

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council
FROM: David A. Bobardt, Community Development Director
DATE: December 6, 2012 (CC Meeting of 12/19/2012)



SUBJECT: Consider Ordinance Terminating Development Agreement No. 1998-04 Adopted by Ordinance No. 250 and Consider Adopting Development Agreement No. 2012-01 by and between the City of Moorpark and A-B Properties for Approximately 34.53 Acres, North of the Union Pacific Railroad Right-of-Way, West of Gabbert Road

BACKGROUND

On April 18, 2012, the City Council directed the Planning Commission to study, hold a public hearing, and provide a recommendation on an Amendment to a Development Agreement between the City and A-B Properties for Approximately 34.53 Acres, North of the Union Pacific Railroad Right-of-Way, West of Gabbert Road. The intent of the Amendment was to address the impact on the original Development Agreement of a Settlement Agreement between A-B Properties, SCE, and the Hitch Ranch owners related to access rights to the property from Gabbert Road. On July 24, 2012, the Planning Commission considered a draft Ordinance amending the Development Agreement and recommended its approval.

The City Council opened a public hearing on this item on October 3, 2012 and continued the matter with the public hearing open to November 7, 2012. On November 7, 2012, the City Council continued this matter further to December 5, 2012 with the public hearing still open. Since the Planning Commission meeting, the proposed ordinance amending the Development Agreement has been re-formatted into a complete new Development Agreement for ease of future use. Approval of the attached ordinance would terminate the prior Development Agreement with the adoption of the new agreement.

DISCUSSION

On December 16, 1998, the Moorpark City Council adopted Resolution No. 98-1556, Ordinance No. 249, and Ordinance No. 250 amending the General Plan land use designation from Agricultural (AG-1) to Medium Industrial (I-2), amending the Zoning

Map from Agricultural Exclusive (AE) to Limited Industrial (M-2), and approving two development agreements, one with A-B Properties on approximately 34.53 acres, and one with Southern California Edison (SCE) on approximately 8.79 acres of land, both west of Gabbert Road and north of the Union Pacific railroad right-of-way. A copy of the Development Agreement with A-B Properties is attached as Attachment No. 1. A Tentative Tract Map 5147 was approved by the City Council for a 17-industrial lot subdivision on the A-B Properties land on March 15, 2000. All Los Angeles Avenue Area of Contribution fees were paid on September 28, 2006, and a Final Map was recorded on August 20, 2007 for this subdivision. A copy of the Final Map, including a location map, is attached as Attachment No. 2.

A dispute arose between SCE and A-B Properties when the developer of the A-B Properties land wanted to grade an access road from Gabbert Road to Tract 5147 on a 2001 easement they obtained on the adjacent Hitch Ranch property. That easement was recorded on top of an exclusive easement already held by SCE since 1963. In October, 2007, A-B Properties sued SCE to enforce their access easement. A Settlement Agreement between A-B Properties, SCE, and the Hitch Ranch owners resolved this lawsuit. The terms of the Settlement Agreement, in summary, allow for A-B Properties to construct and use an access road on the SCE property (conveyed in fee to SCE as part of the settlement) for up to 40 years. Additional terms and restrictions call for this access road to be no more than 32 feet wide, not interfering with any SCE electrical transmission, have a slope drain no more than 3 feet wide, and provide truck driveway access to SCE's 3 high voltage power poles. The Settlement Agreement also calls for a new access road to replace this access road, restricting the original access road to be for emergency access only once a new access road is built. Finally, after 8 years, A-B Properties would be responsible for a \$125,000 per year use fee on the access road if it is still needed for primary access. A copy of the Settlement Agreement, with Exhibits 5 (Road, Slope, and Drain Easement) Exhibit 6 (Utility Easement), and Exhibit 7 (Promissory Note) is attached as Attachment No. 3. A separate Settlement Agreement between the City and SCE led to action by the City Council in July 2011 to terminate the SCE Development Agreement and rezone the 8.79-acre SCE property back to Agricultural Exclusive (A-E) zoning in place prior to approval of the two Development Agreements.

The draft new Development Agreement is provided in legislative format (Attachment No. 4, Exhibit A) showing text changes to the Development Agreement adopted by Ordinance No. 250. If a new ordinance is introduced, the legislative format would be removed prior to second reading. Changes include the following:

- Updated Park and Air Quality Fee Sections 6.3 and 6.7 to reflect current Development Agreement language and to be easier to administer on a project that will be constructed one lot at a time.

- Updated dedication requirements in Section 6.10 for the future North Hills Parkway (formerly SR-118 bypass), reducing the right-of-way width of east-west section from 120 feet to 100 feet from this property.
- Updated access improvement requirements for Gabbert Road and North Hills Parkway in Sections 6.19, 6.21, and 6.22 to be consistent with the Settlement Agreement and the intent of the terms of the original agreement.
- Updated section on participation in an assessment district for the construction of North Hills Parkway.
- Refund of funds collected to process lot line adjustments.
- Allowance for crushing material on site to be used as recycled base for interior private streets.
- Provides for reimbursement for improvements that benefit other projects
- Provision of new term of the Development Agreement to be 20 years from the new operative date, or until the last fees of the final building permit have been paid, whichever comes last.

Since the Planning Commission considered this Ordinance on July 24, 2012, staff has made additional changes to the recommended Amendment to the Development Agreement as follows:

- Draft amendments have been reformatted into a new development agreement. Non-substantive reference and minor updated language changes have been made as part of this reformatting.
- Development Fee in Section 6.4, originally recommended to the Planning Commission to be updated to be consistent with the fee used in recent agreements and to take effect upon the date in which the original agreement would have expired, now would take effect after completion of 40% of the development.
- Citywide Traffic Fee in Section 6.5, originally recommended to the Planning Commission to be updated to be consistent with the fee used in recent agreements and to take effect upon the date in which the original agreement would have expired, is no longer recommended to be updated, with the exception of the name of the price index, which has been updated to use the current index name.
- Recommendations to Section 6.19 have been amended to focus on improvements to North Hills Parkway along the project frontage and Gabbert Road from Poindexter Road to a point 125 feet north of the railroad right-of-way. Improvements on North Hills Parkway between Gabbert Road and the project site and improvements on Gabbert Road between the point 125 feet north of the railroad right-of-way and North Hills Parkway, if made by the Developer, would be limited to the provision of a 32-foot wide roadway.
- Recommendations for Section 6.20 have been amended to now require an Implementation Plan since this will be a phased development project.

- Recommendations to Section 6.22 have been amended to change the timing of the creation of the funding mechanism and description of the improvements to be consistent with Section 6.19.
- Section 7.6 has been amended to allow for stockpiling and up to four crushing operations to recognize the development as a phased development. The stockpiling would be for recycled road base material and is estimated to require approximately one acre of the site for a five-foot high stockpile.
- Section 7.8 has been added to allow the developer to proceed with the construction of the North Hills Parkway railroad undercrossing in the event the City does not initiate this project prior to the issuance of a building permit for any portion of the property that would exceed 70% of the acreage of the total of all developable lots.
- Sections 11.3, 11.4, 28, and 31, have been amended to include updated language on violation notices, remedies the Implementation Plan requirement, and attorneys' fees consistent with recent development agreements.
- The term of the agreement in Section 19 has been amended to cover the entire construction period.

Procedures for adopting, amending, or terminating a Development Agreement are established in Section 15.40.120 of the Moorpark Municipal Code, which require adoption of an ordinance by City Council after public hearings by the Planning Commission and City Council. In this case, the prior Development Agreement is proposed to be terminated by mutual consent and a new Development Agreement is proposed to be adopted. A new Tentative Tract Map has been filed by the developer to be considered at a future meeting of the Planning Commission and City Council to be consistent with the terms of the draft Development Agreement and the Settlement Agreement. It is anticipated that this item will be scheduled for Planning Commission and City Council consideration in early 2013.

STAFF RECOMMENDATION

1. Continue to accept public testimony and close the public hearing.
2. Introduce Ordinance No. ____, amending a Development Agreement with A-B Properties, for first reading, waive full reading, and schedule second reading and adoption for January 16, 2013.

ATTACHMENTS:

1. Signed Development Agreement
2. Final Map for Tract 5147
3. Settlement Agreement between A-B Properties, SCE, and Hitch Ranch Owners with Exhibits 5, 6, and 7
4. Draft Ordinance No. ____

Recording Requested By
And When Recorded Return to:

CITY CLERK
CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code
§ 6103

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
A-B PROPERTIES

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into this 16th day of December, 1998, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and A-B Properties a California General Partnership (referred to hereinafter as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreement's contained in this Agreement, City and Developer agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
 - 1.1. Pursuant to Government Code section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within the City for the development of such property in order to establish certainty in the development process.
 - 1.2. [INTENTIONALLY LEFT BLANK]
 - 1.3. Developer is owner in fee simple of certain real property in the City of Moorpark, as more specifically described by the legal description set forth in Exhibit A, which exhibit is attached hereto and incorporated herein by this reference (the "Property").
 - 1.4. City has approved, or is in the process of approving, General Plan Amendment No. 97-2 ("GP") and Zone Change No. 97-6 ("ZC"), (The GP and ZC, are collectively referred to as the "Project Approvals
 - 1.5. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.
 - 1.6. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and exactions imposed upon

the development of the Property pursuant to the Project Approvals, this Agreement and any Subsequent Approvals (as defined in Section 5.3 of this Agreement) and to provide the public benefits and improvements specified in this Agreement.

- 1.7. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City as amended by General Plan Amendment No.97-6.
 - 1.8. On November 9, 1998, the Planning Commission of City commenced a duly noticed public hearing on this Agreement and at the conclusion of the hearing recommended approval of the Agreement.
 - 1.9. On November 18, 1998, the City Council of City ("City Council") commenced a duly noticed public hearing on this Agreement which was continued to December 2, 1998, and at the conclusion of the hearing approved the Agreement by Ordinance No. 250 ("the Enabling Ordinance").
2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may be referred to hereinafter as "the site" or "the Project area".
 3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project area that has been fully developed in accordance with the Project Approvals and this Agreement.
 - 3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property in which the Developer has a legal interest is, and shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.
 - 3.2. Release Upon Transfer. Upon the sale or transfer of the Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or

transferred subsequent to the effective date of the sale or transfer, provided that the Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivers to City a written assumption agreement, duly executed by the purchaser or transferee and notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.

4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.

4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by this Agreement.

4.2. Building Standards. All construction on the Property shall adhere to the Uniform Building Code, including the Fire Resistive Design Manual, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, the Uniform Code for Building Conservation and the Uniform Administrative Code in effect at the time the plan check or permit is approved and to any federal or state building requirements that are then in effect (collectively "the Building Codes").

5. Vesting of Development Rights.

5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment, except as provided for in this Agreement.

In furtherance of the Parties' intent, as set forth in this section, no future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed on the number of building units that can be built each year within the Project Area. However, nothing in this section shall be construed to limit City's right to insure that Developer timely provides all infrastructure required by the Project Approvals, Subsequent Approvals and this Agreement.

5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.

5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do not include building permits.

Subsequent Approvals shall be governed by the Project Approvals and by the applicable provisions of the Moorpark General Plan, the Moorpark Municipal Code and other City ordinances, resolutions, rules, regulations, policies, standards and requirements as most recently adopted or approved by the City Council or through the initiative or referendum process and in effect at the time that the application for the Subsequent Approval is deemed complete by City in City's sole

discretion(collectively "City Laws"), except City Laws that:

(a) change any permitted or conditional permitted uses of the Property from what is allowed by the Project Approvals or this Agreement;

(b) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;

(c) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations; or

(d) control commercial rents.

5.4. Term of Subsequent Approvals. The term of any tentative map for the Property, or any portion thereof, shall expire eight (8) years after its approval or conditional approval or upon the expiration or earlier termination of this Agreement, whichever occurs first, notwithstanding the fact that the final map may be filed in phases. Each Developer hereby waives any right that it may have under the Subdivision Map Act, Government Code section 66410 et seq., or any successor thereto, to apply for an extension of the time at which the tentative map expires pursuant to this subsection. No portion of the Property for which a final map or parcel map has been recorded shall be reverted to acreage at the initiative of City during the term of this Agreement.

The term of any Subsequent Approval, except a tentative map, shall be one year; provided that the term may be extended by the decision maker for two (2) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's Department of Community Development prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval.

It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, the Developer shall have the right, at its election, to apply for a new permit to replace a permit that has expired or is about to expire.

- 5.5. Modification Of Approvals. Throughout the term of this Agreement, the Developer shall have the right, at its election and without risk to any right that is vested in it pursuant to this section, to apply to City for minor modifications to Project Approvals and Subsequent Approvals. The approval or conditional approval of any such minor modification shall not require an amendment to this Agreement, provided that, in addition to any other findings that may be required in order to approve or conditionally approve the modification, a finding is made that the modification is consistent with this Agreement.
- 5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from the Developer if all infrastructure required to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. In no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.
- 5.7. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage, including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.
6. Developer Agreements.
- 6.1. The Developer shall comply with (i) this Agreement, (ii) the Project Approvals, and (iii) all Subsequent

Approvals for which it was the applicant or a successor in interest to the applicant.

- 6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.
- 6.3. As a condition of the issuance of each building permit, Developer shall pay City a fee to be used for park improvements within the City of Moorpark. The amount of the fee shall be twenty-five cents (\$.25) per square foot of gross floor area. The fee shall be adjusted annually (commencing one (1) year after the first building permit is issued within the Project Area by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which the Development Agreement is approved by the City Council (e.g., if approval occurs in June, then the month of February is used to calculate the increase). This fee may be expended by City in its sole and unfettered discretion.
- 6.4. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Development Fee shall be Twenty One Thousand Dollars (\$21,000.00) per acre of each lot on which the building is located. The fee shall be adjusted annually (commencing one (1) year after the first building permit is issued within the Project Area by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which the Development Agreement is approved by the City Council (e.g., if approval occurs in June, then the month of February is used to calculate the increase).

- 6.5. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Citywide Traffic Fee shall be Eighteen Thousand Dollars (\$18,000.00) per acre of each lot on which the use is located. Commencing on January 1, 2001, and annually thereafter, the Citywide Traffic Fee shall be increased to reflect the change in the State Highway Bid Price Index for the twelve (12) month period that is reported in the latest issue of the Engineering News Record that is available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the Citywide Traffic Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.
- 6.6. On the operative date of this Agreement, Developer shall pay all outstanding City processing and environmental processing costs related to the project and preparation of this Agreement.
- 6.7. Developer agrees to pay Air Quality Fees, that are to be calculated by City at its sole and unfettered discretion consistent with similar projects in the City as a condition on each Subsequent Approval within the boundaries of the Project Area. The Air Quality Fees may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.
- 6.8. Developer agrees to cast affirmative ballots for the formation of an assessment district and levying of assessments, for the maintenance of parkway and median landscaping, street lighting and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action.

- 6.9. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Police Facilities Fees, Fire Facilities Fees, Library Facilities Fees, entitlement processing fees, and plan check and permit fees for buildings, and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole and unfettered discretion so long as said fee is imposed on similarly situated properties.
- 6.10. Prior to City Council action on any Subsequent Approval, or grading of the Property, whichever occurs first, Developer agrees to provide City an irrevocable offer of dedication to dedicate right-of-way at no cost to City for the future 118 bypass along the entire length of the north side of the property, along the east side of the Gabbert Channel, and a connector with a radius as determined by the City at its sole and unfettered discretion. The right-of-way shall be one hundred and twenty feet (120') wide along the north side of the property (east-west section) and one hundred feet (100') along the east side of the channel (north-south section) plus any necessary slope easements to accommodate a level right-of-way of the required width and slope easements to accommodate a grade separation crossing of the railroad tracks along the southern boundary. Developer further agrees to dedicate access rights from the property to the City for the 118 bypass except for no more than one (1) approved intersection with public streets. City shall have final approval of the location, legal description and use of the property offered for dedication. City may transfer its interest in the property after acceptance of its dedication to any other public entity.
- 6.11. Developer agrees that as part of any grading of the property the right-of-way for the future 118 bypass shall be graded per City direction.
- 6.12. Developer agrees to comply with all the provisions of the Hillside Management Ordinance (Chapter 17.38 of the Municipal Code) of the City.

- 6.13. Developer agrees to pay a pro-rata share, as determined by the City at its sole and unfettered discretion, for the funding and construction of the improvements identified in the Gabbert and Walnut Canyon Channels Deficiency Study. Developer also acknowledges that interim improvements may also be necessary to facilitate any new use or development of the property and Developer agrees that they shall be responsible for any such interim improvements as their sole responsibility, without credit of these costs, except as may be provided in the implementation plan for the Gabbert and Walnut Canyon Channels Deficiency Study.
- 6.14. Prior to any subdivision or new use of the property, Developer agrees to acquire and construct, at their sole cost, dedicated public access to the properties, as approved by the City Council. Secondary access to comply with City and public safety requirements shall also be provided at their sole cost.
- 6.15. Developer agrees to not oppose creation of a redevelopment Project Area (as defined by applicable State law) encompassing any part of the Property provided that the Project Area is consistent with the rights of Developer under this Agreement.
- 6.16. Developer agrees not to request any concession, waiver, modification or reduction of any fee, regulation, requirement, policy or standard condition for any Subsequent Approval and further agrees to pay all fees imposed by City for future buildings, so long as said fees are also imposed in a similar manner on similar projects.
- 6.17. Developer shall grant, in a form acceptable to City, a conservation easement to retain that portion of the Property west of and including the Gabbert Canyon drain in a predominantly open space condition consistent with Civil Code Section 815 et seq., except for the following purposes: temporary construction (including temporary pumping needed for dewatering as part of any approved grading operations for the Property), landscape maintenance of manufactured slope areas, vegetation clearance within two hundred (200) feet of any structure for fire hazard reduction, revegetation and biological habitat enhancement required by City consistent with any Mitigation Monitoring Program, drainage conveyance, emergency access and extension of State Route 118. No excavation, drilling, extraction, pumping (excluding such pumping as may be needed for dewatering as part of approved grading operations), mining, or similar activity shall be allowed in any

portion of the Property zoned Open Space. The limitations and exclusions described in this subsection shall be included in the conservation easement. The foregoing does not restrict the extraction of subsurface mineral resources by drilling from off the Property so long as the drilling apparatus and equipment are screened from view from all points within the City. Further, if the drilling site is not within the City, Developer agrees that before proceeding with any drilling it shall secure a use permit from the City which may include conditions ordinarily placed upon drilling operations. Further, noise impacts from the drilling shall meet the same noise standards as placed on Industrial Planned Development Permits and there shall be no visible evidence or impacts on the ground surface of the Property:

The conservation easement shall be recorded concurrently with the recordation of the first final subdivision map for the Property.

6.18. Prior to the effective date of the Ordinance approving Zone Change No. 97-6, Developer shall execute in favor of City and record in the Office of the County Recorder of the County of Ventura a Covenant Running with the Land (Covenant) as set forth in Exhibit "B" attached hereto and incorporated herein to limit use of the Property.

6.19. Developer agrees that as a condition of the City's approval of the first Subsequent Approval for the Property, Developer shall submit improvement plans to improve Gabbert Road from the Union Pacific Gabbert Road rail crossing to a point approximately one hundred twenty-five (125) feet north of the rail crossing to four travel lanes, two eight (8) foot bike lanes and two ten (10) foot parkways inclusive of sidewalks (Gabbert Road improvements). The plans for the Gabbert Road improvements must be approved by the City and a surety in an amount and form determined by the City in its sole and unfettered discretion to guarantee this improvement shall be provided prior to approval of the first final Map for the Property occurring after the operative date of this Agreement. The Gabbert Road improvements shall be constructed prior to issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement. In the event the Improvements required pursuant to Section 6.22 of this Agreement

are constructed, accepted by the City and open to the public prior to the issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement, then the improvements required by this Section 6.19 shall not be required to be constructed by the Developer.

- 6.20. Prior to City action on the first Subsequent Approval for the Property, Developer shall provide a traffic study to determine if signalization of the intersection of the Gabbert Road/Poindexter Avenue is needed. Developer agrees that City at its sole and unfettered discretion may condition any Subsequent Approval of the Property to construct the traffic signal or pay a fair share payment at the above intersection. Construction of the signal, if required, shall occur at the same time as the Gabbert Road improvements in Section 6.19, above, or such later date as determined by the City Council at its sole and unfettered discretion.
- 6.21. Developer shall construct a thirty-two (32) foot wide paved access road (paved access road) to the Property to serve as the primary access until such time as the Improvements referenced in Section 6.22 are constructed. At such time as the Improvements in Section 6.22 are opened to the public, the paved access road shall become an emergency access only for the Property. The paved access road shall be located generally following the existing unpaved access road to the Property with the final location of said paved access road to be determined by the City at its sole and unfettered discretion. The paved access road shall be constructed to City Standards for an industrial street but with no requirement for curb, gutter, or sidewalk except curbs that may be determined necessary to provide for positive drainage.
- 6.22. Prior to issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all lots created by the recordation of the first final Map for the Property occurring after the operative date of this Agreement, Developer shall cause to be constructed a street extending north from Los Angeles Avenue (SR 118) including an underground crossing of the Union Pacific railroad tracks to a point approximately six hundred (600) feet north of

said railroad tracks (Improvements) within the area of the offer of dedication required of Developer in Section 6.10 of this Agreement. The preliminary improvement plans must be approved by the City and a surety in an amount and form determined by the City in its sole and unfettered discretion to guarantee the Improvements shall be provided prior to approval of the first final map for the Property occurring after the operative date of this Agreement. Prior to issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement, City must approve in its sole and unfettered discretion the final design plans and specifications for the Improvements and a financing plan that demonstrates the ability to fund the Improvements. This financing plan may include at City's sole and unfettered discretion, use of Citywide Traffic monies.

7. City Agreements.

- 7.1. City shall use its best efforts to process plan checking and related processing for the project in an expedited manner.
- 7.2. City shall exempt this project from payment of the Gabbert Road/Casey Road Area of Construction (AOC) fees.
- 7.3. City agrees that upon receipt of a landowners' petition by developer and Developer's payment of a fee as determined necessary by City in its sole and unfettered discretion, City shall commence proceedings to form a Mello-Roos Community Facilities District ("District") and to incur bonded indebtedness to finance all or portions of the on site and off site public facilities, infrastructure and services that are required by this Agreement and Subsequent Approvals and that may be provided pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); provided, however, the City Council, in its sole and unfettered discretion, may abandon establishment of the District upon the conclusion of the public hearing required by California Government Code Section 53321 and/or deem it unnecessary to incur bonded indebtedness at the conclusion of the hearing required by California Government Code Section 53345. The formation, type of assessment district (if City determines another type of assessment district other than District is more

appropriate) and method and spread of assessment shall be at the City's sole and unfettered discretion.

- 7.4. If requested in writing by Developer and limited to City's legal authority, City shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer which are outside Developer's legal boundaries. The process shall generally follow Government Code Section 66457 et. seq. and shall include the obligation of Developer to enter into an agreement with City, guarantee by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs and City staff costs.
8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City in its sole and unfettered discretion.
9. Demonstration of Good Faith Compliance. In order to ascertain compliance by the Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of the Developer hereunder or render this Agreement invalid or void.
10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, and Developer's obligations and restrictions on development as provided for in Sections 6.19, 6.20, 6.21 and 6.22 of this Agreement shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of

materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.

11. Default Provisions.

11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:

(a) practices, or attempts to practice, any fraud or deceit upon City; or

(b) willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Developer may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Developer; or

(c) fails to make any payments required under this Agreement; or

(d) materially breaches any of the other provisions of the Agreement and the same is not cured within the time set forth in a written notice of violation from City to Developer, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if Developer cannot reasonably cure the breach within the time set forth in the notice, Developer fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.2. Default by City. City shall be deemed in breach of this Agreement if it:

(a) materially breaches any of the provisions of the Agreement and the same is not cure within the time set forth in a written notice of violation from Developer to City, which period shall not be less than ten (10) days from the date the notice is deemed received, provided if City cannot reasonably cure the breach

within the time set forth in the notice, City fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this section of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. The notice shall be deemed given on the date that it is personally delivered or on the third day following the day after it is deposited in the United States mail, in accordance with Section 20 hereof.

11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection.

The remedies for breach of the Agreement by City shall be injunctive relief and/or specific performance.

The remedies for breach of the Agreement by the Developer shall be injunctive relief and/or specific performance. In addition, and notwithstanding any other language of this Agreement, if the breach is of Subsection 6.4 or 6.5 or 6.9 or 6.10 or 6.19, or 6.20, or 6.21, or 6.22 of this Agreement, City shall have the right to withhold the issuance of building permits from the date that the notice of violation was given pursuant to Subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

Nothing in this subsection shall be deemed to preclude City from prosecuting a criminal action against the Developer if it violates any City ordinance or state statute.

