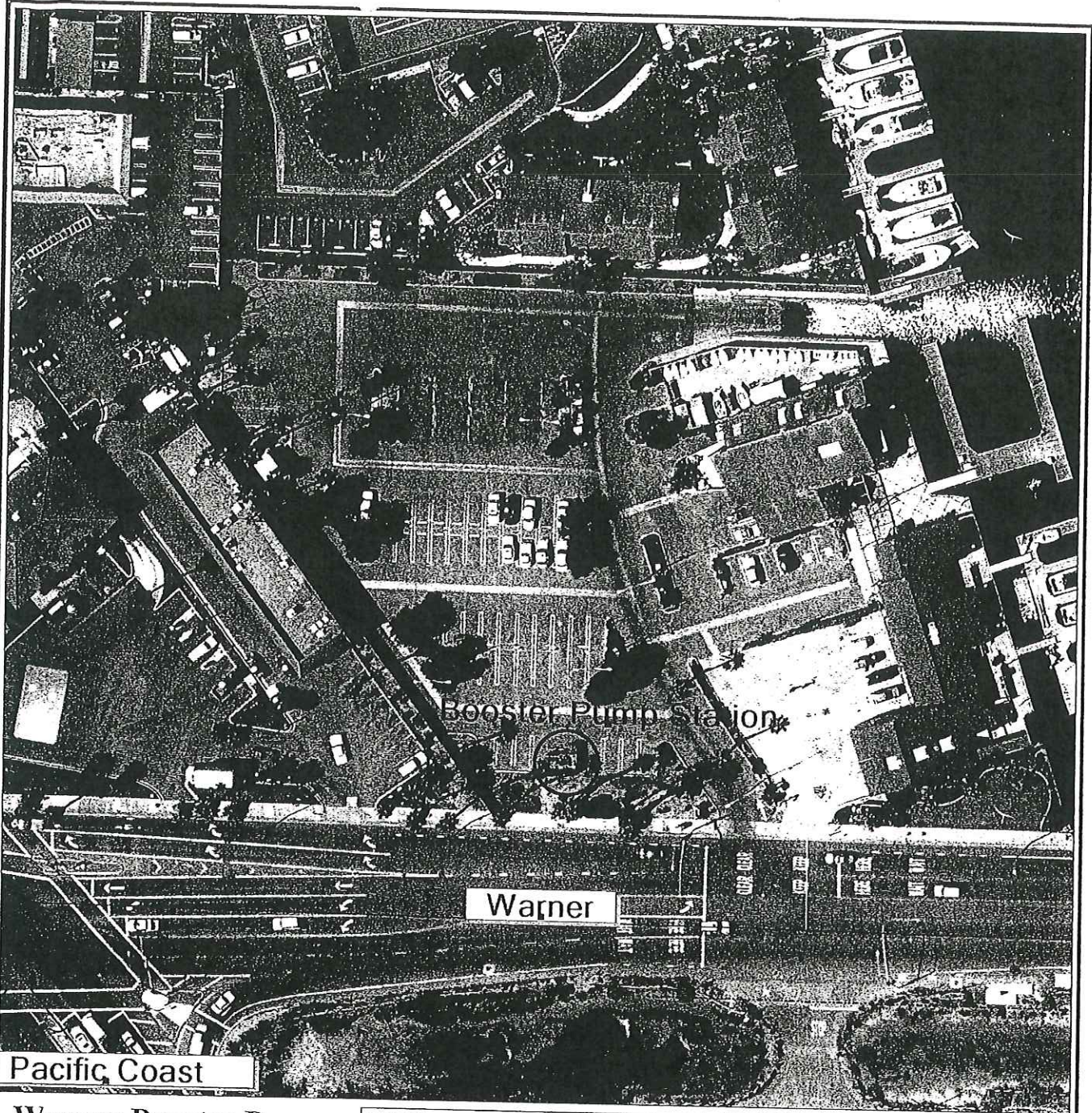
## CITY OF HUNTINGTON BEACH ORANGE COUNTY, CALIFORNIA



USE OF PROPERTY MAP







Pacific Coast

## Warner Booster Pump Station

Map produced by information contained in the City of Huntington Beach Information Services Department Geographic Information System. Information warranted for City use only. Huntington Beach does not guarantee its completeness or accuracy.  
Map Produced on 7/25/2008



HB  
GIS

0 81 162

One inch equals 81 feet

### STREET NAMES

### CITY BOUNDARY

### STREET CENTERLINES (CLASS)

- Smartstreet
- Major
- Collector
- Primary
- Secondary
- Residential
- Travelway
- Alley

### PARKS

