

DEVELOPMENT AGREEMENT NO. [_____]

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF HUNTINGTON BEACH

and

SLF-HB Magnolia, LLC, a Delaware limited liability company

DRAFT

DEVELOPMENT AGREEMENT NO. [_____]

This Development Agreement (hereinafter “Agreement”) is entered into as of this _____ day of _____, 2021 by and between the City of Huntington Beach, California (hereinafter “CITY”), and SLF-HB Magnolia LLC, a California limited liability company (hereinafter “OWNER”):

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Huntington Beach Zoning and Subdivision Ordinance (HBZSO) Chapter 246; and

WHEREAS, This Agreement constitutes a current exercise of CITY’S Charter City authority to provide predictability to OWNER in the development approval process by vesting the permitted uses, density, intensity of use, and timing and phasing of development consistent with the Development Plan in exchange for OWNER’S commitment to provide significant public benefits to CITY as set forth in Section 4, below; and

WHEREAS, OWNER has filed an application with the CITY requesting, in part, the CITY to enter into a development agreement in accordance with the HBZSO Chapter 246; and

WHEREAS, the CITY finds and determines that the health, safety and welfare will be enhanced and better served by entering into this Agreement because, in part, this Agreement will provide the CITY with additional housing as well as funding that may be used to enhance CITY recreational facilities, parks, playground equipment and affordable housing in accordance with and in implementation of numerous general plan goals and policies of the CITY; and

WHEREAS, the provision by OWNER of these aforementioned public benefits allows the CITY to realize significant economic, and social benefits it would not otherwise gain without this Agreement; and

WHEREAS, the environmental impacts, if any, of the Project and this Agreement have been analyzed pursuant to the California Environmental Quality Act (“CEQA”) (Pub. Res. Code section 21000 *et seq.*); and

WHEREAS, this Agreement and the Project are consistent with the Huntington Beach General Plan, Local Coastal Program, and any specific plan, as amended, applicable thereto; and

WHEREAS, in consideration of this Agreement the CITY and OWNER have complied with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters.

COVENANTS

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 adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** The following terms when used in this Agreement shall be defined as follows:

1.1.1 “Agreement” means this Development Agreement.

1.1.2 “CITY” means the City of Huntington Beach, a California municipal corporation.

1.1.3 “City Council” means the duly elected city council of the City of Huntington Beach.

1.1.4 “Commencement Date” means the Effective Date of this Agreement.

1.1.5 “Development” means the improvement of the Property for the purposes of completing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. “Development” does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.6 “Development Approvals” means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

- (a) General Plan, general plan amendments, specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (c) conditional use permits, architectural review, and plot plans;
- (d) Zoning, Zoning Map amendments, and zoning text amendments;
- (e) Local Coastal Program and local coastal program amendments; and,
- (f) grading and building permits.

1.1.7 “Development Exaction” means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.8 “Development Impact Fee” a monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include park “in lieu” fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, affordable housing fees, or fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4.

1.1.9 “Development Plan” means the plan for development of the Property as set forth in Exhibit “C” consisting of a Residential Parcel, a Hotel Parcel, an Open Space Park Parcel, and an Open Space Conservation Parcel.

1.1.10 “Effective Date” means the date this Agreement is approved in final form by the California Coastal Commission in accordance with Government Code section 65869.

1.1.10 “Final Inspection” means the City has undertaken a final inspection in accordance with HBZO section 110.3.11 and “finalized” the permit allowing human occupation/use of the structure.

“Hotel Improvements” shall mean those on-site hotel improvements set forth on pp. 3-22 through 3-23 of the Magnolia Tank Farm Specific Plan and set forth in Exhibit “C.”

1.1.11 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Property. “Land Use Regulations” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes (special or general) and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain.

“OWNER” means the persons and entities listed as OWNER on page 1 of this Agreement and their successors in interest to all or any part of the Property.

“Open Space Park Improvements” shall mean those on-site open space improvements set forth on pp. 3-5 and 3-17 through 3-22 of the Magnolia Tank Farm Specific Plan and set forth in Exhibit “C.”

“Open Space Conservation Improvements” shall mean shall mean those on-site open space conservation improvements set forth on pp. 3-4 and 3-16 through 3-19 of the Magnolia Tank Farm Specific Plan and set forth in Exhibit “C.”

1.1.12 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.13 “Project” means the development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.14 “Property” means the real property as set forth in Exhibit “A” and Exhibit “B” to this Agreement.

1.1.15 “Public Benefit” refers to those benefits provided to the CITY and the community by OWNER pursuant to Section 4 below.

1.1.16 “Reservation of Rights” means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 2.3 of this Agreement.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit “A” – Legal Description of the Property.

Exhibit “B” – Map showing Property and its location.

Exhibit “C” – Development Plan – Vested Entitlements.

Exhibit “D” – Hotel Quality Standards

Exhibit “E” Magnolia/Hamilton Improvements

GENERAL PROVISIONS.

1.3 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Property shall be carried out in accordance with the Land Use Regulations, which are fully vested by this Agreement, in effect as of the Effective Date. The Property Development, as authorized by future approvals, shall be carried out in accordance with the terms of the Development Plan, the Land Use Regulations in effect as of the Effective Date, and this Agreement.

1.4 Ownership of Property. OWNER represents and covenants that it is the owner of the fee simple title to, or has an equitable interest in, the Property or a portion thereof.

1.5 City Council Findings. The City Council finds that:

1.5.1 This Agreement is consistent with the City's General Plan, and Local Coastal Program as amended.

1.5.2 This Agreement is consistent with all provisions of Chapter 246 of the HBZSO, the CITY's Municipal Code, and the State Subdivision Map Act.

1.5.3 This Agreement will not be detrimental to the health, safety and general welfare; and will not adversely affect the orderly development of property.

1.5.4 The City Council has considered the fiscal effect of this Agreement on the CITY and the effects on the housing needs of the region in which the CITY is situated and has balanced these needs against the public service needs of its residents and available fiscal and environmental resources.

1.5.5 This Agreement ensures a desirable and functional community environment, provides effective and efficient development of public facilities, infrastructure, and services appropriate for the development of the Project, enhances effective utilization of resources within the CITY.

1.5.6 This Agreement provides public benefits beyond those which are necessary to mitigate the development of the Project.

1.5.7 This Agreement strengthens the public planning process, encourages private participation in comprehensive planning and reduces costs of development and government.

1.5.8 This Agreement enhances the health, safety and welfare and the CITY is better served by entering into this Agreement.

1.6 Term. The term of this Agreement shall commence on the date (the "Commencement Date") that is the Effective Date, and shall continue for a period of fifteen (15) years thereafter, unless this term is modified, extended or terminated pursuant to the provisions of this Agreement.

1.7 Assignment.

1.7.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, *et seq.*) to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement with the prior written consent of the CITY, which shall not be unreasonably withheld; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.

(b) Before any such sale, transfer or assignment, OWNER shall notify CITY, in writing, of such sale, transfer or assignment and obtain CITY's consent as set forth above, and shall provide CITY with an draft agreement ("Assignment and Assumption Agreement"), in a form reasonably acceptable to CITY Attorney, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties, obligations, agreements, covenants, waivers of OWNER under this Agreement, including, without limitation, the covenants not to sue and waivers contained in Sections 6.2 and 7.4 hereof.

Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall be void and constitute a default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 1.7.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

1.7.2 Release of Transferring Owner. Notwithstanding any sale, transfer or assignment, a transferring OWNER shall continue to be obligated under this Agreement with respect to the transferred Property or any transferred portion thereof, unless such transferring OWNER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring OWNER of the following conditions:

(a) OWNER no longer has a legal or equitable interest in all or any part of the Property subject to the transfer.

(b) OWNER is not then in default under this Agreement.

(c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 1.7.1 above.

(d) The purchaser, transferee or assignee provides CITY with security equivalent to any security previously provided by OWNER to secure performance of its obligations hereunder.

1.7.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

1.7.4 Utilities. The Project shall be connected to all utilities necessary to provide adequate water, sewer, gas, electric, and other utility service to the Project, prior to final inspections and/or the issuance of a certificate of occupancy for any portion of the Project, as applicable.

1.7.5 Sale to Public and Completion of Construction. The provisions of Subsection 1.7.1 shall not apply to the sale or lease (for a period longer than one year) of any lot that has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. This Agreement shall terminate with respect to any lot and such lot shall be released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of both of the following conditions:

(a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and

(b) A Final Inspection or certificate of occupancy has been issued for a building on the lot, and the fees for such lot set forth in this Agreement have been paid.

1.8 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only by written consent of all parties in the manner provided for in HBZSO or Government Code Section 65868. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement.

1.9 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 1.6.

(b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.

