

# **CITY OF NEWPORT BEACH**



## **REQUEST FOR PROPOSALS NO. 26-08 LOWER CASTAWAYS PARK REDEVELOPMENT**

### **RFP DUE DATE:**

October 3, 2025 by 1:00PM

### **MANDATORY PREBID MEETING:**

September 10, 2025 at 11:00AM

100 Dover Drive

Newport Beach, CA 92663

*View this solicitation at <http://www.newportbeachca.gov/bidderportal>*

## TABLE OF CONTENTS

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<b>RFP INTRODUCTION INSTRUCTIONS AND TERMS .....</b>	<b>3</b>
INTRODUCTION .....	4
INSTRUCTIONS .....	6
TERMS AND CONDITIONS .....	9
<b>SCOPE OF SERVICES .....</b>	<b>13</b>
<b>REQUIRED CITY FORMS FOR BID/PROPOSAL SUBMITTAL.....</b>	<b>64</b>
BIDDER/PROPOSER INFORMATION FORM .....	65
STATEMENT OF COMPLIANCE .....	66
AFFIDAVIT OF NON-COLLUSION AND NON-DISCRIMINATION .....	67
AFFIDAVIT OF NON-FEDERAL LOBBYIST REQUIREMENTS CERTIFICATION.....	68
VENDOR CONFLICT OF INTEREST DISCLOSURE FORM .....	69
DEBARMENT AND SUSPENSION CERTIFICATION .....	70
<b>BIDDER/PROPOSER REQUIRED QUESTIONNAIRE .....</b>	<b>71</b>
<b>SUBMITTAL CHECKLIST AND PROPOSAL FORMAT .....</b>	<b>72</b>
<b>DRAFT AGREEMENT .....</b>	<b>75</b>

# RFP INTRODUCTION, INSTRUCTIONS AND TERMS & CONDITIONS



### OBJECTIVE

The City of Newport Beach ("City") is seeking proposals from qualified Proposers with sufficient experience, financial resources, and personnel to enter into a Public Private Partnership with the City through a long-term lease to successfully plan, design, permit, fund, and construct improvements to develop the property located at 100 Dover Drive, Newport Beach, [A.P.N. 117-801-10] known as Lower Castaways Park ("Property"). Proposers will develop, market, operate, manage, and maintain the new improvements at the Property. The objective of this Request for Proposals ("RFP") solicitation is to identify the highest-qualified proposer to provide these services over the course of a long-term lease. The City reserves the right to make multiple awards if doing so serves in the best interest of the City. Final contract terms, including compensation and length of the agreement are subject to final City and/or City Council approval, depending on department needs.

### BACKGROUND

The City was incorporated September 1, 1906 and the current City Charter was adopted in 1954. The City operates under a Council-Manager form of government. The City is located in the County of Orange and serves a population of approximately 86,000 people. The City covers an area land of approximately 26 square miles, with an additional 25.5 square miles of ocean, bay, and harbor waters.

The City of Newport Beach owns and/or holds in trust a variety of real property, both income and non-income producing assets. The income producing properties vary in use from residential developments, tidelands with yacht basins and upland office space, to telecommunication sites. The City's non-income producing properties also vary in use and include beaches, parks, open space preserves and reservoirs, parking lots, libraries, community centers, and police and fire stations.

Deeded to the City in 2008, the Property was transferred from The Irvine Company ("TIC"), a local landowner and developer, pursuant to the terms of a Development Agreement. The grant deed reserved certain water and oil rights to TIC, as well as provided easements for communications facilities and some limited rights of access for maintenance of the same. Covenants restricting the use of the property and allowing TIC to review and comment on any improvement plans for the Property run with the land and limit the City's ability to transfer the Property to another owner.

The Property consists of approximately 175,933 square feet or 4.04 acres and is currently unimproved. There are several existing temporary uses of the Property: (i) A fenced maintenance yard is used by TIC pursuant to a temporary non-exclusive easement with sixty (60) days' notice of termination, which occupies approximately 15,995 square feet and contains a trailer, storage sheds, and parking area; (ii) A lease agreement with thirty (30) days' notice of termination with the non-profit Newport Outrigger Canoe Club, which agreement allows for use of approximately 6,500 square feet of the Property for the storage and use of outrigger canoes and other equipment; (iii) A lease agreement with thirty (30) days' notice of termination with a second non-profit outrigger club, Castaways Outrigger, which allows for storage and use of outrigger canoes and other equipment over approximately 2,800 square footage of the Property; (iv) A temporary non-exclusive and revocable license agreement is in effect but not currently occupied by the



Orange County Sanitation District for potential use of an 18,000 square foot area of the Property for staging and storage of office trailers, vehicles, and construction equipment and materials and expires on the sooner of completion of the project or December 31, 2028, or upon one hundred eighty (180) business days' notice; and (v) Intermittent temporary use of the Property for construction staging and equipment and material staging and storage for City projects.

Easements for water lines and mains cross the north section of the Property from the bulkhead to the right-of-way on Dover Drive, near the property line with the City-owned Castaways Park. Additionally, the City does not have plan or permit records of the bulkhead structure, but records show it as existing in 1947 when the area was mapped and the Property was subdivided by TIC pursuant to Tract Map No. 1125. The Property was annexed to the City under Ordinance No. 748 which was approved by the City Council on April 25, 1955.

## **DEFINITIONS**

The following is an explanation of terms frequently referred to in this document:

- “City”: Refers to the City of Newport Beach.
- “Request for Proposals (RFP)”: Refers to the solicitation process wherein the City is seeking proposals.
- “Proposal”: The formal response to this solicitation submitted to the City by a proposer or proposers.
- “Proposer”: Refers to the individual, partnership, or corporation that is submitting a proposal in response to this RFP process.
- “Project”: The provision of Lower Castaways Park Redevelopment, as requested in this solicitation.
- “Shall”: Refers to a mandatory requirement.
- “Contractor or Consultant”: Refers to the individual, partnership, or corporation that is awarded a contract by the City upon conclusion of this RFP process.
- “Contract” or “Agreement” or “Exclusive Negotiating Agreement”: A promissory agreement with specific terms between the City and one or more parties that creates, modifies or destroys a legal relation in exchange for consideration.
- “Project Manager”: The City’s Real Property Administrator, or designee as assigned by the City.

## INSTRUCTIONS

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### RFP REGISTRATION:

All aspects of this RFP will be managed on the City of Newport Beach PlanetBids portal.

Once registered as a vendor/bidder on the City of Newport Beach PlanetBids portal (hereby referred to as “the Portal”), please search for this solicitation (RFP No. 26-08 to register as a bidder for this project specifically. Any and all updates, addenda, questions and answers and changes to this RFP will be distributed through the Portal. The City shall not be held responsible or liable if interested bidders or proposers do not register for this solicitation specifically and miss any information relevant to this RFP.

### PREBID MEETING:

Prebid meeting mandatory: Yes  
Prebid date and time: September 10, 2025 at 11:00AM  
Prebid address and location: 100 Dover Drive, Newport Beach, CA 92663

Prebid contact: Lauren Wooding Whitlinger  
(949-644-3236  
[lwooding@newportbeachca.gov](mailto:lwooding@newportbeachca.gov)

### QUESTIONS, ANSWERS AND ADDENDA TO RFP:

**Questions are due on Friday, September 12, 2025 by 12:00PM.** Prior to the RFP submission deadline questions may arise regarding the specifications and procedural or administrative matters. All questions pertaining to this RFP shall be submitted using the City of Newport Beach PlanetBids portal, using the “Q&A” tab within this solicitation. Proposers shall contact PlanetBids for all technical matters related to use and function of PlanetBids; proposers **shall not** contact any other City personnel, City Council members or other members of the Lower Castaways Ad Hoc Committee, other than the City’s Purchasing Division for matters regarding this solicitation. The RFP Administrator will provide formal answers to all questions. Changes to the RFP itself shall only be made by the City via formal written addenda. Addenda will be published and distributed through the Portal. All addenda shall become a part of the RFP document requiring acknowledgment by the proposer.

It is the sole responsibility of the proposer to ensure that they have received the entire Request for Proposals, including any and all questions, answers and addenda by visiting the City of Newport Beach PlanetBids portal.

### SUBMITTAL INFORMATION:

**Proposals are due on Friday, October 3, 2025 by 1:00PM.** It is the sole responsibility of the bidder to ensure that their bid and/or proposal is submitted through the City of Newport Beach PlanetBids portal before the stated deadline. In the event you encounter any complications with the Portal or require further assistance, please contact PlanetBids support at (818) 992-1771, Monday – Friday between 7am – 5pm (PST). The submittal status of a bid and/or proposal can be checked any time using PlanetBids. The City shall not be held liable for complications arising

due to connectivity or network issues. Should you have any questions regarding the RFP or contract process, please reach out to the RFP Administrator below:

RFP Administrator: Jennifer Anderson  
Email: [janderson@newportbeachca.gov](mailto:janderson@newportbeachca.gov)

#### **PROPOSAL EVALUATION CRITERIA:**

Proposals will be evaluated on the basis of the response to all provisions of this RFP. Since this solicitation is an RFP as opposed to a bid, pricing alone will not constitute the entire selection criteria. The City may use some or all of the following criteria and corresponding percentages in its evaluation and comparison of proposals submitted. The criteria listed are not necessarily an all-inclusive list. The order in which they appear is not intended to indicate their relative importance. The City reserves the right to modify the evaluation criteria and percentage of score as deemed appropriate prior to the commencement of evaluation.

<b>PROPOSAL EVALUATION CRITERIA</b>	
<b>EVALUATION CRITERION</b>	<b>PERCENTAGE OF SCORE</b>
Qualifications, Experience, and Subject Matter Expertise of the Firm and Key Personnel in Providing the Requested Project	40%
Proposer's Plans for the Property, and Proposed Deal Terms and Conditions	40%
Project Pro Forma	15%
Proposer's References	5%
The following deficiencies may result in a proposal disqualification, deemed non-responsive or penalized in the evaluation of the proposal:	<ul style="list-style-type: none"><li>• Missing required submittal documentation.</li><li>• </li></ul>
The following deficiencies may result in a penalty in the evaluation of the proposal:	<ul style="list-style-type: none"><li>• Incomplete submittal documentation.</li><li>• Number of Exceptions Taken</li></ul>

The City reserves the right to determine whether or not a proposal meets the specifications and requirements of this RFP and reject any proposal that, in the City's opinion, fails to meet the detail or intent of the requirements. The City reserves the right to reject any and all proposals.

#### **SELECTION PROCESS:**

The City shall employ a multistep process to select a partner for this Project. First, an Evaluation Committee shall rate all Proposals using the criteria described above. Each criterion shall be

assigned a unique scoring weight based on the significance of each criterion to the overall success of the Project. Proposals must earn a minimum of 70% of the available points in Step 1 to advance to Step 2. Step 2 will require Oral Interviews with the Evaluation Committee. The total number of points earned for the written Proposals and Oral Interviews will be combined for each Proposer, and rank ordered. Based on said ranking, the Evaluation Committee will recommend a Primary Proposer for City Council approval. It is the City's intention to first negotiate an exclusive negotiating agreement (ENA) with the Primary Proposer then negotiate a lease. Should the parties fail to reach an agreement on the ENA or lease terms, the City may begin negotiations with the next Ranked Proposer. The City reserves the right to make no award or award the Agreement in its entirety to a sole Proposer.

#### **PROJECT SCHEDULE:**

The following is a tentative schedule of this entire RFP process. While the City will attempt to apply the necessary resources to maintain this schedule, the following dates are merely projections, and the City reserves the right to modify this schedule as needed to accommodate the completion of this RFP process.

<b>TENTATIVE PROJECT SCHEDULE</b>	
RFP Published:	August 19, 2025
Mandatory Prebid Meeting:	September 10, 2025 at 11:00AM
Questions from Proposers Due:	September 12, 2025 by 12:00PM
Questions and Answers Posted:	September 18, 2025
Proposals Due:	October 3, 2025 by 1:00PM
Anticipated Contract Award:	November 2025

#### **PROPOSAL FORMAT:**

Please refer to the Submittal Checklist and Proposal Format (located in this RFP) section for a comprehensive guide regarding the format of the proposal submittal.

## TERMS AND CONDITIONS

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### **I. Acceptance of Terms and Conditions**

Submission of a proposal indicates acceptance by the company submitting the proposal of the terms, conditions and specifications contained in this RFP and in the Draft Agreement, unless clearly and specifically stated otherwise in the completed Statement of Compliance.

### **II. Precedence of Terms and Conditions**

All terms and conditions of the Draft Agreement are hereby incorporated into this RFP. In the event of a conflict between a provision in the RFP and the Draft Agreement, Draft Agreement shall take precedence.

### **III. Public Record**

Upon submission of a proposal and other materials for consideration by the City, such proposals and materials shall become the property of the City of Newport Beach. Proposals may be subject to public inspection and disclosure pursuant to state and federal law after the award of a contract for this Project. Prior to the RFP deadline, proposals may be modified or withdrawn by an authorized representative of the proposer by written notice to the Purchasing Office.

### **IV. Availability of Records**

All relevant documents pertaining to this RFP and procurement process shall be made available by the Purchasing Office upon successful conclusion of the entire procurement process.

### **V. Late Proposals**

Any proposal which is not received according to the City's submission requirements prior to the deadline date and time set forth in this RFP shall not be considered. The City assumes no responsibility or liability for the transmission, delay, or delivery of a proposal by either public or private carriers.

### **VI. Specificity of Information**

No verbal or written information which is obtained other than through this RFP or its addenda shall be binding on the City. No employee of the City is authorized to interpret any portion of this RFP or give information as to the requirements of the RFP in addition to that contained in or amended to this written RFP document.

### **VII. Errors and Omissions**

This RFP cannot identify each specific, individual task required to successfully and completely implement this Project. The City relies on the professionalism and competence of proposers to be knowledgeable of the general areas identified in the scope of work and to include in their proposals all materials, equipment, required tasks and subtasks, personnel commitments, man-hours, labor, direct and indirect costs, etc. Proposers shall not take advantage of any errors and/or omissions in this RFP document or in the firm's specifications submitted with their proposals. Where such errors or omissions are discovered by the City, full instructions will be given by the City in the form of an addenda.