12. Mortgage Protection. At the same time that City gives notice to the Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of its name and mailing address to City

and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

Each Financier that has given prior notice to City pursuant to this section shall have the right, at its option and insofar as the rights of City are concerned, to cure any such breach within fifteen (15) days after the receipt of the notice from City. If such breach cannot be cured within such time period, the Financier shall have such additional period as may be reasonably required to cure the same, provided that the Financier gives notice to City of its intention to cure and commences the cure within fifteen (15) days after receipt of the notice from City and thereafter diligently prosecutes the same to completion. City shall not commence legal action against Developer by reason of Developer's breach without allowing the Financier to cure the same as specified herein.

Notwithstanding any cure by Financier, this Agreement shall be binding and effective against the Financier and every owner of the Property, or part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

13. Estoppel Certificate. At any time and from time to time, any Developer may deliver written notice to City and City may deliver written notice to the Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.
14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within ten (10) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed. The Developer shall not seek judicial review of

any staff decision without first having exhausted its remedies pursuant to this section.

15. Amendment or Termination by Mutual Consent. In accordance with the provisions of Ordinance No. 59 of City or any successor thereof then in effect, this Agreement may be amended or terminated, in whole or in part by mutual consent of City and the Developer.

15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement.

16. Indemnification. The Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, the Developer's performance pursuant to this Agreement.

Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or any provision thereof or the Project Approvals or any Subsequent Approvals.

17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.
19. Term. This Agreement shall remain in full force and effect for a term of twenty (20) years commencing on its operative date unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

Upon expiration of the term or earlier termination of this Agreement, the Parties shall execute any document reasonably requested by any Party to remove this Agreement from the public records as to the Property, and every portion thereof, to the extent permitted by applicable laws.

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed

received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "C" attached hereto and incorporated herein.

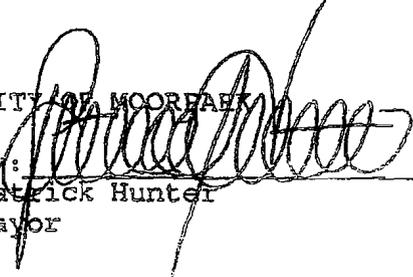
Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.
22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.
23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of the other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.
26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Ordinance No. 59 of City or any successor thereof then in effect.

27. Cooperation Between City and Developers. City and each Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.
28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail.
29. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.
30. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.
31. Attorneys' fees under this section shall include attorneys' fees on any appeal and any post-judgment proceedings to enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.
32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

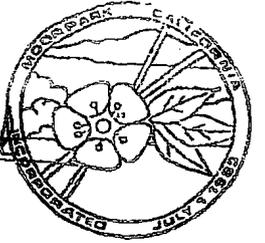
IN WITNESS WHEREOF, A-B Properties and City of Moorpark have each executed this Development Agreement on the date first above written.

CITY OF MOORPARK

By: 
Patrick Hunter
Mayor

ATTEST


Deborah S. Traffenstedt
City Clerk



A-B Properties

By: 
Stephen R. Andersen
General Partner

By: 
Paul D. Burns
General Partner

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 9907

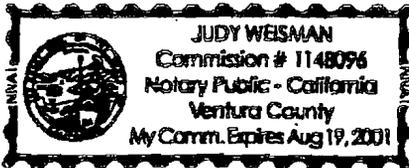
State of CALIFORNIA

County of VENTURA

On 12-15-98 before me, JUDY WEISMAN, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared PAUL D. BURNS
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Judy Weisman
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED
- GENERAL

- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

A.B. PROPERTIES

DESCRIPTION OF ATTACHED DOCUMENT

DEVELOPMENT AGREEMENT

TITLE OR TYPE OF DOCUMENT

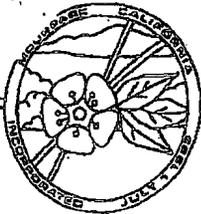
22

NUMBER OF PAGES

DATE OF DOCUMENT

STEPHEN RANDERSON

SIGNER(S) OTHER THAN NAMED ABOVE



MOORPARK

799 Moorpark Avenue Moorpark, California 93021 (805) 529-6864

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

On this 16th day of December in the year 1998, before me Deborah S. Traffenstedt, City Clerk of the City of Moorpark, California, personally appeared Patrick Hunter, personally known to me to be the person who executed this instrument as the Mayor of the City of Moorpark and acknowledged to me that the City executed it.

Witness my hand and Official Seal

Deborah S. Traffenstedt
Deborah S. Traffenstedt
City Clerk



PATRICK HUNTER
Mayor

CHRISTOPHER EVANS
Mayor Pro Tem

CLINT D. HARPER
Councilmember

DEBBIE RODGERS
Councilmember

JOHN E. WOZNIAK
Councilmember

EXHIBIT A
LEGAL DESCRIPTION

Part of Subdivision "L" as the same is designated and delineated upon that certain map entitled, "Map of the lands of Rancho Simi, in the Ventura and Los Angeles Counties, California", and recorded in the office of the County Recorder of Ventura County, in book 3 of Miscellaneous Records (Maps) at page 7 and particularly described as:

West one half of the Southeast one quarter of Section six (6) in Township two (2) North of Ranch nineteen (19) West, as the same is designated and delineated upon the above described map.

EXCEPTING the interest in that certain parcel of land, containing 3.118 acres, as conveyed by H.C. Estes et al., to Southern Pacific Railroad Company, by deed dated October 6, 1899 and recorded in the office of the County Recorder of said County of Ventura County, in book 62 of deeds at page 6 et seq.

ALSO EXCEPT the interest and/or land conveyed to the Southern California Edison Company in deed recorded March 22, 1968 in book 3280 page 326 of Official Records.

ALSO EXCEPTING THEREFROM that portion thereof as conveyed to Bugle Boy Industries in a deed recorded December 5, 1990 as Document No. 90-179525 of Official Records.

END OF LEGAL DESCRIPTION

(Also identified as Assessor's Parcel No. 500-0-340-225)A-1

EXHIBIT B
COVENANT RUNNING WITH THE LAND

THIS COVENANT is made this _____ day of _____, by and between the A-B Properties and Southern California Edison Company (Covenantors") and the City of Moorpark ("Covenantee").

WHEREAS, Covenantor is the owner of certain real property (500.0.340.22 and 23) in the City of Moorpark, County of Ventura, more particularly described in Exhibit "A" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee is the owner of certain real property at 799 Moorpark Avenue, in the City of Moorpark, County of Ventura, more particularly described in Exhibit "B" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee is willing to rezone the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2) but for the concern that some of the uses that are presently, or may subsequently be, allowed by right or permit in the CPD zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location;

WHEREAS, Covenantor seeks to have the Covenantors Property rezoned from Agricultural Exclusive (AE) to Limited Industrial (M-2) but acknowledges that some of the uses that are presently, or may subsequently be, allowed by right or permit in the M-2 zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location; and

NOW, THEREFORE, in consideration of the mutual promises of the parties to this Covenant, each to the other as Covenantor and Covenantee, and expressly for the benefit of, and to bind, their successors in interest, the parties agree as follows:

1. Covenantor agrees to adopt an ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2);
2. Covenantor agrees that, commencing on the effective date of the ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2). Subject to the following restrictions in addition, and superseding the M-2 regulations.
 - A. Primary uses, except agricultural crops, shall be conducted within completely enclosed buildings and metal faced buildings shall not be allowed as principal buildings. Outside storage and operations shall not be allowed as primary uses, only accessory outside storage shall be allowed, subject to the same limitations as M-1 (confined to the area to the rear of the principal building or the rear two-thirds of the property, whichever is more restrictive, and screened from view from any property line by appropriate walls, fencing, earth mounds, or landscaping).
 - B. The following uses shall not be allowed as a primary use:
 - Manufacturing - Batteries
 - Manufacturing - Metal industries, primary; Rolling, drawing, and extruding
 - Manufacturing - Rubber and plastics products
 - Manufacturing - Tire retreading and recapping
 - Manufacturing - Cement, concrete and plaster products
 - Mini-storage
 - Recreational vehicle storage
 - Signs - Freestanding off-site advertising signs
 - Transportation services - Truck storage, overnight
3. Covenantor and Covenantor agree that, commencing on the effective date of the ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2), all uses specified in Paragraph 2.B. hereof that are presently allowed or that at any time in the future may be allowed in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from the Covenantors Property to the Covenantor Property for the benefit of the Covenantor Property.
4. Covenantors and Covenantor agree that from time to time Covenantor may substitute any other property owned by Covenantor on the date of the substitution for the Covenantor Property ("the Substitute Covenantor Property") without the consent of Covenantor by the recordation of an amendment to

this Covenant. The amendment shall describe the Substitute Covenantee Property and shall provide that, commencing on the date of recordation of the amendment, all uses not specified in Paragraph 2 hereof that are presently allowed, or that at any time in the future may be allowed, in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from that Covenantor Property to the Substitute Covenantee Property for the benefit of the Substitute Covenantee Property.

5. All of the covenants, restrictions, and limitations set forth herein shall run with the Covenantee Property and the Covenantor Property and shall benefit and bind all persons, whether natural or legal, having or acquiring any right, title, or interest in any portion of the Covenantee Property or the Covenantor Property. Each grantee of a conveyance or purchaser under a contract of sale or similar instrument that covers any right, title, or interest in or to any portion of the Covenantee Property or the Covenantor Property, by accepting a deed or a contract of sale or similar instrument, accepts the conveyance or sale subject to, and agrees to be bound and benefited by, all of the covenants, restrictions and limitations set forth herein.
6. Nothing in this Covenant shall be construed so as to limit the right of Covenantee to rezone, or the right of Covenantor to petition Covenantee to rezone, the Covenantor Property in the future.
7. This Covenant shall remain in full force and effect until such time as an ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2) to another zone designation becomes effective.
8. This Covenant may be enforced by proceedings at law or in equity against any person who violates or attempts to violate a covenant, restriction or limitation hereof. The prevailing party shall be entitled to recover such attorneys' fees and court costs as it reasonably incurs in such a proceeding.
9. In the event any provision of this Covenant is found to be invalid or unenforceable in any proceeding at law or in equity, such finding shall not affect the other provisions of this Covenant, which shall remain in full force and effect.

10. Either party may record in the office of the Recorder of Ventura County this Covenant or any amendment hereto specified in Paragraph 4 hereof without the consent of the other party.

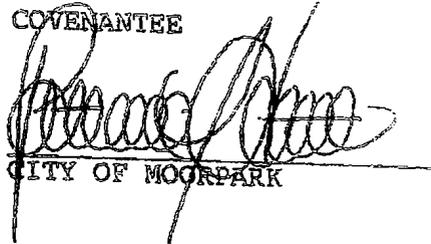
IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant on the date first above written

COVENANTORS



A-B PROPERTIES

COVENANTEE



CITY OF MOORPARK

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

Not. 5807

State of CALIFORNIA

County of VENTURA

On 12-15-98 before me, JUDY WEISMAN, NOTARY PUBLIC
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared STEPHEN R. ANDERSON
NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Judy Weisman
SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

DEVELOPMENT AGREEMENT EX B
TITLE OR TYPE OF DOCUMENT

4
NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)
A B PROPERTIES

PAUL D. BURNS
SIGNER(S) OTHER THAN NAMED ABOVE



MOORPARK

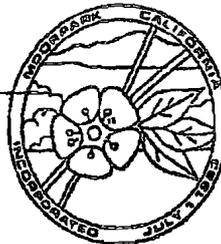
799 Moorpark Avenue Moorpark, California 93021 (805) 529-6864

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

On this 16th day of December in the year 1998, before me Deborah S. Traffenstedt, City Clerk of the City of Moorpark, California, personally appeared Patrick Hunter, personally known to me to be the person who executed this instrument as the Mayor of the City of Moorpark and acknowledged to me that the City executed it.

Witness my hand and Official Seal

Deborah S. Traffenstedt
Deborah S. Traffenstedt
City Clerk



PATRICK HUNTER
Mayor

CHRISTOPHER EVANS
Mayor Pro Tem

CLINT D. HARPER
Councilmember

DEBBIE RODGERS
Councilmember

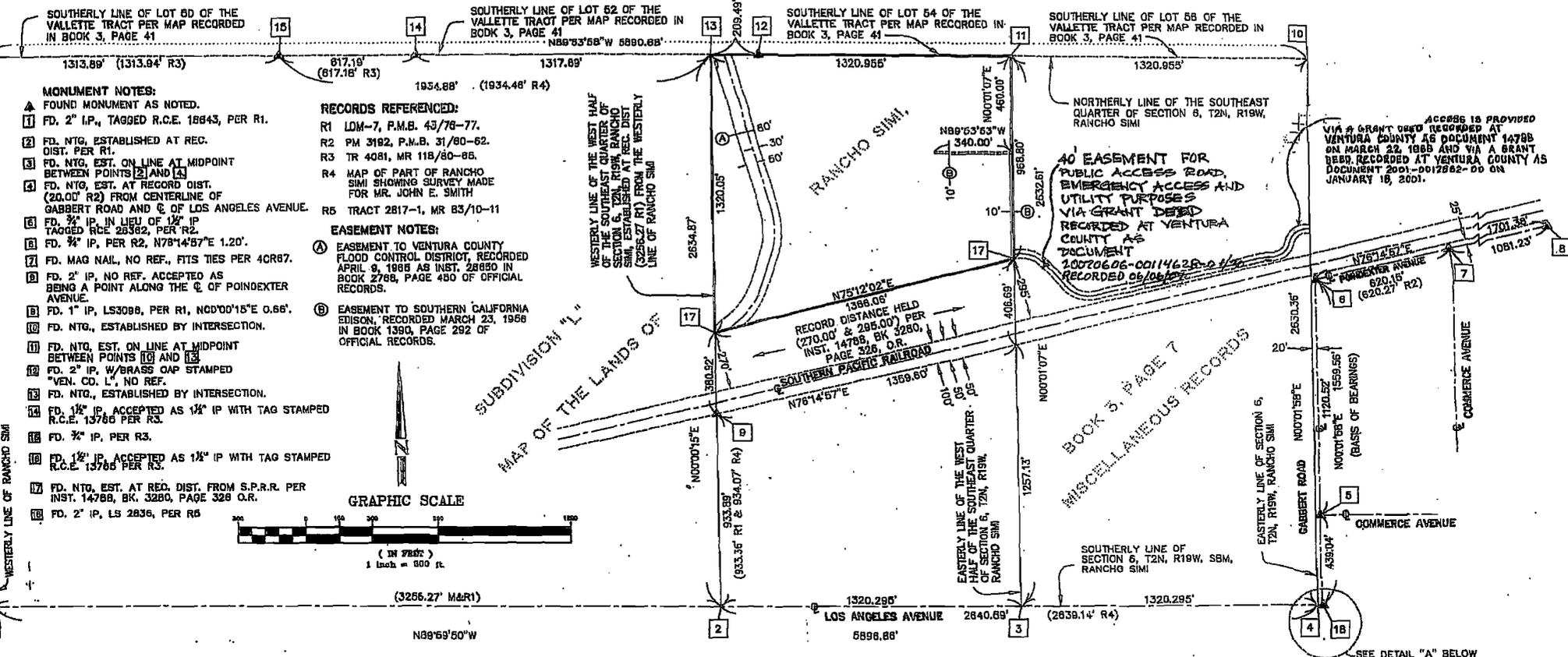
JOHN E. WOZNIAK
Councilmember

EXHIBIT C

To City: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn. City Manager

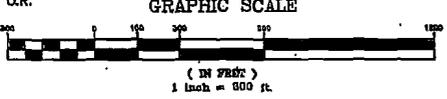
To Developer: A-B Properties
4875 Spring Road
Moorpark, CA 93021
ATTN: Stephen R. Anderson

C-1

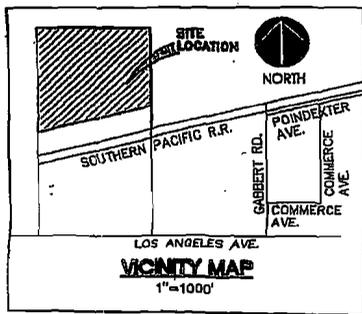


- MONUMENT NOTES:**
- ▲ FOUND MONUMENT AS NOTED.
 - ① FD. 2" IP., TAGGED R.C.E. 18843, PER R1.
 - ② FD. NTG, ESTABLISHED AT REC. DIST. PER R1.
 - ③ FD. NTG, EST. ON LINE AT MIDPOINT BETWEEN POINTS ② AND ④.
 - ④ FD. NTG, EST. AT RECORD DIST. (20.00' R2) FROM CENTERLINE OF GABBERT ROAD AND C. OF LOS ANGELES AVENUE.
 - ⑤ FD. 3/4" IP. IN LIEU OF 1/2" IP. TAGGED RDE 28382, PER R2.
 - ⑥ FD. 3/4" IP. PER R2, N78°14'57"E 1.20'.
 - ⑦ FD. MAG NAIL, NO REF., FITS TIES PER 4CR87.
 - ⑧ FD. 2" IP., NO REF. ACCEPTED AS BEING A POINT ALONG THE C. OF POINDEXTER AVENUE.
 - ⑨ FD. 1" IP., LS3088, PER R1, N0°00'15"E 0.66'.
 - ⑩ FD. NTG., ESTABLISHED BY INTERSECTION.
 - ⑪ FD. NTG, EST. ON LINE AT MIDPOINT BETWEEN POINTS ⑩ AND ⑬.
 - ⑫ FD. 2" IP. W/BRASS CAP STAMPED "VEN. CO. L.", NO REF.
 - ⑬ FD. NTG., ESTABLISHED BY INTERSECTION.
 - ⑭ FD. 1/2" IP. ACCEPTED AS 1/2" IP WITH TAG STAMPED R.C.E. 13788 PER R3.
 - ⑮ FD. 3/4" IP. PER R3.
 - ⑯ FD. 1/2" IP. ACCEPTED AS 1/2" IP WITH TAG STAMPED R.C.E. 13788 PER R3.
 - ⑰ FD. NTG, EST. AT RED. DIST. FROM S.P.R.R. PER INST. 14788, BK. 3280, PAGE 328 O.R.
 - ⑱ FD. 2" IP., LS 2836, PER R6

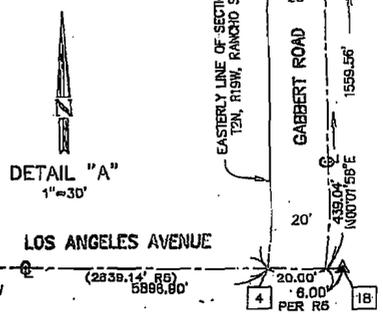
- RECORDS REFERENCED:**
- R1 LDM-7, P.M.B. 43/78-77.
 - R2 PM 3192, P.M.B. 31/80-82.
 - R3 TR 4081, MR 118/80-85.
 - R4 MAP OF PART OF RANCHO SIMI SHOWING SURVEY MADE FOR MR. JOHN E. SMITH
 - R5 TRACT 2817-1, MR 83/10-11
- EASEMENT NOTES:**
- Ⓐ EASEMENT TO VENTURA COUNTY FLOOD CONTROL DISTRICT, RECORDED APRIL 9, 1988 AS INST. 28880 IN BOOK 2788, PAGE 450 OF OFFICIAL RECORDS.
 - Ⓑ EASEMENT TO SOUTHERN CALIFORNIA EDISON, RECORDED MARCH 23, 1958 IN BOOK 1390, PAGE 292 OF OFFICIAL RECORDS.



BOUNDARY ESTABLISHMENT



- LEGEND**
- CENTERLINE
 - BOUNDARY OF THE LAND BEING SUGGIDVED
 - - - - - EASEMENT
- ▲ FOUND MONUMENT AS NOTED.
- BASIS OF BEARINGS**
 THE BEARINGS SHOWN HEREON ARE BASED UPON THE CENTERLINE OF GABBERT ROAD AS SHOWN ON PARCEL MAP 3192, AS FILED IN BOOK 31, PAGES 60-83 OF PARCEL MAPS, BEING NORTH 00°01'58" EAST.



TRACT No. 5147

IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA BEING A PORTION OF SUBDIVISION "L", MAP OF THE LANDS OF RANCHO SIMI, AS FILED IN BOOK 3, PAGE 7 OF MISCELLANEOUS RECORDS OF SAID COUNTY.

OCTOBER 2005

SHEET 3 OF 4 SHEETS

LINE TABLE			LINE TABLE			CURVE TABLE			
LINE	BEARING	LENGTH	LINE	BEARING	LENGTH	CURVE	DELTA	RADIUS	LENGTH
L1	N00°08'02"E	80.00'	L24	N14°47'36"W	34.00'	C1	30°27'03"	35.00'	18.60'
L2	N76°00'15"E	80.00'	L25	N00°00'47"E	28.00'	C2	43°48'42"	35.00'	26.73'
L3	N76°00'15"E	80.00'	L26	N89°28'13"W	30.00'	C3	13°16'38"	35.00'	9.13'
L4	N76°00'15"E	80.00'	L27	N89°28'13"W	30.00'	C4	88°19'59"	55.00'	81.81'
L5	N76°33'28"W	50.00'	L28	N89°28'13"W	30.00'	C5	43°48'42"	35.00'	26.73'
L6	N83°10'58"W	80.00'	L29	N89°28'13"W	30.00'	C6	89°54'42"	37.00'	58.08'
L7	N75°12'02"E	80.69'	L30	N00°08'02"E	30.00'	C7	90°01'18"	37.00'	58.18'
L8	N75°12'02"E	82.81'	L31	N00°08'02"E	30.00'	C8	12°28'18"	226.00'	47.88'
L9	N75°12'02"E	20.22'	L32	N00°08'02"E	30.00'	C9	92°19'23"	37.00'	59.82'
L10	N75°12'02"E	67.85'	L33	S43°38'37"E	58.00'	C10	13°28'18"	280.00'	65.83'
L11	N75°12'02"E	59.85'	L34	N89°53'55"W	62.28'	C11	88°50'28"	37.00'	57.37'
L12	N00°00'15"E	31.85'	L35	N89°53'55"W	70.04'	C12	90°20'18"	37.00'	58.34'
L13	N49°48'00"E	65.10'	L36	N89°53'55"W	65.00'	C13	5°59'20"	278.00'	80.10'
L14	N89°53'55"W	8.24'	L37	N00°01'00"E	34.90'	C14	82°31'31"	378.00'	84.12'
L15	N89°53'55"W	81.73'	L38	N89°53'55"W	68.80'	C15	11°09'02"	578.00'	111.80'
L16	N89°53'55"W	31.07'	L39	N89°53'55"W	67.10'	C16	7°39'01"	629.00'	83.27'
L17	N16°38'02"E	34.00'	L41	N43°00'31"E	1.00'	C17	78°48'57"	37.00'	80.88'
L18	N14°08'14"E	34.00'	L42	N43°01'48"E	56.00'	C18	17°44'21"	894.00'	178.17'
L19	N37°38'07"E	28.51'	L43	N14°08'45"E	22.34'	C19	92°10'47"	558.00'	91.38'
L20	N37°37'22"E	91.69'	L44	N14°47'58"W	71.31'	C21	8°01'18"	580.00'	77.00'
L21	N14°37'01"W	34.00'	L45	N00°08'02"E	30.00'	C22	13°02'28"	280.00'	58.80'
L22	N75°12'02"E	67.28'				C23	14°03'04"	35.00'	8.88'
L23	N75°12'02"E	67.03'				C24	28°42'38"	35.00'	18.15'

MONUMENT NOTES

- △ 8" SPIKE & WASHER STAMPED "LS 7734" TO BE SET FLUSH IN ASPHALT AT ALL STREET CENTERLINE POINTS OF INTERSECTION, CURVATURE, RADIUS, AND TERMINATION.
- 2" IRON PIPE TAGGED "LS 7734" TO BE SET FLUSH AT ALL BOUNDARY CORNERS.
- 1" IRON PIPE TAGGED "LS 7734" TO BE SET FLUSH IN DIRT, OR LEAD, TACK & TAG STAMPED "LS 7734" TO BE SET FLUSH IN CONCRETE, OR 8" SPIKE & WASHER STAMPED "LS 7734" TO BE SET FLUSH IN ASPHALT AT ALL LOT CORNERS.
- TYPE E4 VENTURA COUNTY WELL MONUMENT TO BE SET AT ALL CENTERLINE STREET INTERSECTIONS

EASEMENT NOTES

- (A) EASEMENT TO VENTURA COUNTY FLOOD CONTROL DISTRICT, RECORDED APRIL 9, 1985 AS INSTRUMENT NO. 26850 IN BOOK 2766, PAGE 450 OF OFFICIAL RECORDS.
- (B) EASEMENT TO SOUTHERN CALIFORNIA EDISON, RECORDED MARCH 23, 1958 IN BOOK 1390, PAGE 292 OF OFFICIAL RECORDS.
- (C) EASEMENT TO VENTURA COUNTY WATERWORKS DISTRICT NO. 1, FOR ACCESS, WATER PIPELINE AND SANITARY SEWER PURPOSES OVER ALL PRIVATE STREETS SHOWN ON THIS MAP.