(c) Completion of the Project in accordance with the terms of this Agreement including passing final inspection and/or issuance of all required permits and acceptance by CITY or applicable public agency of all required dedications.

Termination of this Agreement shall not constitute termination of any other land use entitlements approved for the Property. Upon the termination of this Agreement, no party shall

have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement.

1.10 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date of delivery shown in the records of a standard overnight delivery service. All notices shall be addressed as follows:

If to CITY:

City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648
Attn: City Manager
Telephone: (714) 536-8465

Copy to:

City Attorney's Office
2000 Main Street
Huntington Beach, CA 92648
Attn: Michael Gates
Telephone: (714) 536-5538

If to OWNER:

SLF-HB Magnolia, LLC
2 Park Plaza, Suite 700
Irvine, CA 92614
Attn: John Santry
Telephone: (949) 769-6714

Copy to:

Rutan & Tucker, LLP
611 Anton Blvd., Suite 1400
Costa Mesa, CA 92694
Attn: John A. Ramirez
Telephone: (714) 662-4610

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be

invalidated by the change.

2. DEVELOPMENT OF THE PROPERTY.

2.1 Rights to Develop. Subject to the terms of this Agreement including the Reservation of Rights, OWNER shall have the vested right to develop the Property in accordance with the Land Use Regulations in existence on the Effective Date and to the extent this Agreement permits. Except as expressly provided otherwise herein, the Project is subject to all Land Use Regulations and Development Approvals in effect on the Effective Date that are required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the Land Use Regulations and Development Approvals in effect on the Effective Date. OWNER shall comply with all mitigation measures and conditions of approval as required to be undertaken pursuant to any discretionary approval, including any CEQA document, with respect to the Project. This Agreement shall not apply to Development Approvals which have not been approved prior to Effective Date.

2.2 Effect of Agreement on Land Use Regulations. In connection with any Development Approvals issued following the Effective Date and except as specifically provided otherwise herein, CITY may exercise its discretion in accordance with the Land Use Regulations then in effect, as provided by this Agreement, including, but not limited to, the Reservation of Rights. CITY shall accept for processing, review and take action on all applications for subsequent development approvals.

2.3 Reservation of Rights.

2.3.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Property:

(a) Processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations, policies and rules governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY, including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Grading

Ordinance.

(d) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development located either throughout the CITY or within a defined area of benefit which includes the Property. No such subsequently adopted Development Exaction shall apply if its application to the Property would physically prevent development of the Property for the uses and to the density or intensity of development set forth in the Development Plan. In the event any such subsequently adopted Development Exaction fulfills the same purposes, in whole or in part, as the fees set forth in Section 4 of this Agreement, CITY shall allow a credit against such subsequently adopted Development Exaction for the fees paid under Section 4 of this Agreement to the extent such fees fulfill the same purposes.

(e) Health and safety regulations that may be in material conflict with this Agreement but that are necessary to protect the residents of the project or the immediate community from a condition perilous to their health or safety. To the extent possible, any such regulations shall be applied and construed so as to provide OWNER with the rights and assurances provided under this Agreement.

(f) Regulations that are not in material conflict with this Agreement or the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to materially conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(g) Regulations that are in material conflict with the Development Plan; provided OWNER has given written consent to the application of such regulations to development of that Property in which the OWNER has a legal or equitable interest.

(h) Regulations that impose, levy, alter or amend fees, charges, or Land Use Regulations relating to consumers or end users, including, without limitation, trash can placement, service charges and limitations on vehicle parking.

(i) Regulations of other public agencies, including Development Impact Fees adopted or imposed by such other public agencies, although collected by CITY.

(j) For purposes of clarity, it is acknowledged that development of the Property will require the submission and approval of various implementation permits, including, but not limited to subdivision maps. City shall retain discretion in acting upon such future permits, consistent with the terms of this Agreement.

2.3.2 Modification or Suspension by State or Federal Law. In the event that State, County or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of

this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

2.4 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of CITY may possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

2.5 Timing of Development. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo (1984) 37 Cal. 3d 465, that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the specific intent of the Parties to provide for the timing of the Project in this Agreement. To do so, the Parties acknowledge and provide that OWNER shall have the right, but not the obligation, to complete the Project in such order, at such rate, at such times, and in as many development phases and sub-phases as OWNER deems appropriate in its sole subjective business judgment subject the following: The on-site Open Space Park Improvements and Open Space Conservation Improvements shall be completed prior to Final Inspection for the first dwelling unit. The Hotel shall receive a certificate of occupancy prior to the Final Inspection for the 175th dwelling unit.

2.6 Conditions, Covenants and Restrictions. Except as imposed as a condition in a discretionary permit, OWNER shall have the ability to reserve and record such covenants, conditions, and restrictions (CC&Rs) against the Property as OWNER deems appropriate. Such CC&Rs may not conflict with this Agreement or the General Plan. Before recording any CC&Rs, OWNER shall provide a copy of the CC&Rs to the City for review and approval by the City Attorney. The City Attorney's review shall be limited to determining if the CC&Rs substantially comply with this Agreement and all laws in effect. Within thirty (30) days after receiving a copy of the proposed CC&Rs from OWNER, as evidenced by written confirmation of receipt from the City Attorney, the City Attorney shall provide OWNER with either (i) a statement that the CC&Rs comply with this Agreement ("CC&R Approval") or (ii) written comments identifying each aspect of the CC&Rs which the City Attorney believes not to be in compliance with this Agreement and/or law(a "Statement of Non-Compliance"). If the City Attorney fails to provide OWNER with either CC&R Approval or a Statement of Non-Compliance within thirty (30) days following a written request by OWNER, City shall be deemed to have approved the CC&Rs and OWNER may record the CC&Rs against the Property. If the City Attorney provides a Statement of Non-Compliance, OWNER shall have thirty (30) days in which to respond to the Statement of Non-Compliance. Upon submittal of OWNER's response, the procedure described above for the initial submittal and City Attorney review of proposed CC&Rs shall again be followed. This procedure shall be followed until OWNER either (1) receives CC&R Approval, (2) submits the compliance issues to binding arbitration pursuant

to the rules of the American Arbitration Association, (3) files an action for declaratory relief in Orange County Superior Court seeking a judicial determination of the compliance of the proposed CC&Rs, or (4) an agreement is otherwise reached between the Parties allowing for the recording of the CC&Rs. The CC&Rs may run with the land and bind OWNER's successors and assigns. Except as provided above, any dispute between the Parties regarding the City's approval or rejection of the CC&Rs shall be subject to immediate and binding arbitration pursuant to the rules of the American Arbitration Association.

3. PUBLIC BENEFITS.

3.1 Public Benefits. The Project will serve to re-vitalize an under-developed site, will provide on and off site infrastructure upgrades; will provide additional property and sales tax revenues to the CITY. In addition, the Project will provide monetary funds to improve the CITY's open space and recreational facilities by providing funding in a total amount that would allow the CITY, should it so choose in the future and in compliance with all laws, including but not limited to City Charter section 612 (Measure C), to implement the public improvements listed below. Nothing in this Agreement obligates the City to use the monetary funds provided by the OWNER for such improvements, and the City Council may use the funds provided by OWNER for any lawful purpose at its sole and absolute discretion. However, the monetary funds to be provided by OWNER to the CITY pursuant to this Agreement may fund the following public improvements:

3.1.1 Banning Branch Library. \$1,000,000.00 (ONE MILLION DOLLARS) is being provided by OWNER. This amount could fund improvements to the Banning Branch Library.

3.1.2 Edison Park Improvements. \$800,000.00 (EIGHT HUNDRED THOUSAND DOLLARS) is being provided by OWNER. This amount could fund the reconfiguration of the exterior of Edison Park, including but not limited to the relocation of some of the current amenities to a more functional location within Edison Park and construction of new patron serving amenities if funding permits.

3.1.3 Play Equipment and Park Improvements at Seely Parks. \$400,000.00 (FOUR HUNDRED THOUSAND DOLLARS) is being provided by OWNER. This amount could fund play equipment and/or other park improvements at Seely Park, with any remaining funds after improvements have been completed to be used at Edison Park for park improvements.

3.1.4 Banning Avenue Beautification. \$300,000.00 (THREE HUNDRED THOUSAND DOLLARS) is being provided by OWNER. This amount could fund the creation of landscape improvements along Banning Avenue.

3.2 Timing of Payments; No Restrictions on Use of Funds by City. The sum total to be provided by OWNER to City pursuant to Section 4.1 of the Agreement is \$2,500,000.00 (TWO MILLION FIVE HUNDRED THOUSAND DOLLARS). OWNER shall provide payment to CITY as follows: \$1,000,000.00 (ONE MILLION DOLLARS) concurrent with the issuance of the building permit for the first dwelling unit; \$1,000,000.00 (ONE MILLION DOLLARS) prior to Final Inspection of the first dwelling unit; and \$500,000.00 (FIVE HUNDRED THOUSAND DOLLARS) prior to Final Inspection of the 125th dwelling unit. CITY may use the monetary funds provided by OWNER pursuant to this Agreement for any lawful purpose but will prioritize the monetary funds for capital improvement projects located within a one mile radius of the Property that are deemed to improve the quality of life for residents within the area. The obligations to provide payments set forth above shall survive any termination of this Agreement.