## **VIII. Proposal Validity**

Unless otherwise noted by the proposer, all proposals shall be held valid for a period of 180 days.

## **IX. Right of Rejection**

The City reserves the right to: (1) Accept or reject any and all proposals or any part of any proposal, and to waive minor defects or technicalities in such; (2) Request clarification of any information contained in a proposal; (3) Solicit new proposals on the same project, or on a modified project, which may include portions of the original RFP as the City may deem necessary; (4) Disregard all non-conforming, non-responsive, or conditional proposals, (5) Reject the response of any proposer who does not pass the evaluation to the City's satisfaction, (6) Allow for the correction of errors and/or omissions; (7) Select the proposal that will best meet the needs of the City, and (8) Negotiate contract and terms with the successful proposer.

## **X. Right of Rejection of Lowest Fee Proposal**

The City is under no obligation to award this project to the proposer offering the highest lease fee proposal. Evaluation criteria expressed in this RFP solicitation shall be used in the proposal evaluation process. In evaluating proposals, the City may consider the qualifications of the proposers and whether the proposals comply with the prescribed requirements. The size and scope of the Project at hand may dictate the degree to which Qualifications-Based Selection processes are utilized.

## **XI. Non-Compliance**

Proposers and/or proposals that do not meet the stated requirements for this Project may be considered noncompliant and may be disqualified, unless such noncompliance is waived by the City. During the evaluation process, the City reserves the right to request additional information or clarification from those submitting proposals, and to allow corrections of errors and/or omissions.

## **XII. Exceptions to Proposal Requirements**

Proposers may find instances where they must take exception with certain requirements or specifications of the RFP and/or Draft Agreement. All exceptions shall be clearly identified using the Statement of Compliance, and written explanations shall include the scope of the exceptions, the ramifications of the exceptions for the City, and a description of the advantage to be gained or disadvantages to be incurred by the City as a result of these exceptions.

## **XIII. Determination of Responsiveness and Responsibility**

The City shall have sole authority in determining the responsiveness and responsibility of any and all proposals. For Proposals containing exceptions to specifications and/or requirements, the City shall have sole authority in determining the extent to which exceptions affect the responsiveness and responsibility of any and all proposals.

## **XIV. Obligation to Award**

The City of Newport Beach is not obligated to enter into a Contract or Agreement on the basis of any proposal submitted in response to this RFP. City reserves the right to award multiple contracts for this Project if it is deemed most advantageous to the City.

**XV. Bidder Reimbursement Prohibition**

The City will not pay for any information herein requested, nor are they liable for any costs incurred by any vendors prior to award of a contract or purchase order. The City may require the finalist proposer(s) to provide on-site presentations and demonstrations of the product(s)/service(s) proposed by the proposer(s). All costs associated with the demonstrations or follow-up interviews are the sole obligation of the proposer(s).

**XVI. Gratuity Prohibition**

Proposers shall not offer any gratuities, favors, or anything of monetary value to any official, employee, or agent of the City for the purpose of influencing consideration of this proposal. Submission of a Proposal indicates proposer certifies that they have not paid nor agreed to pay any person, other than a bona fide employee, a fee or a brokerage resulting from the award of the contract.

**XVII. Contact with City Personnel or Entities**

The RFP Administrator is to serve as the primary point of contact for all communications related to the procurement process including the evaluation process, and the selection process. Proposers shall not contact City personnel or City Council members or Lower Castaways Ad Hoc Committee members other than the City's Purchasing Division for matters regarding this Project until conclusion of the entire procurement process, which shall be defined as Agreement Award. Unauthorized contact may result in disqualification of proposals.

**XVIII. Indemnification**

Proposer, at its own expense and without exception, shall indemnify, defend and pay all damages, costs, expenses, including attorney fees, and otherwise hold harmless the City, its employees, and agents, from any liability of any nature or kind in regard to the delivery of these services. Submission of a Proposal indicates proposer waives the right to claims for damages of any nature, whatsoever, based on the Proposal solicitation and/or selection process.

**XIX. Insurance Requirements**

The selected Contractor(s) for this Project shall furnish proof of insurance in accordance with the specific types and limits set forth in the insurance requirements included in the Draft Agreement after the Notice of Intent to Award is issued. Contractor(s) shall be considered ineligible for the contract award if the insurance requirements are not met.

Additionally, the insurance requirements reflected in *Section 7.1. Entry for Investigation of* the Draft Agreement are revised as follows:

Subsection (f) is hereby revised to read: "(f) provide to City prior to initial entry a certificate of insurance evidencing that Developer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than **FOUR MILLION DOLLARS (\$4,000,000.00)** which

insurance names City, its City Council, boards and commissions, officers, agents, volunteers and employees...”

Any self-insured retentions (“SIR”) must be declared to and approved by the City. The City reserves the right to require that an SIR be eliminated, lowered, or replaced by a deductible.

**The proposal should disclose the value and type of self-insurance, if any.**

Insurance reviews are conducted through a third party, via an online portal called Ebix. It is required that the selected Contractor(s) maintain the insurance coverage through Ebix.

**XX. Compliance with All Applicable Laws**

Proposer declares that it shall comply with all licenses, statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted, including, but not limited to, appropriate Contractor licensing, permits and business licensing.

**XXI. Inclusive Proposal Pricing**

Proposal pricing shall include any and all applicable licenses, insurance coverage, endorsements, bonding and if necessary, any wage compliance deemed necessary to perform the Work or Services as part of the Project described in this RFP. City will not be responsible for reimbursing Contractors for any charges not included in the proposal pricing that are incurred in securing these requirements.

**XXII. Subcontractor/Joint Ventures**

The selected Contractor shall be the Prime Contractor performing the primary functions of the Agreement. If any portion of the Agreement is to be performed by a subcontractor, this must be clearly set forth in the proposal submittal as to what part(s) is/are to be delegated. The City reserves the right to reject any proposal wherein use of subcontractors significantly affects the ability of the proposer to function as the Prime Contractor on the awarded Agreement. The Prime Contractor will at all times be responsible for the acts and errors or omissions of its subcontractors or joint participants and persons directly or indirectly employed by them. Acceptance or rejection of a proposer’s request to use subcontractors is at the sole discretion of the City.



# SCOPE OF SERVICES



### **Objective:**

The City of Newport Beach (“City”) is seeking a qualified private developer (“Developer”) to plan, design, permit, finance, construct, and operate public amenities at the City-owned Lower Castaways property through a public–private partnership (PPP). The Lower Castaways site – approximately 4 acres at the corner of Dover Drive and West Coast Highway – represents Newport Beach’s last undeveloped bayfront parcel. The City’s objective is to activate this currently underutilized site with a public park and parking facility along with low-impact recreational and visitor-serving uses at no cost to taxpayers by leveraging private investment. The selected partner will enter into a long-term lease agreement with the City to develop the site and share project revenues with the City. This Scope of Work outlines the project vision, required components, developer responsibilities, and key considerations (regulatory, financial, and contextual) to guide proposals in response to this Request for Proposals (RFP).

After selection of the highest-qualified Developer, the City anticipates preparing an exclusive negotiating agreement (“ENA”) to be submitted to the City Council for its consideration in early 2026. Once the selected Developer has determined the project scope and necessary entitlements, a review of the use and design by the City’s Planning Commission is likely. The lease will be negotiated and submitted back to City Council for its consideration with the final project designs. If any work is necessary over the tidelands, which boundary is provided in Attachment 2, the project shall be submitted to the California State Lands Commission for its consideration and approval prior to being considered by City Council. Upon approval of the project scope and lease agreement, the selected Developer will be required to obtain the necessary entitlements for the project, which will include a coastal development permit from the City.

**Term: Negotiable, but subject to the maximum terms in state law**

### **I. Site Background and Context**

**Site Description:** Lower Castaways Park is a City-owned waterfront property located along Newport Harbor, immediately north of the Marian Bergesen Memorial Bridge on West Coast Highway at Dover Drive. The site is currently a gravel lot used for equipment staging, laydown yard, and small boat storage, with basic improvements such as a hand-launch area and portable restrooms. Several informal trails cross the site and connect to the adjacent Upper Castaways bluff, which is a designated view park.

**Historical Significance:** The Lower Castaways area is often noted as the “birthplace of Newport Beach,” being near the spot where early mariners first entered and discovered Newport Harbor in the 19th century. It is regarded as the founding site of the city, yet today remains an unimproved expanse of dirt – “essentially a vacant storage lot” in the words of one Councilmember. Any development should incorporate interpretive elements to celebrate this rich history (e.g. signage or displays about Newport Harbor’s origins and the Castaways’ role). The Upper Castaways Park, overlooking the site, already features scenic lookouts and memorials, underscoring the cultural importance of this locale as a public viewpoint and historic site.

**Environmental Context:** Lower Castaways lies at the nexus of Newport Harbor and the Upper Newport Bay Nature Preserve. The waters offshore immediately adjacent to the site are part of the Upper Newport Bay State Marine Conservation Area, a protected ecological reserve, and the site’s shoreline and uplands may include sensitive habitat. Past studies have identified the area as an ideal hub for outdoor recreation (hiking, biking, human powered watercraft) while cautioning that development must respect the sensitive coastal environment. The site’s status as a public tidelands-adjacent property means that uses must align with public trust purposes (coastal

recreation, navigation, habitat conservation). Developers should be aware of potential environmental constraints – such as protected bird species, wetland adjacency, and water quality considerations – and plan to incorporate sustainable, low-impact design and habitat protections. Educational or interpretive signage about local ecology (e.g. Upper Newport Bay's wildlife and marine protected area regulations) is a desired component to enhance public understanding of the environment.

## II. Project Vision and Required Components

The City envisions transforming Lower Castaways into a vibrant yet low-intensity recreational waterfront park destination that serves the community. The development program must include the following key components:

- **Passive Park Areas:** Landscaped open space for informal recreation and relaxation. The design should create a “passive park” atmosphere – e.g. grassy or natural areas with benches, picnic tables, and shade – rather than active sports fields or intensive facilities. The park areas should capitalize on the site's panoramic bay and harbor vistas, effectively extending the Upper Castaways “view park” experience at the bluff down to the water's edge. Minimal hardscape, native or drought-tolerant landscaping, and possibly a small community garden or habitat garden are encouraged to enhance aesthetics and environmental value.

This park is not a secondary amenity but a critical and prominent element that reflects the City's commitment to public access, environmental stewardship, and quality of life. Proposals must clearly demonstrate how the passive park will be prioritized in the site plan, how it will connect with other site features, and how it will be maintained over the long term. Activation through interpretive signage, public art, or light-touch programming may be proposed, provided it is consistent with the serene nature of the space.

- **Flexible Commercial Use Area:** The project should incorporate a flexible commercial use area that supports the public-serving character of the marina and waterfront. Potential uses may include—but are not limited to a restaurant, café, retail shop, rental facility or a combination thereof. The design may accommodate a small kiosk-style footprint or a larger standalone building, depending on the developer's vision and feasibility within site and parking constraints. The City does not intend to prescribe a specific building type or use, allowing the proposer to be creative and responsive to market demand. However, residential and general storage uses (beyond operational or janitorial support space) are strictly prohibited. The intent is to create a vibrant, visitor-serving use that complements the bay and encourages public access and engagement with the waterfront.
- **Hand Boat Launch and Kayak Storage:** A dedicated hand-launch facility for human-powered watercraft—including kayaks, canoes, and stand-up paddleboards—shall be a central feature of the project. Adequate staffing should be provided to manage and facilitate the operation. Although the Lower Castaways site is already informally used for free public launching, the proposed redevelopment should formalize and enhance this function through a safe, durable, and environmentally sensitive launch structure. Options may include a small floating dock or gently graded ramp designed to minimize impacts to the shoreline and adjacent habitat, in full compliance with applicable harbor and coastal regulations. The area is prone to erosion and beach replenishment efforts. No motorized boat launch is proposed, consistent with the passive recreational use of Upper Newport Bay and the preservation of a tranquil setting.

To further support non-motorized boating activity, the project must include secure, accessible on-site human powered watercraft storage facilities (such as kayaks, outriggers and stand-up paddle boards). These may take the form of lockable racks, enclosed lockers, or modular storage sheds with capacity for short- and long-term storage. The storage area should be conveniently located near the launch point, incorporate durable weather-resistant materials, and be made available to the public with reasonable access controls. The selected developer will be responsible for designing, constructing, and maintaining both the launch and storage components, and for ensuring continued public access under clearly posted operating hours or safety guidelines.

- **Pedestrian Walking Trails:** A network of walking paths connecting the site's features and linking to existing trails. Trails should provide public access through the site, including a connection between the Lower Castaways waterfront and Upper Castaways Park (potentially via a stairway). The trails must be designed for ADA accessibility where possible and could include a bayfront promenade or viewpoint overlooks. Wayfinding signage, seating at viewpoints, and bicycle racks ("bike node" amenities) should be integrated to encourage use by hikers and cyclists. These pathways will enhance coastal access consistent with the California Coastal Act's mandate to maximize public access and recreational opportunities.
- **Interpretive Signage and Displays:** The project must incorporate interpretive elements to educate visitors about the site's unique natural and cultural history. This may include informational signage, plaques, or small exhibits on topics such as the history of Newport Harbor's founding at Castaways (e.g. the landing of early settlers or sailors); the ecology of Upper Newport Bay and its status as a protected wetlands and marine area; and the significance of the site to the community. All interpretive features should be thoughtfully placed along trails or near the commercial space where people will encounter them, and should be made of durable, weather-resistant materials. The developer should plan to consult with local historical societies, the Newport Bay Conservancy, and/or Native American representatives (if applicable) to ensure accurate and meaningful content. By telling the "story" of Lower Castaways, these elements will enrich the visitor experience and fulfill a cultural/educational role in line with Coastal Act policies promoting public coastal education.
- **Parking Requirements and Considerations:** The developer shall include a comprehensive parking strategy that addresses the anticipated demand generated by the proposed redevelopment project. The parking plan must ensure adequate availability to support all intended uses, including commercial and visitor-serving functions, in accordance with applicable City standards and the California Coastal Act's requirements for public access. Developers are expected to analyze parking needs, propose efficient configurations, and incorporate ADA-compliant spaces. The number, layout, and type of parking spaces shall be clearly depicted in the conceptual design plans. The City will evaluate parking adequacy during entitlement review and may require modifications to ensure alignment with community needs and regulatory obligations.
- **Monument Sign Relocation and Integration:** As part of the proposed improvements to the Lower Castaways site, the developer shall be responsible for the relocation and reinstallation of the existing monument sign currently situated on Coast Highway. The monument sign, which identifies the Castaways area and its contributions to the City's historical and civic identity, must be repositioned in a manner that maintains high visibility from West Coast Highway while complementing the new site layout and landscaping. The final location and design of the relocated sign shall be reviewed and approved by the City.

to ensure it aligns with aesthetic, wayfinding, and branding objectives. The developer shall bear all costs associated with the relocation, including design modifications, permitting, fabrication (if needed), and installation.