LEGEND

- CENTERLINE
- BOUNDARY OF THE LAND BEING SUBDIVIDED
- - - EASEMENT
- LOT LINES

GENERAL NOTES

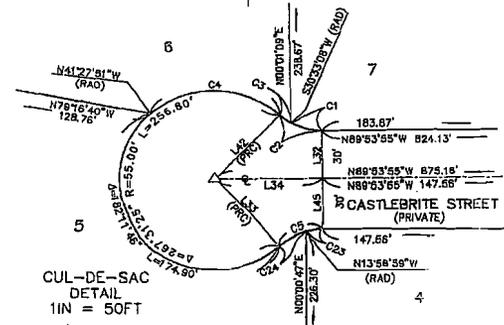
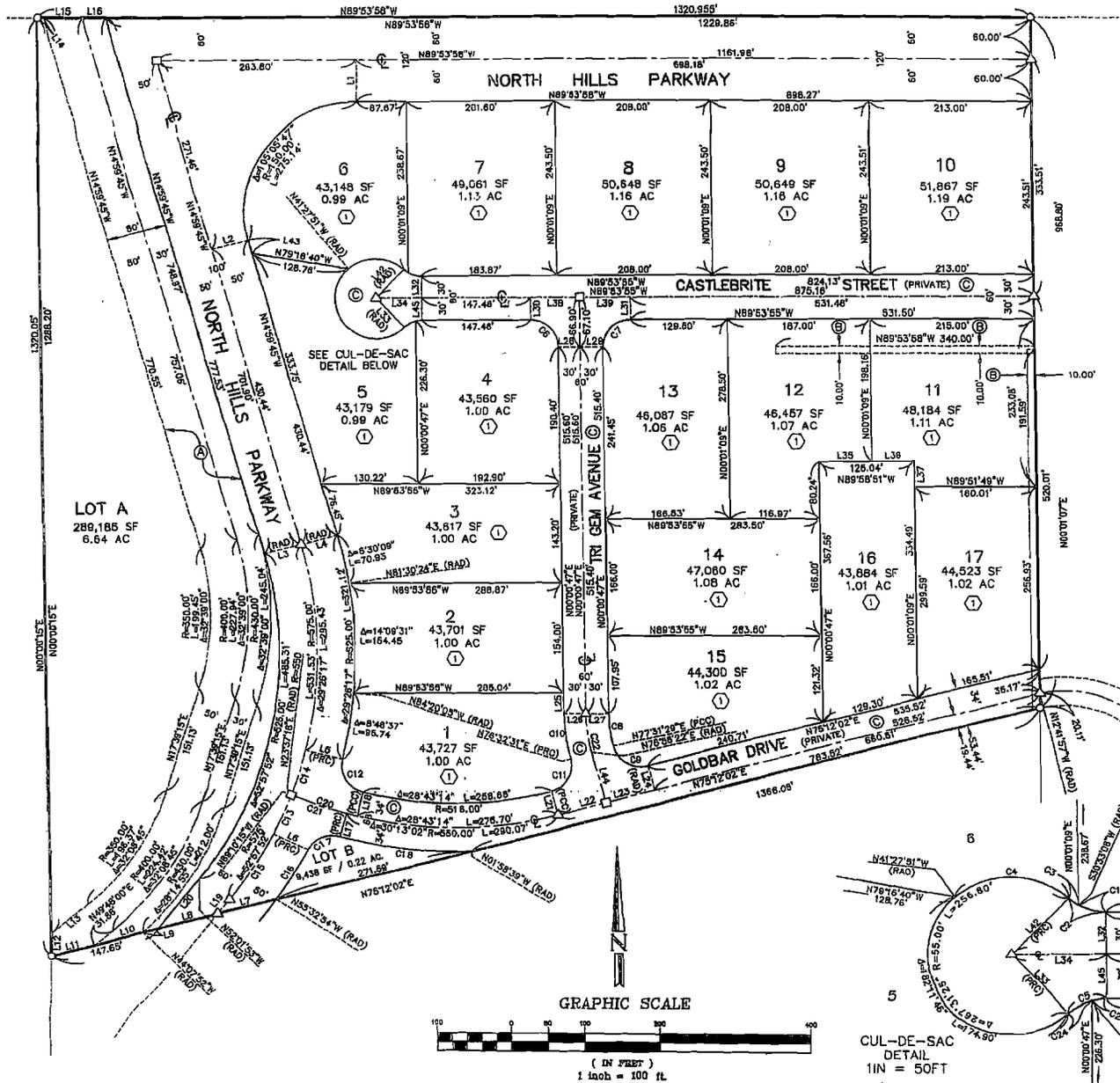
INDICATES THAT DEVELOPMENT ON THIS LOT IS SUBJECT TO DEVELOPMENT AGREEMENT CITY ORDINANCE NO. 250 RECORDED WITH THE VENTURA COUNTY RECORDER'S OFFICE ON OCTOBER 30, 1998 AS INSTRUMENT NO. 88-233584 AND THE CONDITIONS OF APPROVAL FOR TRACT NO. 5147 AS APPROVED BY THE MOORPARK CITY COUNCIL ON MARCH 15, 2000.

TRACT No. 5147

IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA BEING A PORTION OF SUBDIVISION "L", MAP OF THE LANDS OF RANCHO SIMI, AS FILED IN BOOK 3, PAGE 7 OF MISCELLANEOUS RECORDS OF SAID COUNTY.

OCTOBER 2005

SHEET 4 OF 4 SHEETS



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement"), dated as of August 5, 2010 ("Settlement Date"), is made by and among the following parties (collectively the "Parties"), on behalf of each of themselves and all Persons (as defined below) who could claim by and through each of them: A-B Properties, a California general partnership ("A-B"), Burns-Pacific Construction, Inc. ("BPC"), and Paul D. Burns ("Burns" and, collectively with A-B and BPC, the "Burns Parties"); the Southern California Edison Company ("SCE"); and Louis David Bavo, Susan C. Bavo, Richard S. Hambleton, Jr., A. A. Milligan, John R. Milligan (aka John Reid Milligan), Kimberley Jeanne Milligan, Marshall C. Milligan, Michael S. Milligan, Alan J. Pomato, Allison Jones Pomato, Julia Milligan Summers, Idaho Trust Company, and the Richard H. Jones Ltd. Partnership (collectively the "Hitch Owners"), with reference to the following facts:

RECITALS

A. **The A-B Fee Property.** Sometime before March 2000, A-B acquired that property that is now sometimes described as "all of lots 1 through 17 inclusive per Tract No. 5147, as per map recorded in Book 158, page 37, of Miscellaneous Records, in the Office of the County Recorder of Ventura County," (the "A-B Fee Property"). A-B holds all right, title and interest to the A-B Fee Property in fee simple, and no Person (as defined below) other than A-B has any present or future possessory or other interest in the A-B Fee Property or any subdivision thereof.

B. **The SCE Fee Property.** In about 1967, by grant deed recorded on or about March 22, 1968 as number 14788 in book 3280 page 326 of the Ventura County Recorder, SCE acquired the property described in that deed (the "SCE Fee Property"), which is south of, and adjacent to, the A-B Fee Property.

C. **The Hitch Ranch Property.** With the exception of A.A. Milligan and the Idaho Trust Company, the Hitch Owners, either individually and/or as trustees of certain trusts, collectively own in fee approximately 283 acres of property located on both sides of Gabbert Road, north of the Union Pacific right of way, within the limits of the City of Moorpark, California ("Moorpark") that is commonly known as Hitch Ranch (the "Hitch Ranch"). West of Gabbert Road, the western portion of the Hitch Ranch borders the eastern portions of the A-B Fee Property and the SCE Fee Property at or about the westerly line of the west half of the southeast quarter of section 6, T2N, R19W, Rancho Simi, established at rec. dist (3256.27 R1) from the westerly line of Rancho Simi. The Hitch Ranch is subject to several exclusive easements in favor of SCE for electricity transmission, including exclusive easements the Hitch Owners or their predecessors conveyed to SCE by grant deed on or about May 31, 1963 and recorded on or about July 1, 1963 in book 2347 page 225 of the Ventura County Recorder, and grant deed dated on about October 30, 1967 and recorded on or about January 4, 1968 in book 3243 page 379 of the Ventura County Recorder (the "Transmission Easements").

D. The Lawsuit. On or about October 22, 2007, A-B filed a complaint against SCE in the Ventura County Superior Court, commencing *A-B Properties v. Southern California Edison*, Ventura County Superior Court No. 56-2007-00306094-CU-NP-SIM. Through its complaint, A-B sought, among other things, to enforce against SCE certain easement rights within the Transmission Easements that A-B asserted had been conveyed to A-B by the Hitch Owners by grant deed dated September 8, 2000 and recorded with the Ventura County Recorder on or about January 18, 2001 (the "2001 Deed"). SCE disputed A-B's assertion. On or about December 5, 2008, SCE cross-complained against A-B and the Hitch Owners in the Lawsuit for declaratory relief, to quiet title and for damages. On or about July 29, 2009 SCE filed and served a motion to amend its cross-complaint (the "Motion to Amend") to, among other things, quiet title to an additional unrecorded easement grant deed dated March 6, 2000 from the Hitch Owners to A-B (the "2000 Deed"), and an additional easement grant deed from the Hitch Owners to A-B executed on various dates in May 2007 that was recorded with the Ventura County Recorder on or about June 5, 2007 and June 6, 2007 (the "2007 Deeds"). The Motion to Amend was still pending when the Parties entered into this Agreement. The foregoing action commenced by A-B Properties, including SCE's cross-claims in such action, is hereinafter referred to as the "Lawsuit."

E. The Eminent Domain Action. On or about April 21, 2008, A-B entered into an "Agreement Regarding Acquisition of Off-Site Property" with Moorpark (the "Eminent Domain Agreement") pursuant to which, among other things, Moorpark agreed to commence an eminent domain action to acquire an easement for access to the A-B Fee Property, and A-B agreed to reimburse Moorpark for fees and costs of that acquisition. Pursuant to the Eminent Domain Agreement, Moorpark commenced *Moorpark v. Milligan et al.*, Ventura County Superior Court No. 56-2008-00331392-CU-EI-SIM (the "Eminent Domain Action"), in which Moorpark through eminent domain seeks to acquire from the Hitch Owners and SCE an easement within the Transmission Easements over the same land, or substantially the same land, described in the 2000 Deed, the 2001 Deed and the 2007 Deeds.

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements set forth below, the Parties hereby agree as follows:

AGREEMENT

1. **Incorporation of Recitals.** The recitals set forth above are true, correct, constitute the intent of the Parties and are incorporated herein as part of this Agreement.
2. **Additional Definitions.** The following terms shall have the following meaning when used in this Agreement:
 - a. **Development Agreement.** "Development Agreement" means the agreement between by and between Moorpark and A-B dated December 16, 1998, together with all amendments thereto, regarding the development of the A-B Fee Property.

- b. **Closing.** The "Closing" shall be a meeting of all Parties, or their representatives, at 10:00 a.m. on the Closing Date at the offices of Nordman Cormany Hair & Compton LLP, 1000 Town Center Drive, 6th floor, Oxnard, California, or some other location agreed upon in writing by all Parties, at or before which the Parties shall deliver and exchange the fully executed Deliverables (as defined below), to the extent and in the manner required below.
- c. **Closing Date.** The "Closing Date" shall be a date after the Effective Date that is mutually agreed upon by all Parties.
- d. **Effective Date.** The "Effective Date" is the date on which this Agreement becomes effective, which shall be the date as of which all Parties have signed this Agreement.
- e. **Permitted Encumbrances.** "Permitted Encumbrances" mean any liens or other interests held by SCE, or easements in favor of SCE or the Ventura County Watershed Protection District fka the Ventura County Flood Control District.
- f. **Person.** "Person" includes any natural person, as well as any other entity, including (but not limited to) corporations, limited liability companies, limited and general partnerships, unincorporated associations, and states, counties, municipal corporations and government agencies, and any subdivisions thereof.

3. **Stipulation for Dismissal.** Upon execution of this Agreement, the relevant Parties or their counsel shall execute stipulations providing for the dismissal with prejudice, each Party to bear his or its own attorneys' fees and costs of suit, of the Lawsuit ("Lawsuit Dismissal Stipulation") and the dismissal without prejudice, each party to bear his, her or its own attorneys' fees and costs of suit, of the Eminent Domain Action ("Eminent Domain Dismissal Stipulation") and, collectively with the Lawsuit Dismissal Stipulation, the "Dismissal Stipulations", substantially in the forms annexed hereto as Exhibit 1 and Exhibit 2, respectively. The Burns Parties shall also, as a required term of this Agreement, obtain from Moorpark an Eminent Domain Dismissal Stipulation, on the same terms, executed by a duly authorized representative of Moorpark. At or before the Closing, each of the Hitch Owners shall deliver to SCE Dismissal Stipulations executed by all of them (or their counsel), the Burns Parties shall deliver to SCE Dismissal Stipulations executed by all of them (or their counsel) and Moorpark (or its counsel), and SCE shall deliver to the Burns Parties and the Hitch Owners Dismissal Stipulations executed by its counsel.

4. **Quitclaim.** A-B, on behalf of itself, its successors and its assigns, relinquishes any and all interests granted to it by the 2000 Deed, the 2001 Deed and the 2007 Deeds. A-B will execute, and at or before the Closing the Burns Parties will deliver to SCE for recording

with the Ventura County Recorder, a quitclaim deed to and for the benefit of SCE in the form attached hereto as **Exhibit 3** (the "Quitclaim"), extinguishing any rights that may have been conveyed by the 2000 Deed, the 2001 Deed and the 2007 Deeds. SCE shall record the Quitclaim on or before the Closing Date, or as soon thereafter as is practical, in accordance with the provisions herein.

5. **Fee Conveyance.** Each of the Hitch Owners agrees to convey to SCE all right, title and interest in the real property described in Exhibit A, and depicted in Exhibit B, of the grant deed attached hereto as **Exhibit 4** (the "Hitch Fee Interest" or, after the Fee Grant (as defined below), the "Transmission Strip"). At the Closing, the Hitch Owners will deliver to SCE for recording with the Ventura County Recorder a fully executed fee simple grant deed in the form of Exhibit 4 conveying to SCE all right, title and interest to the Hitch Fee Interest in fee simple (the "Fee Grant"). SCE shall record the Fee Grant as soon as practical after recording the Quitclaim, and shall pay any documentary transfer tax associated with the recording of the Fee Grant.

6. **Easement Conveyances.** Subject to, and conditioned upon, SCE's receipt of the fully executed Dismissal Stipulations, the Quitclaim, the Fee Grant, the Note (as defined in section 8c herein) and the First Trust Deed (as defined in section 8c herein) (collectively, the "Cross-defendant Deliverables"), SCE will convey to A-B the following easements subject to the following conditions, terms and restrictions:

- a. **The Access Easement.** The Access Easement (also sometimes referred to as the "Road, Slope and Drain Easement") shall be a non-exclusive easement across the Transmission Strip along the path specified in the easement grant deed attached hereto as **Exhibit 5** (the "Access Easement Deed") for the sole purpose of the certain access rights to the A-B Fee Property specified below and in the Access Easement Deed. The Access Easement will include certain slope easements and drainage structures, but only to the extent and on the conditions specified below. SCE shall record the Access Easement Deed with the Ventura County Recorder as soon as practical after recording the Fee Grant. The Access Easement conveyed by the Access Easement Deed shall:
 - (1) be for the sole benefit of the A-B Fee Property;
 - (2) not be severable from the A-B Fee Property;
 - (3) not be appurtenant to any after acquired property;
 - and (4) be subject to the following conditions, terms and restrictions contained in the Access Easement Deed:
 - i. The only structures permitted within the Access Easement (the "Permitted Structures") shall be (1) a maximum 32-foot wide asphalt paved road (the "Paved Road"); (2) a slope drain (the "Slope Drain") and an inlet structure and riprap (the "Riprap"); and (3) at least three driveways leading off the Paved Road to the unpaved portion of the Transmission Strip (the "Driveways").

- ii. The Paved Road shall: (1) be a maximum of 32-feet wide at any point; (2) located only in the location indicated on Exhibit B to the Access Easement Deed; (3) not have any sidewalks, streetlights, landscaping, curbs or any other structure other than the Driveways along its entire length; and (4) otherwise be designed, constructed, utilized and maintained in a manner that neither interferes with nor endangers SCE's operations within the Transmission Strip.
- iii. The Slope Drain shall: (1) be no wider than three feet, nor deeper than six inches, at any point; and (2) only be located to the north of the Paved Road along the toe of the Slope Easements (as defined below), or otherwise within the Access Easement, in the location indicated on Exhibit B to Access Easement Deed. The Riprap shall be: (1) no larger than 20 feet by 20 feet; and (2) contiguous to the Paved Road in the location indicated on Exhibit B to the Access Easement Deed.
- iv. There shall be a minimum of three Driveways, which each shall be: (1) constructed and maintained as a *quid pro quo* for the installation of the Slope Drain (*i.e.*, proper installation and maintenance of the three driveways shall be a condition for A-B to install and maintain the Slope Drain); (2) in the locations indicated on Exhibit B to the Access Easement Deed; (3) a minimum of 28 feet wide, and otherwise accessible for use by SCE's operational equipment; (4) engineered and constructed at a minimum to the guidelines and standards for commercial driveways promulgated and set forth by Moorpark; and (5) blocked to public access by chains that can and shall only be removed by SCE. The Driveways leading north off the Access Road shall cross over and cover the Slope Drain.
- v. Variable width slope easements ("Slope Easements") shall also be permitted to the extent, on the conditions, and in the locations provided in the Access Easement Deed, including the Exhibits thereto.
- vi. A-B and its successors and assigns to its interests in the A-B Fee Property shall have sole responsibility for the construction and maintenance of the Slope Easements and each of the Permitted Structures. Aside from SCE's operations, no utilities or any construction other than the Permitted Structures shall be permitted anywhere in the Access Easement. With the sole exception of vehicles engaged in SCE operations, parking shall not be permitted anywhere within the Access Easement and the Transmission Strip. Traffic signs that do not interfere with SCE operations may be posted along the Paved Road where necessary for safety.

- vii. SCE may, at its option, survey the Permitted Structures and Slope Easements after completion of construction to confirm their proper placement within the Access Easement. Any portions of the Permitted Structures and Slope Easements that are not at or within the locations permitted in the Access Easement Deed, including exhibits, shall be relocated by A-B to at or within those locations.
- viii. The Public Access Time Period shall commence upon the recordation of the Access Easement Deed (the "Access Easement Start Date"). The Public Access Time Period shall terminate upon the earlier of (1) the construction of a road extending from the A-B Fee Property to Gabbert Road entirely off the Transmission Strip (the "New Access Road"), (2) the construction of some other road accessing the A-B Fee Property that is entirely off the Transmission Strip, or (3) the fortieth (40th) anniversary of the Access Easement Start Date. During the Public Access Time Period, the Access Easement shall be used only for vehicular access to and from the A-B Fee Property by emergency or other Moorpark municipal services, and by A-B Fee Property owners and tenants, their customers, suppliers, employees, agents, invitees, guests, and persons performing maintenance or other work on the A-B Fee Property, as well as other members of the public seeking to conduct business on the A-B Fee Property, and shall not be used as a thoroughfare, nor dedicated as a public street or roadway (the "Public Access").
- ix. Public Access shall not under any circumstances be permitted in the Access Easement unless and until the Development Agreement has been amended (the "Development Agreement Amendments") to the reasonable satisfaction of SCE to provide that the Improvements referenced in section 6.22 of the Development Agreement shall be the New Access Road.
- x. In the event that the Public Access Time Period terminates prior to the fortieth (40th) anniversary of the Access Easement Start Date, Emergency Access (as defined in this paragraph), and only Emergency Access, shall be permitted in the Access Easement until the earlier of the (1) the completion of construction of a second access road (e.g., in addition to the New Access Road) that extends from a public road to the A-B Fee Property entirely outside of Transmission Easement, (2) the fortieth (40th) anniversary of the Access Easement Start Date, or (3) December 31, 2049 (the "Access Easement Termination Date"). From the end of the Public Access Time Period until the Access Easement Termination Date: (1) the Access Easement may be used only by SCE and by Authorized Emergency Vehicles as defined in California

Vehicle Code section 165 that need to access the A-B Fee Property (the "Emergency Access"); (2) the Access Easement and Paved Road shall be blocked and secured at each end by locked gates; and (3) only SCE and those emergency public entities required by law to have access shall have keys to the locked gates, and A-B or its designated successor shall have one key not to be duplicated. Each of the Burns Parties expressly acknowledges that following the termination of Public Access, no Person shall have any rights of Public Access to the A-B Fee Property anywhere over the Transmission Strip.

- xi. The Access Easement will terminate in its entirety and be extinguished, and all interests previously granted shall revert to and merge into the interest of the fee owner of the Transmission Strip, on the Access Easement Termination Date. Each of the Burns Parties expressly acknowledges that after this forfeiture of the Access Easement, no Person shall have any rights of Public Access, Emergency Access, or any other access to the A-B Fee Property anywhere over the Transmission Strip.
- xii. Notwithstanding any rights of access granted by the Access Easement, SCE reserves at all times the absolute right to access, maintain and repair the transmission towers, power lines and other of its property and equipment within the Transmission Strip, and to close the Paved Road when necessary due to exigent circumstances.
- xiii. A-B and its successors and assigns to its interests in the A-B Fee Property shall release SCE from liability for damage to or destruction of any of the Slope Easements or any of the Permitted Structures caused by or arising out of operations conducted by SCE in the Transmission Strip; provided, however, that the foregoing shall not be construed to release SCE from liability for any negligent or willful act of SCE.
- xiv. A-B and its successors and assigns to its interests in the A-B Fee Property shall indemnify and hold SCE harmless from and against any claim or liability for injury to any Person or damage to SCE's property caused by the installation, use and maintenance of any of the Slope Easements or any of the Permitted Structures, except when that injury or damage is caused by the negligence or willful misconduct of SCE.
- xv. A-B and its successors and assigns to its interests in the A-B Fee Property shall maintain the Access Easement reasonably free of debris and will remove debris from the Transmission Strip upon the request of SCE within a reasonable amount of time. If A-B or its successors and/or assigns fail to timely remove any such debris from the

Transmission Strip, A-B or its successors and/or assigns shall indemnify SCE for the removal of such debris and any additional harm caused by the presence of such debris.

- xvi. If at any time after the eighth (8th) anniversary of the Access Easement Start Date, SCE determines in its sole discretion that (1) any transmission line(s), towers or any other electricity transmitting equipment need to be added within the Transmission Strip, or (2) any or all existing transmission line(s), towers or any other electricity transmitting equipment need to be reconfigured or relocated to, from or within the Transmission Strip, those who are interest holders of the A-B Fee Property at the time of notice of that determination shall either:
1. be jointly and severally liable to pay SCE for any and all incremental costs of any such addition, reconfiguration, or relocation caused by the presence or use of the Permitted Structures and/or the Access Easement; or
 2. move, at their sole expense, any or all of the Permitted Structures to a different location(s) provided that in the opinion of a mutually selected industry expert, the new location(s) do(es) not interfere with SCE's operation of its current transmission lines or its plans for added, reconfigured, or relocated transmission lines.
- xvii. A-B and its successors and assigns to its interests in the A-B Fee Property shall be solely responsible for the payment of all taxes due on account of the Access Easement.
- xviii. The terms and conditions governing the Access Easement shall not be modified except in a writing signed by all parties thereto.
- b. The Utilities Easement. The Utilities Easement shall be a non-exclusive easement along the path specified in the easement grant deed attached hereto as **Exhibit 6** (the "Utility Easement Deed" and, together with the Access Easement Deed, the "Easement Grant Deeds") appurtenant to, and binding upon all successors and assigns to, the A-B Fee Property for the sole purpose of the installation, operation and maintenance of cable, electricity, tel-com, and fiber optics (the "Dry Utilities"), and water, sewer and natural gas utilities (the "Wet Utilities" and, collectively with the Dry utilities, the "Utilities") across the Transmission Strip. SCE shall record the Utilities Easement Deed with the Ventura County Recorder as soon as practical after recording the Fee Grant. The Utilities Easement conveyed by the Utilities Easement Deed shall: (1) be appurtenant to the A-B Fee Property; (2) not be severable from the A-B Fee

Property; (3) not be appurtenant to any after acquired property, whether contiguous or not, to the A-B Fee Property; and (4) be subject to the conditions and restrictions contained in the Utilities Easement Deed, including:

- i. The Utilities Easement shall commence upon the recordation of the Utilities Easement Deed (the "Utilities Easement Start Date").
- ii. The Utilities shall be permitted in the Utilities Easement from the Utilities Easement Start Date until the earlier of (1) the fortieth (40th) anniversary of the Utilities Easement Start Date, (2) when voluntarily relinquished by all the fee interest holders in the A-B Fee Property, or (3) December 31, 2049 (the "Utilities Easement Termination Date"). At the Utilities Easement Termination Date, the Utilities Easement will terminate in its entirety and be extinguished, and all interests previously granted shall revert to and merge into the interest of the owner of the Transmission Strip. At the Utilities Easement Termination Date, the fee interest holders in the A-B Fee Property shall be jointly and severally liable to remove all Utilities from the Transmission Strip. Should the fee interest holders in the A-B Fee Property fail to remove any Utilities remaining in the Transmission Strip within 30 days after the Utilities Easement Termination Date, SCE may, at its option, remove (without any obligation to relocate, or to pay for the relocation of) any such Utilities at the expense of the interest holders in the A-B Fee Property.
- iii. SCE will make a good faith effort to expedite A-B's application to SCE for electric utility service to the A-B Fee Property at the commencement of the Utilities Easement. Assuming, and on the condition, that Moorpark and/or other property owner(s) have made available a location outside of the Transmission Strip, or A-B or its successors in interest have otherwise acquired a right to install all Dry Utilities at a location outside of the Transmission Strip, at or before the Utilities Easement Termination Date, SCE shall at its expense (1) relocate the SCE conduit, equipment, cables and electric utility related items to that location, and (2) provide additional conduit to accommodate A-B's other Dry Utilities at that location.
- iv. Aside from SCE's operations, no other utilities or construction shall be permitted anywhere in the Utilities Easement other than the Utilities.
- v. Notwithstanding the rights granted by the Utilities Easement, SCE at all times expressly reserves its right to access, maintain and repair its transmission towers, power lines and other of its property and equipment within the Transmission Strip, and to shut down any and all

Utilities when required due to exigent circumstances.