3.3 Magnolia/Hamilton Improvements. In addition, the project design includes extensive improvements to be constructed by OWNER to the intersection of Magnolia and Hamilton and along the adjacent ASCON property frontage on Magnolia Street (e.g., full width street improvements; including but not limited to sidewalk, curb, gutter, streetlights, undergrounding of utilities, signalization improvements, etc.). The City will allow OWNER to underground utilities located along Magnolia Street within the public right of way for the portion adjacent to the ASCON property as well as the portion adjacent to the PROPERTY. The Hamilton Street improvements include full width street improvements as well with the exception of undergrounding of utilities. Provided that OWNER is able to obtain access at no-charge to construct said improvements, said improvements shall be completed prior to Final Inspection of the 125th dwelling unit. The Magnolia/Hamilton Improvements are set forth in Exhibit "E."

3.4 Hotel Quality Standards. The Hotel quality standards and amenities shall be those set forth on Exhibit "D".

3.5 The CITY acknowledges the Project and this Agreement must be approved by the California Coastal Commission ("CCC") prior to the Agreement taking effect. The CITY also acknowledges the CCC may request that changes be made to the Development Plan. Thus, the public benefits set forth herein are predicated on the Development Plan being approved by the CITY.

3.6 Development Impact Fees.

3.6.1 Amount of Fee. The Development Impact Fees in effect at the time of Building Permit issuance in accordance with the City's HBZSO shall be charged to the Project.

3.6.2 Time of Payment. The fees required pursuant to Subsection 3.6.1 shall be paid to CITY in accordance with the terms of such ordinance(s).

3.6.3 Fee Credits. OWNER shall be entitled to credit against the fees required pursuant to Subsection 4.6.1 in accordance with the terms of such ordinance(s).

3.7 Timing of Construction of Off-Site Infrastructure. Approval of any building permits on the Property shall be conditioned upon CITY's determination, in its reasonable discretion, that sufficient progress is being made on construction of off-site infrastructure serving development of OWNER's Property. Construction of the off-site infrastructure adjacent to Owner's Property shall be completed prior to Final Inspection for the first dwelling unit. Construction of the Magnolia Hamilton Improvements shall be subject to section 3.3.

4. REVIEW FOR COMPLIANCE.

4.1 Periodic Review. The CITY shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the compliance by OWNER with the terms of the Agreement. OWNER shall submit an Annual Monitoring Report, in a form acceptable to the City Manager, within thirty (30) days after written notice from the City Manager. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council.

4.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The City Manager, or his or her designee, shall conduct such special reviews.

4.3 Procedure.

(a) During either a periodic review or a special review, OWNER shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on OWNER.

(b) Upon completion of a periodic review or a special review, the City Manager, or his or her designee, shall submit a report to the Planning Commission setting forth the evidence concerning good faith compliance by OWNER with the terms of this Agreement and his or her recommended finding on that issue.

(c) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has not complied in good faith with the terms and conditions of this Agreement, the Commission may recommend to the City Council modification or termination of this Agreement. OWNER may appeal a Planning Commission determination pursuant to this Section 5.3(d) pursuant to CITY's rules for consideration of appeals in zoning matters then in effect. Notice of default as provided under Section 6.3 of this Agreement shall be given to OWNER prior to or concurrent with proceedings under Section 5.4 and Section 5.5.

4.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 5.3, CITY determines to proceed with modification or termination of this Agreement, CITY shall give written notice to OWNER of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and shall contain:

- (a) The time and place of the hearing;
- (b) A statement as to whether or not CITY proposes to terminate or to modify the Agreement; and,
- (c) Such other information that the CITY considers necessary to inform OWNER of the nature of the proceeding.

4.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, OWNER shall be given an opportunity to be heard. OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence, that OWNER has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the CITY. The decision of the City Council shall be final.

4.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the City Manager and City Council that: (1) this Agreement remains in effect; and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a Periodic or Special Review and shall state the anticipated date of commencement of the next Periodic Review. OWNER may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the City Manager or City Council.

5. DEFAULT AND REMEDIES.

5.1 Remedies in General. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that neither CITY nor OWNER shall be liable in damages and both OWNER and CITY covenant not to sue for damages or claim any damages:

(a) For any breach of this Agreement or for any cause of action that arises out of this Agreement; or

(b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or

(c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

5.2 Release. Except for non-monetary remedies, OWNER, for itself, its successors and assignees, hereby releases CITY, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth and Fourteenth Amendments to the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon CITY because it entered into this Agreement or because of the terms of this Agreement. OWNER hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

By initialing below, OWNER hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Owner's Initials

5.3 Termination or Modification of Agreement for Default of OWNER. CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

5.4 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within sixty (60) days after the effective date of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such sixty (60) day period and to diligently proceed to complete such actions and cure such default.

6. LITIGATION.

6.1 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement, or the approval of any permit granted pursuant to this Agreement. CITY shall promptly notify OWNER of any claim, action, proceeding or determination included within this Section 8.1, and CITY shall cooperate in the defense. If CITY fails to promptly notify OWNER of any such claim, action, proceeding or determination, or if CITY fails to cooperate in the defense, OWNER shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may in its discretion participate in the defense of any such claim, action, proceeding or determination.

6.2 Environmental Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of OWNER or City, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to any environmental laws or regulations including but not limited to CEQA the CCA, CERCLA, industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

6.3 Reservation of Rights. With respect to Section 7.1 and Section 7.2 herein, CITY reserves, the right to either (1) approve the attorney(s) that the indemnifying party selects, hires or otherwise engages to defend the indemnified party hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense; provided, however, that the indemnifying party shall reimburse the indemnified party forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

6.4 Challenge to Existing Land Use Approvals. By accepting the benefits of this Agreement, OWNER, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge any land use approval affecting the Property and in effect as of the Effective Date. Such agreement and covenant includes, without limitation, the

covenant against any direct suit by OWNER or its successor in interest, or any participation, encouragement or involvement whatsoever that is adverse to CITY by OWNER or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction. OWNER hereby expressly waives, on behalf of itself and its successors in interest, any claim or challenge to any land use approval affecting the Property and in effect as of the Effective Date. In the event of any breach of the covenant or waiver contained herein, CITY shall, in addition to any other remedies provided for at law or in equity, be entitled to:

(a) impose and recover (at any time, including after sale to a member of the public or other ultimate user) from the party breaching such covenant or waiver, the full amount of Development Impact Fees that the breaching party would have been required to pay in the absence of this Development Agreement; and

(b) impose any subsequently adopted land use regulation on those land use approvals for which the breaching party had not, as of the time of such breach, obtained a building permit.

OWNER hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

By initialing below, OWNER hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Owner's Initials

6.5 Survival. The provisions of Sections 8.1 through 8.5, inclusive, shall survive the termination of this Agreement.

6.6 Litigation Deposit. Within ten (10) business days of OWNER receiving notification from CITY that any claim, action or proceeding covered by Section 6.1 above has been filed, OWNER shall make a monetary deposit in an interest bearing account with CITY in an amount to be mutually agreed upon by the Parties at that time after discussing the budget required to defend such claim, action or proceeding and/or settlement thereof. If OWNER fails to make the deposit as required by this Section 6.6, CITY shall have the right to rescind (i) any Development Approvals as defined in Section 1.1.6 above issued or granted by CITY and (ii) this Development Agreement.

7. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 1.7 of this Agreement.

8. MISCELLANEOUS PROVISIONS.

8.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Orange County Recorder by the Clerk of the City Council within ten (10) days after the City enters into the Agreement, in accordance with Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the CITY terminates or modifies this Agreement as provided herein for failure of the OWNER to comply in good faith with the terms and conditions of this Agreement, the City

Clerk shall have notice of such action recorded with the Orange County Recorder.

8.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

8.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 3 of this Agreement, including the payment of the Development Impact Fees set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

8.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

8.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.6 Singular and Plural. As used herein, the singular of any word includes the plural.

8.7 Joint and Several Obligations. If at any time during the Term of this Agreement the Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS. Notwithstanding the foregoing, no OWNER of a single lot that has been finally subdivided and sold to such OWNER as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as expressly provided for herein.

8.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

8.9 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have

any right of action based upon any provision of this Agreement.

8.10 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as any action challenging the validity of the Project Approvals, restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the written agreement of the parties for the period of time that such events prevented such performance, provided that the Term of this Agreement shall not be extended under any circumstances for more than ten (10) years.