In addition to the above required elements, developers are encouraged to be creative in suggesting other compatible enhancements that align with the site's passive recreation theme – for example, a small outdoor event lawn or picnic pavilion (which could double as an event venue for community gatherings), public art installations reflecting maritime history, or a harbor lookout platform. However, any added use should remain low-impact and coastal-dependent or coastal-related, consistent with the Coastal Land Use Plan. The City will evaluate proposals on how well they integrate the required components and any optional features into a cohesive, balanced plan that serves the public interest.

### III. Developer Scope of Work and Responsibilities

The selected development partner will be responsible for delivering a turnkey project – from initial planning through long-term operations – under a comprehensive development lease. Major responsibilities and tasks include:

- **Master Planning and Design:** Prepare a detailed site master plan and architectural/landscape designs for all improvements. This includes conducting site investigations, developing conceptual designs (with floor plans, elevations, and renderings for facilities such as commercial space and any structures), and refining the plans in response to City and community feedback. The design phase must ensure that all required project components (commercial space, park areas, launch, trails, signage) are thoughtfully integrated. The developer's team should include qualified architects, landscape architects, and engineers with experience in coastal projects. The end goal is a plan that achieves the City's vision while respecting community and environmental needs. All designs will be subject to City approval prior to moving forward.
- **Entitlement and Permitting:** The developer shall be responsible for securing all required entitlements and approvals necessary for project implementation. This includes leading the multi-agency regulatory process typical of coastal development, such as obtaining a General Plan Amendment (if applicable), Site Development Review, Coastal Development Permit, and conducting Environmental Review in compliance with CEQA. The developer is expected to coordinate with all relevant local, regional, and state agencies to ensure timely approval.
- **Financing and Funding:** The developer must provide 100% of the project's financing, as no public funds are available. This includes covering all planning, design, permitting, construction, and startup costs through private sources such as equity or debt. The proposals should include a clear financing plan and proforma outlining all costs and expected revenue. The City will require proof of financial capacity and relevant experience. During the ENA period, the developer may need to show proof of funds or provide performance security. All entitlement and development-related costs, including application and permitting fees, are the developer's responsibility.
- **Construction and Implementation:** Once approvals are obtained, the developer will complete all improvements per approved plans and permits. This includes site grading, utility work, and construction of commercial space, parking, hardscape, landscape, trails, signage, lighting, and other required facilities. Work must comply with all codes and environmental mitigation measures. The developer is responsible for construction

logistics, traffic control, and maintaining public access when possible. A phasing plan should minimize disruptions, and certain features (e.g., the hand-launch area) may remain open during construction. Insurance, bonding, progress updates, and City inspections will be required. The finished project must be turn-key and delivered with all as-built plans and warranties per the negotiated lease.

**Operations and Maintenance:** Following construction, the developer (or its operator) will manage and maintain all facilities throughout the lease term. This includes operating the commercial space, overseeing any rentable amenities, and maintaining public areas—such as landscaping, trails, lighting, docks, restrooms, and signage—to City standards. Public access to the park, trails, and launch must be preserved, with posted hours and safety measures as needed. A maintenance plan covering routine upkeep, cleaning, and security is required. All operational costs are the developer's responsibility but may be offset by on-site revenue to be negotiated in the lease. The City will monitor performance, and all improvements will revert to the City in good condition at the end of the lease term, unless otherwise agreed.

Public access to the passive park, pedestrian trails, and hand-launch facilities shall be maintained for the duration of the lease. These elements must remain open to the public during posted hours of operation and may not be restricted for private use or events unless explicitly approved by the City. Temporary closures for maintenance or safety shall be minimized and clearly communicated in advance. The developer shall not impose fees for general public access to non-commercial elements of the site.

The developer must work closely with City staff throughout all project phases and follow City contracting requirements. Regular meetings with the City's project manager will track progress on design, permitting, construction, and operations. The developer is also responsible for securing required insurance, providing indemnifications, and complying with labor laws, including use of licensed contractors and prevailing wage if applicable. A detailed project schedule with key milestones must be included in the proposal and will be part of the final agreement.

#### IV. Partnership Structure and Financial Terms

The City intends to structure the public-private partnership in a manner that shares both the responsibilities and rewards of the project, while securing long-term public benefits. Key anticipated terms and options include:

- **Long-Term Ground Lease:** The City will offer a long-term ground lease—typically 30 to 50 years—allowing the developer to build, operate, and earn revenue from the site while the City retains land ownership. At lease end, ownership of all improvements will revert to the City. The lease term will be negotiated to balance the developer's investment recovery with the City's long-term interests. Developers should recommend a lease length and justify it based on project financing. Extensions may be considered if linked to future upgrades or performance goals. Developer will indemnify City against any and all claims arising on the Property and carry adequate insurance policies naming the City as additionally insured.
- **Revenue Sharing Model:** Instead of fixed rent alone, the City prefers a revenue-sharing model to share in the project's financial success. Proposals should include a financial offer with both base rent (guaranteed minimum) and a percentage of gross on-site revenues (e.g., commercial use, event fees). The City is open to creative structures, such as tiered revenue sharing or varying percentages by revenue type. The aim is to ensure fair public



value from private use of public land. Final terms will be negotiated and included in the lease, with financial reporting and audit rights required.

- **Capital Investment and Ownership:** The developer will fund all project costs, and the lease will likely be a triple-net (NNN) structure, meaning the developer covers all maintenance, insurance, taxes, and operating expenses. The City will not provide capital funding; its contribution is the land itself. Developers should consider fair market ground rent in their financial offers, though below-market rent may be accepted early on if balanced by higher revenue sharing and significant public improvements. Ownership of all improvements will likely transfer to the City at no cost at the end of the lease. If cost recovery is needed over time, the lease term should reflect that.
- **Lease Structure Options:** While a ground lease is most likely, the City is open to exploring alternative lease or partnership structures if they better achieve the project goals. Possible structures could include:
  - A **Concession Agreement or Operating Lease** for certain components (for example, the City could own the park improvements while the developer only leases the commercial space and perhaps has a concession to operate the boat launch rentals). In such a case, different term lengths might apply to different facilities.
  - A **Phased Lease** where portions of the site are developed in phases and each phase's lease commences upon completion.

Developers are encouraged to suggest the structure that they believe will be most effective and financially viable. However, any structure must ensure the City's fee interest in land ownership and public access rights are protected in perpetuity. Ultimately, the City Council will approve the final business terms, and any long-term lease on City property will likely require City Council approval.

- **Exclusive Negotiating Agreement (ENA):** Before finalizing a lease, the City plans to enter into an Exclusive Negotiating Agreement (ENA) with the selected developer. The ENA will set deadlines for key pre-development tasks such as design, entitlements, outreach, and environmental review, as well as lease negotiations. If milestones aren't met or lease terms can't be agreed upon, the City may end the ENA and engage another developer. The ENA term is typically 6–12 months, with possible extensions if progress continues.
- **Performance Guarantees:** The City will likely require certain performance security, such as performance and labor and materials bonds for construction and maybe a form of guaranty or letter of credit ensuring completion of the project and initial operation. Additionally, default provisions in the lease will protect the City: for example, if the developer fails to construct the improvements by a certain date or abandons the project, the City can step in, terminate the lease, and retain improvements or seek damages. Similarly, failure to operate the facilities to the agreed standard could constitute default. These provisions ensure the public investment (in terms of opportunity cost of the land and the envisioned amenities) is safeguarded.

## V. Minimum Developer Qualifications and Experience Requirements

The following minimum qualifications must be met by any Developer submitting a proposal in response to this RFP. Proposals that do not demonstrate these qualifications may be deemed non-responsive and excluded from further consideration.

- Demonstrated experience in managing, designing, permitting, constructing, renovating, promoting, advertising, operating, and maintaining integrated landside and waterside commercial marina-related projects. Projects should include amenities such as office space, restaurants, retail, storage, boat slips, and parking facilities.
- Proven track record of managing commercial development projects in Newport Beach and/or other coastal-centric areas within Orange County and Southern California.
- Prior experience partnering with public agencies on real estate development projects is preferred but not required.
- Experience navigating entitlement and permitting processes with the California Coastal Commission and municipalities operating under a certified Local Coastal Program (LCP).
- A thorough and demonstrated understanding of the California Coastal Act, including policies relevant to coastal access, land use, and environmental protections.
- Demonstrated financial capability to secure and deploy sufficient capital to fund pre-development, entitlement, construction, and operation phases. This includes the ability to access both debt and equity sources.

### **VI. RFP Information Requirements**

RFP submittals must include the following:

- Cover Transmittal Letter
- Provide narrative that introduces the firm and team highlighting the strengths of the Developer to implement the City and Developer's vision for the project.
- Developer's Qualifications, Experience, and References
- Developer must include a description of the anticipated management team structure and key development team staff including but not limited to the following roles:
  - Management
  - Design
  - Entitlement
  - Leasing
  - Operations
- Describe specific qualifications and experience of firm and/or key individuals with direct project responsibility.
  - Current resumes of firm and/or key individuals must be included.
- Developer must include at least three references.
- Relevant Project Experience
  - Developer must include two or more current or previous projects (within the last 10 years) and include the following information:
    - Type and location of the project(s),
    - Entity scope of involvement,
    - Current status,
    - Project Management responsibilities,
    - Value of development,
    - Financing strategy of the development,
    - Summary of Public-Private Partnerships (as may be applicable) associated with the project,



- Any additional information that may clarify the Developer's success in producing projects of this type
- Financial Capability to Complete the Project
  - RFP must include information that will enable the City to discern the financial resources available to the entity. Such information should help the City to determine whether the development entity has the financial ability to deliver the proposed revitalization program as evidenced by submission of information such as:
    - Description of relationships with lending institutions, financial partners, investors, etc., along with who is responsible for decision making; and
    - Description of any bankruptcy filing by the Developer, a major team member, or an entity controlled (minimum past ten years).
- Conceptual Project Proposal
  - Developer must include:
    - Conceptual design, including: floor plans, floor areas, proposed uses, height, and amount of parking provided;
    - Any added entitlements, amendments and approvals anticipated for project;
    - Plan and timing to implement the project;
    - Ability and plan to finance the project;
    - Marketing plan;
    - Parking and circulation during construction and the term of the lease;
    - Management and operation plan for the project during the Lease term; and
    - Financial offer to the City.
- Project Proforma
  - Developer must include:
    - A detailed description of Developers plans to finance costs of entitlement, design, and construction.
    - A budget for direct/hard and indirect/soft costs and financing expenses. Cost and expense detail should include lease payments, hard construction costs, parking costs, on and off-site infrastructure and mitigation costs, all direct and indirect soft costs, and all construction financing costs. Soft development costs should be detailed as appropriate, including architecture and engineering, construction insurance, legal fees, developer overhead, administration, and leasing commissions.
  - All estimated pre-development costs necessary to complete the entitlement, permitting and CEQA processes
    - Provide a proforma of the project including anticipated costs, anticipated revenue, and revenue sharing proposal.
- A detailed schedule for the proposed project.
- A plan to attract and recruit tenants.
- Description of any litigation in which the Developer or a major team member was a defendant (past 5 years or pending), and any litigation involving the City of Newport Beach or any other governmental agency or jurisdiction at any time.