- ~~vi.~~ A-B and its successors and assigns to its interests in the A-B Fee Property shall release SCE from liability for damage to or destruction of the Utilities caused by or arising out of operations conducted by SCE in the Transmission Strip; provided, however, that the foregoing shall not be construed to release SCE from liability for any negligent or willful act of SCE.
 - vii. A-B and its successors and assigns to its interests in the A-B Fee Property shall indemnify and hold SCE harmless from and against any claim or liability for injury to any Person or damage to SCE's property caused by the installation, use and maintenance of any of the Utilities, except when that injury or damage is caused by the negligence or willful misconduct of SCE.
 - viii. If at any time after the eighth (8th) anniversary of the Utilities Easement Start Date, SCE determines in its sole discretion that (1) any transmission line(s), towers or any other electricity transmitting equipment need to be added within the Transmission Strip, or (2) any or all existing transmission line(s), towers or any other electricity transmitting equipment need to be reconfigured or relocated to, from or within the Transmission Strip, those who are A-B Fee Property interest holders at the time of notice of that determination shall either:
 - 1. be jointly and severally liable to pay SCE for any and all incremental costs of any such addition, reconfiguration, or relocation caused by the presence and/or use of the Utilities and the Utilities Easement; or
 - 2. move, at their sole expense, the Utilities to a different location provided that in the opinion of a mutually selected industry expert the new location does not interfere with SCE's operation of its current transmission lines or its plans for added, reconfigured or relocated transmission lines.
 - ix. A-B and its successors and assigns to its interests in the A-B Fee Property shall be solely responsible for the payment of all taxes due on account of the Utilities Easement.
 - x. The Utilities Easement shall not be modified except in a writing signed by all parties thereto by all parties thereto.
- c. Documentary Transfer Tax. The Burns Parties shall pay any documentary transfer tax associated with the recording of the Easement Grant Deeds.

7. **Payment by SCE to the Burns Parties.** Subject to, and expressly conditioned upon, SCE's receipt of the Cross-defendant Deliverables, SCE shall deliver to the Burns Parties \$125,000.00 (the "Settlement Consideration"), which delivery shall be by wire or check made payable to the order of A-B.

8. **Annual Use Fees.** No fee shall be charged for the use of either the Access Easement or the Utilities Easement from the Access Easement Start Date until the eighth (8th) anniversary of the Access Easement Start Date. Starting on the eighth anniversary of the Access Easement Start Date, and on each anniversary date thereafter that (1) the Access Easement is being used for Public Access, or (2) the Utilities Easement has not been voluntarily relinquished by all the fee interest holders in the A-B Fee Property, however, A-B shall pay an annual fee of one hundred twenty five thousand dollars (\$125,000) (the "Annual Use Fee") to SCE.

- a. The obligation to pay Annual Use Fees shall be personal to A-B, shall not be part of the Access Easement or the Utilities Easement, and shall not run with the land. Failure to pay the Annual Use Fee when due shall not result in the forfeiture of the Access Easement or the Utilities Easement or any easement rights thereunder.
- b. All payments of Annual Use Fees shall be by bank check payable to the order of Southern California Edison Company, and shall be made in accordance with section 13n herein. The payment of each Annual Use Fee shall be accompanied by a report that details the status and progress in development of the alternative access routes, including the New Access Road and any other access road then planned or under construction, and utility routes. Such status report shall at a minimum identify any applications for permits, permits issued, plans submitted to government agencies or utilities, any objections that are known to have been made to any alternative routes, and timetables for the completion of alternative access and utility routes.
- c. To ensure the timely payment of Annual Use Fees, A-B shall execute, deliver and convey to SCE at or before the Closing (1) a non-interest bearing Note in the face amount of two million dollars (\$2,000,000), in the form of **Exhibit 7** (the "Note"); and (2) a recordable first trust deed in the amount of two million dollars (\$2,000,000), in the form of **Exhibit 8** (the "First Trust Deed") on the 87.9 acres or so of property A-B owns that is sometimes known by assessor parcel numbers 511-0-180-110 and 511-0-190-120 in the City of Moorpark (the "North Village Property") securing the Note and granting SCE a first priority lien on the North Village Property in the amount of two million dollars (\$2,000,000), which security is an express condition to SCE's obligation to grant the easements herein. That the Note is in the face amount of two million dollars (\$2,000,000) shall in no way explicitly or implicitly cap or otherwise limit A-B's liability for Annual Use Fees, which shall be due and payable in

accordance with the provisions of this section 8. Pursuant to the terms of the Note and First Trust Deed, the failure of A-B to pay any Annual Use Fee when due shall be an event of default ("Event of Default") causing the Note to become due and payable for the entire face amount. In such Event of Default, SCE shall provide notice, in accordance with section 13n herein, to A-B of such Event of Default. A-B shall have thirty (30) days from the date of notice to cure such Event of Default. If the Event of Default is not cured within thirty (30) days of such notice, SCE shall have the absolute right to exercise any and all rights to collect on the Note and foreclose on the First Trust Deed. In the event that such Event of Default is not cured within thirty (30) days of SCE's Notice of Event of Default, A-B hereby waives any and all further rights of presentment for payment, demand, protest, notice of non-payment, or dishonor and of protest, and any and all other notices and demands whatsoever, and consent that at any time, or from time to time, payment of any sum payable under any Note may be extended without notice, whether for definite or indefinite time.

- d. An Event of Default shall not relieve A-B of its obligation to pay further Annual Use Fees as they come due; however, any amounts collected by SCE on the Note in excess of the Annual Use Fees due and owing at the time of the Event of Default shall be held by SCE in an interest bearing account, and shall, along with any interest earned, be credited toward such Annual Use Fee obligations as they become due. All such credit amounts remaining upon the later of (1) the termination of the Public Access Time Period and (2) the removal of all Utilities from the Transmission Strip after the Utilities Easement Termination Date shall be remitted to A-B.
- e. Upon termination of the later of (1) Public Access pursuant to the Access Easement and (2) the Utilities Easement:
 - i. If the Note is not then in default, the Note shall be cancelled and returned to A-B, and the First Trust Deed shall be extinguished;
 - ii. If the Note is then in default, A-B shall remain liable for the amount of Annual Use Fee payments that would have been due in the absence of any default and, to the extent that SCE has collected on the Note an amount in excess of the amount of Annual Use Fee payments that would have been due in the absence of any default, SCE shall refund such excess to A-B.

9. Further Covenants, Representations and Warrantees.

- a. Each of the Burns Parties represents and warrants that, as of their execution of this Agreement, (a) A-B is the sole holder of all right title and interest in fee

simple of the A-B Fee Property and the North Village Property; (b) the North Village Property is not subject to any liens or other encumbrances, other than Permitted Encumbrances; and (c) any and all licenses, easements and other interests in the Hitch Ranch previously conveyed by the Hitch Owners to any of the Burns Parties have been extinguished, with the sole exception of the easements that purport to have been conveyed in the 2000 Deed, the 2001 Deed and the 2007 Deeds, which easement grants each of the Burns Parties and the Hitch Owners now relinquish. Each of the Burns Parties further covenants, represents and warrants that neither A-B nor its successors will quitclaim, assign, transfer, convey or encumber: any interest in the A-B Fee Property or the North Village Property between its execution of this Agreement and the delivery of the executed Quitclaim and First Trust Deed at the Closing; or, without the advance, written consent of SCE (which consent shall not be unreasonably withheld), any interest in the North Village Property prior to the satisfaction of the Notes and extinguishment of the First Trust Deed.

- b. Each of the Burns Parties covenants, represents and warrants that they either now have, or will timely obtain, all consents necessary to carry out their obligations under this Agreement.
- c. Each of the Burns Parties covenants that they will construct the New Access Road on or before the expiration of the Public Access Time Period.
- d. Each of the Hitch Owners represents and warrants that, as of their execution of this Agreement, (a) as tenants in common, the Hitch Owners, and only the Hitch Owners, own the Hitch Fee Interest in fee simple absolute; (b) without duty of investigation or inquiry, none of the Hitch Owners have any actual knowledge of any lien or encumbrance to which the Hitch Fee Interest is subject other than Permitted Encumbrances, water rights, and tax liens or assessments that are disclosed as exceptions to title in that certain Preliminary Title Report issued by Stewart Title of California, Inc. under order no. 205868, dated as of July 7, 2010; (c) all taxes and other assessments assessed against the Hitch Fee Interest have been, or will before Closing be, paid through the Closing; and (d) any and all licenses, easements and other interests in the Hitch Fee Interest previously conveyed by the Hitch Owners to any of the Burns Parties have been extinguished, with the sole exception of the easements that purport to have been conveyed in the 2000 Deed, the 2001 Deed and the 2007 Deeds. The Hitch Owners each further covenants, represents and warrants that neither they nor their successors will quitclaim, assign, transfer, convey or encumber any of their interest in the Hitch Fee Interest between the execution of this Agreement and the execution and delivery of the Fee Grant at the Closing, and that the conveyance of the Fee Grant will transfer title of the Hitch Fee Interest to SCE free and clear of any and all encumbrances, except

Permitted Encumbrances.

- e. SCE represents and warrants that, as of its execution of this Agreement, it is the holder of the Transmission Easement.

10. **Mutual Releases.**

- a. Releases between the Burns Parties and SCE. In consideration of the mutual compromises and other agreements set forth herein, and subject to the provisions of Section 11 of this Agreement, each of the Burns Parties, on the one hand, and SCE, on the other hand, for themselves and each of their respective predecessors, successors, heirs and assigns (each, individually, a "Releasing Party"), each fully release and forever discharge the other and each of such other Party's respective, as relevant, shareholders, affiliates, parent, boards, directors, officers, employees, agents, representatives, attorneys, spouses, successors, heirs and assigns (each, individually, a "Released Party") from and against all claims, demands, actions, causes of action, liens, judgments, losses, damages, costs, expenses, attorneys' fees, obligations, and liabilities of every nature and kind (collectively, the "Released Claims") whether known or unknown, suspected or unsuspected, vested or contingent, whether in law or in equity, and whether under state or federal law, which each Releasing Party may ever have had, may now have, or may in the future have against any Released Party and which Released Claims concern, arise from, or pertain to (i) the Lawsuit, (ii) the claims and defenses in the Lawsuit, (iii) the disputes that are the subject matter of the Lawsuit, or (iv) the Eminent Domain Action and the claims and defenses in the Eminent Domain Action; *provided*, however, that nothing herein shall alter or operate as a release of any obligations created under this Agreement.
- b. Releases between the Hitch Owners and SCE. In consideration of the mutual compromises and other agreements set forth herein, and subject to the provisions of Section 11 of this Agreement, each of the Hitch Owners, on the one hand, and SCE, on the other hand, for themselves and each of their respective predecessors, successors, heirs and assigns (each, individually, a "Releasing Party"), fully release and forever discharge the other and each of such other Party's respective, as relevant, shareholders, affiliates, parent, boards, directors, officers, employees, agents, representatives, attorneys, spouses, successors, heirs and assigns (each, individually, a "Released Party") from and against all claims, demands, actions, causes of action, liens, judgments, losses, costs, expenses, attorneys' fees, obligations, and liabilities of every nature and kind (collectively, the "Released Claims") whether known or unknown, suspected or unsuspected, vested or contingent, whether in law or in equity, and which each Releasing Party may ever have had, may now have, or may in the future have against any Released Party and which Released

Claims concern, arise from, or pertain to (i) the Lawsuit, (ii) the claims and defenses in the Lawsuit; (iii) the disputes that are the subject matter of the Lawsuit, or (iv) the Eminent Domain Action and the claims and defenses in the Eminent Domain Action, *provided*, however, that nothing herein shall alter or operate as a release of any obligations created under this Agreement.

11. **Release of Unknown Claims.** It is the intention of the Parties that releases contained in this Agreement shall be effective as a full and final accord and satisfaction and release of the Released Claims, whether or not such claims are presently known or unknown to the Parties. In furtherance thereof, and to the extent California law is applicable to this Agreement or the release provisions hereof, the Parties acknowledge that they are familiar with Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DID 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.

Without expanding the scope of the foregoing releases, to the extent that such releases, or any portions thereof, may be construed as being subject to Civil Code Section 1542, the Parties waive any and all rights they have or may have under such section, any successor section to it, and any comparable principle of law or equity as may exist in any jurisdiction, in connection with the claims released hereby. Specifically, and without limitation, the Parties acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected; or facts in addition to or different from those they now know or believe to be true with respect to the subject matter of this Agreement. Nevertheless, the Parties intend by this Agreement and with and upon the advice of their own independently selected counsel, to release fully, finally and forever all claims released and discharged under this Agreement. In furtherance of such intention, the releases set forth in this Agreement shall be, and shall remain in effect, as full and complete releases, notwithstanding the discovery or existence of any such additional or different claims relevant hereto. The releases shall inure to the benefit of the Parties' successors and assigns.

12. **Actions upon Occurrence of the Effective Date.** Upon the Effective Date having been reached: each of the Burns Parties shall be obligated to execute and deliver to SCE the Dismissal Stipulations, the Quitclaim, the Note and the Trust Deed to SCE at or before the Closing, and the Hitch Owners shall be obligated to deliver the Fee Grant to SCE at or before the Closing. Upon receipt of the last of the Cross-Defendant Deliverables, SCE shall be obligated to convey the Settlement Consideration, the Access Easement, the Utilities Easement, and to record the Easement Grant Deeds (the "SCE Deliverables" and, together with the Cross-Defendant Deliverables, the "Deliverables"). Subject to and upon SCE's recordation of the Easement Grant Deeds, the releases provided in Section 10 of this

Agreement shall take full effect.

13. **Miscellaneous Provisions.**

- a. Warranty of Non-Assignment. Other than Permitted Encumbrances, each Party to this Agreement represents and warrants that he, she or it has not assigned or in any way conveyed, transferred or encumbered all or any portion of the claims or rights covered by this Agreement.
- b. Warranty of Authority. Each of the individuals executing this Agreement on behalf of a Party hereto represents and warrants that he or she is duly authorized to execute this Agreement on behalf of such Party.
- c. Choice of Law. This Agreement shall be interpreted in accordance with the laws of the State of California without regard to its choice of law provisions.
- d. Advice of Counsel. Each Party to this Agreement acknowledges that this Agreement has been executed with the consent and on the advice of independent legal counsel, and each Party knowingly and voluntarily agrees to be bound by the terms of the Agreement.
- e. Non-waiver provision. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.
- f. Further Assurances. Each of the Parties hereto agrees that he, she or it will execute and deliver all such documents and instruments as may be necessary and appropriate to effectuate the terms hereof.
- g. Counterparts. This Agreement may be executed in counterparts with the same force and effect as if executed in one complete document by the Parties. Facsimile signatures shall be deemed original signatures for the purpose of the execution of this Agreement. Counsel for each of SCE, the Burns Parties and the Hitch Owners shall deliver to the others by email or fax the signature page for each of their respective clients within three (3) business days of the execution of this Agreement by that client.
- h. Joint Drafting. This Agreement shall be deemed to have been drafted jointly by the Parties, and shall be so construed.
- i. Headings. Headings, titles and captions preceding the sections hereof are provided for convenience of reference and shall not be used to explain or to restrict the meaning, purpose or effect of any provision to which they refer.
- j. Parties to bear own fees and costs. The Parties hereto agree to pay their own

costs and attorneys' fees incurred in connection with the Lawsuit and the Eminent Domain Action, and in connection with negotiation, drafting and execution of this Agreement and all other matters related thereto or in connection therewith.

- k. Integration Clause. This Agreement, together with the exhibits attached hereto, represents the entire agreement of the Parties concerning the subject matter of this Agreement. There are no oral or written representations, warranties, promises or inducements to this Agreement not set forth herein.
- l. Modifications. This Agreement may not be altered, amended, waived, modified or otherwise changed in any respect or particular whatsoever except by written agreement executed by all Parties affected by the alteration, amendment, waiver, modification or change.
- m. Severability and Reformation. If, for any reason, any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be automatically reformed to embody the essence of that provision to the maximum extent permitted by law, and, unless the invalidity or unenforceability, after reformation, results in a material failure of consideration, the remaining provisions of this Agreement shall be construed, performed and enforced as if the reformed provision had been included in this Agreement at inception.
- n. Notices and Payments. Any notices or payments required under this Agreement shall be sent to the Parties at the following addresses by FedEx or similar commercial overnight service which provides for a receipt or tracking number, with a copy of the notice or payment simultaneously provided by fax or e-mail to each Party's counsel. Notice shall be deemed given and effective upon sending Party's receipt of notice properly addressed.

- i. The Burns Parties

- To Paul D. Burns, Burns Pacific Construction, Inc., 505 Thousand Oaks Boulevard, Thousand Oaks, California, 91360, fax no. (805) 495-6014, email address: paul.burnspacific@verizon.net; copy to Gaines & Stacey LLP, 16633 Ventura Blvd., Suite 1220, Encino, California 91436-1872, Attn. Fred Gaines, Esq., Fax No. (818) 933-0222, e-mail address: fgaines@gaineslaw.com.

- ii. SCE

- To Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770, Attn: Leon Bass, Jr., Esq.; copy to Willenken, Wilson, Loh & Lieb LLP, 707 Wilshire Blvd., Suite 3850,

Los Angeles, California 90017, Attn: Jason H. Wilson, Esq., Fax No. (213) 955-9250, e-mail address: JasonWilson@Willenken.com.

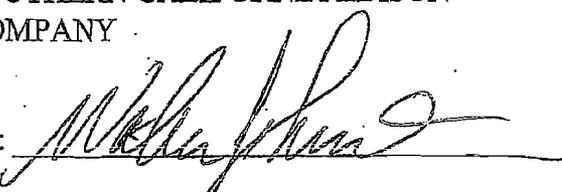
- iii. Louis David Bavo, Susan C. Bavo, Richard S. Hambleton, Jr., A.A. Milligan, John R. Milligan (aka John Reid Milligan), Kimberley Jeanne Milligan, Marshall C. Milligan, Michael S. Milligan, Alan J. Pomato, Allison Jones Pomato, Julia Milligan Summers, Idaho Trust Company, and the Richard H. Jones Ltd Partnership

To Richard S Hambleton; Hoffman, Vance and Worthington Inc., 1000 S Seaward Ave. Ventura Calif. 93001; copy to Nordman, Cormany, Hair & Compton LLP, 1000 Town Center Drive, 6th floor, P.O. Box 9100, Oxnard, California 93031-9100, attn: Michael C. O'Brien, Esq., Fax No. (805) 988-8387, e-mail address: mobrien@nchc.com

14. **Disputes.** Any and all disputes between or among the Parties to enforce or interpret the terms of this Agreement shall be resolved before a single arbitrator, to be agreed upon by all Parties to the dispute, under the comprehensive rules and procedures of JAMS then in effect. The venue for any arbitration or proceedings to enforce any arbitration award, or any other court proceeding between or among the Parties, shall be in the County of Los Angeles, State of California, and all Parties expressly agree to submit to the personal jurisdiction of the courts of California to the extent required for a Party to compel arbitration or to enforce any arbitration award resulting from the foregoing procedures.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Settlement Date.

SOUTHERN CALIFORNIA EDISON
COMPANY

By: 

Print Name: Walter Johnston

Print Title: VP of Power Delivery

A-B PROPERTIES, a California general partnership.

By: 
Print Name: Paul D. Burns
Print Title: General Partner

BURNS-PACIFIC CONSTRUCTION, INC.

By: 
Print Name: PAUL D. BURNS
Print Title: PRESIDENT


PAUL D. BURNS

LOUIS DAVID BAVO

SUSAN C. BAVO

RICHARD S. HAMBLETON, JR.

A-B PROPERTIES, a California general partnership.

By: _____

Print Name: _____

Print Title: _____

BURNS-PACIFIC CONSTRUCTION, INC.

By: _____

Print Name: _____

Print Title: _____

PAUL D. BURNS



LOUIS DAVID BAVO

SUSAN C. BAVO

RICHARD S. HAMBLETON, JR.

A-B PROPERTIES, a California general partnership.

By: _____

Print Name: _____

Print Title: _____

BURNS-PACIFIC CONSTRUCTION, INC.

By: _____

Print Name: _____

Print Title: _____

PAUL D. BURNS

LOUIS DAVID BAVO

Susan C Bavo

SUSAN C. BAVO

RICHARD S. HAMBLETON, JR.

A-B PROPERTIES, a California general partnership.

By: _____

Print Name: _____

Print Title: _____

BURNS-PACIFIC CONSTRUCTION, INC.

By: _____

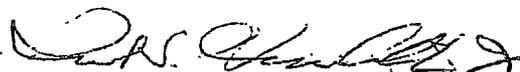
Print Name: _____

Print Title: _____

PAUL D. BURNS

LOUIS DAVID BAVO

SUSAN C. BAVO



RICHARD S. HAMBLETON, JR.