8.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

8.12 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

8.13 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

8.14 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

8.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

8.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement.

Upon the request of either party at any time, the other party shall promptly execute and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

8.18 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the City Manager, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto.

8.19 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

OWNER

SLF-HB Magnolia, LLC
a Delaware limited liability company

By: _____

Name: _____

Title: _____

Dated: _____

CITY

CITY OF HUNTINGTON BEACH, a
California municipal corporation

By: _____

Mayor

Dated: _____

ATTEST:

By: _____

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

EXHIBIT “A”

DRAFT

LEGAL DESCRIPTION

Real property in the City of Huntington Beach, County of Orange, State of California, described as follows:

PARCEL 1: (APN: 114-150-36)

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13, TOWNSHIP 6 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 51 PAGE 14](#) OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING EASTERLY OF THE EASTERLY LINE OF THAT CERTAIN STRIP OF LAND 145.00 FEET WIDE, DESCRIBED AND DESIGNATED AS PARCEL D1-104 IN THE FINAL ORDER OF CONDEMNATION HAD IN CASE NO. 80955 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, A CERTIFIED COPY WHICH WAS RECORDED SEPTEMBER 8, 1961 IN [BOOK 5842 PAGE 7](#) OF OFFICIAL RECORDS.

EXCEPT THEREFROM THE "SEVERED PROPERTY" AS DESCRIBED IN PART B OF THE GRANT DEED FROM THE SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, RECORDED AUGUST 4, 2003 AS INSTRUMENT NO. [2003000931976](#) OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM: "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM THAT CERTAIN PORTION OF THE HEREINABOVE DESCRIBED AS PARCELS 1 AND 2 TOGETHER WITH THE RIGHT TO USE THOSE PORTIONS ONLY OF SAID LANDS WHICH UNDERLIE A PLANE PARALLEL TO AND FIVE HUNDRED (500) FEET BELOW THE PRESENT SURFACE OF SAID LANDS, FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID LANDS BY MEANS OF WELLS DRILLED INTO SAID SUBSURFACE OF SAID LAND FROM DRILL SITES LOCATED ON OTHER LAND, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT SAID GRANTOR, THEIR SUCCESSORS AND ASSIGNS, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID LANDS OR TO USE SAID LANDS OR ANY PORTION THEREOF TO SAID DEPTH OF FIVE HUNDRED (500) FEET, FOR ANY PURPOSE WHATSOEVER", AS RESERVED IN THE DEED FROM DOROTHY CONSTANCE SMITH RECORDED JULY 30, 1962 IN [BOOK 6194 PAGE 470](#) OF OFFICIAL RECORDS.

PARCEL 2: (APN: 114-481-32)

THAT PORTION OF THE NORTHEAST QUARTER OF FRACTIONAL SECTION 24, TOWNSHIP 6 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 51 PAGE 14](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF SAID FRACTIONAL SECTION 24 WITH THE NORTHEASTERLY RIGHT OF WAY LINE OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT'S "HUNTINGTON BEACH CHANNEL" AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RECORDED IN [BOOK 5591 PAGE 500](#), ET SEQ. OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 89° 32' 40" EAST ALONG SAID NORTHERLY LINE OF FRACTIONAL SECTION 24 A DISTANCE OF 360.17 FEET TO

THE SOUTHWESTERLY CORNER OF THAT CERTAIN REAL PROPERTY DESCRIBED AND DESIGNATED AS "PARCEL TWO" IN THAT CERTAIN ROAD EASEMENT TO THE CITY OF HUNTINGTON BEACH

RECORDED OCTOBER 13, 1967 IN BOOK 8418 PAGE 439 OF SAID OFFICIAL RECORDS, SAID SOUTHWESTERLY CORNER BEING ALSO A POINT IN A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 950.00 FEET FROM WHICH POINT A RADIAL LINE OF SAID CURVE BEARS NORTH 57° 33' 35" WEST; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 37' 14" AN ARC DISTANCE OF 176.10 FEET; THENCE TANGENT TO SAID LAST MENTIONED CURVE 80.37 FEET TO A POINT IN A CURVE IN SAID NORTHEASTERLY RIGHT OF WAY LINE OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT'S "HUNTINGTON BEACH CHANNEL", SAID LAST MENTIONED CURVE BEING CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 4,717.50 FEET FROM WHICH POINT A RADIAL LINE OF SAID CURVE BEARS NORTH 43° 40' 03" EAST; THENCE NORTHWESTERLY ALONG SAID LAST MENTIONED CURVE, THROUGH A CENTRAL ANGLE OF 1° 10' 00" AN ARC DISTANCE OF 96.06 FEET; THENCE TANGENT TO SAID CURVE NORTH 45° 09' 57" WEST 181.36 FEET TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THE "SEVERED PROPERTY" AS DESCRIBED IN PART B OF THE GRANT DEED FROM THE SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, RECORDED AUGUST 4, 2003 AS INSTRUMENT NO. [2003000931976](#) OF OFFICIAL RECORDS.

PARCEL 3:

EASEMENTS FOR FIRE WATER SYSTEMS, VEHICULAR ACCESS, FUEL SYSTEMS, AND SUCH OTHER PURPOSES INCIDENTAL THERE TO, CREATED BY THAT CERTAIN FOP FACILITY EASEMENT AGREEMENT DATED JULY 31, 2003 BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND PACIFIC TERMINALS LLC, A DELAWARE LIMITED LIABILITY COMPANY, RECORDED AUGUST 4, 2003 AS INSTRUMENT NO. [2003000931980](#) OF OFFICIAL RECORDS, OVER THE FOLLOWING LAND:

THAT PORTION OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13 IN TOWNSHIP 6 SOUTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, SHOWN ON A MAP IN [BOOK 43 PAGE 2](#) OF RECORDS OF SURVEY, BEING THE PARCEL OF LAND SHOWN AS PARCEL 3 ON LOT LINE ADJUSTMENT NO. 97-3 RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. [19970628491](#) OF OFFICIAL RECORDS OF SAID COUNTY, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTERLINE OF NEWLAND STREET (ALSO BEING THE NORTH-SOUTH CENTERLINE OF SAID SECTION 13) AND THE WESTERLY PROLONGATION OF THE NORTH LINE OF PARCEL 1 AS SHOWN ON SAID MAP; THENCE SOUTH 00° 16' 41" WEST 578.88 FEET (SHOWN ON SAID MAP AS S 00° 40' 50" E) ALONG SAID NORTH-SOUTH CENTERLINE OF SAID SECTION 13 AS SHOWN ON SAID MAP TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 53° 56' 04" EAST 248.54 FEET; THENCE SOUTH 35° 31' 50" WEST 6.04 FEET; THENCE SOUTH 54° 28' 10" EAST 536.14 FEET; THENCE SOUTH 76° 14' 35" EAST 53.96 FEET TO THE NORTHWESTERLY PROLONGATION OF THAT CERTAIN COURSE DESCRIBED AS "SOUTH 56° 32' 30" EAST 369.07 FEET, MORE OR LESS" ALONG THE SOUTHERLY LINE OF THE LAND CONVEYED TO A. C. THORPE BY DEED RECORDED JUNE 13, 1917 IN [BOOK 302 PAGE 69](#) OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE SOUTH 55° 17' 06" EAST 301.06 FEET ALONG SAID PROLONGATION AND SAID LINE; THENCE NORTH 00° 00' 00" EAST 435.68 FEET; THENCE NORTH 54° 42' 53" WEST 175.17 FEET; THENCE NORTH 00° 00' 00" EAST 338.21 FEET; THENCE NORTH 90° 00' 00" WEST 357.07 FEET; THENCE SOUTH 27° 47' 17" WEST 128.15 FEET TO THE NORTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 13;

THENCE NORTH 89° 29' 32" WEST 373.23 FEET ALONG SAID NORTHERLY LINE TO SAID NORTH-SOUTH CENTERLINE OF SAID SECTION 13 AS SHOWN ON SAID MAP; THENCE SOUTH 00° 16' 41" WEST 117.92 FEET ALONG SAID NORTH-SOUTH CENTERLINE (SHOWN ON SAID MAP AS S 00° 40' 50" E) TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM; ALL STRUCTURES AND IMPROVEMENTS, FACILITIES, SYSTEMS, FIXTURES AND EQUIPMENT OF ANY KIND NOW OR HEREAFTER LOCATED ON SAID LAND, WHETHER ABOVE OR BELOW THE LAND SURFACE, WHETHER REAL OR PERSONAL PROPERTY, AND WHETHER PERMANENT OR TEMPORARY, INCLUDING WITHOUT LIMITATION, ALL BUILDING, SHEDS, ENERGY PLANTS, TANKS, PIPELINES (INCLUDING METERS, CONNECTIONS, VALVES AND OTHER ASSOCIATED EQUIPMENT), CABLES, WIRES, CONDUITS, CABLE TRAYS, TRENCHES, MAINS, LINES, DUCTS, FENCES, TOWERS, ANTENNAE, TUNNELS, SCREENING WALLS, AWNINGS, RETAINING WALLS, IRRIGATION AND DRAINAGE PIPES AND FACILITIES, LIGHTNING FIXTURES AND SIGNS, CONVEYED TO AES HUNTINGTON BEACH, L.L.C. BY DEED RECORDED JUNE 16, 1998 AS INSTRUMENT NO. [98-0379306](#) OF OFFICIAL RECORDS, UNDER THE TERMS AND CONDITIONS SET FORTH THEREIN.