## ATTACHMENTS

The following pages contain attachments relevant to this project and RFP. They are as follows:

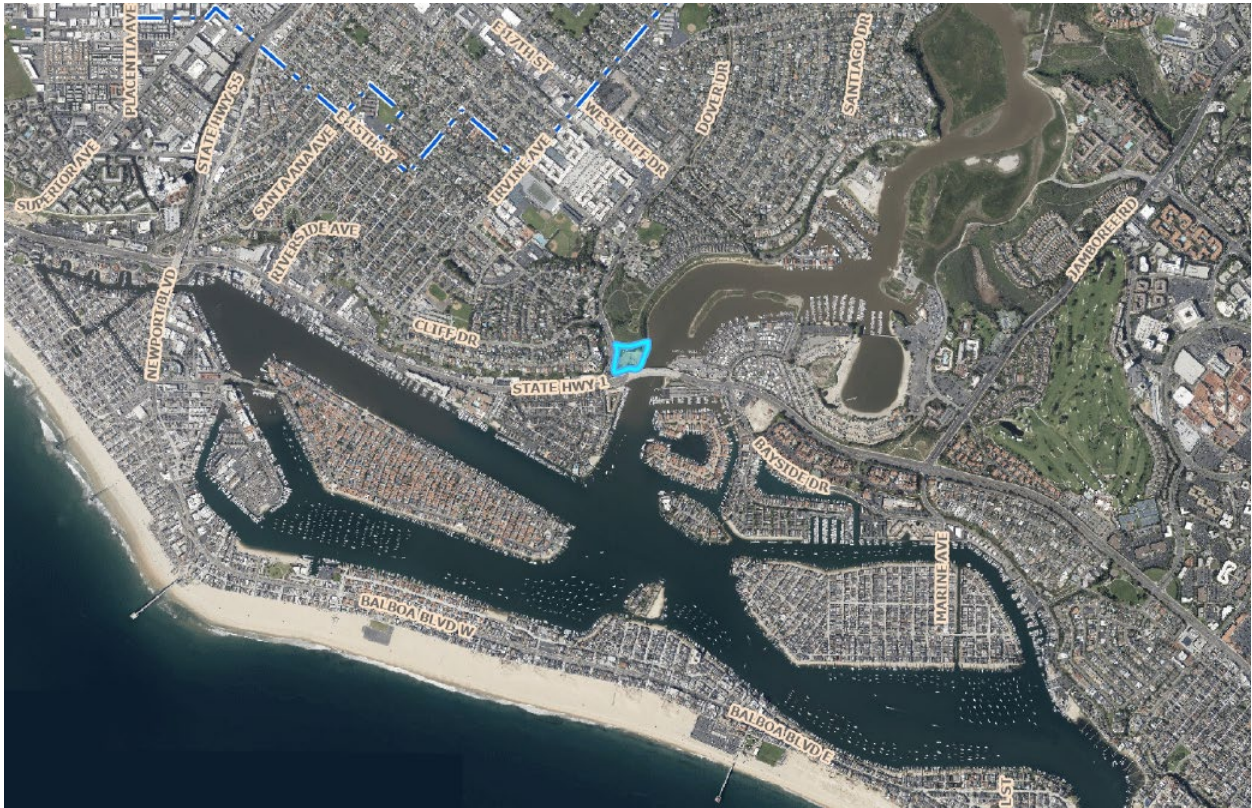
## SCOPE OF SERVICES

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1. Aerial Vicinity Map
2. Tidelands Boundary Map
3. Site Plan
4. Monument Sign
5. Grant Deed, recorded 10/17/2008

ATTACHMENT 1

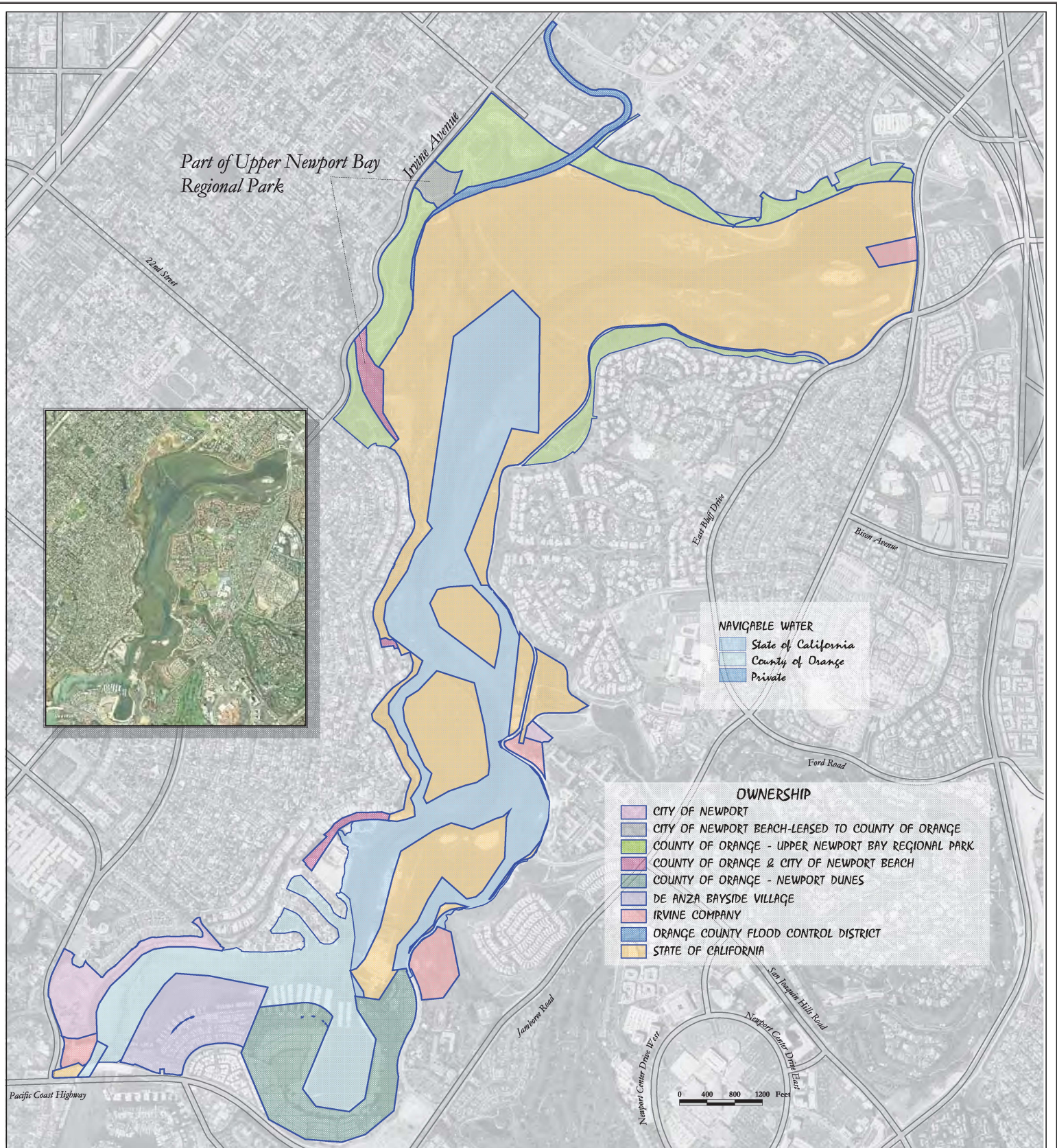
AERIAL VICINITY MAP



**ATTACHMENT 2**

**TIDELANDS BOUNDARY MAP**





# UPPER NEWPORT BAY

## OWNERSHIP

### County of Orange, California

DESIGNED AND PRODUCED BY:  
Public Facilities and Resources Department  
GIS Mapping Unit  
Carmen Copli-Daniels

#### DATA SOURCE:

Geomatics Land Information System Division  
Aerial Imagery: One Meter Resolution, 2001

DATE: August 19, 2002





ATTACHMENT 3

SITE PLAN





ATTACHMENT 4

MONUMENT SIGN



**ATTACHMENT 5**

**GRANT DEED**

[see attached]





NO FEE

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**RECORDING REQUESTED BY  
AND WHEN RECORDED, MAIL TO:**

City Clerk  
City of Newport Beach  
3300 Newport Boulevard  
Newport Beach, California 92663-3884

**WITH A CONFORMED COPY TO:**

The Irvine Company LLC  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attn: General Counsel's Office

(Space Above For Recorder's Use)

**EXEMPT RECORDING REQUEST PER  
GOVERNMENT CODE 27383**

**GRANT DEED**  
(Lower Castaways Parcel)

**THE UNDERSIGNED GRANTOR DECLARES:**

This document is recorded at the request of and for the benefit of the City of Newport Beach, and therefore is exempt from the payment of a recording fee pursuant to California Government Code §§ 6103 and 27383 and from payment of documentary transfer tax pursuant to California Revenue and Taxation Code § 11922.

**RECITALS**

A. The Irvine Company LLC is the owner of fee title to certain real property in the City of Newport Beach, County of Orange, State of California, described on Exhibit A and depicted on Exhibit B attached hereto (the "**Property**").

B. The Property is subject to the provisions of that certain Zoning Implementation and Public Benefit Agreement entered into by and between the City of Newport Beach and The Irvine Company LLC, dated January 8, 2008 and recorded on February 4, 2008 as Instrument No. 2008000051429 in the Official Records of Orange County, California, as clarified by that certain letter agreement between The Irvine Company LLC and the City of Newport Beach dated August 28, 2008 (collectively, the "**Development Agreement**"). Section 4.11 of the Development Agreement requires that The Irvine Company LLC dedicate the Property to the City at the time prescribed in said Section.

C. In order to comply with the requirements of the Development Agreement, The Irvine Company LLC now desires to convey the Property to the City of Newport Beach subject to the provisions of this Grant Deed.

## CONVEYANCE

NOW THEREFORE, in consideration of the above,

**THE IRVINE COMPANY LLC**, a Delaware limited liability company ("**Grantor**"), hereby grants to the **CITY OF NEWPORT BEACH**, a California municipal corporation and chartered city ("**Grantee**"), in fee, the Property.

**EXCEPTING** from the Property, any and all oil, oil rights, minerals, mineral rights, natural gas rights and other hydrocarbons by whatsoever name known, geothermal steam, any other material resources and all products derived from any of the foregoing, that may be within or under the Property, together with the perpetual right of drilling, mining, exploring and operating therefor and storing in and removing the same from the Property or any other land, including the right to whipstock or directionally drill and mine from lands outside the Property, oil or gas wells, tunnels and shafts into, through or across the subsurface of the Property and to bottom such whipstocked or directionally drilled wells, tunnels and shafts under and beneath or beyond the exterior limits thereof, and to redrill, retunnel, equip, maintain, repair, deepen and operate any such wells or mines; but without, however, the right to drill, mine, store, explore or operate through the surface or the upper 500 feet of the subsurface of the Property;

**EXCEPTING** from the Property, any and all water, water rights or interests therein appurtenant to, underlying or relating to the Property, or owned or used by Grantor in connection with the Property or for any beneficial use, no matter how acquired by Grantor, and including but not limited to the rights that are riparian, overlying, appropriative, prescriptive, percolating, littoral, adjudicated, statutory or contractual, but without, however, any right to enter upon the surface of the Property in the exercise of such reserved rights.

**RESERVING** unto Grantor, its successors and assigns, together with the right (without the consent of Grantee or any other owner of an interest in the Property) to grant, transfer or license all or a portion of the same to one or more grantees, transferees or licensees:

i. **Cellular Telephone & Other Transmission Facilities.** The exclusive right to, and exclusive easements in gross on, over, under and across the Property to, install, operate, maintain, repair and replace cellular telephone, electronic data and communications transmission facilities such as antennae and related equipment and appurtenances (collectively, "**Communications Facilities**"), together with the rights to (a) enter upon the Property (without unreasonably interfering with the Permitted Uses) in order to service, maintain, repair, reconstruct, relocate or replace any of such Communications Facilities and (b) retain all revenues derived from the operation of any such Communications Facilities; provided, however, that (I) Grantor shall not exercise its rights under this reservation without first obtaining the approval of Grantee and entering an encroachment agreement with Grantee for the improvements proposed to be placed on the Property, (II) the exercise of Grantor's rights under this reservation must be in conformance with Grantee's municipal code and not interfere with the Permitted Uses of the Property, and (III) any such Communications Facilities are used only for emergency and/or other communications, irrigation systems, and similar uses related to the operation of properties (including but not limited to marinas) owned by Grantor within Newport Beach. Notwithstanding any language to the contrary contained in this reservation,

nothing contained herein shall preclude Grantee from installing municipal communications and/or operating systems for emergency communications, irrigation systems serving publicly owned property, and municipal similar uses (collectively, "***Municipal Communications Systems***"), so long as (A) prior to the award of a contract to install such systems, Grantee shall give Grantor thirty (30) days' prior notice for review and comment regarding the size, shape, color, appearance and location of the proposed communications/operating systems and give reasonable consideration to any suggestions that Grantor provides to Grantee regarding such proposed improvements, and (B) any such systems are screened from view of adjacent roadways by landscaping or other method acceptable to Grantor.

ii. **California Recreation Company Usage.** Temporary, non-exclusive easements in gross on, over, under and across the portion of the Property depicted on **Exhibit C** for the purposes of use, operation and maintenance of a trailer, storage sheds and parking area used by California Recreation Company, an affiliate of Grantor, in connection with its marina maintenance and operations activities, together with access over and across such portions of the Property as may be required to access the trailer, storage sheds and parking area; provided, however, that (A) Grantor shall, at its own cost and expense, restore and repair any areas of the Property that may be damaged by the exercise of the easements reserved in this subsection, and shall also indemnify and hold harmless Grantee from and against any and all claims, losses, actions, damages and liabilities arising from such use that may be asserted or claimed by any person or entity, except to the extent caused by the acts or omissions of Grantee, and (B) the easements reserved in this subsection shall expire upon sixty (60) days prior written notice from Grantee to Grantor delivered or mailed at any time after June 30, 2009.

**SUBJECT TO:**

1. **Taxes and Assessments.** General and special real property taxes and supplemental assessments, if any, for the current fiscal year; provided, however, that Grantor shall pay for (a) any such taxes and assessments applicable to the Property prior to the date of recordation of this deed, and (b) any assessments, special taxes or other payments arising from bonds, contracts, or liens created by, through or as a result of the efforts or activities of Grantor.

2. **Encumbrances.** All exceptions to title contained in Preliminary Report No. 3078537, dated as of May 15, 2008, issued by First American Title Insurance Company, a copy of which is attached hereto as **Exhibit D**, and any and all other covenants, conditions, restrictions, reservations, rights, easements and other matters of record, apparent by reasonable inspection or known to Grantee, including but not limited to use of a portion of the Property by The Dutra Group in connection with dredging operations for the Back Bay pursuant to that certain Entry Permit dated February 6, 2006, as extended (with current expiration date of March 20, 2010 or completion of the dredging operations, whichever first occurs).

3. **Customary Title Exceptions.** Usual and customary exceptions to title insurance consistent with ALTA policies with Regional Exceptions (Standard Coverage) issued by First American Title Insurance Company in Orange County, California.

4. **Condition of Property.** The requirement that Grantee accepts the Property (a) without any warranty concerning suitability for Grantee's intended use of the Property, and (b) without any warranty concerning the absence of hazardous or toxic materials. Grantee acknowledges that Grantor has not made any representations or warranties concerning the condition of the Property except as expressly contained in this Offer.