Michael S. Milligan

A.A. MILLIGAN

By MICHAEL S. MILLIGAN or MARSHALL
C. MILLIGAN, his attorneys-in-fact

JOHN R. MILLIGAN (aka JOHN REID
MILLIGAN)

KIMBERLEY JEANNE MILLIGAN

MARSHALL C. MILLIGAN

Michael S. Milligan

MICHAEL S. MILLIGAN

ALAN J. POMATO

A.A. MILLIGAN
By MICHAEL S. MILLIGAN or MARSHALL
C. MILLIGAN, his attorneys-in-fact



~~JOHN R. MILLIGAN (aka JOHN REID
MILLIGAN)~~

KIMBERLEY JEANNE MILLIGAN

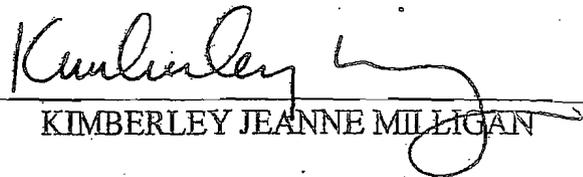
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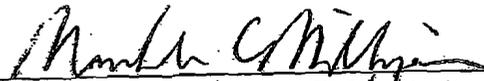
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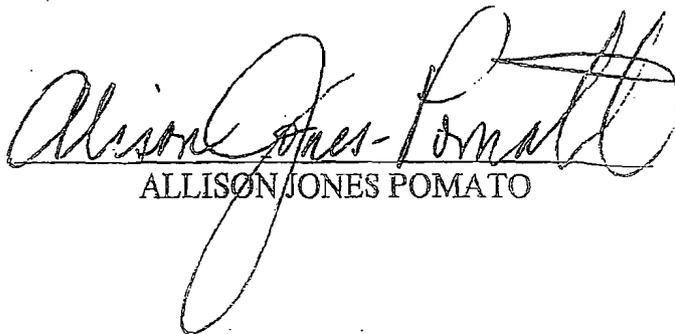
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KIMBERLEY JEANNE MILLIGAN

MARSHALL C. MILLIGAN

MICHAEL S. MILLIGAN


ALAN J. POMATO


ALLISON JONES POMATO

JULIA MILLIGAN SUMMERS

IDAHO TRUST COMPANY

By: _____

Print Name: _____

Print Title: _____

THE RICHARD H. JONES LTD
PARTNERSHIP

By: _____

Print Name: _____

Print Title: _____

ALLISON JONES POMATO


JULIA MILLIGAN SUMMERS

IDAHO TRUST COMPANY

By: _____
Print Name: _____
Print Title: _____

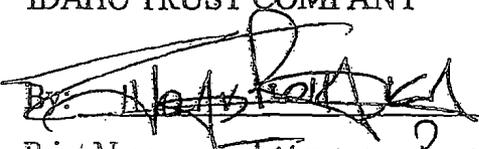
THE RICHARD H. JONES LTD
PARTNERSHIP

By: _____
Print Name: _____
Print Title: _____

ALLISON JONES POMATO

JULIA MILLIGAN SUMMERS

IDAHO TRUST COMPANY

By: 

Print Name: THOMAS PROHASKA

Print Title: PRESIDENT, IDAHO TRUST BANK
(SUCCESSOR IN INTEREST)

THE RICHARD H. JONES LTD
PARTNERSHIP

By: 

Print Name: Richard H. Jones

Print Title: General Partner

Approved by:

WILLENKEN, WILSON, LOH & LIEB LLP

By: _____

Jason H. Wilson
Attorneys for Southern California Edison
Company

Approved by:

GAINES & STACEY LLP

By:  _____

Fred Gaines
Attorneys for A-B Properties; Burns Pacific
Construction, Inc.; and Paul D. Burns

Approved by:

NORDMAN CORMANY HAIR & COMPTON
LLP

By: _____

Michael C. O'Brien
Attorneys for Louis David Bavo, Susan C.
Bavo, Richard S. Hambleton, Jr., A.A.
Milligan, John R. Milligan (aka John Reid
Milligan), Kimberley Jeanne Milligan,
Marshall C. Milligan, Michael S. Milligan,
Alan J. Pomato, Allison Jones Pomato, Julia
Milligan Summers, Idaho Trust Company,
and the Richard H. Jones Ltd Partnership

EXHIBIT 5

EXHIBIT 5

RECORDING REQUESTED BY
SOUTHERN CALIFORNIA EDISON
COMPANY

WHEN RECORDED MAIL TO
SOUTHERN CALIFORNIA EDISON
COMPANY

14799 Chestnut Street,
Westminster, Ca. 92683
Attn: Title & Real Estate Services

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ROAD, SLOPE AND DRAIN EASEMENT

Location: Moorpark
A.P.N. 511-0-200-225
& 511-0-200-235
Affects SCE Docs:
206689 & 278568

DOCUMENTARY TRANSFER TAX \$	SER. 68545A
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED	APPROVED
NO CONSIDERATION AND VALUE LESS THAN 100.00	SCE LAW DEPARTMENT
SO. CALIF. EDISON CO.	BY WAM DATE 7/7/2010
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX	FIRM NAME

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, (hereinafter called "Grantor"), does hereby grant to AB PROPERTIES, a California general partnership, (hereinafter called "Grantee" and, together with the Grantor, the "Parties") subject to the terms and conditions stated herein, a non-exclusive easement covering the area described in Exhibit "A" attached hereto, and more particularly depicted on Exhibit "B" attached hereto, both of which exhibits are by this reference made a part hereof, which non-exclusive easement consists and is comprised of a 32.00 foot wide road easement (hereinafter "Road Easement") as depicted on the Exhibit "B"; an easement for slope purposes (hereinafter "Slope Easement") as depicted on the Exhibit "B"; and an easement for a slope drain and riprap (hereinafter the "Drain Easement" and, together with the Road Easement and the Slope Easement, the "Road, Slope and Drain Easement"), also as depicted on the Exhibit "B", all in accordance with the terms and conditions stated within the numbered paragraphs below, crossing that certain real property of the Grantor, situated in the County of Ventura, State of California, hereinafter the "Servient Tenement", for the installation, operation and maintenance of an access road, described as follows:

Servient Tenement:

The East half of the Southeast quarter of Section 6, Township 2 North, Range 19 West, Rancho Simi, in the City of Moorpark, County of Ventura, State of California, as shown on map entitled, Map of the Lands of Rancho Simi, in Ventura and Los Angeles Counties, California, and recorded in Book 3, Page 7 of Maps, in the office of the County Recorder of said County, and particularly described as follows:

"Beginning at a point in the centerline of that certain public road, 60 feet wide, locally known as and called "Los Angeles Avenue at the corner common to Sections 5,6, 7 and 8 of Township 2 North, Range 19 West, Rancho Simi, as shown on the above described map, said

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point of beginning being the Southwest corner of Tract "Q" as shown on map entitled "Map of a Part of Tract "L" of Rancho Simi, Ventura County, California, showing the Township of Moorpark and Lands of Madeleine R. Poindexter, a Re-subdivision of Fremont Tract" and recorded in Book 5, Page 5 of Maps, in the office of the County Recorder of said Ventura County; thence, from said point of beginning,

1st: North 2640 feet to the Southeast corner of Lot 56 of Vallette Tract, as per Map recorded in Book 3, Page 41 of Maps, in the office of the County Recorder of said County; thence, at right angles,

2nd: West 1320 feet to the Southwest corner of said Lot 56 of Vallette Tract, at the Northeast corner of that certain parcel of land conveyed to Mary Frances Estes, by deed dated October 22, 1902 and recorded in Book 87, Page 120 of Deeds; thence, at right angles,

3rd: South 26' 10 feet along the East line of said lands of Mary Frances Estates to a point in the centerline of said Los Angeles Avenue; thence, along same,

4th: East 1320 feet to the point of beginning.

Except that portion lying Southerly of the Northerly line of that certain strip 100 feet wide described in the deed to the Southern Pacific Railroad Company, recorded November 13, 1899, in Book 58, Page 596 of Deeds."

Commonly known as A.P.N. 511-0-200-225 and 511-0-200-235

SUBJECT TO prior covenants, conditions, restrictions, reservations, exceptions, encumbrances, rights, easements, leases and licenses, affecting the Servient Tenement or any portion thereof, whether of record or not.

The foregoing grant is made subject to the following terms and conditions:

1. This Road, Slope and Drain Easement shall be located only where indicated on Exhibit B hereto, and shall be appurtenant to, and for the sole benefit of, that property owned in fee by Grantee described as lots 1 through 17 inclusive of Tract No. 5147, as per map recorded in Book 158, page 37, of Miscellaneous Records, in the Office of the County Recorder of Ventura County, State of California (hereinafter the "Dominant Tenement"), and only that property. It shall be neither severable from the Dominant Tenement nor appurtenant to any after acquired property.
2. The only structures permitted within the Road, Slope and Drain Easement (the "Permitted Structures") shall be: a maximum 32-foot wide asphalt paved road (the "Paved Road"); a maximum three-foot wide, six-inch deep slope drain; a riprap no larger than 20-feet by 20 feet; and at least three driveways of a minimum 28-foot wide leading from the Paved Road to the unpaved portion of the servient tenement (the "Driveways"). All Permitted Structures shall be placed only in the locations indicated on Exhibit B hereto.
3. The Paved Road: (1) shall be a maximum of 32-foot wide at any point; (2) located only in the location indicated on Exhibit B; (3) shall not have any sidewalks, curbs, streetlights, landscaping or any other structure other than the Driveways along its

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entire length; and (4) shall otherwise be designed, constructed, utilized and maintained in a manner that neither interferes with nor endangers Grantor's operations. The Road, Slope and Drain Easement may only be used for the development and maintenance of the Paved Road. The Paved Road may provide vehicular ingress and egress, subject to the restrictions herein, over the Servient Tenement to and from the Dominant Tenement. Traffic signs that do not interfere with SCE operations may be posted along the Paved Road where necessary for safety.

4. The Slope Drain shall: (1) be no wider than three feet, nor deeper than six inches, at any point; and (2) only be located to the north of the Paved Road along the toe of the Slope Easements (as defined below), or otherwise within the Road, Slope and Drain Easement, in the location indicated on Exhibit B. The Riprap shall be: (1) no larger than 20 feet by 20 feet; and (2) contiguous to the Paved Road in the location indicated on Exhibit B.
5. There shall be a minimum of three Driveways, which each shall be: (1) constructed and maintained as a *quid pro quo* for the installation of the Slope Drain (i.e., proper installation and maintenance of the three driveways shall be a condition for A-B to install and maintain the Slope Drain); (2) in the locations indicated on Exhibit B to the Access Easement Deed; (3) a minimum of 28 feet wide, and otherwise accessible for use by SCE's operational equipment; (4) engineered and constructed at a minimum to the guidelines and standards for commercial driveways promulgated and set forth by Moorpark; and (5) blocked to public access by chains that can and shall only be removed by SCE. The Driveways leading north off the Paved Road shall cross over and cover the Slope Drain.
6. Grantee shall have sole responsibility for the construction and maintenance of the Slope Easement and each of the Permitted Structures. Aside from Grantor's operations, no utilities or any construction other than the Permitted Structures shall be permitted anywhere in the Road, Slope and Drain Easement. With the sole exception of vehicles engaged in Grantor's operations, parking shall not be permitted anywhere within the Road, Slope and Drain Easement.
7. Slope Easement shall only be permitted within the Road, Slope and Drain Easement, and only to the extent any such Slope Easement is necessary for construction or maintenance of the Paved Road.
8. The Driveways shall be engineered, constructed and maintained in accordance with all applicable guidelines and standards, including the guidelines and standards for commercial driveways promulgated by the City of Moorpark. The Driveways shall be blocked to public access by chains that can and shall only be removed by Grantor.
9. Grantee covenants, for itself and its successors and assigns, to construct, operate and maintain the Paved Road, Permitted Structures and Slope Easement at its own expense. Construction, operation and maintenance of the Permitted Structures shall be done without any cost or expense whatsoever to Grantor and, in the event a special assessment or assessments is or are levied by an authorized lawful body against the real property of Grantor for any of the Permitted Structures, Grantee agrees that it will reimburse Grantor for the full amount of any and all such special assessment or assessments so levied for said Permitted Structures and paid by Grantor.

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10. The Public Access Time Period shall be the time period in which the Paved Road may be used for vehicular ingress and egress only to and from the Dominant Tenement ("Public Access"). The right to such Public Access shall be limited to the Grantee and tenants holding a leasehold interest in the Dominant Tenement; their respective customers, suppliers and employees; emergency and other City of Moorpark municipal services, and only those persons; at no time shall the Paved Road be used as a thoroughfare, nor dedicated as a public street or roadway. Further, in no event - not even during the Public Access Time Period - shall Public Access be permitted in the Paved Road until after Grantee's agreement with the City of Moorpark dated December 16, 1998 for the development of the Dominant Tenement (the "Development Agreement") has been amended to the reasonable satisfaction of Grantor to provide that the Improvements referenced in section 6.22 of the Development Agreement shall be a road extending from the A-B Property to Gabbert Road entirely off of the Servient Tenement (the "New Access Road").
11. The Public Access Time Period shall commence on the date of the recording of this Road, Slope and Drain Easement (the "Public Access Start Date"). The Public Access Time Period shall terminate upon the earlier of the completion of the New Access Road or some other road not within the Servient Tenement that provides Public Access to the Dominant Tenement, or the fortieth (40th) anniversary of the Public Access Start Date.
12. In the event that the Public Access Time Period terminates prior to the fortieth (40th) anniversary of the Public Access Start Date, the Road, Slope and Drain Easement and Paved Road may thereafter be used only by Grantor or for access by Authorized Emergency Vehicles as defined in California Vehicle Code section 165 responding to any emergency at the Dominant or Servient Tenement (the "Emergency Access") until the earlier of the fortieth (40th) anniversary of the Public Access Start Date or the completion of construction of a second access road (e.g., in addition to the New Access Road) that extends from a public road to the Dominant Tenement entirely outside of the Servient Tenement (the "Road Easement Termination Date.") During this time period between the end of the Public Access Time Period and the Road Easement Termination Date, (1) no Person shall have any right of Public Access to the Dominant Tenement anywhere over the Servient Tenement, and the Road, Slope and Drain Easement and Paved Road may be used only for Emergency Access; (2) the Road, Slope and Drain Easement and Paved Road shall be blocked and secured at each end by locked gates; and (3) only Grantor and those emergency public entities required by law to have access shall have keys to the locked gates, and Grantee or its designated successor shall have one key not to be duplicated.
13. The Road, Slope and Drain Easement will terminate and be extinguished in its entirety, and all interests previously granted herein shall revert to and merge in the interest of Grantor, on the earlier of the Road Easement Termination Date, the fortieth (40th) anniversary of the Public Access Start Date, or December 31, 2049. Grantee expressly acknowledges that after this termination of the Road, Slope and Drain Easement, neither Grantee nor any other person shall have any rights of Public Access, Emergency Access, or any other access anywhere over the Servient Tenement.
14. Grantee agrees that no additional structure other than the Permitted Structures will be installed, nor other uses made by or on behalf of Grantee, on or within the Servient Tenement except where expressly permitted herein.

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15. This Road, Slope and Drain Easement is granted subject to the right of Grantor to construct, maintain, use, operate, alter, add to, repair, replace, reconstruct, enlarge and/or remove in, on, over, under, through, along and across the Servient Tenement, electric transmission and distribution lines and communication lines, together with supporting structures and appurtenances, for conveying electric energy for light, heat, power and communication purposes, and pipelines and appurtenances for the transportation of oil, petroleum, gas, water, or other substances, and conduits for any and all purposes.
16. The said Road, Slope and Drain Easement shall be exercised so as not to unreasonably endanger or interfere with the construction, maintenance, use, operation, presence, repair, replacement, relocation, reconstruction or removal of such electric transmission, distribution or communication lines, pipelines, or other conduits.
17. Grantee agrees to hold harmless and indemnify Grantor to the fullest extent to which it can legally do so, from and against all claims, liens, encumbrances, actions, loss, damage, expense and/or liability arising from or growing out of loss or damage to property, including Grantor's own property, or injury to or death of persons, including employees of Grantor, resulting in any manner whatsoever, directly or indirectly, by reason of the exercise of the rights hereby granted; provided, however, that this covenant shall not apply in those instances where such claims, liens, encumbrances, actions, loss, damage, expense and/or liability are caused by the sole active negligence of Grantor.
18. If at any time after the eighth anniversary of the Public Access Start Date Grantor determines in its sole discretion that (1) any transmission line(s), towers or any other electricity transmitting equipment need to be added within the Servient Tenement, or (2) any or all existing transmission line(s), towers or any other electricity transmitting equipment need to be reconfigured or relocated to, from or within the Servient Tenement, Grantee shall either:
 - a. pay Grantor for any and all incremental costs of any such addition, reconfiguration, or relocation caused by the presence and/or use of any of the Permitted Structures and the Road, Slope and Drain Easement; or
 - b. move, at Grantee's sole expense, the Road, Slope and Drain Easement and Permitted Structures to a different location(s) provided that in the opinion of a mutually selected industry expert the new location(s) do(es) not interfere with Grantor's operation of its current transmission lines or its plans for added, reconfigured or relocated transmission lines.
19. Grantee agrees that in the exercise of its rights hereunder, its contractors, employees and other agents will maintain a minimum clearance of seventeen (17.00) feet between their equipment and any and all overhead electric conductors.
20. Grantor shall have full unobstructed access to its facilities at all times and the right to clear, keep clear, and remove any and all obstructions of any kind at all times.
21. Grantor reserves for itself the right to trim any tree or trees which may grow in or on the Servient Tenement and which, in the opinion of Grantor, may endanger or interfere with the proper operation or maintenance of any electric transmission, distribution and

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communication lines, to the extent necessary to prevent any such interference or danger.

22. The above described Road, Slope and Drain Easement is to be used only for the purposes specified herein and in the event:
- a. said Road, Slope and Drain Easement is not used by Grantee for this purpose, or should Grantee allow said Road, Slope and Drain Easement to be used for any purpose inconsistent with the purposes specified herein;
 - b. said Road, Slope and Drain Easement is vacated as an access easement right of way; or
 - c. the project for which this Road, Slope and Drain Easement is being granted is abandoned,

the Road, Slope and Drain Easement shall thereupon, *ipso facto*, revert to and merge in the interest of Grantor in the Servient Tenement.

23. Upon termination or reversion of the rights herein granted, Grantee shall execute and deliver to Grantor, within thirty (30) days after service of a written demand therefore, a good and sufficient quitclaim deed to the rights herein given. Should Grantee fail or refuse to deliver to Grantor a quitclaim deed, as aforesaid, a written notice by Grantor reciting the failure or refusal of Grantee to execute and deliver said quitclaim deed as herein provided and terminating this Road, Slope and Drain Easement shall, after ten (10) days from the date of recordation of said notice, be conclusive evidence against Grantee and all persons claiming under Grantee of the termination or reversion of the rights herein given.
24. Grantee hereby recognizes Grantor's title and interest in and to the Servient Tenement and agrees never to assail or resist Grantor's title or interest therein.
25. Grantee agrees that during any period of construction activity, it will periodically water down the construction area within the above described real property, so as to prevent dust contamination of Grantor's facilities.
26. The use of the neuter gender herein will, when appropriate, be construed to mean either the masculine or feminine gender or both. The terms, covenants and conditions of this Road Easement shall inure to the benefit of, and are binding upon, the heirs, successors, representatives and assigns of the Parties hereto.

Dated: _____, 2010.

This Document may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, said Southern California Edison Company has caused this instrument to be executed this ____ day of _____, 2010.

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A.B. Properties, a Ca. general partnership
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SOUTHERN CALIFORNIA EDISON COMPANY,
a corporation

By: _____

Glenn A. Larson,
Manager of Northern Region
Land Asset Management – Real Properties
Operations Support Department

GRANTEE does hereby accept the above and foregoing Easement upon and subject to all of the terms, covenants and conditions therein contained, and does hereby agree to comply with and perform each and all of said terms, covenants and conditions.

DATED as of this ____ day of _____, 2010.

AB Properties,
a California general partnership

By: _____
Paul D. Burns, president
Burns-Pacific Construction, Inc.,
Its general partner

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State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person[s] whose name[s] [is or are] subscribed to the within instrument and acknowledged to me that [he or she or they] executed the same in [his or her] authorized [capacity or capacities], and that by [his or her] signature[s] on the instrument the person[s], or the entity on behalf of which the person[s] acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[Seal]

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person[s] whose name[s] [is or are] subscribed to the within instrument and acknowledged to me that [he or she or they] executed the same in [his or her] authorized [capacity or capacities], and that by [his or her] signature[s] on the instrument the person[s], or the entity on behalf of which the person[s] acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[Seal]

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF LOT "L" IN RANCHO SIMI, IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 3 PAGES 7, OF MISCELLANEOUS RECORDS (MAPS), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF GABBERT ROAD AND LOS ANGELES AVENUE AS SAID INTERSECTION IS SHOWN ON THE MAP OF TRACT NO. 5147 FILED IN BOOK 158, PAGES 37 THROUGH 40 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; THENCE, ALONG THE CENTERLINE OF SAID GABBERT ROAD, NORTH $00^{\circ}01'58''$ EAST, 1778.57 FEET; THENCE LEAVING SAID CENTERLINE, NORTH $89^{\circ}58'02''$ WEST, 20.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID GABBERT ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY LINE, THE FOLLOWING THREE (3) COURSES:

1. NORTH $89^{\circ}58'02''$ WEST, 12.00 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 59.00 FEET, SAID CURVE HEREINAFTER REFERRED TO AS COURSE 1;
2. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $71^{\circ}00'00''$ AN ARC LENGTH OF 73.11 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 109.00 FEET, SAID REVERSE CURVE HEREINAFTER REFERRED TO AS COURSE 2;
3. SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $39^{\circ}47'42''$ AN ARC LENGTH OF 75.71 FEET TO A LINE PARALLEL WITH AND 75.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, SHOWN AS BEING 100.00 FEET WIDE ON SAID TRACT NO 5147;

THENCE, ALONG SAID PARALLEL LINE, SOUTH $76^{\circ}14'57''$ WEST, 591.36 FEET; THENCE, LEAVING SAID PARALLEL LINE THE FOLLOWING FOUR (4) COURSES:

1. NORTH $89^{\circ}39'02''$ WEST, 52.29 FEET;
2. NORTH $78^{\circ}08'31''$ WEST, 497.02 FEET;
3. SOUTH $86^{\circ}39'35''$ WEST, 66.99 FEET;
4. NORTH $80^{\circ}21'43''$ WEST, 26.66 FEET TO THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF SAID TRACT NO. 5147;

THENCE, ALONG SAID PROLONGATION AND SAID EASTERLY LINE OF SAID TRACT, NORTH $00^{\circ}01'07''$ EAST, 107.83 FEET;

THENCE, LEAVING SAID EASTERLY LINE THE FOLLOWING EIGHT (8) COURSES:

EXHIBIT "A"
LEGAL DESCRIPTION

1. NORTH 49°43'58" EAST, 32.21 FEET;
2. SOUTH 84°36'48" EAST, 95.89 FEET;
3. SOUTH 60°47'06" EAST, 57.79 FEET;
4. SOUTH 68°37'12" EAST, 68.89 FEET;
5. SOUTH 82°48'49" EAST, 93.62 FEET;
6. SOUTH 69°12'35" EAST, 253.37 FEET;
7. SOUTH 73°42'44" EAST, 45.29 FEET;
8. NORTH 85°20'25" EAST, 63.97 FEET TO A LINE PARALLEL WITH AND 124.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY;

THENCE, ALONG SAID PARALLEL LINE, NORTH 76°14'57" EAST, 43.47 FEET; THENCE, LEAVING SAID PARALLEL LINE, NORTH 13°45'09" WEST, 12.00 FEET TO A LINE PARALLEL WITH AND 136.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE ALONG SAID PARALLEL LINE, NORTH 76°14'57" EAST, 30.00 FEET; THENCE, LEAVING SAID PARALLEL LINE, SOUTH 13°45'09" EAST, 13.00 FEET TO A LINE PARALLEL WITH AND 123.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE, ALONG SAID PARALLEL LINE, NORTH 76°14'57" EAST, 48.13 FEET; THENCE, LEAVING SAID PARALLEL LINE, NORTH 13°45'09" WEST, 6.00 FEET TO A LINE PARALLEL WITH AND 129.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE ALONG SAID PARALLEL LINE, NORTH 76°14'57" EAST, 34.00 FEET; THENCE, LEAVING SAID PARALLEL LINE, SOUTH 13°45'09" EAST, 6.00 FEET TO SAID LINE PARALLEL WITH AND 123.00 FEET NORTHWESTERLY, MEASURED AT RIGHT ANGLES, FROM SAID CENTERLINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY; THENCE ALONG SAID PARALLEL LINE, NORTH 76°14'57" EAST, 191.94 FEET; THENCE, LEAVING SAID PARALLEL LINE, THE FOLLOWING FIVE (5) COURSES:

1. NORTH 29°53'53" EAST, 14.93 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 75.00 FEET;
2. NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°20'58" AN ARC LENGTH OF 60.67 FEET;
3. NORTH 76°14'51" EAST, 10.87 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 110.00 FEET;
4. EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°52'10" AN ARC LENGTH OF 49.67 FEET;

EXHIBIT "A"
LEGAL DESCRIPTION

5. SOUTH 77°52'59" EAST, 50.46 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 56.00 FEET, SAID CURVE ALSO BEING CONCENTRIC WITH AND NORTHWESTERLY 53.00 FEET FROM SAID COURSE 2, A RADIAL LINE THROUGH SAID BEGINNING OF CURVE BEARS SOUTH 24°34'56" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 46°23'06" AN ARC LENGTH OF 45.34 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 112.00 FEET, SAID CURVE ALSO BEING CONCENTRIC WITH AND NORTHWESTERLY 53.00 FEET FROM SAID COURSE 1;

THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°38'09" AN ARC LENGTH OF 104.85 FEET;

THENCE SOUTH 19°53'25" EAST, 3.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 109.00 FEET, SAID CURVE ALSO BEING CONCENTRIC WITH AND NORTHWESTERLY 50.00 FEET FROM SAID COURSE 1, A RADIAL LINE THROUGH SAID BEGINNING OF CURVE BEARS NORTH 17°15'39" WEST;

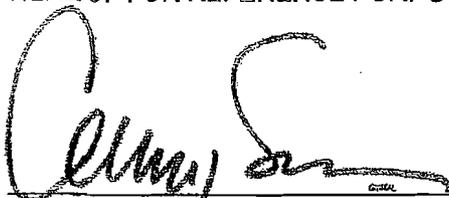
THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 17°17'37" AN ARC LENGTH OF 32.90 FEET;

THENCE SOUTH 89°58'02" EAST, 12.00 FEET TO SAID WESTERLY RIGHT OF WAY LINE OF GABBERT ROAD;

THENCE, ALONG SAID RIGHT OF WAY LINE, SOUTH 00°01'58" WEST, 50.00 FEET TO THE TRUE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 2.35 ACRES, MORE OR LESS.