PARCEL 4:

AN UNDIVIDED ONE-HALF INTEREST IN AND TO THE EASEMENTS (THE "EASEMENTS") FOR THE VARIOUS PURPOSES CONTAINED THEREIN, AS RESERVED, DEFINED AND SET FORTH IN THE GRANT DEED EXECUTED BY SOUTHERN CALIFORNIA EDISON COMPANY, A CALIFORNIA CORPORATION, RECORDED MAY 7, 2001 AS INSTRUMENT NO. [20010286988](#) OF OFFICIAL RECORDS OF ORANGE COUNTY, AS SUCH EASEMENTS RELATE TO THE EPTC PROPERTY MORE PARTICULARLY DESCRIBED IN THAT CERTAIN GRANT DEED DATED JULY 31, 2003 BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY, A CALIFORNIA CORPORATION, AS GRANTOR, AND PACIFIC TERMINALS LLC, A DELAWARE LIMITED LIABILITY COMPANY, AS GRANTEE, RECORDED AUGUST 4, 2003 AS INSTRUMENT NO. [2003000931976](#) OF OFFICIAL RECORDS, WHEREIN SAID GRANTOR CONVEYED THE FOP PROPERTY TO SAID GRANTEE, OVER THE FOLLOWING LAND:

THAT PORTION OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13 IN TOWNSHIP 6 SOUTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, SHOWN ON A MAP IN [BOOK 43 PAGE 2](#) OF RECORDS OF SURVEYS, BEING THAT PARCEL OF LAND SHOWN AS PARCEL 4 ON LOT LINE ADJUSTMENT NO. 97-3 RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. [19970628491](#) OF OFFICIAL RECORDS OF SAID COUNTY, FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF NEWLAND STREET (ALSO BEING THE NORTH-SOUTH CENTERLINE OF SAID SECTION 13) AND THE WESTERLY PROLONGATION OF THE NORTH LINE OF PARCEL 1 AS SHOWN ON SAID MAP; THENCE SOUTH 89° 27' 18" EAST, 1,220.30 FEET ALONG THE NORTH LINE OF SAID PARCEL 1 TO A LINE THAT IS PARALLEL WITH AND WESTERLY 100 FEET FROM THE EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13, SAID PARALLEL LINE ALSO BEING THE EAST LINE OF SAID PARCEL 1; THENCE SOUTH 00° 17' 00" WEST 96.13 FEET ALONG SAID EAST LINE TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY RIGHT OF WAY OF THE ORANGE COUNTY FLOOD CONTROL DISTRICT HUNTINGTON BEACH CHANNEL AS DESCRIBED IN PARCEL NO. D1-104 IN THE AMENDED FINAL ORDER OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED NOVEMBER 1, 1963 IN BOOK [6788 PAGES 915 THROUGH 922](#), INCLUSIVE, OF OFFICIAL RECORDS, COUNTY OF ORANGE, STATE OF CALIFORNIA, SAID POINT OF INTERSECTION ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 312.69 FEET, THROUGH WHICH A RADIAL LINE BEARS

NORTH 87° 30' 32" EAST; THENCE SOUTHERLY 15.27 FEET, ALONG SAID SOUTHWESTERLY RIGHT OF WAY AND SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 02° 47' 51" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2,462.50 FEET; THENCE SOUTHEASTERLY 703.87 FEET ALONG SAID SOUTHWESTERLY RIGHT OF WAY AND SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 16° 22' 38" TO SAID EAST LINE OF THE WEST

ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13 AS SHOWN ON A MAP RECORDED IN [BOOK 74 PAGE 11](#) OF RECORDS OF SURVEY, OF SAID COUNTY; THENCE SOUTH 00° 17' 00" WEST 679.10 FEET ALONG SAID EAST LINE OF THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13 TO THE SOUTHERLY LINE OF THE LAND CONVEYED TO A. C. THORPE BY DEED RECORDED JUNE 13, 1917 IN [BOOK 302 PAGE 69](#) OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTH 47° 42' 57" WEST ALONG SAID SOUTHERLY LINE 42.21 FEET; THENCE CONTINUING ALONG SAID SOUTHERLY LINE NORTH 55° 21' 57" WEST 83.13 TO SAID EASTLINE OF PARCEL 1 AND THE SOUTHEASTERLY CORNER OF SAID PARCEL 1 AS SHOWN ON SAID MAP RECORDED IN BOOK 42 PAGE 2 OF RECORDS OF SURVEY; THENCE NORTH 00° 17' 00" EAST ALONG SAID EAST LINE OF SAID PARCEL 1, 268.17 FEET; THENCE SOUTH 74° 13' 00" WEST 256.65 FEET TO SAID SOUTHERLY LINE OF SAID LAND CONVEYED TO A. C. THORPE, PAGE 69 OF DEEDS; THENCE NORTH 55° 17' 06" WEST ALONG SAID SOUTHERLY LINE 9.69 FEET; THENCE NORTH 00° 00' 00" EAST 435.68 FEET; THENCE NORTH 54° 42' 53" WEST 175.17 FEET; THENCE NORTH 00° 00' 00" EAST 338.21 FEET; THENCE NORTH 90° 00' 00" WEST 357.07 FEET; THENCE SOUTH 27° 47' 17" WEST 128.15 FEET TO THE NORTHERLY LINE OF THE SOUTHWEST ONE-QUARTER OF THE SOUTHEAST ONE-QUARTER OF SAID SECTION 13; THENCE NORTH 89° 29' 32" WEST 373.23 FEET ALONG SAID NORTHERLY LINE TO SAID NORTH-SOUTH CENTERLINE OF SAID SECTION 13 AS SHOWN ON SAID MAP; THENCE NORTH 00° 16' 41" EAST 460.96 FEET ALONG SAID NORTH-SOUTH CENTERLINE (SHOWN ON SAID MAP AS S 00° 40' 50" E) TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM; ALL STRUCTURES AND IMPROVEMENTS, FACILITIES, SYSTEMS, FIXTURES AND EQUIPMENT OF ANY KIND NOW OR HEREAFTER LOCATED ON SAID LAND, WHETHER ABOVE OR BELOW THE LAND SURFACE, WHETHER REAL OR PERSONAL PROPERTY, AND WHETHER PERMANENT OR TEMPORARY, INCLUDING WITHOUT LIMITATION, ALL BUILDING, SHEDS, ENERGY PLANTS; TANKS, PIPELINES (INCLUDING METERS, CONNECTIONS, VALVES AND OTHER ASSOCIATED EQUIPMENT), CABLES, WIRES, CONDUITS, CABLE TRAYS, TRENCHES, MAINS, LINES, DUCTS, FENCES, TOWERS, ANTENNAE, TUNNELS, SCREENING WALLS, AWNINGS, RETAINING WALLS, IRRIGATION AND DRAINAGE PIPES AND FACILITIES, LIGHTING FIXTURES AND SIGNS, CONVEYED TO AES HUNTINGTON BEACH, L.L.C. BY DEED RECORDED JUNE 16, 1998 AS INSTRUMENT NO. [98-079306](#) OF OFFICIAL RECORDS, UNDER THE TERMS AND CONDITIONS SET FORTH THEREIN.