5. **Covenants.** The following covenants, conditions, rights and restrictions (collectively, the "**Covenants**"), which shall remain in full force and effect in perpetuity from the date of recordation of this Grant Deed, unless terminated or modified as hereinafter provided. This conveyance of the Property is made by Grantor and accepted by Grantee upon and expressly subject to these covenants. Upon the occurrence of any breach or violation of any of the Covenants without being cured within the times provided below, Grantor shall be entitled to avail itself of the remedies specified below.

i. **List of Covenants.**

a. **Covenant 1: Use of Property.** The Property shall be used only for municipal or municipally-sponsored uses that are either or both (a) allowed under the Recreational Marine Commercial uses described in the City of Newport Beach General Plan Recreation Element, such as a park, a marine educational facility, or a marine research and conservation facility, or (b) in furtherance of the Tidelands Trust, such as marine and harbor-dependent service and support uses, navigation, fishing, commerce, public access, water-oriented recreation, open space and environmental protection (collectively, the "**Permitted Uses**"). As used in the previous sentence, "commerce" shall be deemed to mean marine-related commercial uses such as sport fishing, marine cruises and boat rentals. Nothing contained herein shall preclude Grantee from contracting with one or more for-profit or nonprofit entities to operate municipal facilities or to use the Property in furtherance of the Permitted Uses; provided, however, that in no event may Grantee transfer, exchange or sell all or any portion of the Property to (or enter any lease, license, contract or other agreement with) any private, for-profit entity for operation of a commercial boat marina. Further, nothing contained herein shall preclude Grantee from using a portion of the Property for the installation and operation of Municipal Communications Systems, subject to compliance with the requirements of the subsection entitled "Cellular Telephone & Other Transmission Facilities" above.

b. **Covenant 2: Review of Improvement Plans.** With respect to any improvements proposed Grantee to be constructed on, across, under or above the Property, Grantee shall (I) prior to the award of any design contract entered after the date of recordation of this Grant Deed for the proposed improvements, give Grantor thirty (30) days to review and comment on the proposed improvements and design plan, and (II) after the design plans have been completed and prior to award of the construction contract for such improvements, give Grantor sixty (60) days' prior notice for review and comment regarding Grantee's designed improvements or any significant changes thereto. After receipt of Grantor's comments, Grantee shall give reasonable consideration to any suggestions that Grantor provides to Grantee regarding such proposed improvements.

c. **Covenant 3: Maintenance and Repairs.** Grantee shall maintain the Property in safe condition and in accordance with applicable laws, ordinances and regulations

applicable to the Property, and shall keep the Property in attractive condition, free from garbage and debris.

d. **Covenant 4: No Transfer of Property.** Grantee acknowledges that upon acceptance of the Property, it shall not abandon the Property nor thereafter sell, lease, exchange or in any other way transfer or convey all or any portion of its interest in the Property to a third party without the prior written approval of Grantor, which may be granted or withheld in Grantor's sole discretion; provided, however, that Grantee may (I) transfer an interest in any portion of the Property in connection with a utility installation required in connection with Grantee's permitted use of the Property; (II) transfer any portion or all of the Property to another public or quasi-public agency, maintenance district or non-profit corporation or entity that shall operate and maintain such portion or all of the Property in accordance with the Permitted Uses; (III) transfer any portion of the Property acquired by another entity under the power of eminent domain, and (IV) enter contracts with for-profit or non-profit entities for operation of municipal facilities or to use the Property in furtherance of the Permitted Uses as provided in Covenant 1 above.

ii. **Matters Related to Covenants.**

a. **General Purpose.** The Covenants are hereby declared and agreed to be part of a general plan for the purpose of assuring the enhancement and protection of the value, desirability and attractiveness of that certain real property in Orange County, California, owned by Grantor or its affiliates described on Exhibit E attached hereto (the "**Benefitted Property**"). The Covenants shall run and pass with each and every portion of the Property and be binding upon and burden all persons having or acquiring any right, title or interest in the Property (during their ownership of such interest), or any part thereof, and their successors and assigns.

b. **Run With the Property.** Subject to the following provisions of this paragraph, the Covenants shall inure to the benefit of the Benefitted Property and the owners of the Benefitted Property and their successors and assigns, and the Benefitted Property shall be deemed the dominant tenement for purposes of the Covenants. In the event that any portion of the Benefitted Property is conveyed by Grantor or its affiliates to a third party (each parcel of the Benefitted Property so transferred is hereinafter referred to as a "**Transferred Parcel**"), the Covenants shall cease to benefit the Transferred Parcel unless the deed conveying the Transferred Parcel from Grantor to the transferee or a separate recorded document executed by Grantor expressly assigns to the transferee the benefits of the Covenants that run with the Transferred Parcel by specific reference to this Grant Deed (general references to appurtenances or rights related to the acquired property will not suffice). Any owner of any Transferred Parcel who has been so assigned the ongoing benefit of the Covenants hereunder is referred to herein as a "**Covenant Transferee**." Any (i) merger of Grantor or its affiliates with or into another entity, (ii) acquisition of all or a portion of the stock or equity of Grantor or its affiliates by a third party, or (iii) assignment or transfer of the Benefitted Property to a division, subsidiary or affiliated company of Grantor or such affiliates, will not be deemed a transfer of the Benefitted Property triggering the applicability of this paragraph.

Every person or entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property or any improvements thereon is and shall be conclusively



deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this instrument is contained in the instrument by which such person acquired an interest in the Property or any such improvements.

c. **Amendment.** The Covenants may be amended by mutual agreement of Grantor, any Covenant Transferee and Grantee. Any amendment must be recorded in the Official Records of Orange County, California.

d. **Term.** The Covenants shall run with and bind the Property, shall inure to the benefit of and be enforceable by Grantor, and shall be binding absolutely and perpetually on Grantee, unless Grantor (and, if applicable, any Covenant Transferee) record a declaration terminating the Covenants.

e. **Default and Remedies.** Because of the unique nature and scope of development of the Benefitted Property by Grantor and its affiliates, as well as the amount of planning, effort and time expended by such parties in reliance upon the anticipated uses of the Property and the Benefitted Property, monetary damages will not provide an adequate remedy for the damage to such planning efforts or development resulting from a breach of the Covenants. Therefore, in the event of any breach, violation or failure to comply with any of the Covenants which has not been cured within thirty (30) days after written notice from Grantor to do so (or if any such breach, violation or failure cannot be fully cured within such thirty (30) day period, then upon failure of Grantee to commence such cure within such period and thereafter to diligently complete such cure to Grantor's reasonable satisfaction), Grantor shall be entitled, in addition to any other remedy to which it may be entitled by law or equity (other than damages), to specifically enforce the performance of the Covenants and Grantee's other obligations hereunder or an injunction to enjoin the continuance of any breach or violation of the Covenants or terms of this Grant Deed.

f. **Waiver.** No waiver by Grantor of a breach of any of the Covenants and no delay or failure to enforce any of the Covenants shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other restrictions or conditions. No waiver of any breach or failure of any of the Covenants shall be implied from any omission by Grantor to take any action on account of such breach or failure if such breach or failure persists or is repeated, and no express waiver shall affect a breach or failure other than as specified in said waiver. The consent or approval by Grantor to or of any act by Grantee requiring Grantor's consent or approval shall not be deemed to waive or render unnecessary Grantor's consent or approval to or of any subsequent similar acts by Grantee.

g. **Cost of Enforcement.** In the event any declaratory or other legal or equitable action or proceeding shall be instituted between Grantor and Grantee to enforce any provision of these Covenants, the party prevailing in such action shall be entitled to recover from the losing party or parties the costs and expenses, including court costs and reasonable attorneys' fees.

## MISCELLANEOUS.

1. **Captions.** The captions used herein are for convenience only and are not a part of this instrument and do not in any way limit or amplify the scope or intent of the terms and provisions hereof.

2. **Application to Grantor.** Notwithstanding anything herein contained to the contrary, if Grantor or any successor to Grantor reacquires title to the Property or any portion thereof, the provisions of this instrument shall automatically cease and terminate as to such reacquired property and be of no further force or effect as to Grantor or such successor.

3. **Notices.** All notices, consents, demands, requests and other communications provided herein shall be in writing and shall be deemed to have been duly given if and when personally served or 48 hours after being sent by United States registered mail, return receipt requested, postage prepaid, to the other party at the following respective address:

If to Grantor:           The Irvine Company LLC  
550 Newport Center Drive  
Newport Beach, CA 92660  
Attn: General Counsel

If to Grantee:           City of Newport Beach  
Public Works Department  
3300 Newport Boulevard, (P.O. Box 1768)  
Newport Beach, CA 92658-8915  
Attn: City Manager

and to:                 City of Newport Beach  
City Attorney's Office  
3300 Newport Boulevard, (P.O. Box 1768)  
Newport Beach, CA 92658-8915  
Attn: City Attorney

or at such other address as the Grantor or Grantee may designate to the other in writing.

4. **Exhibits.** The following exhibits are attached to this Grant Deed and incorporated herein by this reference:

- |    |                           |   |
|----|---------------------------|---|
| A. | <b><i>Exhibit "A"</i></b> | Description of the Property                 |
| B. | <b><i>Exhibit "B"</i></b> | Depiction of the Property                   |
| C. | <b><i>Exhibit "C"</i></b> | Depiction of Location of Cal Rec Facilities |
| D. | <b><i>Exhibit "D"</i></b> | Preliminary Title Report                    |
| E. | <b><i>Exhibit "E"</i></b> | Description of Benefitted Property          |

5. **Compliance with Law and Satisfaction of Obligations.** This Grant Deed is made expressly upon the understanding that it is in compliance with and fully satisfies all lawful enactments and conditions of Grantee under the Development Agreement requiring the dedication of the Property to Grantee. Grantee agrees and acknowledges that this Grant Deed and the conveyance of Property hereunder comply with all local, state and federal laws, and Grantee's acceptance of this conveyance is not prohibited under and does not violate any provision of local, state or federal law.

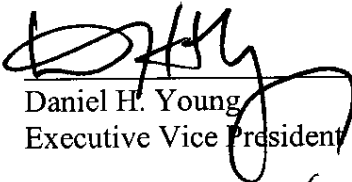
6. **Authority.** The persons executing this Grant Deed on behalf of Grantor warrant that they are duly authorized to execute this document.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of October 1, 2008. This Grant Deed shall not be effective for any purpose unless and until the Acceptance below has been duly executed by Grantee.

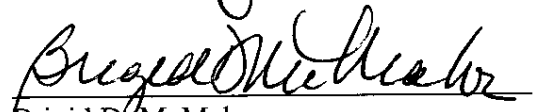
**"GRANTOR"**

The Irvine Company LLC,  
a Delaware limited liability company

By:

  
Daniel H. Young  
Executive Vice President

By:

  
Brigid D. McMahon  
Assistant Secretary

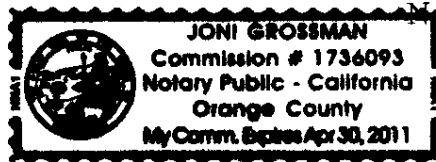
STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF ORANGE           )

On October 1, 2008, before me, Joni Grossman, a Notary Public in and for said State, personally appeared **Daniel H. Young**, who 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.

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.

(SEAL)



Joni Grossman  
Notary Public in and for said State

NOTARY: JONI GROSSMAN  
TELEPHONE # 949-720-2582  
COMMISSION #1736093  
COUNTY: ORANGE COUNTY  
COMM. EXPIRES: APRIL 30, 2011

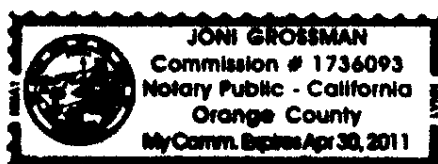
STATE OF CALIFORNIA           )  
  ) ss.  
COUNTY OF ORANGE           )

On October 1, 2008, before me, Joni Grossman, a Notary Public in and for said State, personally appeared **Brigid D. McMahon**, who 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.

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.

(SEAL)



Joni Grossman  
Notary Public in and for said State

NOTARY: JONI GROSSMAN  
TELEPHONE # 949-720-2582  
COMMISSION #1736093  
COUNTY: ORANGE COUNTY  
COMM. EXPIRES: APRIL 30, 2011

## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed attached hereto as made by The Irvine Company LLC, a Delaware limited liability company, to the City of Newport Beach, a charter city ("City"), is hereby accepted on Oct. 15, 2008, by the undersigned officer or agent on behalf of the City pursuant to authority conferred by Resolution No. 92-82 of the City adopted on July 27, 1992, and the City consents to the recordation of said document in the Office of the Recorder of Orange County, State of California. City acknowledges that this Grant Deed complies with the requirements of the Development Agreement with respect to the dedication to City of the Open Space Parcel described in Section 4.11 of the Development Agreement

Dated: 10/15/08

By: Homer Bludau  
Homer Bludau  
City Manager

Approved as to form:

By: Robin Clauson  
Robin Clauson,  
City Attorney

ATTEST:

Lavonne M. Harkless  
City Clerk



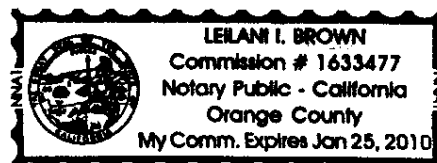
STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

On October 15, 2008 before me, Leilani I. Brown, Notary Public, personally appeared Homer L. Bludau, who 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.

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.

Leilani I. Brown (SEAL)  
Notary Public in and for said State



30209-0102/367794.4 9/10/08



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

**RBF Consulting  
14725 Alton Parkway  
Irvine, California 92618**

**Revised September 15, 2008**

**May 15, 2008**

**JN 10-105906**

**Page 1 of 1**

**EXHIBIT "A"**

**LOWER CASTAWAYS  
(APN 117-801-10)**

Lot 1 of Tract No. 1125 in the City of Newport Beach, County of Orange, State of California as shown on a map thereof filed in Book 39, Pages 7 and 8 of Miscellaneous Maps, in the Office of the County Recorder of said Orange County.

**EXCEPTING THEREFROM** those portions of said Lot 1 described in the Grant Deeds to the State of California recorded January 18, 1979 in Book 13004, Page 1183 and in Book 13004, Page 1187, both of Official Records, in the Office of the County recorder of said Orange County.