THE ABOVE LEGAL DESCRIPTION IS DELINEATED ON EXHIBIT "B" AND IS MADE A PART HEREOF FOR REFERENCE PURPOSES.



GREGORY T. SCHLARBAUM P.L.S. 6704
REGISTRATION EXPIRES 6/30/12
DATE PREPARED: 7-06-10



EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR EXHIBIT "A"

TRACT NO. 5147
158 MR 37-40

SEE SHEET 4

SEE SHEET 3

SEE SHEET 2

SUBDIVISION "L"
OF MAP OF THE LANDS OF
RANCHO SIMI
3 MR 7

EASEMENT
AREA

T.P.O.B.

RAILROAD

PACIFIC

SOUTHERN

SUBDIVISION "L"
OF MAP OF THE LANDS OF
RANCHO SIMI
3 MR 7

GABBERT ROAD

1778.57'

N00°01'58"E

LOS ANGELES AVENUE

P.O.B.

SHEET 1 OF 5



SCALE: 1"=150'

EXHIBIT "B"
ACCESS EASEMENT
CITY OF MOORPARK, CALIFORNIA

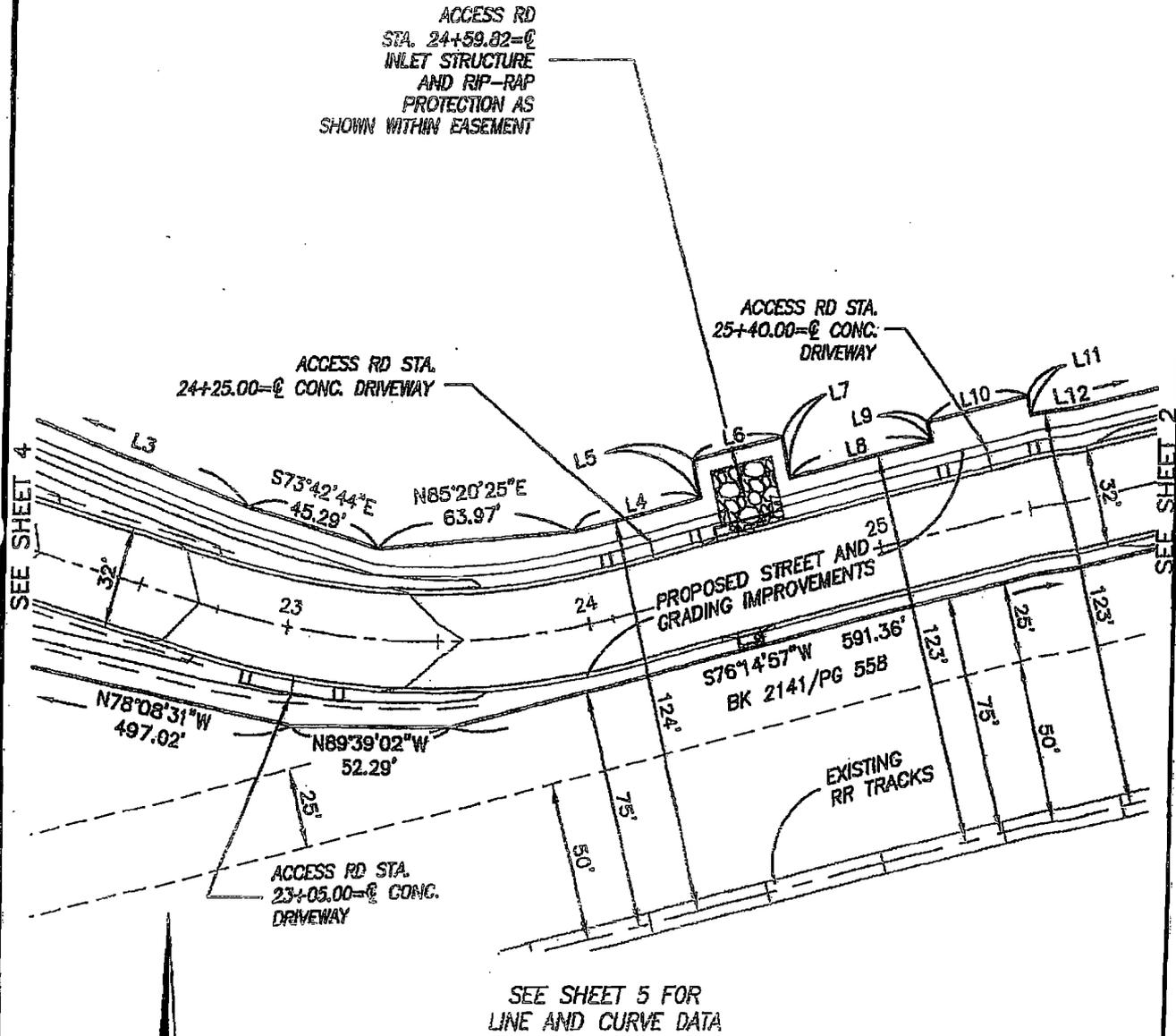
ORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 N. Riverview Drive, Sta. 100
Anaheim Hills, California 92808
(714) 685-8880

EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR EXHIBIT "A"

SUBDIVISION "L" OF MAP OF THE LANDS OF RANCHO SIMI 3 MR 7



SCALE: 1"=50'

SHEET 3 OF 5

EXHIBIT "B"
ACCESS EASEMENT
CITY OF MOORPARK, CALIFORNIA

DORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 H. Ehrenkrew Drive, Ste. 100
Ancheta Hills, California 92808
(714) 635-6860

EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR EXHIBIT "A"

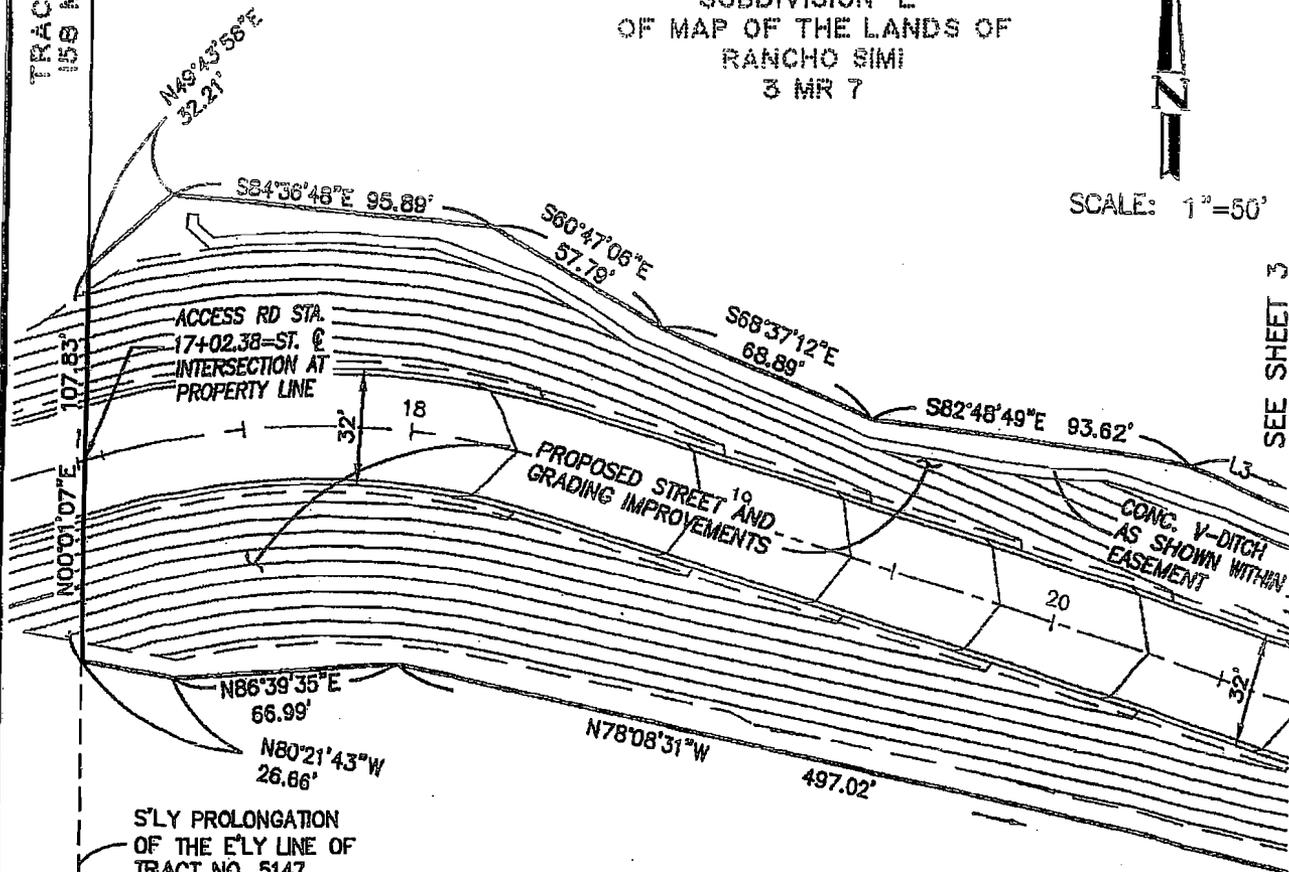
TRACT NO. 5147
158 MR 37-40

E'LY LINE OF
TRACT NO. 5147

SUBDIVISION "L"
OF MAP OF THE LANDS OF
RANCHO SIMI
3 MR 7



SCALE: 1"=50'



SEE SHEET 3

SUBDIVISION "L"
OF MAP OF THE LANDS OF
RANCHO SIMI
3 MR 7

SEE SHEET 5 FOR
LINE AND CURVE DATA

SHEET 4 OF 5

EXHIBIT "B"
ACCESS EASEMENT
CITY OF MOORPARK, CALIFORNIA

ORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 N. Riverview Drive, Ste. 100
Anaheim WA, California 92808
(714) 685-6060

EXHIBIT "B"

PLAT TO ACCOMPANY LEGAL DESCRIPTION FOR EXHIBIT "A"

LINE TABLE		
LINE	BEARING	LENGTH
L1	N89°58'02"W	20.00'
L2	N89°58'02"W	12.00'
L3	N89°12'35"W	253.37'
L4	N76°14'57"E	43.47'
L5	N13°45'09"W	12.00'
L6	N76°14'57"E	30.00'
L7	S13°45'09"E	13.00'
L8	N76°14'57"E	48.13'
L9	N13°45'09"W	6.00'
L10	N76°14'57"E	34.00'
L11	S13°45'09"E	6.00'
L12	N76°14'57"E	191.94'
L13	N29°53'53"E	14.93'
L14	N76°14'51"E	10.87'
L15	S19°53'25"E	3.00'
L16	S89°58'02"E	12.00'
L17	S00°01'58"W	50.00'

CURVE TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	71°00'00"	59.00'	73.11'
C2	39°47'42"	109.00'	75.71'
C3	46°20'58"	75.00'	60.67'
C4	25°52'10"	110.00'	49.67'
C5	45°23'06"	56.00'	45.34'
C6	53°38'09"	112.00'	104.85'
C7	17°17'37"	109.00'	32.90'

SHEET 5 OF 5

EXHIBIT "B"
ACCESS EASEMENT
CITY OF MOORPARK, CALIFORNIA

ORC Engineering, Inc.
Civil Engineering/Land Surveying/Land Planning

160 N. Riverside Drive, Ste. 200
Anaheim Hills, California 92808
(714) 885-6860

EXHIBIT 6

EXHIBIT 6

RECORDING REQUESTED BY
SOUTHERN CALIFORNIA EDISON
COMPANY

WHEN RECORDED MAIL TO
SOUTHERN CALIFORNIA EDISON
COMPANY

14799 Chestnut Street,
Westminster, Ca. 92683
Attn: Title & Real Estate Services

SPACE ABOVE THIS LINE FOR RECORDER'S USE

UTILITY EASEMENT

Location: Moorpark
A.P.N. 511-0-200-225
& 511-0-200-235
Affects SCE Documents:
206689 & 278568

DOCUMENTARY TRANSFER TAX \$ _____	SER. 68869A
COMPUTED ON FULL VALUE OF PROPERTY CONVEYED	APPROVED
NO CONSIDERATION AND VALUE LESS THAN 100.00	SCE LAW DEPARTMENT
SO. CALIF. EDISON CO.	BY WAM DATE 4/23/10
SIGNATURE OF DECLARANT OR AGENT DETERMINING TAX FIRM NAME	

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, SOUTHERN CALIFORNIA EDISON COMPANY, a corporation, (hereinafter called "Grantor"), does hereby grant to AB PROPERTIES, a California general partnership, (hereinafter called "Grantee" and, together with the Grantor, the "Parties") subject to the terms and conditions stated herein, an easement (hereinafter "Utility Easement"), described on the Exhibit "A" and more particularly depicted on the Exhibit "B", both attached hereto and by this reference made a part hereof, across that certain real property in the County of Ventura, State of California (hereinafter the "Servient Tenement") for the installation, operation and maintenance of underground cable, electricity, tel-com fiber optics, natural gas, water and sewer utility lines, pipes and conduits (hereinafter "Utilities"), described as follows:

Servient Tenement:

The East half of the Southeast quarter of Section 6, Township 2 North, Range 19 West, Rancho Simi, in the City of Moorpark, County of Ventura, State of California, as shown on map entitled, Map of the Lands of Rancho Simi, in Ventura and Los Angeles Counties, California, and recorded in Book 3, Page 7 of Maps, in the office of the County Recorder of said County, and particularly described as follows:

"Beginning at a point in the centerline of that certain public road, 60 feet wide, locally known as and called "Los Angeles Avenue at the corner common to Sections 5, 6, 7 and 8 of Township 2 North, Range 19 West, Rancho Simi, as shown on the above described map, said point of beginning being the Southwest corner of Tract "Q" as shown on map entitled "Map of a Part of Tract "L" of Rancho Simi, Ventura County, California, showing the Township of Moorpark and Lands of Madeleine R. Poindexter, a Re-subdivision of Fremont Tract" and recorded in Book 5, Page 5 of Maps, in the office of the County Recorder of said Ventura County; thence, from said point of beginning,

1st: North 2640 feet to the Southeast corner of Lot 56 of Vallette Tract, as per Map recorded in Book 3, Page 41 of Maps, in the office of the County Recorder of said County; thence, at right angles,

2nd: West 1320 feet to the Southwest corner of said Lot 56 of Vallette Tract, at the Northeast corner of that certain parcel of land conveyed to Mary Frances Estes, by deed dated October 22, 1902 and recorded in Book 87, Page 120 of Deeds; thence, at right angles,

3rd: South 26' 10 feet along the East line of said lands of Mary Frances Estates to a point in the centerline of said Los Angeles Avenue; thence, along same,

4th: East 1320 feet to the point of beginning.

Except that portion lying Southerly of the Northerly line of that certain strip 100 feet wide described in the deed to the Southern Pacific Railroad Company, recorded November 13, 1899, in Book 58, Page 596 of Deeds."

Commonly known as A.P.N. 511-0-200-225 and 511-0-200-235

SUBJECT TO prior covenants, conditions, restrictions, reservations, exceptions, encumbrances, rights, easements, leases and licenses, affecting the Servient Tenement or any portion thereof, whether of record or not.

The foregoing grant is made subject to the following terms and conditions:

1. This Utility Easement shall be located where indicated in Exhibit B hereto, and shall be appurtenant to, and for the sole benefit of, that property owned in fee by Grantee described as lots 1 through 17 inclusive of Tract No. 5147, as per map recorded in Book 158, page 37, of Miscellaneous Records, in the Office of the County Recorder of Ventura County, State of California (hereinafter the "Dominant Tenement"), and only that property.
2. The Utilities shall be permitted within the Utility Easement from date of the recording of this Utilities Easement (the "Utilities Easement Start Date"), until the earlier of (1) the fortieth (40th) anniversary of the Utilities Easement Start Date, (2) voluntary relinquishment and quitclaim by Grantee, or (3) December 31, 2049 (the "Utility Easement Termination Date"). At the Utility Easement Termination Date, this Utility Easement shall be extinguished in its entirety, and the right to locate any Utility within the Utility Easement will terminate, revert to and merge in the interest of Grantor in the Servient Tenement.
3. After the Utility Easement Termination Date, Grantee shall not have any right to locate any Utility in the Utility Easement or anywhere within the Servient Tenement. On or before the Utility Easement Termination Date, Grantee shall at its own risk and expense remove all remaining Utilities from the Utility Easement and restore said Servient Tenement as nearly as possible to the same state and condition that it was in prior any construction of said facilities, but if it should fail to do so within sixty (60) days after such termination, Grantor may do so at the sole risk and expense of Grantee, and all cost and expense of such removal and the restoration of said premises as aforesaid, together with interest thereon at the rate of ten percent (10%) per annum shall be paid by Grantee upon demand.

4. This Utility Easement is accepted upon and subject to the express condition that the improvement for which the Utility Easement is given, regardless of the time performed, and any other work or improvement commenced within two years from the date of recording of this Utility Easement (which improvement and other work or improvement and other work or improvement are hereinafter sometimes collectively called "Improvement") shall be done without any cost or expense whatsoever to Grantor, and that in the event a special assessment or assessments is or are levied by an authorized lawful body against the real property of Grantor for the Improvement, Grantee agrees that it will reimburse Grantor for the full amount of any and all such special assessment or assessments so levied for said Improvement and paid by Grantor.
5. Grantee covenants, for itself, its successors and assigns, to construct and maintain the Improvement to be located on the Servient Tenement at its own expense.
6. Grantor agrees that no additional structures will be installed on or within the Servient Tenement.
7. This Utility Easement is granted subject to the right of Grantor to construct, maintain, use, operate, alter, add to, repair, replace, reconstruct, enlarge and/or remove in, on, over, under, through, along and across the Servient Tenement, electric transmission and distribution lines and communication lines, together with supporting structures and appurtenances, for conveying electric energy for light, heat, power and communication purposes, and pipelines and appurtenances for the transportation of oil, petroleum, gas, water, or other substances, and conduits for any and all purposes.
8. Grantor shall not erect or place at any future time any of its facilities so as to unreasonably interfere with the rights of Grantee created by this Utility Easement grant.
9. The said Utility Easement shall be exercised so as not to unreasonably endanger or interfere with the construction, maintenance, use, operation, presence, repair, replacement, relocation, reconstruction or removal of such electric transmission, distribution or communication lines, pipelines, or other conduits.
10. Grantee agrees to hold harmless and indemnify Grantor to the fullest extent to which it can legally do so, from and against all claims, liens, encumbrances, actions, loss, damage, expense and/or liability arising from or growing out of loss or damage to property, including Grantor's own property, or injury to or death of persons, including employees of Grantor, resulting in any manner whatsoever, directly or indirectly, by reason of the exercise of the rights hereby granted; provided, however, that this covenant shall not apply in those instances where such claims, liens, encumbrances, actions, loss, damage, expense and/or liability are caused by the sole active negligence of Grantor.
11. If at any time after the eighth anniversary of the Utilities Easement Start Date, Grantor determines in its sole discretion that (1) any transmission line(s), towers or any other electricity transmitting equipment need to be added within the Servient Tenement, or (2) any or all existing transmission line(s), towers or any other electricity transmitting equipment need to be reconfigured or relocated to, from or within the Servient Tenement, Grantee shall either:
 - a. pay Grantor for any and all incremental costs of any such addition, reconfiguration, or relocation caused by the presence and/or use of the Non-Gas Utilities and the Utilities Easement; or

- b. move, at Grantee's sole expense, the Non-Gas Utilities to a different location provided that in the opinion of a mutually selected industry expert the new location does not interfere with Grantor's operation of its current transmission lines or its plans for added, reconfigured or relocated transmission lines
12. Grantor agrees that in the exercise of its rights hereunder, its contractors, employees and other agents will maintain a minimum clearance of seventeen (17.00) feet between their equipment and any and all overhead electric conductors.
13. Grantor shall have full unobstructed access to its facilities at all times and the right to clear, keep clear, and remove any and all obstructions of any kind at all times.
14. Grantor reserves for itself the right to trim any tree or trees which may grow in or on the Servient Tenement and which, in the opinion of Grantor, endanger or interfere with the proper operation or maintenance of any electric transmission, distribution and communication lines, to the extent necessary to prevent any such interference or danger.
15. The above described Utility Easement is to be used only for the purposes specified herein and in the event:
 - a. said Utility Easement is not used by Grantee for this purpose, or should Grantee allow said Road, Slope and Drain Easement to be used for any purpose inconsistent with the purposes specified herein;
 - b. said Utility Easement shall be vacated as a utility easement right of way; or
 - c. the project for which this Utility Easement is being granted is abandoned,the Utility Easement shall thereupon, *ipso facto*, revert to and merge in the interest of Grantor in the Servient Tenement.
16. Upon termination or reversion of the rights herein granted, Grantee shall execute and deliver to Grantor, within thirty (30) days after service of a written demand therefore, a good and sufficient quitclaim deed to the rights herein given. Should Grantee fail or refuse to deliver to Grantor a quitclaim deed, as aforesaid, a written notice by Grantor reciting the failure or refusal of Grantee to execute and deliver said quitclaim deed as herein provided and terminating this Utility Easement shall, after ten (10) days from the date of recordation of said notice, be conclusive evidence against Grantee and all persons claiming under Grantee of the termination or reversion of the rights herein given.
17. Grantee hereby recognizes Grantor's title and interest in and to the Servient Tenement and agrees never to assail or resist Grantor's title or interest therein.
18. All underground facilities shall be buried in the ground so that the tops thereof shall be not less than 36 inches below the surface of the ground, shall be capable of supporting three-axle vehicles weighing up to forty (40) tons, and shall be of such type of construction and material as to be sufficient and safe for the purpose for which they are to be used.
19. Grantee agrees that during any period of construction activity, it will periodically water down the construction area within the above described real property, so as to prevent dust contamination of Grantor's facilities.

20. Grantee shall promptly and properly replace the earth over any underground facilities, shall tamp or water-settle such earth so that no depressions shall be left or shall develop in the surface of the ground over said underground facilities, and shall restore the surface of the ground over said underground facilities to as near its original condition and appearance as possible. Any earth fill placed by Grantee within the boundaries of the above-described real property shall have a relative compaction density of ninety percent (90%).
21. Grantee shall place identification and location markers of a number, location and nature suitable to Grantor, indicating the type, location and depth of any facilities, structures or equipment located by Grantee in the underground of the Utility Easement.
22. The use of the neuter gender herein will, when appropriate, be construed to mean either the masculine or feminine gender or both. The terms, covenants and conditions of this Utility Easement shall inure to the benefit of, and are binding upon, the heirs, successors, representatives and assigns of the Parties hereto.

Dated: _____, 2010.

This Document may be executed in counterparts, each of which shall be deemed to be an original and all of which, taken together, shall constitute one and the same document.

IN WITNESS WHEREOF, said Southern California Edison Company has caused this instrument to be executed this ____ day of _____, 2010.

SOUTHERN CALIFORNIA EDISON COMPANY,
a corporation

By: _____
Glenn A. Larson,
Manager of Northern Region
Land Asset Management - Real Properties
Operations Support Department

GRANTEE does hereby accept the above and foregoing Easement upon and subject to all of the terms, covenants and conditions therein contained, and does hereby agree to comply with and perform each and all of said terms, covenants and conditions.

DATED as of this ____ day of _____, 2010.

AB Properties,
a California general partnership.

By: _____
Paul D. Burns, president
Burns-Pacific Construction, Inc.,
Its general partner

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person[s] whose name[s] [is or are] subscribed to the within instrument and acknowledged to me that [he or she or they] executed the same in [his or her] authorized [capacity or capacities], and that by [his or her] signature[s] on the instrument the person[s], or the entity on behalf of which the person[s] acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[Seal]

State of California)
County of _____)

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person[s] whose name[s] [is or are] subscribed to the within instrument and acknowledged to me that [he or she or they] executed the same in [his or her] authorized [capacity or capacities], and that by [his or her] signature[s] on the instrument the person[s], or the entity on behalf of which the person[s] acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

[Seal]

EXHIBIT "A"
LEGAL DESCRIPTION
SERIAL No. 68859A

26' WIDE UTILITY EASEMENT

A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 19 WEST, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS SHOWN ON MAP ENTITLED, "MAP OF THE LANDS OF RANCHO SIMI, IN VENTURA AND LOS ANGELES COUNTIES, CALIFORNIA," AND RECORDED ON BOOK 3, PAGE 7 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF VENTURA COUNTY.