PARCEL 5:

AN UNDIVIDED INTEREST IN AND TO THE EASEMENTS AND OTHER RIGHTS (THE "EASEMENTS") FOR THE VARIOUS PURPOSES CONTAINED THEREIN, FOR ACCESS, PIPELINE, FUEL OIL TANKS AND RELATED PURPOSES AS RESERVED, DEFINED AND SET FORTH IN THAT CERTAIN GRANT DEED DATED SEPTEMBER 21, 2001 BY AND BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY, AS GRANTOR, AND THE HUNTINGTON BEACH WETLANDS CONSERVANCY, AS GRANTEE, RECORDED IN THE OFFICIAL RECORDS ON OCTOBER 5, 2001 AS INSTRUMENT NO. [20010705328](#), AS SUCH EASEMENTS RELATE TO THE EPTC PROPERTY MORE PARTICULARLY DESCRIBED IN THAT CERTAIN GRANT DEED DATED JULY 31, 2003 BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY, A CALIFORNIA CORPORATION, AS GRANTOR, AND PACIFIC TERMINALS LLC, DELAWARE LIMITED LIABILITY COMPANY, AS GRANTEE, RECORDED AUGUST 4, 2003 AS INSTRUMENT NO. [2003000931976](#) OF OFFICIAL RECORDS, WHEREIN SAID GRANTOR CONVEYED THE FOP PROPERTY TO SAID GRANTEE, OVER THE FOLLOWING LAND:

PARCEL A OF PARCEL 5:

THOSE PORTIONS OF THE FRACTIONAL SOUTHWEST ONE-QUARTER OF SECTION 13; THE WEST ONE-HALF OF THE SOUTHEAST ONE-QUARTER OF SECTION 13 AND THE NORTHEAST ONE-QUARTER OF SECTION 24 IN TOWNSHIP 6 SOUTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF

ORANGE, STATE OF CALIFORNIA, SHOWN ON A MAP IN [BOOK 43 PAGE 2](#) OF RECORDS OF SURVEY, BEING THE PARCEL OF LAND SHOWN AS PARCEL 2 ON LOT LINE ADJUSTMENT NO. 97-3 RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. 97-0628491 OF OFFICIAL RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM; "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM THAT CERTAIN PORTION OF THE LAND HEREINABOVE DESCRIBED WHICH LIES NORTHEASTERLY OF A LINE THAT IS PARALLEL WITH AND 200 FEET NORTHEASTERLY MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF THE PACIFIC COAST (STATE) HIGHWAY, 100.00 FEET WIDE, WHICH CERTAIN PORTION OF LAND IS HEREINAFTER REFERRED TO AS AREA 'A', TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID AREA 'A' WHICH UNDERLIES A PLANE PARALLEL TO AND FIVE HUNDRED (500) FEET BELOW THE PRESENT SURFACE OF SAID AREA 'A', FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID AREA 'A' BY MEANS OF WELLS DRILLED INTO THE SUBSURFACE OF SAID AREA 'A' FROM DRILL SITES LOCATED ON OTHER LAND, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT, SAID GRANTOR, HER HEIRS AND ASSIGNS, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID AREA 'A' OR TO USE SAID AREA 'A' OR ANY PORTION THEREOF TO SAID DEPTH OF FIVE HUNDRED (500) FEET, FOR ANY PURPOSE WHATSOEVER" AS RESERVED IN THE DEED FROM DAISY THORPE HOOK RECORDED APRIL 24, 1956 IN [BOOK 3485 PAGE 268](#) OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM; "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM THE REMAINDER OF THE LAND FIRST HEREINABOVE DESCRIBED WHICH SAID REMAINDER OF LAND IS HEREINAFTER REFERRED TO AS AREA 'B', TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID AREA 'B' WHICH UNDERLIES A PLANE PARALLEL TO AND ONE HUNDRED (100) FEET BELOW THE PRESENT SURFACE OF SAID AREA 'B', FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID AREA 'B' BY MEANS OF WELLS DRILLED INTO THE SUBSURFACE OF SAID AREA 'B' FROM DRILL SITES LOCATED ON OTHER LAND, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT SAID GRANTOR, HER HEIRS AND ASSIGNS, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID AREA 'B' OR TO USE SAID AREA 'B' OR ANY PORTION THEREOF TO SAID DEPTH OF ONE HUNDRED (100) FEET, FOR ANY PURPOSE WHATSOEVER" AS RESERVED IN THE DEED FROM DAISY HORPE HOOK RECORDED APRIL 24, 1956 IN [BOOK 3485 PAGE 268](#) OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM; "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM THAT

CERTAIN PORTION OF THE HEREINABOVE DESCRIBED LAND WHICH LIES NORTHEASTERLY OF A LINE THAT IS PARALLEL WITH AND 200 FEET NORTHEASTERLY MEASURED AT RIGHT ANGLES, FROM THE SOUTHWESTERLY LINE OF SAID HEREINABOVE DESCRIBED LAND, WHICH CERTAIN PORTION OF SAID LAND IS HEREINAFTER REFERRED TO AS AREA 'A', TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID AREA 'A' WHICH UNDERLIES A PLANE PARALLEL TO AND FIVE HUNDRED (500) FEET BELOW THE PRESENT SURFACE OF SAID AREA

'A', FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID AREA 'A' BY MEANS OF WELLS DRILLED INTO THE SUBSURFACE OF SAID AREA 'A' FROM DRILL SITES LOCATED ON OTHER LAND, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID AREA 'A' OR TO USE SAID AREA 'A' OR ANY PORTION THEREOF TO SAID DEPTH OF FIVE HUNDRED (500)

FEET, FOR ANY PURPOSE WHATSOEVER" AS RESERVED IN THE DEED FROM MILLS LAND AND WATER COMPANY RECORDED OCTOBER 24, 1956 IN [BOOK 3688 PAGE 275](#) OF OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM; "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN AND UNDER OR WHICH MAY BE PRODUCED FROM THE REMAINDER OF SAID HEREINABOVE DESCRIBED LAND, WHICH REMAINDER OF LAND IS HEREINAFTER REFERRED TO AS AREA 'B', TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID AREA 'B' WHICH UNDERLIES A PLANE PARALLEL TO AND ONE HUNDRED (100) FEET BELOW THE PRESENT SURFACE OF SAID AREA 'B', FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID AREA 'B' BY MEANS OF WELLS DRILLED INTO THE SUBSURFACE OF SAID AREA 'B' FROM DRILL SITES LOCATED ON OTHER LAND, IT BEING EXPRESSLY UNDERSTOOD AND AGREED THAT SAID GRANTOR, ITS SUCCESSORS AND ASSIGNS, SHALL HAVE NO RIGHT TO ENTER UPON THE SURFACE OF SAID AREA 'B' OR TO USE SAID AREA 'B' OR ANY PORTION THEREOF TO SAID DEPTH OF ONE HUNDRED (100) FEET, FOR ANY PURPOSE WHATSOEVER" AS RESERVED IN THE DEED FROM MILLS LAND AND WATER COMPANY, RECORDED OCTOBER 24, 1956 IN [BOOK 3688 PAGE 275](#) OF OFFICIAL RECORDS.

PARCEL B OF PARCEL 5:

THAT PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 13 IN TOWNSHIP 6 SOUTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 51 PAGE 14](#) OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND THAT PORTION OF THE NORTH EAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 24 IN TOWNSHIP 6 SOUTH, RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, ALSO IN SAID CITY OF HUNTINGTON BEACH, AS SHOWN ON A MAP RECORDED IN [BOOK 51 PAGE 14](#) OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND AS THE NORTHERLY PORTION OF SAID SECTION 24 IS SHOWN ON A MAP FILED IN [BOOK 6 PAGE 6](#) OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

ON THE WEST BY THE WESTERLY LINE OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 13; ON THE SOUTHWEST BY THE SOUTHERLY LINE OF THE LAND DESCRIBED IN THE DEED TO A. C. THORPE RECORDED JUNE 13, 1917 IN [BOOK 302 PAGE 69](#) OF DEEDS; ON THE NORTHEAST BY THE SOUTHWESTERLY LINE OF A STRIP OF LAND 145.00 FEET WIDE AS DESCRIBED IN PARCEL NO. D1-104 IN THE AMENDED FINAL ORDER OF CONDEMNATION, A CERTIFIED COPY OF WHICH WAS RECORDED NOVEMBER 1, 1963 IN [BOOK 6788 PAGE 915](#) OF OFFICIAL RECORDS; AND ON THE SOUTHEAST BY THE FOLLOWING DESCRIBED LINE:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO SOUTHERN CALIFORNIA_ EDISON COMPANY, A CORPORATION, DATED APRIL 6, 1956 AND RECORDED APRIL 24, 1956 IN [BOOK 3485 PAGE 268](#) OF OFFICIAL RECORDS AND SAID POINT

BEING IN A LINE THAT IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF THE 40.00 FOOT RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY AS DESCRIBED IN THE DEED RECORDED DECEMBER 20, 1905 IN [BOOK 123 PAGE 96](#) OF DEEDS; THENCE SOUTH 55° 28' 30" EAST, ALONG SAID PARALLEL LINE, 1,40.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE AT RIGHT ANGLES NORTH 34° 31' 30" EAST, 1,05.00 FEET MORE OR LESS, TO THE SOUTHWESTERLY LINE OF THE HEREINABOVE DESCRIBED STRIP OF LAND, 145.00 FEET WIDE.