**EXHIBIT "B"** attached and by this reference made a part hereof.

  
\_\_\_\_\_  
Gregory A. Helmer, L.S. 5134



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**EXHIBIT "B"**  
**DEPICTION OF THE PROPERTY**



LOT S  
AMENDED MAP NO. 1 OF  
TRACT NO. 15012  
M.M. 753/23-32

CITY OF NEWPORT BEACH  
POR. O.R. 13004/1187  
(APN 117-801-11)

DOVER DRIVE

UPPER NEWPORT BAY

STATE OF CALIFORNIA  
POR. O.R. 13004/1187  
(APN 117-801-08)

POR. LOT 1  
TRACT NO. 1125  
M.M. 39/7-8  
(APN 117-801-10)

STATE OF CALIFORNIA  
O.R. 13004/1183  
(APN 117-801-09)

PACIFIC COAST HIGHWAY

**EXHIBIT "B"**  
**DEPICTION OF PROPERTY**  
**LOWER CASTAWAYS**

**RBF** PLANNING ■ DESIGN ■ CONSTRUCTION  
CONSULTING  
REVISED SEPTEMBER 15, 2008  
MAY 15, 2008  
14725 ALTON PARKWAY  
IRVINE, CALIFORNIA 92618-2027  
949.472.3505 • FAX 949.472.8373 • www.RBF.com  
J.N. 10-105906

**EXHIBIT "C"**

**DEPICTION OF LOCATION OF CAL REC FACILITIES**





CITY OF NEWPORT BEACH  
POR. O.R. 13004/1187  
(APN 117-801-11)

LOT S  
AMENDED MAP NO. 1 OF  
TRACT NO. 15012  
M.M. 753/23-32

DOER DRIVE

APPROX. LOCATION  
OF CAL REC  
FACILITIES  
AREA

STATE OF CALIFORNIA  
POR. O.R. 13004/1187  
(APN 117-801-08)

POR. LOT 1  
TRACT NO. 1125  
M.M. 39/7-8  
(APN 117-801-10)

STATE OF CALIFORNIA  
O.R. 13004/1183  
(APN 117-801-09)

UPPER NEWPORT BAY

PACIFIC COAST HIGHWAY

**RBF**  
CONSULTING

PLANNING ■ DESIGN ■ CONSTRUCTION

14725 ALTON PARKWAY  
IRVINE, CALIFORNIA 92618-2027  
949.472.3905 • FAX 949.472.8373 • www.RBF.com

**EXHIBIT "C"**  
Depiction of Location of CAL REC Facilities  
Lower Castaways  
**JUNE 03, 2008**

**EXHIBIT "D"**

**PRELIMINARY TITLE REPORT**

**"Amended"**



## **First American Title Insurance Company**

**9130 Anaheim Pl., Suite 230  
Rancho Cucamonga, CA 91730**

Brigid McMahon  
The Irvine Company  
550 Newport Center Drive  
Newport Beach, CA 92660-7011

Customer Reference: Lower Castaways Site

Order Number: OSA-3078537 (18)

Title Officer: Ed Luque  
Phone: (909)477-5654  
Fax No.: (714)913-6235  
E-Mail: eluque@firstam.com  
Buyer:  
Property: Lower Castaways Site  
Newport Beach, CA

### **PRELIMINARY REPORT**

In response to the above referenced application for a policy of title insurance, this company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a policy or policies of title insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said policy or policies are set forth in Exhibit A attached. *The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties.* Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit A. Copies of the policy forms should be read. They are available from the office which issued this report.

**Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit A of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered.**

**It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.**

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a binder or commitment should be requested.

*First American Title*

Dated as of May 15, 2008 at 7:30 A.M.

The form of Policy of title insurance contemplated by this report is:

To Be Determined

A specific request should be made if another form or additional coverage is desired.

Title to said estate or interest at the date hereof is vested in:

THE IRVINE COMPANY LLC, A DELAWARE LIMITED LIABILITY COMPANY

The estate or interest in the land hereinafter described or referred to covered by this Report is:

A fee.

The Land referred to herein is described as follows:

(See attached Legal Description)

At the date hereof exceptions to coverage in addition to the printed Exceptions and Exclusions in said policy form would be as follows:

1. General and special taxes and assessments for the fiscal year 2008-2009, a lien not yet due or payable.
2. The lien of supplemental taxes, if any, assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code.
3. Additional matters, if any, relating to waterways and boundaries issues, to be determined by a review by the Company's underwriting staff.
4. An easement for conduits and incidental purposes, recorded February 25, 1928 in Book 139, Page 47 of Official Records.  
In Favor of: Pacific Telephone and Telegraph Company  
Affects: A portion of the land
5. Rights of way in favor of Laguna Beach County Water District, a Corporation, as disclosed by deed recorded November 30, 1928 in Book 221, Page 76 of Official Records, and as disclosed on map of Tract No. 1125.  
  
Note: By deed recorded March 3, 1955 in Book 2982, Page 1 of Official Records, said rights of way were conveyed to the City of Newport Beach.
6. Intentionally Deleted

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7. A perpetual avigation easement in and through the air above the herein described and other land, as conveyed to the County of Orange by the Irvine Company, by deed recorded March 17, 1964 in Book 6965, Page 721 of Official Records, and the terms and conditions as set forth in said deed to which record reference is hereby made for all particulars.
8. The terms and provisions contained in the document entitled "Circulation Improvement and Open Space Agreement" recorded July 19, 1993 as Instrument No. 93-0479122 of Official Records.  
  
Document(s) declaring modifications thereof recorded March 28, 1996 as Instrument No. 19960151033 of Official Records.
9. Intentionally Deleted
10. An easement for waterline facilities and incidental purposes, recorded April 3, 2003 as Instrument No. 2003000367339 of Official Records.  
In Favor of: City of Newport Beach  
Affects: A portion of the land
11. Rights of parties in possession.

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### INFORMATIONAL NOTES

Note: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

1. Taxes for proration purposes only for the fiscal year 2007-2008.  
First Installment: \$35,441.11, PAID  
Second Installment: \$35,441.11, PAID  
Tax Rate Area: 07-001  
APN: 117-801-10
2. According to the latest available equalized assessment roll in the office of the county tax assessor, there is located on the land a(n) Vacant Land known as Lower Castaways Site, Newport Beach, California.
3. We find no open deeds of trust. Escrow please confirm before closing.

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Order Number: OSA-3078537 (18)

Page Number: 5

**WIRE INSTRUCTIONS**

**First American Title Company, Demand/Draft Sub-Escrow Deposits  
Orange County, California**

**First American Trust, FSB**  
5 First American Way  
Santa Ana, CA 92707

**ABA 122241255**  
**Credit to First American Title Company**  
**Account No. 2000015030**  
**Reference Title Order Number 3078537 and Title Officer Ed Luque**

**Please wire the day before recording. Also, notify the Title Officer of your intent to wire.**

The map attached, if any, may or may not be a survey of the land depicted hereon. First American expressly disclaims any liability for loss or damage which may result from reliance on this map except to the extent coverage for such loss or damage is expressly provided by the terms and provisions of the title insurance policy, if any, to which this map is attached.

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**LEGAL DESCRIPTION**

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

LOT 1 OF TRACT NO. 1125 IN THE CITY OF NEWPORT BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA AS SHOWN ON A MAP THEREOF FILED IN BOOK 39, PAGES 7 AND 8 OF MISCELLANEOUS MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID LOT 1 DESCRIBED IN THE GRANT DEEDS TO THE STATE OF CALIFORNIA RECORDED JANUARY 18, 1979 IN BOOK 13004, PAGE 1183 AND IN BOOK 13004, PAGE 1187, BOTH OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID ORANGE COUNTY.

APN: 117-801-10

*First American Title*

***NOTICE***

Section 12413.1 of the California Insurance Code, effective January 1, 1990, requires that any title insurance company, underwritten title company, or controlled escrow company handling funds in an escrow or sub-escrow capacity, wait a specified number of days after depositing funds, before recording any documents in connection with the transaction or disbursing funds. This statute allows for funds deposited by wire transfer to be disbursed the same day as deposit. In the case of cashier's checks or certified checks, funds may be disbursed the next day after deposit. In order to avoid unnecessary delays of three to seven days, or more, please use wire transfer, cashier's checks, or certified checks whenever possible.

If you have any questions about the effect of this new law, please contact your local First American Office for more details.

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**EXHIBIT A**  
**LIST OF PRINTED EXCEPTIONS AND EXCLUSIONS (BY POLICY TYPE)**

**1. CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE POLICY - 1990**  
**SCHEDULE B**

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the public records.

**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
 (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by their policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

**2. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970**  
**SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law, ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant; (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder; (c) resulting in no loss or damage to the insured claimant; (d) attaching or

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created subsequent to Date of Policy; or (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

**3. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY FORM B - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 2 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

**4. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
SCHEDULE OF EXCLUSIONS FROM COVERAGE**

1. Any law, ordinance or governmental regulation (including but not limited to building and zoning ordinances) restricting or regulating or prohibiting the occupancy, use or enjoyment of the land, or regulating the character, dimensions or location of any improvement now or hereafter erected on the land, or prohibiting a separation in ownership or a reduction in the dimensions or area of the land, or the effect of any violation of any such law ordinance or governmental regulation.
2. Rights of eminent domain or governmental rights of police power unless notice of the exercise of such rights appears in the public records at Date of Policy.
3. Defects, liens, encumbrances, adverse claims, or other matters (a) created, suffered, assumed or agreed to by the insured claimant, (b) not known to the Company and not shown by the public records but known to the insured claimant either at Date of Policy or at the date such claimant acquired an estate or interest insured by this policy or acquired the insured mortgage and not disclosed in writing by the insured claimant to the Company prior to the date such insured claimant became an insured hereunder, (c) resulting in no loss or damage to the insured claimant; (d) attaching or created subsequent to Date of Policy (except to the extent insurance is afforded herein as to any statutory lien for labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy).
4. Unenforceability of the lien of the insured mortgage because of failure of the insured at Date of Policy or of any subsequent owner of the indebtedness to comply with applicable "doing business" laws of the state in which the land is situated.

**5. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1970  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association Lenders Policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy, the exclusions set forth in paragraph 4 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage by reason of the matters shown in parts one and two following:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

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**6. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH A.L.T.A. ENDORSEMENT FORM 1 COVERAGE  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:  
(a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;  
(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;  
(c) resulting in no loss or damage to the insured claimant;  
(d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or  
(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:  
(i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or  
(ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or  
(iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:  
(a) to timely record the instrument of transfer; or  
(b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**7. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 6 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**8. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992**

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**EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy; or
  - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
  - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (a) to timely record the instrument of transfer; or
    - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

**9. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 1992  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 8 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**10. AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL  
TITLE INSURANCE POLICY - 1987  
EXCLUSIONS**

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 

* land use	* land division
* improvements on the land	* environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.  
This exclusion does not limit the zoning coverage described in items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:

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- \* a notice of exercising the right appears in the public records on the Policy Date
- \* the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking.
- 3. Title Risks:
  - \* that are created, allowed, or agreed to by you
  - \* that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
  - \* that result in no loss to you
  - \* that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
- 4. Failure to pay value for your title.
- 5. Lack of a right:
  - \* to any land outside the area specifically described and referred to in Item 3 of Schedule A, or
  - \* in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

#### 11. EAGLE PROTECTION OWNER'S POLICY

#### CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998 ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE - 1998

**Covered Risks 14 (Subdivision Law Violation). 15 (Building Permit). 16 (Zoning) and 18 (Encroachment of boundary walls or fences) are subject to Deductible Amounts and Maximum Dollar Limits of Liability**

#### EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
  - a. building
  - b. zoning
  - c. land use
  - d. improvements on the land
  - e. land division
  - f. environmental protectionThis exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.  
This exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.
2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
  - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
  - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
  - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
  - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
  - c. that result in no loss to You; or
  - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
  - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
  - b. in streets, alleys, or waterways that touch the Land.This exclusion does not limit the coverage described in Covered Risk 11 or 18.

#### LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A.

The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$10,000.00
Covered Risk 15: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00
Covered Risk 16: 1% of Policy Amount or \$5,000.00 (whichever is less)	\$25,000.00

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Covered Risk 18: 1% of Policy Amount or \$2,500.00 (whichever is less)

\$5,000.00

**12. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)****EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or area of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.  
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14 and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
  - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8 (e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting title, the existence of which are Known to the Insured at:
  - (a) The time of the advance; or
  - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of interest is greater as a result of the modification than it would have been before the modification.
 This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.

**13. SECOND GENERATION EAGLE LOAN POLICY AMERICAN LAND TITLE ASSOCIATION EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01) WITH REGIONAL EXCEPTIONS**

When the American Land Title Association loan policy with EAGLE Protection Added is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 12 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.

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3. Easements, claims of easement or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

**14. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006  
EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
  - (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
  - (a) a fraudulent conveyance or fraudulent transfer, or
  - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

**15. AMERICAN LAND TITLE ASSOCIATION LOAN POLICY - 2006  
WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 14 above are used and the following exceptions to coverage appear in the policy.

**SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

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1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

#### **16. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 EXCLUSIONS FROM COVERAGE**

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
  - (i) the occupancy, use, or enjoyment of the Land;
  - (ii) the character, dimensions, or location of any improvement erected on the Land;
  - (iii) the subdivision of land; or
  - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
  - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
  - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
  - (c) resulting in no loss or damage to the Insured Claimant;
  - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risks 9 and 10); or
  - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
  - (a) a fraudulent conveyance or fraudulent transfer; or
  - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

#### **17. AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY - 2006 WITH REGIONAL EXCEPTIONS**

When the American Land Title Association policy is used as a Standard Coverage Policy and not as an Extended Coverage Policy the exclusions set forth in paragraph 16 above are used and the following exceptions to coverage appear in the policy.

##### **SCHEDULE B**

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

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## PRIVACY POLICY

### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information – particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from a public record or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our website at [www.firstam.com](http://www.firstam.com).

### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial service providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all the information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply to you.

### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products or services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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## **EXHIBIT "E"**

### **DESCRIPTION OF BENEFITTED PROPERTY**

The properties described below shall constitute the "Benefitted Property" for purposes of the Grant Deed, provided that any such property shall cease being a "Benefitted Property" at such time as fee title to such property ceases to be owned by Grantor or any of its respective divisions or affiliates, or a Successor Covenantee as provided in Section 5.ii.b (entitled "Run With the Property") contained in the "Subject To" provisions of this Grant Deed.