BEING A STRIP OF LAND, 26.00 FEET IN WIDTH, THE CENTERLINE BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF GABBERT ROAD AND LOS ANGELES AVENUE AS SAID INTERSECTION IS SHOWN ON THE MAP OF TRACT NO. 5147 FILED IN BOOK 158, PAGE 39 OF MISCELLANEOUS MAPS, RECORDS OF SAID COUNTY; THENCE ALONG THE CENTERLINE OF SAID GABBERT ROAD, NORTH 00°01'58" EAST, 1739.78 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 76°14'51" WEST, 20.59 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF SAID GABBERT ROAD, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT OF WAY LINE, THE FOLLOWING THIRTEEN (13) COURSES:

- 1) SOUTH 76°14'51" WEST, 249.55 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 210.00 FEET;
- 2) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 33°47'04" AN ARC LENGTH OF 123.83 FEET;
- 3) NORTH 69°58'05" WEST, 57.47 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 50.00 FEET;
- 4) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°00'00" AN ARC LENGTH OF 39.27 FEET;
- 5) NORTH 24°58'05" WEST, 72.93 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 50.00 FEET;
- 6) NORTHWESTERLY AND SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 81°01'34" AN ARC LENGTH OF 70.71 FEET TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 210.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 15°59'39" WEST;

- 7) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 33°57'48" AN ARC LENGTH OF 124.48 FEET TO THE BEGINNING OF A REVERSE CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 210.00 FEET, A RADIAL LINE FROM SAID BEGINNING OF CURVE BEARS NORTH 49°57'27" WEST;
- 8) SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 49°41'21" AN ARC LENGTH OF 182.12 FEET;
- 9) SOUTH 89°43'54" WEST, 276.63 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 250.00 FEET;
- 10) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°30'57" AN ARC LENGTH OF 72.06 FEET;
- 11) NORTH 73°45'09" WEST, 36.52 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 250.00 FEET;
- 12) NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 31°02'49" AN ARC LENGTH OF 135.47 FEET;
- 13) SOUTH 75°12'02" WEST, 4.53 FEET TO THE EASTERLY LINE OF THE WESTERLY HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 19 WEST, SAN BERNARDINO MERIDIAN.

THE SIDELINES OF SAID STRIP TO BE PROLONGED OR SHORTENED TO ORIGINATE IN THE WESTERLY RIGHT OF WAY LINE OF SAID GABBERT ROAD AND TO TERMINATE IN THE EASTERLY LINE OF THE WESTERLY HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 6.

THE ABOVE LEGAL DESCRIPTION IS DELINEATED ON EXHIBIT "B" AND IS MADE A PART HEREOF FOR REFERENCE PURPOSES.

ALL FOUND MONUMENT DESCRIPTIONS, BASIS OF BEARINGS, COURSES, ETC. ARE AS SHOWN ON EXHIBIT "B" ATTACHED HEREWITH AND MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION



DATE 4/5/10

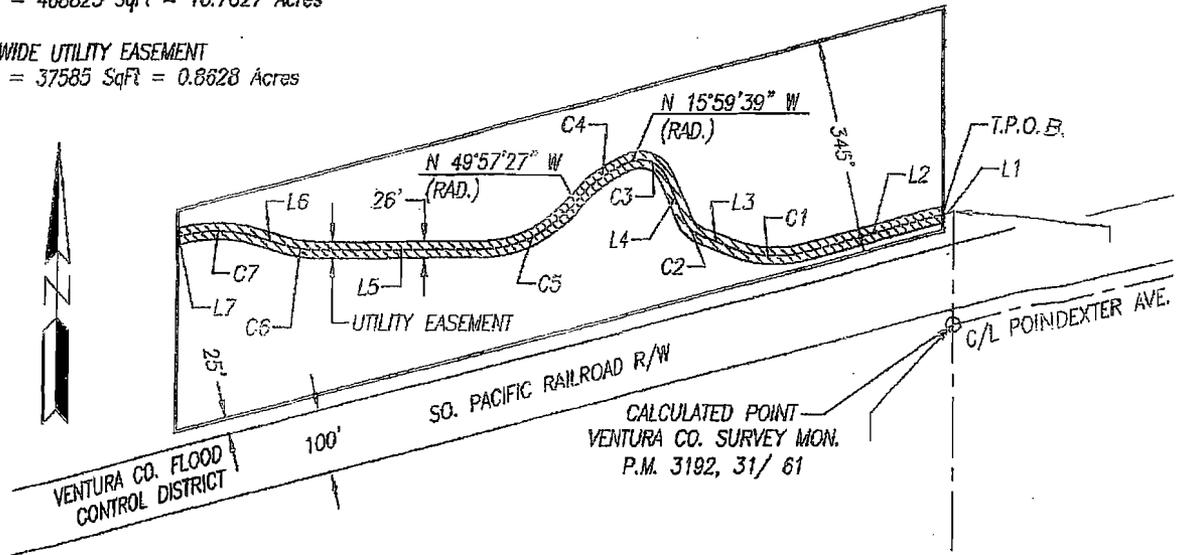
LAWRENCE J. KELLEY, P.L.S. No. 7373
SOUTHERN CALIFORNIA EDISON COMPANY



A PORTION OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 19 WEST, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS SHOWN ON MAP ENTITLED, "MAP OF THE LANDS OF RANCHO SIMI, IN VENTURA AND LOS ANGELES COUNTIES, CALIFORNIA," AND RECORDED ON BOOK 3, PAGE 7 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF VENTURA COUNTY.

LANDS OF: GRANTOR
Area = 468825 Sqft = 10.7627 Acres

26' WIDE UTILITY EASEMENT
Area = 37585 Sqft = 0.8628 Acres



LINE/ CURVE TABLE				
NUMBER	BEARING	LENGTH	RADIUS	DELTA
L1	S76°14'51"W	20.59'		
L2	S76°14'51"W	249.55'		
C1		123.83'	210'	33°47'04"
L3	N69°58'05"W	57.47'		
C2		39.27'	50'	45°00'00"
L4	N24°58'05"W	72.93'		
C3		70.71'	50'	81°01'34"
C4		124.48'	210'	33°57'48"
C5		182.12'	210'	49°41'21"
L5	S89°43'54"W	276.63'		
C6		72.06'	250'	16°30'57"
L6	N73°45'09"W	36.52'		
C7		135.47'	250'	31°02'49"
L7	S75°12'02"W	4.53'		



BASIS OF BEARINGS
N 0°01'58" E 1559.53'
(M),(C) & (R)
PER P.M. 3192, 31/ 61

N 00°01'58" E 1739.78'

FOUND 2" IP IN
CONCRETE, NO TAG
IN LIEU OF RR
SPIKE PER P.M.
3192, 31/ 61

C/L LOS ANGELES AVE.

(M) MEASURED
(C) CALCULATED
(R) RECORDED

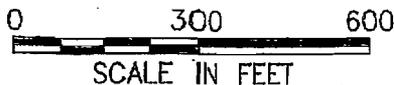


EXHIBIT "B"

PROJECT NAME: MOORPARK-SANTA CLARA R/W			M.S. 61-73	
MAP & F.B. REF: SCE FB 10627 PGS. 1-4			CITY: MOORPARK	
DRAWN BY: M. SIJZINSKI	SURVEYED BY: BOYD - BARDEN		COUNTY: VENTURA	
DATE: 06-17-09	LAND INFO.: J.G.	SER.: 68859A	NOTIFICATION # : 200466401	
CHECKED BY: L. KELLEY				

EXHIBIT 7

EXHIBIT 7

(NON-NEGOTIABLE) PROMISSORY NOTE SECURED BY DEED OF TRUST

\$2,000,000

Moorpark, California

August __, 2010

For value received, this Promissory Note Secured by Deed of Trust ("Note") is given by A-B Properties, a California general partnership ("Payor") in consideration of, and to secure certain of the terms and conditions of, a Settlement Agreement and Mutual Release (the "Settlement Agreement") entered in August 2010 by and among Payor, Burns-Pacific Construction, Inc. , and Paul D. Burns; the Southern California Edison Company ("SCE" or "Payee"); and Louis David Bavo, Susan C. Bavo, Richard S. Hambleton, Jr., A. A. Milligan, John R. Milligan (aka John Reid Milligan), Kimberley Jeanne Milligan, Marshall C. Milligan, Michael S. Milligan, Alan J. Pomato, Allison Jones Pomato, Julia Milligan Summers, Idaho Trust Company, and the Richard H. Jones Ltd. Partnership.

Specifically, this Note is given to secure the payment by the Payor of the thirty-two (32) Annual Use Fees, as that term is defined in paragraph 8 of the Settlement Agreement, that are due and payable on the eighth (8th) through thirty-ninth (39th) anniversaries of the Access Easement Start Date (the "Due Date") for continued Public Access in the Access Easement or the continued use of the Utilities Easement, as defined in paragraphs 6a and 6b of the Settlement Agreement.

The failure of Payor to timely pay any such Annual Use Fee prior to the Due Date for such Annual Use Fee shall constitute a material breach of the Settlement Agreement and a default under this Note ("Event of Default"). In the Event of Default, SCE shall provide Notice of such Event of Default to Payor, in accordance with the notice provisions of section 13n of the Settlement Agreement. Payor shall have thirty (30) days from such notice to cure the Event of Default. If the Event of Default is not cured within that time period, then, in addition to the \$125,000 missed payment then due and owing, payment of all Annual Use Fees for the following fifteen (15) years (or, if less, for the remaining number of years until the thirty-ninth (39th) anniversary of the Access Easement Start Date) up to the two million dollars (\$2,000,000) face amount of this Note shall also be immediately due and payable under this Note; provided however, any amounts collected by SCE in excess of the then due and owing Annual Use Fees shall be held by SCE in an interest bearing account and shall, along with any interest earned, be applied by SCE as a credit toward future Annual Use Fee obligations as they become due. All such credit amounts remaining upon the later of (1) the termination of the Public

the Utilities Easement Termination Date shall be remitted to A-B, as each of those terms are defined in the Settlement Agreement

An Event of Default shall not in any event relieve Payor of its obligation under the Settlement Agreement to make any and all further payments of Annual Access Fees, including to the extent such payments exceed two million dollars (\$2,000,000).

All parties to this Note, including the maker and Payor, and whether bound by this or by separate instrument or agreement, waive any further presentment for payment, demand, protest, notice of non-payment, or dishonor and of protest, and any and all other further notices and demands whatsoever, and consent that at any time, or from time to time, payment of any sum payable under this Note may be extended without notice, whether for definite or indefinite time.

This Note is secured by the First Deed of Trust in the amount of two million dollars (\$2,000,000) to Stuart Title of California, Inc., dated the same date as this Note, executed by Payor, as trustor, in favor of Payee, as beneficiary, and encumbering the certain real property located in the City of Moorpark, State of California that is sometimes known by assessor parcel numbers 510-0-180-110 and 510-0-190-120.

Payor shall pay to Payee all sums owing pursuant to the terms of this Note without deduction, offset, or counterclaim of any kind. The relationship of Payor and Payee under this Note is solely that of obligor to oblige, and the payments due under this Note and secured by the First Deed of Trust will in no manner make Payee the partner of Payor or create any joint venture relationship between Payee and Payor.

This Note shall not be amended or modified, and no provision herein shall be waived, except in a writing executed by both Payor and Payee. No previous waiver by Payee acting with respect to the terms of this Note, the First Trust Deed or the Settlement Agreement will constitute a waiver of any breach, default or failure of condition under this Note, the First Trust Deed or the Settlement Agreement. This Note shall be governed by and construed in accordance with the laws of the State of California.

All payments or notices required or permitted in connection with this Note shall be in writing and made or given at the place and in the manner provided in the Settlement Agreement.

Provided no Event of Default has occurred or exists, this Note shall be void, and of no effect, if: (1) the Payor performs satisfactorily its obligation pursuant to the Settlement Agreement to pay, on or prior to the Due Date, the Annual Use Fees that are due and payable on the eighth (8th) through thirty-ninth (39th) anniversaries of the Access

payable on the eighth (8th) through thirty-ninth (39th) anniversaries of the Access Easement Start Date; or (2) the Utilities Easement has been terminated and the Access Easement is no longer used for Public Access.

This Note is executed this ___ day of August 2010 at Moorpark, California.

AB Properties, a California general partnership

By: Paul D. Burns, President

Burns-Pacific Construction, Inc., its general partner

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, TERMINATING DEVELOPMENT AGREEMENT NO. 1998-04 ADOPTED BY ORDINANCE NO. 250 AND ADOPTING DEVELOPMENT AGREEMENT NO. 2012-01 BY AND BETWEEN THE CITY OF MOORPARK AND A-B PROPERTIES FOR APPROXIMATELY 34.53 ACRES, NORTH OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY, WEST OF GABBERT ROAD

WHEREAS, Section 65864 of the Government Code provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, Chapter 15.40 of the Moorpark Municipal Code contains procedures for adopting, administering, amending, and terminating Development Agreements; and

WHEREAS, on December 16, 1998, the Moorpark City Council adopted Ordinance No. 250 (effective January 15, 1999), approving Development Agreement No. 1998-04 by and between the City of Moorpark and A-B Properties regarding approximately 34.53 acres, approximately 1,300 feet west of Gabbert Road and North of the Union Pacific Railroad Right-of-Way, effective on January 15, 1999; and

WHEREAS, Development Agreement No. 1998-04 was recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584; and

WHEREAS, A-B Properties has requested amendments to the subject Development Agreement to address terms for certain public improvements; and

WHEREAS, on April 18, 2012, the City Council adopted Resolution No. 2012-3098, directing the Planning Commission to study, hold a public hearing, and provide a recommendation to the City Council on this matter; and

WHEREAS, on July 24, 2012, the Planning Commission adopted Resolution No. PC 2012-575, recommending to the City Council approval of amendments to certain terms of the Development Agreement; and

WHEREAS, those recommended amendments have been formatted into Development Agreement No. 2012-01 as contained in Exhibit A to replace in its entirety the previously adopted Development Agreement 1998-04 for the December 19, 2012, regular meeting, with additional amendments as noted in the report to the City Council; and

CC ATTACHMENT 4

WHEREAS, a duly noticed public hearing was held by the City Council on October 3, 2012, November 7, 2012, December 5, 2012, and December 19, 2012 to consider Development Agreement No. 2012-01 and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to the Development Agreement No. 2012-01 and has given careful consideration to the content of the new Development Agreement; and

WHEREAS, changes to the project with Development Agreement No. 2012-01 do not result in new information or impacts that would require preparation of a new or subsequent environmental document under the California Environmental Quality Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council hereby terminates Development Agreement No. 1998-04, as contained within Ordinance No. 250 and recorded by the County Recorder with the assigned document number 98-233584, between the City of Moorpark and A-B Properties.

SECTION 2. The City Council of the City of Moorpark does hereby find as follows:

A. Development Agreement No. 2012-01 is consistent with the General Plan as most recently amended.

B. Development Agreement No. 2012-01 and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Mitigated Negative Declaration adopted by City Council Resolution No. 2000-1714.

C. Development Agreement No. 2012-01 is necessary to ensure the public health, safety and welfare.

SECTION 3. The City Council hereby adopts Development Agreement No. 2012-01 (attached hereto) between the City of Moorpark, a municipal corporation, and A-B Properties, a California General Partnership, and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 4. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said Agreement.

SECTION 5. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this 16th day of January, 2013.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Attachment: EXHIBIT A - Development Agreement No. 2012-01

Recording Requested By
And When Recorded Return to:

CITY CLERK
CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code
Sec. 6103

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
A-B PROPERTIES

**THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE SEC. 65868.5**

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into this _____ day of _____, 2019, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and A-B Properties a California General Partnership (referred to hereinafter as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreement's contained in this Agreement, City and Developer agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
 - 1.1. Pursuant to Government Code section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within the City for the development of such property in order to establish certainty in the development process.
 - 1.2. [INTENTIONALLY LEFT BLANK]
 - 1.3. Developer is owner in fee simple of certain real property in the City of Moorpark, as more specifically described by the legal description set forth in Exhibit A, which exhibit is attached hereto and incorporated herein by this reference (the "Property").
 - 1.4. City has approved, ~~or is in the process of approving,~~ General Plan Amendment No. 97-2 ("GP") and Zone Change No. 97-6 ("ZC"). The GP and ZC are collectively referred to as the "Project Approvals".
 - 1.5. Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584, is terminated upon the effective date of the enabling ordinance (Ordinance No. _____) for this Agreement.
 - 1.56. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.

- 1.67. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and exactions imposed upon the development of the Property pursuant to the Project Approvals, this Agreement and any Subsequent Approvals (as defined in Section 5.3 of this Agreement) and to provide the public benefits and improvements specified in this Agreement.
- 1.78. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City as currently amended by ~~General Plan Amendment No. 97-6.~~
- 1.89. On ~~November 9, 1998~~ July 24, 2012, the Planning Commission of City commenced a duly noticed public hearing on this Agreement and at the conclusion of the hearing recommended approval of the Agreement.
- 1.910. On ~~November 18, 1998~~ October 3, 2012, November 7, 2012, December 5, 2012, and December 19, 2012, the City Council of City ("City Council") commenced a duly noticed public hearing on this Agreement ~~which was continued to December 2, 1998~~, and at the conclusion of the hearing approved the Agreement by Ordinance No. 250___ ("the Enabling Ordinance").
2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may be referred to hereinafter as "the site" or "the Project area".
3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project area that has been fully developed in accordance with the Project Approvals and this Agreement.
- 3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property in which the Developer has a legal interest is, and shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

- 3.2. Release Upon Transfer. Upon the sale or transfer of the Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or transferred subsequent to the effective date of the sale or transfer, provided that the Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivers to City a written assumption agreement, duly executed by the purchaser or transferee and notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.
4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.
- 4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by the Project Approvals and this Agreement.
- 4.2. Development Standards. All design and development standards, including but not limited to density or intensity of use and maximum height and size of buildings, that shall be applicable to the Property are set forth in the Project Approvals and this Agreement
- 4.3. Building Standards. ~~All construction on the Property shall adhere to the Uniform Building Code, including the Fire Resistive Design Manual, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, the Uniform Code for Building Conservation and the Uniform Administrative Code~~ all City building codes in effect at the time the plan check or permit is approved per Title 15 of the Moorpark Municipal Code and to any federal or state building requirements that are then in effect (collectively "the Building Codes").
- 4.4. Reservations and Dedications. All reservations and dedications of land for public purposes that are applicable to the Property are set forth in the Project Approvals and this Agreement.

5. Vesting of Development Rights.

- 5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment, except as provided for in this Agreement.

In furtherance of the Parties' intent, as set forth in this section, no future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed on the number of building units that can be built each year within the Project Area. However, nothing in this section shall be construed to limit City's right to insure that Developer timely provides all infrastructure required by the Project Approvals, Subsequent Approvals and this Agreement.

- 5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.
- 5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do

not include building permits.

Subsequent Approvals shall be governed by the Project Approvals and by the applicable provisions of the Moorpark General Plan, the Moorpark Municipal Code and other City ordinances, resolutions, rules, regulations, policies, standards and requirements as most recently adopted or approved by the City Council or through the initiative or referendum process and in effect at the time that the application for the Subsequent Approval is deemed complete by City in City's sole discretion (collectively "City Laws"), except City Laws that:

- (a) change any permitted or conditional permitted uses of the Property from what is allowed by the Project Approvals or this Agreement;
- (b) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;
- (c) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations; or
- (d) control commercial rents.

- 5.4. Term of Subsequent Approvals. The term of any tentative map for the Property, or any portion thereof, shall expire eight (8) years after its approval or conditional approval or upon the expiration or earlier termination of this Agreement, whichever occurs first, notwithstanding the fact that the final map may be filed in phases. Each Developer hereby waives any right that it may have under the Subdivision Map Act, Government Code section 66410 et seq., or any successor thereto, to apply for an extension of the time at which the tentative map expires pursuant to this subsection. No portion of the Property for which a final map or parcel map has been recorded shall be reverted to acreage at the initiative of City during the term of this Agreement.

The term of any Subsequent Approval, except a tentative map, shall be one (1) year; provided that the term may be extended by the decision maker for two (2) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's ~~Department of Community Development~~ Department prior to the expiration of that Approval. Each such Subsequent Approval shall be

deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval.

It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, the Developer shall have the right, at its election, to apply for a new permit to replace a permit that has expired or is about to expire.

5.5. Modification Of Approvals. Throughout the term of this Agreement, the Developer shall have the right, at its election and without risk to any right that is vested in it pursuant to this section, to apply to City for ~~minor~~permit adjustments or modifications to Project Approvals and Subsequent Approvals. The approval or conditional approval of any such ~~minor~~permit adjustment or modification shall not require an amendment to this Agreement, provided that, in addition to any other findings that may be required in order to approve or conditionally approve the modification, a finding is made that the modification is consistent with this Agreement.

5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from the Developer if all infrastructure required to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. In no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.

5.7. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage, including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.

6. Developer Agreements.

- 6.1. The Developer shall comply with (i) this Agreement, (ii) the Project Approvals, and (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant.
- 6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.
- 6.3. ~~As a condition of the issuance of each building permit, Developer shall pay City a fee to be used for park improvements within the City of Moorpark. The amount of the fee shall be twenty five cents (\$.25) per square foot of gross floor area. The fee shall be adjusted annually (commencing one (1) year after the first building permit is issued within the Project Area by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which the Development Agreement is approved by the City Council (e.g., if approval occurs in June, then the month of February is used to calculate the increase). This fee may be expended by City in its sole and unfettered discretion. Prior to the issuance of each building permit within the boundaries of the Property, Developer shall pay a fee in lieu of the dedication of parkland and related improvements (Park Fee). The amount of the Park Fee shall be fifty cents (\$0.50) for each square foot of building area.~~
- 6.4. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Development Fee shall be Twenty One Thousand Dollars (\$21,000.00) per acre of each lot on which the building is located. The fee shall be adjusted annually (commencing one (1) year after the first building permit is issued within the Project Area by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the

month which is four (4) months prior to the month in which the Development Agreement is approved by the City Council (e.g., if approval occurs in June, then the month of February is used to calculate the increase).

For all building permits issued for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), the Development Fee shall be \$44,325 per acre and shall be adjusted annually commencing one (1) year after this date, beginning on January 1, 2016, by the Consumer Price Index (CPI) using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/ Orange County metropolitan area during the prior year. The calculation shall be made during the month of August over the prior August. In the event there is a decrease in the CPI for annual indexing, the Development Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.5. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Citywide Traffic Fee shall be Eighteen Thousand Dollars (\$18,000.00) per acre of each lot on which the use is located. Commencing on January 1, 2001, and annually thereafter, the Citywide Traffic Fee shall be increased to reflect the change in the State Highway Bid California Department of Transportation Price Index for Selected Highway Construction Items for the previous twelve (12) month period that is reported in the latest issue of the Engineering News-Record that is available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the Citywide Traffic Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.
- 6.6. On the operative date of this Agreement, Developer shall pay all outstanding City processing and environmental processing costs related to the project and preparation of this Agreement
- 6.7. ~~Developer agrees to pay Air Quality Fees, that are to be calculated by City at its sole and unfettered discretion consistent with similar projects in the City as a condition on each Subsequent Approval within the~~

~~boundaries of the Project Area. The Air Quality Fees may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts. Prior to the issuance of each building permit within the boundaries of the Property, Developer shall pay an Air Quality Fee of sixty-three cents (\$0.63) for each square foot of office building area and twenty-eight cents (\$0.28) for each square foot of industrial building area. The Air Quality Fee shall satisfy the Transportation System Management Fee requirement for the Project and may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.~~

- 6.8. Developer agrees to cast affirmative ballots for the formation of an assessment district and levying of assessments, for the maintenance of parkway and median landscaping, street lighting and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action.
- 6.9. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Police Facilities Fees, Fire Facilities Fees, Library Facilities Fees, Art in Public Places fees, entitlement processing fees, and plan check and permit fees for buildings, and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole and unfettered discretion so long as said fee is imposed on similarly situated properties.
- 6.10. ~~Prior to City Council action on any Subsequent Approval, or grading of the Property, whichever occurs first, Developer agrees to provide City an irrevocable offer of dedication to dedicate right of way at no cost to City for the future 118 bypass along the entire length of the north side of the property, along the east side of the Gabbert Channel, and a connector with a radius as determined by the City at its sole and~~

~~unfettered discretion. The right-of-way shall be one hundred and twenty feet (120') wide along the north side of the property (east-west section) and one hundred feet (100') along the east side of the channel (north-south section) plus any necessary slope easements to accommodate a level right-of-way of the required width and slope easements to accommodate a grade separation crossing of the railroad tracks along the southern boundary. Developer further agrees to dedicate access rights from the property to the City for the 118 bypass except for no more than one (1) approved intersection with public streets. City shall have final approval of the location, legal description and use of the property offered for dedication. City may transfer its interest in the property after acceptance of its dedication to any other public entity. Prior to City Council action on any Subsequent Approval, or grading of the Property, whichever occurs first, Developer agrees to provide City an irrevocable offer of dedication to dedicate right-of-way at no cost to City for the future North Hills Parkway (also known as future 118 bypass) along the entire length of the north side of the Property and along the entire length of the west side of the Property east of the Gabbert Channel. The right-of-way shall be a minimum of one hundred (100) feet in width on both sections and shall also include necessary on-site and off-site slope easements in addition to this width to accommodate a grade-separated crossing of the existing railroad tracks south of the Property, along with turn radii and entry/exit lanes as determined by the City at its sole and unfettered discretion. Developer further agrees to dedicate access rights from the Property to the City along the entire North Hills Parkway frontage, except for private streets as part of the Tract Map for this Project.~~

- 6.11. Developer agrees that as part of any grading of the property the right-of-way for the future ~~118 bypass~~North Hills Parkway shall be graded per City direction.
- 6.12. Developer agrees to comply with all the provisions of the Hillside Management Ordinance (Chapter 17.38 of the Municipal Code) of the City.
- 6.13. Developer agrees to pay a pro-rata share, as determined by the City at its sole and unfettered discretion, for the funding and construction of the improvements identified in the Gabbert and Walnut Canyon Channels Deficiency Study. Developer also acknowledges that interim improvements may also be necessary to facilitate any new use or development of the property and Developer agrees that they shall be responsible for any such interim improvements as their sole responsibility, without credit of these costs, except as may be provided

in the implementation plan for the Gabbert and Walnut Canyon Channels Deficiency Study.