EXCEPTING THEREFROM; "ALL MINERALS, GAS, OIL, PETROLEUM, NAPHTHA AND OTHER

HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED AND RESERVED IN VARIOUS INSTRUMENTS OF RECORD" AS SET FORTH IN THE DEED FROM ORANGE COUNTY FLOOD CONTROL DISTRICT RECORDED APRIL 28, 1964 IN [BOOK 7022 PAGE 413](#) OF OFFICIAL RECORDS.

EXCEPTING THEREFROM; ALL STRUCTURES AND IMPROVEMENTS, FACILITIES, SYSTEMS, FIXTURES AND EQUIPMENT OF ANY KIND NOW OR HEREAFTER LOCATED ON SAID LAND, WHETHER ABOVE OR BELOW THE LAND SURFACE, WHETHER REAL OR PERSONAL PROPERTY, AND WHETHER PERMANENT OR TEMPORARY, INCLUDING WITHOUT LIMITATION, ALL BUILDING, SHEDS, ENERGY PLANTS, TANKS, PIPELINES (INCLUDING METERS, CONNECTIONS, VALVES AND OTHER ASSOCIATED EQUIPMENT), CABLES, WIRES, CONDUITS, CABLE TRAYS, TRENCHES, MAINS, LINES, DUCTS, FENCES, TOWERS, ANTENNAE, TUNNELS, SCREENING WALLS, AWNINGS, RETAINING WALLS, IRRIGATION AND DRAINAGE PIPES AND FACILITIES, LIGHTING FIXTURES AND SIGNS, CONVEYED TO AES HUNTINGTON BEACH, L.L.C. BY DEED RECORDED JUNE 16, 1998 AS INSTRUMENT NO. [98-0379306](#) OF OFFICIAL RECORDS, UNDER THE TERMS AND CONDITIONS SET FORTH THEREIN.

PARCEL C OF PARCEL 5:

THOSE PORTIONS OF SECTIONS 13 AND 24 IN TOWNSHIP 6 SOUTH RANGE 11 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE RANCHO LAS BOLSAS, IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SHOWN ON A MAP RECORDED IN [BOOK 51 PAGE 14](#), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO SOUTHERN CALIFORNIA EDISON COMPANY, A CORPORATION, DATED APRIL 6, 1956 AND RECORDED APRIL 24, 1956 IN [BOOK 3485 PAGE 268](#) OF OFFICIAL RECORDS, SAID POINT BEING IN A LINE THAT IS PARALLEL WITH AND 100 FEET NORTHEASTERLY, MEASURED AT RIGHT ANGLES, FROM THE NORTHEASTERLY LINE OF THE 40.00 FOOT RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD COMPANY AS DESCRIBED IN THE DEED RECORDED DECEMBER 20, 1905 IN [BOOK 123 PAGE 96](#) OF DEEDS; THENCE SOUTH 55° 28' 30" EAST, ALONG SAID PARALLEL LINE, 1,040.00 FEET; THENCE AT RIGHT ANGLES, NORTH 34° 31' 30" EAST 1,020.23 FEET MORE OR LESS, TO THE SOUTHWESTERLY LINE OF THE 145.00 FOOT STRIP OF LAND DESCRIBED AND DESIGNATED AS PARCEL D 1-1-106 OF THE LIS PENDENS IN AN ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT, PLAINTIFF, VERSES DAISY E. HURLEY THORPE, AT AL., DEFENDANTS," FILED IN CASE NO. 80955 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, A CERTIFIED COPY OF SAID LIS PENDENS BEING RECORDED MARCH 5, 1959 IN [BOOK 4615 PAGE 6](#) OF OFFICIAL RECORDS; THENCE NORTHWESTERLY, ALONG SAID SOUTHWESTERLY LINE, BEING A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 2,462.50 FEET, AN ARC DISTANCE OF 973.34 FEET, MORE OR LESS, TO THE EASTERLY LINE OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 13; THENCE, ALONG SAID EASTERLY LINE, SOUTH 00° 47' 10" EAST, 686.66 FEET, MORE OR LESS, TO THE SOUTHERLY LINE OF THE LAND

CONVEYED TO BY WILLOW LAND COMPANY TO A. C. THORPE, RECORDED JUNE 13, 1917 IN [BOOK 302 PAGE 69](#) OF DEEDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID SOUTHERLY LINE NORTH 48° 45' WEST 36.61 FEET; THENCE NORTH 56° 32' 30" WEST 88.8 FEET, MORE OR LESS, TO THE NORTHEASTERLY CORNER OF THE LAND DESCRIBED IN THE DEED TO SOUTHERN CALIFORNIA EDISON COMPANY RECORDED IN [BOOK 3485 PAGE 268](#) OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAST MENTIONED LAND, SOUTH 61° 05' 51" WEST 1,013.12 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM; THAT PORTION THEREOF LYING WITHIN THE LAND DESCRIBED AND DESIGNATED AS PARCEL 2 IN THE DEED TO R. C. A. COMMUNICATIONS, INC., A DELAWARE CORPORATION, RECORDED MARCH 30, 1935 IN [BOOK 741 PAGE 315](#) OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM; THAT PORTION THEREOF LYING WITHIN THE LAND DESCRIBED IN THE DEED TO GENEVA DEEBLE, AND OTHERS, RECORDED DECEMBER 28, 1935 IN [BOOK 792 PAGE 470](#) OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM; THAT PORTION THEREOF LYING WITHIN THE LAND DESCRIBED AS "PARCEL NO. 100396" IN THE FINAL ORDER OF CONDEMNATION FILED AUGUST 23, 1996 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, UNDER ACTION NO. 681 121, ENTITLED THE PEOPLE OF THE STATE OF CALIFORNIA, PLAINTIFF VS. SOUTHERN CALIFORNIA EDISON COMPANY, DEFENDANT, A CERTIFIED COPY OF WHICH WAS RECORDED SEPTEMBER 4, 1996 AS INSTRUMENT NO. [96- 0451028](#) OF OFFICIAL RECORDS.

EXCEPTING THEREFROM; "ALL OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES IN, ON, UNDER OR WHICH MAY BE PRODUCED FROM SAID LAND, TOGETHER WITH THE RIGHT TO USE THAT PORTION ONLY OF SAID LAND WHICH UNDERLIES A PLANE PARALLEL TO AND FIVE HUNDRED (500) FEET BELOW THE PRESENT SURFACE OF SAID LAND, FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND/OR EXTRACTING SAID OIL, GAS, PETROLEUM AND OTHER MINERAL OR HYDROCARBON SUBSTANCES FROM SAID LAND BY MEANS OF WELLS DRILLED INTO THE SUBSURFACE OF SAID LAND FROM DRILL SITES LOCATED ON OTHER LAND, WITHOUT HOWEVER, THE RIGHT TO ENTER UPON THE SURFACE OF SAID LAND OR TO USE SAID LAND OR ANY PORTION THEREOF TO SAID DEPTH OF FIVE HUNDRED (500) FEET FOR ANY PURPOSE WHATSOEVER" AS RESERVED IN THE FINAL ORDER OF CONDEMNATION FILED AUGUST 16, 1963 IN ACTION NO. 100040 IN THE SUPERIOR COURT, STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED SOUTHERN CALIFORNIA EDISON COMPANY, PLAINTIFF VS. DAISY THORPE HOOK, ET AL., DEFENDANTS, A CERTIFIED COPY OF WHICH WAS RECORDED AUGUST 16, 1963 IN [BOOK 6679 PAGE 964](#) OF OFFICIAL RECORDS.

APN: 114-150-36 and 114-481-32

EXHIBIT “B”

(Map of the Property)