#### **PARCEL I**

(Lower Bayview Property)

Parcel 1 as shown on Exhibit "B" attached to Lot Line Adjustment No. LA 2003-011, recorded March 19, 2004 as Instrument No. 2004000225274, of Official Records, in the Office of the County Recorder of Orange County, California.

#### **PARCEL II**

(Fashion Island)

##### **Parcel A:**

Parcels 1 through 9, inclusive, in the City of Newport Beach, County of Orange, State of California, as shown on Parcel Map No. 86-399 as per Map filed in Book 221, pages 30 through 36, inclusive, of Parcel Maps, in the Office of the County Recorder of said County.

##### **Parcel B:**

Parcels 13 through 17, inclusive, and Lots Q, R, S, U, R-1, R-2 and R-3 of Tract No. 6015, in the City of Newport Beach, County of Orange, State of California, as per Map recorded in Book 239, pages 28 through 41, inclusive, of Miscellaneous Maps, in the Office of the County Recorder of said County.

##### **Parcel C:**

Parcel 1, in the City of Newport Beach, County of Orange, State of California, as shown on a Parcel Map filed in Book 67, pages 2 and 3, of Parcel Maps, in the Office of the County Recorder of said County.

Parcel D:

Parcel 1, in the City of Newport Beach, County of Orange, State of California, as shown on a Parcel Map filed in Book 75, page 48, of Parcel Maps, in the Office of the County Recorder of said County.

Parcel E:

Parcel 4 of Parcel Maps, as shown on a Map filed in Book 67, pages 2 and 3, of Parcel Maps and Lot W of Tract No. 6015, as per Map recorded in Book 239, pages 28 through 41, inclusive, of Miscellaneous Maps, all in the City of Newport Beach, County of Orange, State of California, in the Office of the County Recorder of said County, lying within the land described as Parcels 1 and 2 of that certain Lot Line Adjustment N.B.L.L.A. 87-3, recorded November 13, 1987, as Instrument No. 87-640346, in the Office of the County Recorder of said County.

PARCEL III

(Corona del Mar Plaza)

Parcel A:

The southwesterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, filed in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County, California.

Parcel B:

The northeasterly one-half of Parcel 2 as shown on Parcel Map No. 90-361, filed in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County, California.

Parcel C:

Parcel 1 of Parcel Map No. 90-361, filed in Book 270, Pages 15 to 18, inclusive, of Parcel Maps, Records of Orange County, California.

Grantor shall have the right at any time, by duly recorded amendment(s) to this Grant Deed executed only by Grantor, to unilaterally amend and/or provide further descriptions and/or depictions of all or portions of the Benefitted Property described above.

## REQUIRED CITY FORMS FOR BID/PROPOSAL SUBMITTAL

A bid/proposal that does not include the completed and signed forms from this section shall be deemed incomplete and materially nonresponsive, and shall not be considered.



# BIDDER/PROPOSER INFORMATION FORM

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## BIDDER/PROPOSER CONTACT INFORMATION

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Bidder/Proposer Firm Name:

Address for Notices:

City: State: ZIP Code:

Main Contact Name and Title:

Email:

Telephone: Fax:

## BIDDER/PROPOSER SIGNATURE AUTHORIZATION AND CERTIFICATION

---

Per the California Corporate Code, Business and Professions Code, the Bidder's/ Proposer's Bylaws/Operating Agreement and/or the attached Board Resolutions (if applicable), I/we hereby verify that I/we am/are (an) authorized signatory(ies) for the aforementioned Bidder/Proposer and as such am/are authorized to sign and bind the Bidder/Proposer to contract with the City of Newport Beach.

(1) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(1) Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

(2) Signature: \_\_\_\_\_ Date: \_\_\_\_\_

(2) Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

## BIDDER/PROPOSER AUTHORITY IS PROVIDED IN ACCORDANCE WITH:

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Bidder/Proposer's Bylaws/Operating Agreement Section: \_\_\_\_\_ Copy Attached

Board Resolution Copy Attached

Corporate or Business Professions Code \*\*

\*\* If Bidder/Proposer is a corporation, two (2) authorized signatures will be required on all documents submitted, unless specified in the organization's Bylaws or corporate resolution.

**IMPORTANT NOTE:** If the signature authorization status of any individual changes during the term of the contract, it is the responsibility of the Bidder/Proposer to contact the RFP Administrator regarding the change and to complete and submit a new Bidder/Proposer Information Form. Incorrect information on file may delay the processing of any of the documents submitted.

## STATEMENT OF COMPLIANCE

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The undersigned declares that the Proposal submitted to provide building plan review, permit technician, and inspection services, as described in, and in response to City of Newport Beach RFP No. 26-08 was prepared in strict compliance with the instructions, conditions, and terms listed in the RFP, Scope of Services and Draft Agreement, with exceptions listed below, if applicable. **At least one box for each item must be checked.**

### RFP Instructions and Terms & Conditions (Check One)

No Exceptions Taken

Exceptions Taken

### Scope of Services (Check One)

No Exceptions Taken

Exceptions Taken

### Insurance Requirements (Check One)

No Exceptions Taken

Exceptions Taken

No Exceptions for Changes to the Draft Contract Agreement Terms and Conditions Shall  
be Allowed

Acknowledgment

If any exceptions are taken, this Statement of Compliance shall include a narrative that identifies each item to which the Bidder/Proposer is taking exception or is recommending change, including the suggested rewording of the contractual obligations or suggested change in the RFP, and identifies the reasons for submitting the proposed exception or change. When available, please reference specific line item numbers as provided in the RFP. The City reserves the right to rule as non-responsive and reject any Proposals that are not accompanied with the required documentation as described above.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

[Attach a separate sheet(s) detailing each exception being taken, if applicable]

# AFFIDAVIT OF NON-COLLUSION AND NON-DISCRIMINATION

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I hereby swear (or affirm) under the penalty of perjury:

That the attached bid/proposal has been prepared by the bidder/proposer independently and has been submitted without collusion with and without any agreement, understanding, or planned common course of action with any other firm or entity designed to limit fair and open competition;

That the contents of the bid/proposal response have not been communicated by the bidder/proposer or its employees or agents to any person not an employee or agent of the bidder/proposer and will not be communicated to any such persons prior to the official opening of the solicitation responses; and

The bidder/proposer does not and shall not discriminate, will provide equal employment practices, and will adhere to an affirmative action program to ensure that in their employment practices, persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

I certify that the statements in this affidavit are true and accurate.

\_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Title**

# AFFIDAVIT OF NON-FEDERAL LOBBYIST REQUIREMENTS CERTIFICATION

Name of Firm: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

State: \_\_\_\_\_ Zip Code: \_\_\_\_\_ Phone No.: \_\_\_\_\_

Acting on behalf of the above-named firm, as its Authorized Official, I certify as follows:

1. No Federal appropriated funds have been paid, by or on behalf of the above named firm to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, loan or cooperative agreement, and any extension, continuation, renewal, amendment, or modification thereof, and;

2. If any funds other than Federal appropriated funds have paid or will be paid to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the above named firm shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities", in accordance with its instructions, and;

3. The above-named firm shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreement) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into the transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title



## VENDOR CONFLICT OF INTEREST DISCLOSURE FORM

All vendors interested in conducting business with the City of Newport Beach must complete and return the Vendor Conflict of Interest Disclosure Form in order to be eligible to be awarded a contract. Please note that all vendors must comply with the conflict of interest policies stated below.

Failure to disclose potential conflicts of interest shall result in disqualification from doing business with the City.

The vendor named below has none of the following conflicts of interest:

1. No City of Newport Beach official or employee or City of Newport Beach employee's immediate family member has an ownership interest in vendor's company or is deriving personal financial gain from this contract;
2. No retired or separated City of Newport Beach official or employee who has been retired or separated from the organization for less than one (1) year has an ownership interest in vendor's company;
3. No City of Newport Beach official or employee is contemporaneously employed or prospectively to be employed with the vendor; and
4. Vendor hereby declares it has not and will not provide gifts or hospitality of any dollar value or any other gratuities to any City of Newport Beach official or employee to obtain or maintain a contract.

If a vendor has a relationship with a City of Newport Beach official or employee or an immediate family member of a City of Newport Beach official or employee, the vendor shall disclose the information required below.

Vendor Name	Vendor Phone Number
Conflict of Interest Disclosure	
Name(s) of City of Newport Beach employees, elected officials, or immediate family members with whom there maybe a potential conflict of interest.	Relationship to employee _____ Interest in vendor's company _____
	Other _____

I certify that the information provided is true and correct by my signature below:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## DEBARMENT AND SUSPENSION CERTIFICATION

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Name of Firm: \_\_\_\_\_

I, the undersigned, a duly authorized representative of the above-named firm ("Consultant") to the best of my knowledge and belief, certify as follows:

Consultant, including its principals:

1. Is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency, and not does not have a proposed debarment pending;
2. Has not within the three-year period preceding this certification been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction, contract, or subcontract under a public transaction; for violation of federal or state antitrust statutes; or for commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2) above;
4. Has not within the three-year period preceding this certification had one or more public transactions (federal, state or local) terminated for cause or default; and
5. Consultant further certifies that Consultant, including its principals, is not listed on the government-wide exclusions in the System for Award Management (SAM.gov).

I acknowledge that falsely providing this certification may result in criminal prosecution or administrative sanctions, and that this certification is a required component of all proposals in response to this RFP.

A proposal that does not include a completed and signed version of this certification will be deemed incomplete and materially nonresponsive, and will not be considered.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

## PROPOSER REQUIRED QUESTIONNAIRE

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Yes

No

1. Do you have experience managing, designing, permitting, constructing, renovating, promoting, advertising, operating and maintaining integrated landside and waterside commercial marina-related projects such as: office, restaurants, retail, storage, boat slips, parking facilities, etc.?
2. Do you have a record of managing commercial projects in Newport Beach and/or other coastal-centric areas within Orange and Southern California?
3. Do you have a record of partnering with public agencies on real estate development projects?
4. Do you have experience navigating entitlements and permitting process with the California Coastal Commission and cities with Local Coastal Plans?
5. Do you have a demonstrated understanding of the California Coastal Act?
6. Do you have the financial capability to secure and deploy sufficient capital to fund pre-development, entitlement, construction and operation phases? This includes the ability to access both debt and equity sources.

## SUBMITTAL CHECKLIST AND PROPOSAL FORMAT

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The Submittal Checklist and Proposal Format is used to help proposers minimize the risk of a proposal being penalized, disqualified or deemed non-responsive. Please review the Evaluation Criteria, Scope of Services and utilize the Submittal Checklist Proposal Format to build a complete RFP document for submittal.

### 1. PRE-PROPOSAL REQUIREMENTS

- ☐ REGISTER ON CITY OF NEWPORT BEACH PLANETBIDS PORTAL AND DOWNLOAD DOCUMENTS

Visit <http://www.newportbeachca.gov/bidderportal> to register for this RFP and download all documents.

### 2. PROPOSAL FORMAT

**Click on the “Place eBid” button (located in the bottom right hand corner of the screen) to start submitting your proposal. After you complete the “Detail” tab with your information, click on the “Attachments” tab, which will prompt you to attach each of the following items that is accompanied with a checkbox:**

- ☐ RESPONSE FILE

For the Response File, please upload a document that addresses the following areas:

- Please see SCOPE OF SERVICES for RESPONSE FILE requirements.

**The information requested above is intended as a baseline minimum in order to give the evaluation panel an understanding and familiarity with your operations. If you have more information that can help the panel assess your experience and qualifications for this project, please include it in the Response File.**

### 3. ADDITIONAL DOCUMENT DOWNLOADS, ACKNOWLEDGEMENT, AND SUBMISSION

- ☐ PROPOSER REQUIRED QUESTIONNAIRE

### 4. COST FILE

- ☐ **One of the mandatory attachments that the PlanetBids portal will prompt you for is called a “Cost File.” This requirement can be satisfied by completing and uploading the Cost File. The Cost File is either attached as part of the RFP or satisfied by following the requirements requested in the Scope of Services.**

## SUBMITTAL CHECKLIST AND PROPOSAL FORMAT

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**DO NOT INCLUDE A COPY OF YOUR COST FILE WITH THE MAIN PROPOSAL FILE. Failure to comply with directions may result in a penalty during the evaluation of the proposal.**

### 5. REQUIRED SUBMITTAL DOCUMENTS

- ☐ BIDDER/PROPOSER INFORMATION FORM
- ☐ STATEMENT OF COMPLIANCE
- ☐ AFFIDAVIT OF NON-COLLUSION AND NON-DISCRIMINATION
- ☐ AFFIDAVIT OF NON-FEDERALIST LOBBYIST REQUIREMENTS CERTIFICATION
- ☐ VENDOR CONFLICT OF INTEREST DISCLOSURE FORM
- ☐ DEBARMENT AND SUSPENSION CERTIFICATION

### 6. SUBMISSION INSTRUCTIONS

- ☐ DOWNLOAD AND ACKNOWLEDGE ADDENDA (IF APPLICABLE)  
If issued for this RFP, the Portal will prompt you to download any active addenda. Such addenda will need to be electronically acknowledged before your proposal is accepted. If your proposal is submitted before an addendum is issued, you will be prompted to log back into the Portal and acknowledge outstanding addenda.
- ☐ ELECTRONICALLY TRANSMIT THE PROPOSAL USING THE CITY OF NEWPORT BEACH PLANETBIDS PORTAL  
Click on the "Submit" (green) button to finalize and submit your proposal to the City.

## EXCLUSIVE NEGOTIATING AGREEMENT WITH [REDACTED]

This EXCLUSIVE NEGOTIATING AGREEMENT (the "Agreement") is made and entered into to be effective as of [REDACTED] 2024 ("Effective Date"), by and between the City of Newport Beach, a California municipal corporation and charter city ("City"), and [REDACTED] LLC, a California limited liability company ("Developer"). City and Developer are sometimes hereinafter individually referred to as a "Party" and collectively as the "Parties."