- 6.14. Prior to any subdivision or new use of the property, Developer agrees to acquire and construct, at their sole cost, dedicated public access to the properties, as approved by the City Council. Secondary access to comply with City and public safety requirements shall also be provided at their sole cost.
- 6.15. ~~Developer agrees to not oppose creation of a redevelopment Project Area (as defined by applicable State law) encompassing any part of the Property provided that the Project Area is consistent with the rights of Developer under this Agreement.~~Developer agrees to terminate Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584.
- 6.16. Developer agrees not to request any concession, waiver, modification or reduction of any fee, regulation, requirement, policy or standard condition for any Subsequent Approval and further agrees to pay all fees imposed by City for future buildings, so long as said fees are also imposed in a similar manner on similar projects.
- 6.17. Developer shall grant, in a form acceptable to City, a conservation easement to retain that portion of the Property west of and including the Gabbert Canyon drain in a predominantly open space condition consistent with Civil Code Section 815 et seq., except for the following purposes: temporary construction (including temporary pumping needed for dewatering as part of any approved grading operations for the Property), landscape maintenance of manufactured slope areas, vegetation clearance within two hundred (200) feet of any structure for fire hazard reduction, revegetation and biological habitat enhancement required by City consistent with any Mitigation Monitoring Program, drainage conveyance, emergency access and extension of State Route 118. No excavation, drilling, extraction, pumping (excluding such pumping as may be needed for dewatering as part of approved grading operations), mining, or similar activity shall be allowed in any portion of the Property zoned Open Space. The limitations and exclusions described in this subsection shall be included in the conservation easement. The foregoing does not restrict the extraction of subsurface mineral resources by drilling from off the Property so long as the drilling apparatus and equipment are screened from view from all points within the City. Further, if the drilling site is not within the City, Developer

agrees that before proceeding with any drilling it shall secure a use permit from the City which may include conditions ordinarily placed upon drilling operations. Further, noise impacts from the drilling shall meet the same noise standards as placed on Industrial Planned Development Permits and there shall be no visible evidence or impacts on the ground surface of the Property:

The conservation easement shall be recorded concurrently with the recordation of the first final subdivision map for the Property.

6.18. ~~Prior to the effective date of the Ordinance approving Zone Change No. 97-6 approval of a Final Map, Developer shall execute in favor of City and record in the Office of the County Recorder of the County of Ventura a Covenant Running with the Land (Covenant) as set forth in Exhibit "B" attached hereto and incorporated herein to limit use of the Property.~~

6.19. ~~Developer agrees that as a condition of the City's approval of the first Subsequent Approval for the Property, Developer shall submit improvement plans to improve Gabbert Road from the Union Pacific Gabbert Road rail crossing to a point approximately one hundred twenty five (125) feet north of the rail crossing to four travel lanes, two eight (8) foot bike lanes and two ten (10) foot parkways inclusive of sidewalks (Gabbert Road improvements). The plans for the Gabbert Road improvements must be approved by the City and a surety in an amount and form determined by the City in its sole and unfettered discretion to guarantee this improvement shall be provided prior to approval of the first final Map for the Property occurring after the operative date of this Agreement. The Gabbert Road improvements shall be constructed prior to issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement. In the event the Improvements required pursuant to Section 6.22 of this Agreement are constructed, accepted by the City and open to the public prior to the issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final map for the Property occurring after the operative date of this Agreement, then the improvements required by this Section 6.19 shall not be required to be constructed by the Developer. Developer agrees that prior to the issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all developable lots (excluding lots used solely as private streets),~~

Developer shall:

- Improve Gabbert Road from the intersection with Poindexter Avenue north to and including the intersection with the future North Hills Parkway. Improvements to Gabbert Road from Poindexter Avenue north to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way shall include four (4) travel lanes, with bike lanes, curbs, gutters, parkways, and sidewalks on each side of the street, and widening of the rail crossing, all consistent with City plans to the satisfaction of the City Engineer/Public Works Director.
- Improve North Hills Parkway along the project frontage from the easterly project boundary to and including the intersection with the future project access road on the west side of the Property. Improvements shall be made within the south side of the ultimate right-of-way north of the developable lots and within the entire ultimate right-of-way west of the developable lots to include half of the ultimate roadway not to exceed forty five (45) feet in width, to allow for two twelve (12) foot wide travel lanes, left turn lanes, and an eight (8) foot wide bike lane on the south/east side. Improvements shall also include curb, gutter, parkway and sidewalk on the south/east side of the street and a median curb and temporary bike lane on the north/west side of the street consistent with City plans for the right-of-way improvements to the satisfaction of the City Engineer/Public Works Director.

All public street improvements described above shall be designed and constructed at Developer's expense to provide for a 50-year life as determined by the City Engineer/Public Works Director. Surety for the improvements shall be provided by the developer to the City prior to approval of the Final Map in an amount and form determined by the City in its sole and unfettered discretion to guarantee these improvements.

If the developer improves North Hills Parkway from Gabbert Road to the eastern project boundary prior to the City's planned improvement of this road, developer shall obtain all necessary right-of-way and slope easements and shall design and construct the roadway with a minimum of thirty-two (32) feet of pavement and positive drainage to the satisfaction of the City Engineer/Public Works Director on this section of North Hills Parkway. Prior to opening this improvement to the public, Developer shall also improve Gabbert Road from a point one-hundred and twenty-five (125) feet north of the railroad right-of-way north to and including the North Hills Parkway intersection to have thirty-two (32)

feet of pavement and positive drainage to the satisfaction of the City Engineer/Public Works Director.

Developer recognizes that the City's improvement plans for Gabbert Road and North Hills Parkway include elevating Gabbert Road above its current grade and re-aligning the roadway near its intersection with North Hills Parkway. If Developer constructs the North Hills Parkway improvements to meet Gabbert Road at its existing grade as described above before the City improvements are constructed, Developer shall be responsible for any additional City construction costs to the North Hills Parkway between Gabbert Road and the Property as a result of the Developer's improvements as determined by the City Manager at his/her sole discretion.

- 6.20. ~~Prior to City action on the first Subsequent Approval for the Property, Developer shall provide a traffic study to determine if signalization of the intersection of the Gabbert Road/Poindexter Avenue is needed. Developer agrees that City at its sole and unfettered discretion may condition any Subsequent Approval of the Property to construct the traffic signal or pay a fair share payment at the above intersection. Construction of the signal, if required, shall occur at the same time as the Gabbert Road improvements in Section 6.19, above, or such later date as determined by the City Council at its sole and unfettered discretion.~~Prior to approval of the final map for Tract No. 5906 for the Property, Developer shall submit and gain approval from City Manager of an Implementation Plan. The Implementation Plan shall address the requirements for phasing and construction responsibilities of Developer and any successors including sureties for performance for all grading, construction of storm drains and utilities, private and public streets, and other private and public improvements on or offsite required by Tract 5906 and this Agreement. The Implementation Plan shall also address entities responsible and method of timing of guarantee for each component of Developer's obligations pursuant to Tract 5906 and this Agreement, and no portion of these improvements may be transferred to owners of any individual lots in Tract 5906. The approval of the Implementation Plan and any amendments thereto shall be at the City Manager's sole discretion. Prior to sale or transfer of ownership of any portion of Tract 5906, except individual lots, Developer shall seek City Manager approval of an amendment to the Implementation Plan to address the responsibilities of each entity.
- 6.21. ~~Developer shall construct a thirty two (32) foot wide paved access road (paved access road) to the Property to serve as the primary access~~

~~until such time as the Improvements referenced in Section 6.22 are constructed. At such time as the Improvements in Section 6.22 are opened to the public, the paved access road shall become an emergency access only for the Property. The paved access road shall be located generally following the existing unpaved access road to the Property with the final location of said paved access road to be determined by the City at its sole and unfettered discretion. The paved access road shall be constructed to City Standards for an industrial street but with no requirement for curb, gutter, or sidewalk except curbs that may be determined necessary to provide for positive drainage. Developer shall design and construct at Developer's expense a thirty-two (32) foot wide paved access road on Southern California Edison property (paved access road) to the Property to serve as the primary access until such time as the Improvements referenced in Section 6.19 are constructed. At such time as the improvements in Section 6.19 are opened to the public, the paved access road shall become an emergency access only for the Property. The paved access road shall be located as described in the road, slope and drain easement grant from Southern California Edison Company to AB Properties, recorded on December 8, 2010 in the Office of the Recorder, County of Ventura by Instrument No. 20101208-00191903-0 1/24, and shall be constructed to City Standards for an industrial street but with no requirement for curb, gutter, sidewalk, streetlights, or landscaping. Drainage improvements shall be provided as necessary, and slopes shall be landscaped to prevent erosion. At such time as the improvements in Section 6.22 are opened to the public, the paved access road shall be closed to the public.~~

6.22. ~~Prior to issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all lots created by the recordation of the first final Map for the Property occurring after the operative date of this Agreement, Developer shall cause to be constructed a street extending north from Los Angeles Avenue (SR 118) including an underground crossing of the Union Pacific railroad tracks to a point approximately six hundred (600) feet north of said railroad tracks (Improvements) within the area of the offer of dedication required of Developer in Section 6.10 of this Agreement. The preliminary improvement plans must be approved by the City and a surety in an amount and form determined by the City in its sole and unfettered discretion to guarantee the Improvements shall be provided prior to approval of the first final map for the Property occurring after the operative date of this Agreement. Prior to issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all lots created by the recordation of the first final~~

~~map for the Property occurring after the operative date of this Agreement, City must approve in its sole and unfettered discretion the final design plans and specifications for the Improvements and a financing plan that demonstrates the ability to fund the Improvements. This financing plan may include at City's sole and unfettered discretion, use of Citywide Traffic monies.~~

Prior to the recording of the Final Map for the Project, a Community Facilities District or other funding mechanism to the satisfaction of the City Council, shall be established to provide funding for improvements to North Hills Parkway from the future eastern Property access road along the east-west section of North Hills Parkway to Gabbert Road and Gabbert Road from North Hills Parkway to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way. A full or partial buyout in an amount and timing to the satisfaction of the City Council may substitute for the establishment of a district or other funding mechanism.

Prior to the issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), the North Hills Parkway undercrossing at the Railroad Right-of-Way immediately south of the Property shall be completed in a manner approved by the City.

7. City Agreements.

- 7.1. City shall use its best efforts to process plan checking and related processing for the project in an expedited manner.
- 7.2. City shall exempt this project from payment of the Gabbert Road/Casey Road Area of Construction (AOC) fees.
- 7.3. City agrees that upon receipt of a landowners' petition by developer and Developer's payment of a fee as determined necessary by City in its sole and unfettered discretion, City shall commence proceedings to form a Mello-Roos Community Facilities District ("District") and to incur bonded indebtedness to finance all or portions of the on site and off site public facilities, infrastructure and services that are required by this Agreement and Subsequent Approvals and that may be provided pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); provided, however, the City Council, in its sole and unfettered discretion, may abandon establishment of the District upon the conclusion of the public hearing required by California Government

Code Section 53321 and/or deem it unnecessary to incur bonded indebtedness at the conclusion of the hearing required by California Government Code Section 53345. The formation, type of assessment district (if City determines another type of assessment district other than District is more appropriate) and method and spread of assessment shall be at the City's sole and unfettered discretion.

7.4. If requested in writing by Developer and limited to City's legal authority, City shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer which are outside Developer's legal boundaries. The process shall generally follow Government Code Section 66457 et. seq. and shall include the obligation of Developer to enter into an agreement with City, guarantee by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs and City staff costs.

7.5 City shall refund Developer twelve-thousand six hundred dollars (\$12,600.00) collected to process Lot Line Adjustments 2010-01 through 2010-07 by crediting this amount to the Development Deposit Fund for this project.

7.6 During project construction, City agrees to allow the on-going import, stockpiling, and use of recycled concrete and asphaltic concrete material for road base for the private streets within the property when in compliance with all Moorpark Municipal Code requirements and all other applicable City Council polices, based on the issuance of a Stockpiling Permit and up to four (4) temporary use permits, for each crushing operation of uncrushed material not to exceed thirty (30) days in length for crushing up to ten-thousand (10,000 tons) of uncrushed material and subject to the following terms:

- Hauling and crushing operations shall be limited to 7:00 AM to 5:00 PM Monday through Friday, excluding City Holidays. The City Engineer/Public Works Director may impose stricter hours on hauling as needed to avoid impacts to peak-hour traffic.
- The stockpiling location shall be subject to approval by the City Engineer/Public Works Director with proper surety for removal of material.
- Stockpiling shall not exceed ten-thousand (10,000) tons of material at any time.

- Prior to bringing any material to the stockpiling location, a report on the source and quantity shall be provided to the satisfaction of the City Engineer/Public Works Director to ensure the material is suitable for recycling and consistent with the terms of the Development Agreement and Stockpiling Permit
- All stockpiling under the permit shall be removed prior to the issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private streets).
- The recycled road base shall meet acceptable green book standards to the satisfaction of the City Engineer/Public Works Director.

7.7 City shall facilitate the reimbursement to Developer of any costs incurred by Developer that may be subject to partial reimbursement from other developers as a condition of approval of a tract map, development permit, or development agreement with one or more other developers. For road improvements, this shall include the Gabbert Road improvements from the intersection with Poindexter Avenue north to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way as specified in Section 6.19.

7.8 In the event City has not initiated construction of the North Hills Parkway undercrossing of the railroad right-of-way in a time as required by Section 6.22 prior to issuance of a building permit for any portion of the property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), City shall allow Developer to construct undercrossing and City shall reimburse Developer for expenses as agreed upon by City and Developer prior to construction in a manner as allowed by law.

7.9 City agrees to terminate Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584.

8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City in its sole and unfettered discretion.

9. Demonstration of Good Faith Compliance. In order to ascertain compliance by the Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of the Developer hereunder or render this Agreement invalid or void.
10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, and Developer's obligations and restrictions on development as provided for in Sections 6.19, 6.20, 6.21 and 6.22 of this Agreement shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.
11. Default Provisions.
- 11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:
- (a) practices, or attempts to practice, any fraud or deceit upon City; or
 - (b) willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Developer may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Developer; or
 - (c) fails to make any payments required under this Agreement; or
 - (d) materially breaches any of the other provisions of the Agreement

and the same is not cured within the time set forth in a written notice of violation from City to Developer, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if Developer cannot reasonably cure the breach within the time set forth in the notice, Developer fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.2. Default by City. City shall be deemed in breach of this Agreement if it:

(a) materially breaches any of the provisions of the Agreement and the same is not cure within the time set forth in a written notice of violation from Developer to City, which period shall not be less than ten (10) days from the date the notice is deemed received, provided if City cannot reasonably cure the breach within the time set forth in the notice, City fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "C" attached hereto and incorporated herein, in accordance with Section 20 hereof. ~~Every notice of violation shall state with specificity that it is given pursuant to this section of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. The notice shall be deemed given on the date that it is personally delivered or on the third day following the day after it is deposited in the United States mail, in accordance with Section 20 hereof.~~

11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties

agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided pursuant to subsection 11.3 herein.

The remedies for breach of the Agreement by City shall be injunctive relief and/or specific performance.

The remedies for breach of the Agreement by the Developer shall be injunctive relief and/or specific performance. In addition, and notwithstanding any other language of this Agreement, if the breach is of Subsection 6.3, 6.4, or 6.5, 6.6, 6.7, or 6.9, or 6.10, 6.11, 6.12, or 6.19, or 6.20, or 6.21, or 6.22 of this Agreement, City shall have the right to withhold the issuance of building permits from the date that the notice of violation was given pursuant to Subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

Nothing in this subsection shall be deemed to preclude City from prosecuting a criminal action against the Developer if it violates any City ordinance or state statute.

12. Mortgage Protection. At the same time that City gives notice to the Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of its name and mailing address to City and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

Each Financier that has given prior notice to City pursuant to this section shall have the right, at its option and insofar as the rights of City are concerned, to cure any such breach within fifteen (15) days after the receipt of the notice from City. If such breach cannot be cured within such time period, the Financier shall have such additional period as may be reasonably required to cure the same, provided that the Financier gives notice to City of its intention to cure and commences the cure within fifteen (15) days after receipt of the notice from City and thereafter diligently prosecutes the same to completion. City shall not commence legal action against Developer by reason of Developer's breach without allowing the Financier to cure the same as specified herein.

Notwithstanding any cure by Financier, this Agreement shall be binding and effective against the Financier and every owner of the Property, or part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

13. Estoppel Certificate. At any time and from time to time, any Developer may deliver written notice to City and City may deliver written notice to the Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.
14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within ten (10) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed. The Developer shall not seek judicial review of any staff decision without first having exhausted its remedies pursuant to this section.
15. Amendment or Termination by Mutual Consent. In accordance with the provisions of ~~Ordinance No. 59~~ Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect, this Agreement may be amended or terminated, in whole or in part by mutual consent of City and the Developer.
 - 15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement.
16. Indemnification. The Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, the Developer's performance pursuant to this Agreement.

Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement or any

provision thereof or the Project Approvals or any Subsequent Approvals or modifications thereto, or any other subsequent entitlements for the project including any related environmental approval.

17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.
19. Term. This Agreement shall remain in full force and effect for a term of twenty (20) years commencing on its operative date or until a building permit is issued and all fees identified in this agreement are paid for the last developable lot in the Project, whichever comes last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

Upon expiration of the term or earlier termination of this Agreement, the Parties shall execute any document reasonably requested by any Party to remove this Agreement from the public records as to the Property, and every portion thereof, to the extent permitted by applicable laws.

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "C" attached hereto and incorporated herein.

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contains the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.
22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of the other Party in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.
26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Chapter 15.30 of the Moorpark Municipal Code Ordinance No. 59 of City or any successor thereof then in effect.
27. Cooperation Between City and Developers. City and each Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.
28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail.
29. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.
30. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.

31. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. ~~Attorneys' fees under this section shall include attorneys' fees on any appeal and any post-judgment proceedings to enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.~~
32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, ~~Developer~~ A-B Properties and City of Moorpark have each executed this Development Agreement on the date first above written.

CITY OF MOORPARK

Janice S. Parvin
Mayor

OWNER/DEVELOPER

A-B Properties

By: _____
Paul D. Burns
General Partner

**EXHIBIT A
LEGAL DESCRIPTION**

To be provided.

EXHIBIT B
COVENANT RUNNING WITH THE LAND

THIS COVENANT is made this _____ day of _____, by and between the A-B Properties and Southern California Edison Company (Covenantors") and the City of Moorpark ("Covenantee").

WHEREAS, Covenantor is the owner of certain real property (~~500-0-340-22 and 23~~) consisting of approximately 34.53 acres, approximately 1,300 feet west of Gabbert Road and North of the Union Pacific Railroad Right-of-Way in the City of Moorpark, County of Ventura, more particularly described in Exhibit "A" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee is the owner of certain real property at 799 Moorpark Avenue, in the City of Moorpark, County of Ventura, more particularly described in Exhibit "B" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee ~~is willing to rezone~~ the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2) through Ordinance No. 249 on December 16, 1998, but for the concern that some of the uses that are presently, or may subsequently be, allowed by right or permit in the CPDM-2 zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location;

WHEREAS, Covenantor ~~seeks to have the Covenantors Property rezoned from Agricultural Exclusive (AE) to Limited Industrial (M-2)~~ but acknowledges that some of the uses that are presently, or may subsequently be, allowed by right or permit in the M-2 zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location; and

NOW, THEREFORE, in consideration of the mutual promises of the parties to this Covenant, each to the other as Covenantor and Covenantee, and expressly for the benefit of, and to bind, their successors in interest, the parties agree as follows:

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1. ~~Covenantor agrees to adopted an Ordinance No. 249 rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2);~~
2. Covenantor agrees that, commencing on the effective date of the ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2). Subject to the following restrictions in addition, and superseding the M-2 regulations.
 - A. Primary uses, except agricultural crops, shall be conducted within completely enclosed buildings and metal faced buildings shall not be allowed as principal buildings. Outside storage and operations shall not be allowed as primary uses, only accessory outside storage shall be allowed, subject to the same permitting requirements (Administrative Permit) and limitations in the M-2 zone (in conjunction with an approved use and screened by an eight (8) foot high masonry wall matched to the structure as M-1 (confined to the area to the rear of the principal building or the rear two thirds of the property, whichever is more restrictive, and screened from view from any property line by appropriate walls, fencing, earth mounds, or landscaping).
 - B. The following uses shall not be allowed as a primary use:
 - Manufacturing - Batteries
 - Manufacturing - Metal industries, primary; Rolling, drawing, and extruding
 - Manufacturing - Rubber and plastics products including tire retreading and recapping
 - ~~Manufacturing - Tire retreading and recapping~~
 - Manufacturing - Cement, concrete and plaster, and product fabrications
 - Self-storage or Mini-storage
 - Recreational vehicle storage
 - ~~Signs - Freestanding off-site advertising signs~~
 - Distribution and Transportation facilities services - Truck storage, overnight
3. ~~Covenantor and Covenantor agree that, commencing on the effective date of the ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2) Development Agreement, all uses specified in Paragraph 2.B. hereof that are presently allowed or that at any time in the future may be allowed in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from the Covenantors Property to the Covenantor Property for the benefit of the Covenantor Property.~~

B-2

4. Covenantors and Covenantee agree that from time to time Covenantee may substitute any other property owned by Covenantee on the date of the substitution for the Covenantee Property ("the Substitute Covenantee Property") without the consent of Covenantor by the recordation of an amendment to this Covenant. The amendment shall describe the Substitute Covenantee Property and shall provide that, commencing on the date of recordation of the amendment, all uses not specified in Paragraph 2 hereof that are presently allowed, or that at any time in the future may be allowed, in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from that Covenantor Property to the Substitute Covenantee Property for the benefit of the Substitute Covenantee Property.
5. All of the covenants, restrictions, and limitations set forth herein shall run with the Covenantee Property and the Covenantor Property and shall benefit and bind all persons, whether natural or legal, having or acquiring any right, title, or interest in any portion of the Covenantee Property or the Covenantor Property. Each grantee of a conveyance or purchaser under a contract of sale or similar instrument that covers any right, title, or interest in or to any portion of the Covenantee Property or the Covenantor Property, by accepting a deed or a contract of sale or similar instrument, accepts the conveyance or sale subject to, and agrees to be bound and benefited by, all of the covenants, restrictions and limitations set forth herein.
6. Nothing in this Covenant shall be construed so as to limit the right of Covenantee to rezone, or the right of Covenantor to petition Covenantee to rezone, the Covenantor Property in the future.
7. This Covenant shall remain in full force and effect until such time as an ordinance rezoning the Covenantor Property from ~~Agricultural Exclusive (AE)~~ to Limited Industrial (M-2) to another zone designation becomes effective.
8. This Covenant may be enforced by proceedings at law or in equity against any person who violates or attempts to violate a covenant, restriction or limitation hereof. The prevailing party shall be entitled to recover such attorneys' fees and court costs as it reasonably incurs in such a proceeding.
9. In the event any provision of this Covenant is found to be invalid or unenforceable in any proceeding at law or in equity, such finding shall not affect the other provisions of this Covenant, which shall remain in full force and effect.

10. Either party may record in the office of the Recorder of Ventura County this Covenant or any amendment hereto specified in Paragraph 4 hereof without the consent of the other party.

IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant on the date first above written

COVENANTORS

COVENANTEE

A-B PROPERTIES

CITY OF MOORPARK

EXHIBIT C

To City: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn. City Manager

To Developer: A-B Properties

ATTN: Paul Burns