DRAFT

Property Location

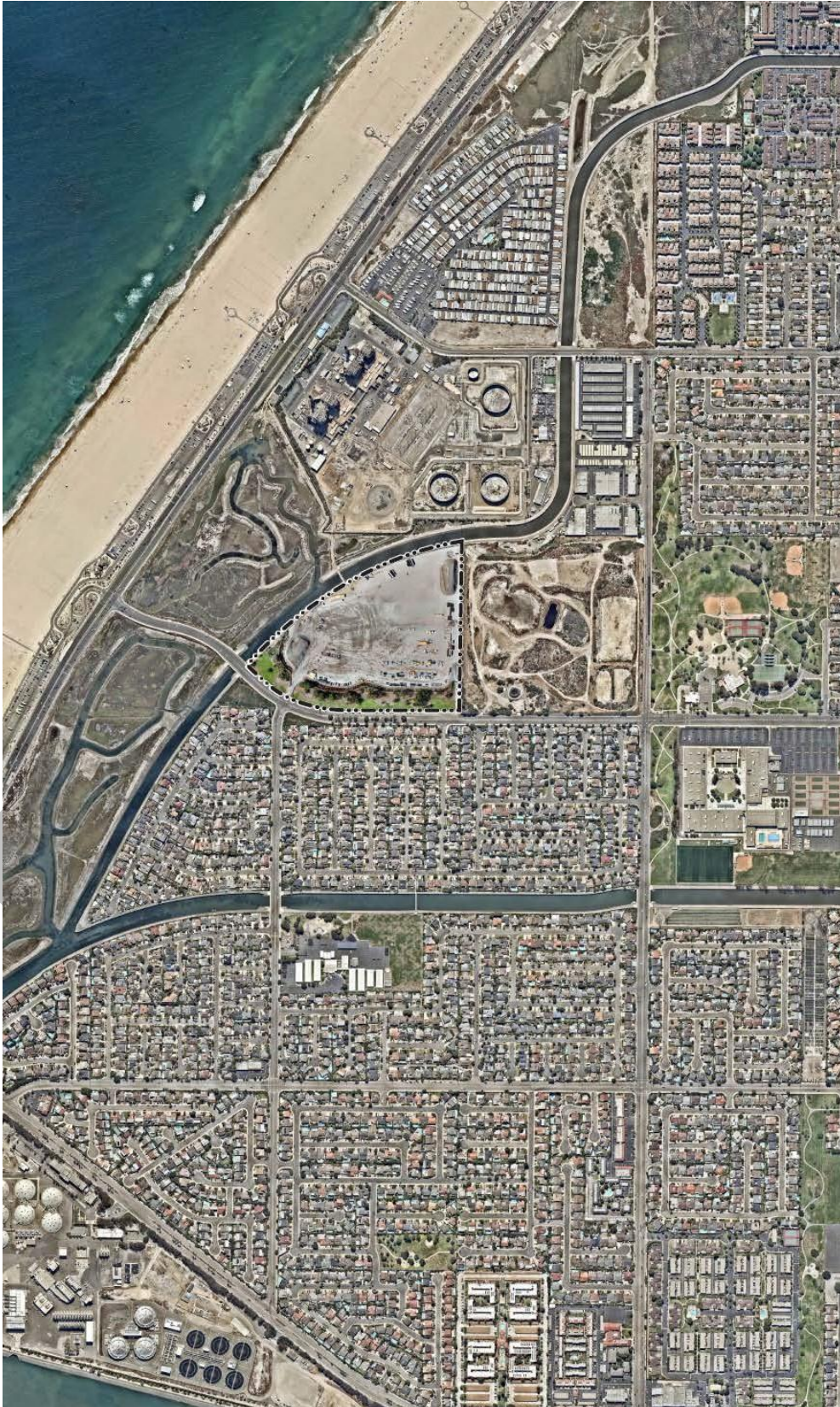


EXHIBIT "C"

(Development Plan – Vested Entitlements)

[Insert as applicable]

General Plan Amendment No. [_____]

Specific Plan No. [_____]

Zoning Map Amendment No. [_____]

Zoning Text Amendment No. [_____]

Local Coastal Program Amendment No. [_____]

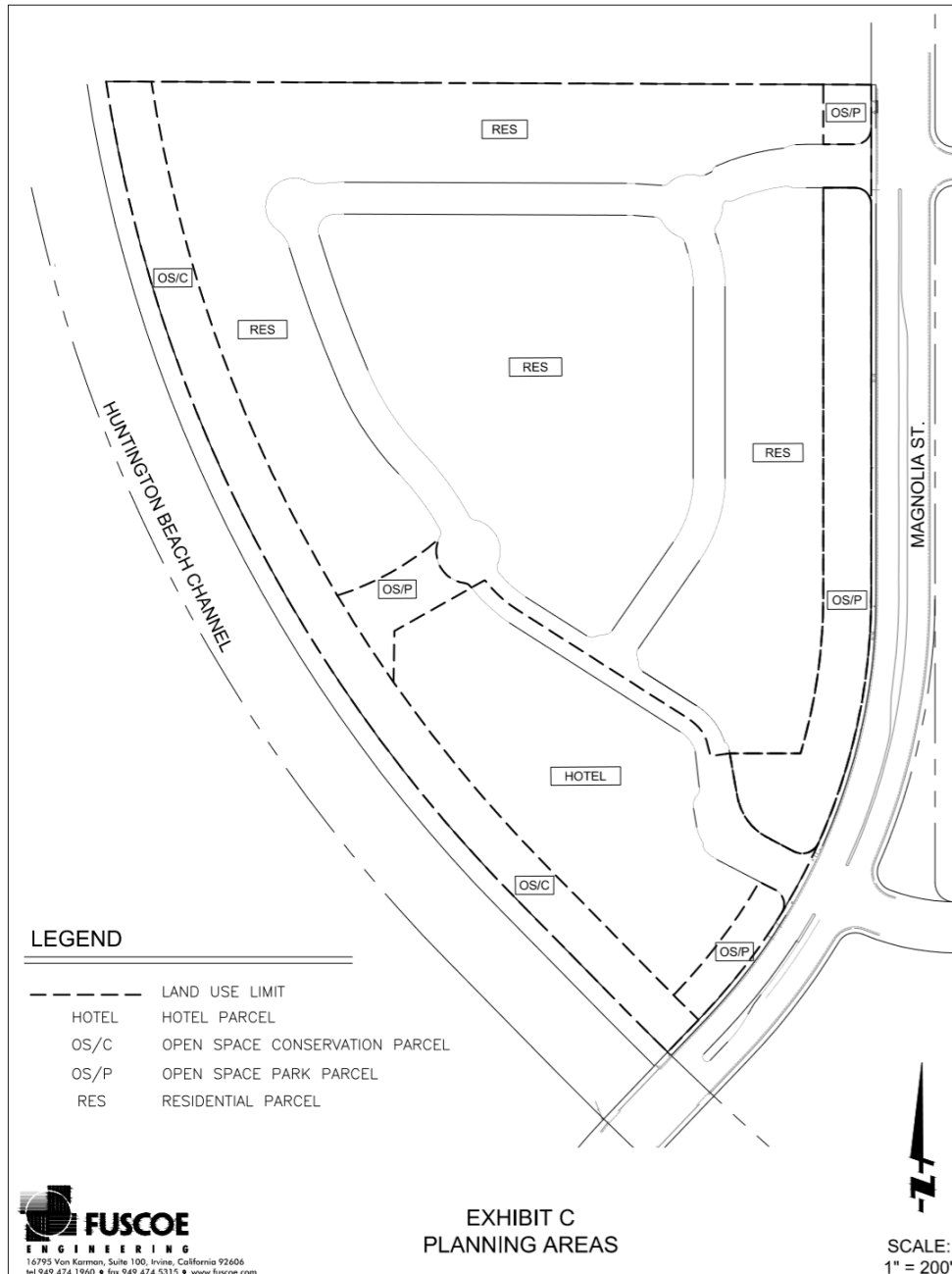


EXHIBIT “D”

(Hotel Quality Standards)

The Hotel shall have a minimum AAA rating of 3-Diamond, or its equivalent. Generally, the hotel’s quality, standards, design, decor, and amenities shall be comparable to the Shorebreak Hotel located at the Strand in downtown Huntington Beach. The amenities and quality standards listed below shall be incorporated into the Lodge’s design.

Design

- A unique and distinctive contemporary and rustic design that reflects the beach and surf culture of the City and of the adjacent Huntington Beach Wetlands.
- The beach/wetlands design theme shall be prominently incorporated into the landscaping, building structure & design, lobby and common areas, decor, and guest rooms through the use of distinctive design elements, different decorative materials, and architectural features.

Entrance

- A pronounced covered drive-through entrance with minimum capacity of at least two car depth and width and valet parking.
- At least three additional features e.g., bench seating, double entry doors, automatic entry doors, revolving doors, entry vestibule, enhanced façade or driving surface.
- An enhanced front desk area with multiple guest service capability that is part of a spacious common area.

Amenities

- Full-service restaurant, lounge and bar, grab and go option, room service, and a gift shop.
- Resort style pool and spa area with an expanded outdoor seating areas and additional recreational facilities (*i.e.*, ping pong, bocce ball, paddle ball).
- Wetlands interpretive programs offered to Lodge guests and the public conducted by environmentalists knowledgeable about the Huntington Beach Wetlands ecosystem.
- At least 8,000 square feet of comprehensive, flexible event and meeting space with a business center.

Guest Rooms

- Range from at least 310 to 415 square feet in size with suites up to 500 square feet.
- Forty of the guest rooms will be affordable as defined in the Magnolia Tank Farm Specific Plan and will offer equivalent finishes as the market rate rooms.
- Feature significant enhancements including, but not limited to, additional seating area, large workspace, quality bedding, refrigerator, technology enhancements, and significant decorative enhancements to the bedroom and bathroom.

EXHIBIT "E" MAGNOLIA/HAMILTON IMPROVEMENTS (to be revised to include
undergrounding of 12 kv distribution line along Magnolia adjacent to ASCON)