### RECITALS

- A. City is a municipal corporation and charter city duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. City is the owner of certain real property frontage and tidelands, together with certain abutting upland property commonly known as [REDACTED] located in the City of Newport Beach, County of Orange, State of California, having County Assessor's Parcel Number [REDACTED], Newport Beach, California includes a public [REDACTED] [REDACTED] ("Property"), as legally described and further depicted on Exhibit "A" attached hereto and incorporated herein by reference.
- C. Developer proposes to plan, design, permit, fund, and construct [REDACTED] [REDACTED] parcel depicted in Exhibit "B" which is attached hereto and incorporated herein by reference to this Agreement ("Site") and provide those services over the course of a [REDACTED] lease term ("Proposal").
- D. The Proposal is subject to refinement and modification as mutually agreed to by the Parties during negotiations.
- E. The Parties desire to enter into this Agreement to establish a period during which they will cooperate to explore the feasibility of refining the Proposal and during which time Developer shall have the exclusive right to negotiate the Proposal with City with respect to the terms of an agreement or agreements to provide for the Proposal ("Proposed Lease").

**NOW, THEREFORE,** it is mutually agreed by and between the Parties as follows:

1. Term of Agreement. The term of this Agreement ("Term") shall be [REDACTED] after the Effective Date; provided, however, that the City Manager and Developer shall have the right to approve an [REDACTED] without the requirement of any official action by the City Council if the City Manager determines that satisfactory progress is being made to achieve the objectives and complete the tasks set forth herein additional time is necessary to finalize discussions or negotiations on mutually satisfactory terms.

2. Proposal Terms. The following nonexclusive list of items related to the Proposal are the subject of negotiations during the Term:

- (a) annual ground lease payment from the Developer to the City for the Site;
- (b) scope of development, the cost of which shall be borne solely by Developer, for the [REDACTED];
- (c) preparation by the Developer of a [REDACTED] plan, as applicable, for the Proposal that depicts the proposed building locations, elevations, building square footages and uses, parking, access points, landscaped areas, pedestrian and vehicular circulation, and utility [REDACTED];
- (d) preparation of a *pro forma* provided by Developer and reviewed by the City for the Proposal that details satisfactory evidence of Developer's ability to finance and complete the Proposal including anticipated rents, estimated profit, appropriate return measurements, development and operational costs that includes (i) all costs of [REDACTED]; (ii) all costs associated with utility [REDACTED]; (iii) all costs associated with possible work or modifications on and adjacent to the site and (iv) all other terms including Site taxes, possessory interest or other taxes and percentage rent on sales;
- (e) financial plan provided by Developer and reviewed by the City for the Proposal addressing the proposed methods of construction, permanent financing, and amounts and sources of equity and debt capital;
- (f) assessment of the physical and environmental condition of the Site conducted by the Developer and scope of work necessary for the [REDACTED] cost of which shall be borne solely by Developer; and
- (g) development schedule for the Proposal.

3. Submission of Documents for Review and Comment.

3.1 Within [REDACTED] of this Agreement, Developer shall submit the following information to the City or its agents:

- (a) detailed scope of development, site plan, elevations, and utility plan (as applicable) that incorporates the information specified in Sections 2(b) and 2(c) of this Agreement;
- (b) detailed *pro forma* that incorporates the information specified in Section 2(d) of this Agreement;
- (c) detailed financing plan that incorporates the information specified in Section 2(e) of this Agreement; and

- (d) development schedule for completion of the Proposal.

In the event that the City requests changes to the aforementioned documents or additional information, Developer shall provide the information requested or resubmit a revised site plan, *pro forma*, financing plan, scope of development, and/or development schedule to the City within [REDACTED] of City's written request. The City shall review and either approve such submissions or return the submissions to Developer for further revision as soon as practical but, in any event, [REDACTED]

Developer acknowledges and agrees that design and architectural review by the City and its consultants will be required at each stage of review of the Proposal and that sketches, plans, and ultimately working drawings, specifications and similar documents will be required to be submitted for review and approval ("City's Design Review"). Developer further acknowledges and agrees that the City, acting not as a Party but under its general police powers as a charter city and municipal corporation, may conduct all applicable review and that building design, including, but not limited to, the selection of building elevations, construction materials, parking layout and landscaping, which will not be final until approved by the City pursuant to Newport Beach Municipal Code including, but not limited to, Title 20 (Planning and Zoning) and Title 21 (Local Coastal Program Implementation Plan). Developer acknowledges and agrees that the City's Design Review rights provided herein, are distinct and separate from those additional rights which the City may exercise under its general police powers as a municipal corporation and charter city.

3.2 City shall submit the following information to Developer:

(a) Within [REDACTED] of the Effective Date of this Agreement, City shall submit copies of reports, studies, surveys, leases and other data and information, if any, that the City has in its possession; and

(b) Within [REDACTED] after the Submission of Documents, [REDACTED] the amount of rent payable to the City to lease the Site.

4. Good Faith Negotiations. During the entire Term of this Agreement, City and Developer shall negotiate in good faith pursuant to the terms set forth herein to achieve the objectives and accomplish the tasks described in this Agreement. Nothing herein shall be deemed a covenant, promise, or commitment by either Party to approve or enter into a Proposed Lease with the other Party on any particular terms or conditions. The Parties' approval and execution of this Agreement is merely an agreement with respect to certain tasks preliminary to the execution of the Proposed Lease and an agreement to enter into a period of negotiations according to the concepts presented herein, reserving full and final discretion with City and Developer as to the final terms of the Proposed Lease as required by law. If, for any reason, City and Developer have not each executed a mutually acceptable Proposed Lease by the expiration of this Agreement, and provided that the Parties have not committed a material default hereunder, this Agreement shall automatically terminate and shall be of no further force or effect.

During the period of exclusive negotiation, the City agrees to negotiate exclusively with the Developer during the Term of this Agreement to the extent permitted by law and shall not



solicit another party for the Property or enter into any agreement with any other party regarding the development of the Property. The City acknowledges and agrees that but for this exclusivity, the Developer would not have entered into this Agreement.

5. Administrative Costs and Expenses; Developer Deposit. Developer shall be responsible for all costs and expenses incurred by the City related to this Agreement including, but not limited to, costs of City staff time, consultant fees and attorneys' fees. Prior to City's execution of this Agreement, Developer shall deposit with City an initial sum [REDACTED] ("Deposit Amount") that the City will use to reimburse itself for the costs related to the preparation and implementation of this Agreement. Said funds shall be maintained in a separate account by the City ("Deposit Account"). Within ten (10) business days of a request by the City, Developer shall deposit additional sums to replenish the Deposit Account so that the amount of funds on deposit with the City is maintained at [REDACTED]. From and after the Effective Date, the Deposit Account may be used by the City to pay the City's costs including, without limitation, City staff time, consultant fees and attorneys' fees required in connection with the drafting, negotiation and execution of this Agreement, the Proposed Lease, or termination of this Agreement ("City Transaction Expenses") provided that City agrees that City Transaction Expenses to be charged Developer shall not exceed [REDACTED] prior to execution of the Proposed Lease.

6. Land Use & Environmental Requirements. The development of the Proposal shall be subject to all rules, regulations, standards, and criteria required by law and as set forth in the City's General Plan, Coastal Land Use Plan, Newport Beach Municipal Code, the California Environmental Quality Act, this Agreement, and the Lease. Developer shall be responsible for obtaining all approvals and entitlements necessary for the Proposal. Developer shall be also be responsible for all costs related to the Proposal incurred, including, but not limited to, City staff time, consultant fees, and other fees, associated in any way with obtaining necessary approvals and entitlements for the Proposal including the environmental review associated with the Proposal including, but not limited to, compliance with the California Environmental Quality Act (collectively, "Costs"). Developer shall place funds on deposit with the City to pay for the Costs pursuant to the City's fee schedule.

7. Physical Condition of the Site. City and Developer shall cooperate and exchange such information as may be available to either of them regarding the physical condition of the Site (or applicable portions thereof).

7.1 Entry for Investigation. Subject to the conditions hereafter stated and the rights of tenants in possession, City grants to Developer, its agents, employees, and consultants a limited license to enter upon any portion of the Property, at a time and manner reasonably approved by City and to minimize disruption or interference with any tenants, for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, investigations and tests shall be done at Developer's sole cost and expense. Developer shall (a) notify City at least [REDACTED] prior to each entry of the date and purpose of intended entry and provide to City the names and affiliations of the persons entering the Property; (b) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (c) comply with all applicable laws and governmental

regulations; (d) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; (e) maintain or assure maintenance of workers' compensation insurance (or state approved self-insurance) on all persons entering the Property in the amounts required by the State of California; (f) provide to City prior to initial entry a certificate of insurance evidencing that Developer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than TWO MILLION DOLLARS (\$2,000,000.00) which insurance names City, its City Council, boards and commissions, officers, agents, volunteers and employees, [REDACTED]

[REDACTED] (hereinafter "Indemnified Parties") as additional insured entitled to not less than thirty (30) days cancellation notice and is primary and non-contributing with insurance carried by Developer; and (g) return the Property to its original condition following Developer's entry. If requested by City in writing, Developer hereby agrees to provide to City a true and complete copy of all finalized tests, reports, studies and the like generated in connection with Developer's inspection of the Property. Developer agrees to indemnify, defend, protect and hold the Indemnified Parties and the Property free and harmless from any and all loss, liability, claims, damages, liens and expenses (including but not limited to attorneys' fees and costs) arising directly or indirectly from the active negligence or willful misconduct by Developer in the exercise of said license, or from Developer's failure to comply with the conditions to Developer's entry onto the Property provided herein. Which undertaking of indemnity shall expire [REDACTED] the termination of this Agreement. The limited license herein granted shall be coextensive with the term of this Agreement or any extension thereof.

8. Hazardous Material Assessment. The Proposed Lease may address applicable clean-up issues, if any. In the event an environmental audit evidences a need for clean-up of any portion of the Site, the City, by this Agreement, does not agree in any respect to undertake or complete such clean-up. In the event that during the Term, the Developer conducts or causes to be conducted any environmental audits and/or testing on any portion of the Site, the Developer shall submit copies of any reports resulting from such tests or studies to the City. Such environmental audits and/or testing shall be conducted at the sole cost and expense of the Developer. Neither Party makes any representation or warranty as to the accuracy or completeness of reports prepared by third parties and delivered to the other Party. Developer shall indemnify, defend and hold harmless City from and against all claims, liabilities or damages, and including expert witness fees and reasonable attorneys' fees and costs, arising out of any such testing, inspection or investigatory activity on the Site by Developer. In addition, following any such testing, inspection or investigatory activity, Developer shall return, and repair if necessary, the Site to the condition it was in prior to the Developer's investigatory activities.

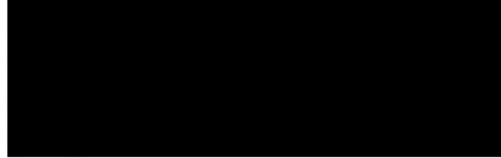
9. Miscellaneous.

9.1 Notices. Any notices, requests or approvals given under this Agreement from one Party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, to the address of the other Party as stated in this paragraph, and shall be deemed to have been given at the time of personal delivery or, if mailed, on the third day following the date of deposit in the course of transmission with the United States Postal Service. Notices shall be sent to the following addresses:

To City: City of Newport Beach  
Community Development Department  
100 Civic Center Drive  
Newport Beach, CA 92660

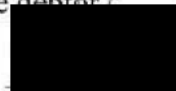
With a copy to: City of Newport Beach  
City Attorney  
100 Civic Center Drive  
Newport Beach, CA 92660

To Developer:



9.2 Termination. Each Party reserves the right to terminate this Agreement, with or without cause, upon [REDACTED] prior written notice to the other Party, thereby withdrawing from such negotiations without any liability to the other Party, except that (i) each Party shall be obligated to promptly return to the other Party all information and materials which such Party has received from the other Party pursuant to this Agreement and (ii) the rights and obligations of the Parties set forth in Section 9.3 shall remain in full force and effect. The Parties, by their respective execution hereof, knowingly agree, notwithstanding anything herein to the contrary, that, except with respect to the rights and obligations set forth in Section 9.3 hereof, neither of them shall have any right to specific performance of this Agreement, nor any other equitable or damage remedies of any nature under the law. Each Party makes such release with full knowledge of Civil Code Section 1542 and hereby waive any and all rights thereunder to the extent of this release, if such Section 1542 is applicable. Section 1542 of the Civil Code provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."



9.3 Developer Documents. In the event of termination of this Agreement, for any reason including, but not limited to, expiration, termination or breach of this Agreement, Developer shall deliver to the City, within [REDACTED] following written request from the City, a copy of all surveys, soils/environmental reports, site plans, *pro forma*, and other documents prepared by Developer or third parties that are associated in any way with this Agreement. Notwithstanding the foregoing, in no event, however, shall Developer be obligated to make available (or cause to be made available) any proprietary or confidential documents including reports or studies that have been superseded by subsequent reports or studies, or any of the following confidential and proprietary materials: (1) information contained in financial analyses or projections (including Developer's budgets, valuations, cost-basis information and

capital account information); (2) material that is subject to attorney-client privilege or that is attorney work product; (3) organizational, financial and other documents relating to Developer or its affiliates (other than evidence of due authorization and organization, and the financing plan required under this Agreement); or (4) material that Developer is legally required not to disclose other than by reason of legal requirements voluntarily assumed by Developer after the Effective Date. Developer makes no representation or warranty as to the accuracy or completeness of reports prepared by third parties and delivered to the City.

9.4 Cooperation. The Parties agree to cooperate with each other in promptly supplying information and analyses relating to the Proposal.

9.5 Assignment. Neither Party shall have the right to assign any of their rights or obligations set forth in this Agreement.

9.6 Entire Agreement, Amendments, and Waivers. This Agreement sets forth the entire agreement between the Parties with respect to the subject matter set forth herein and supersedes all prior discussions and negotiations between the Parties with respect thereto. No amendment to this Agreement shall be effective unless set forth in a writing signed by an authorized signatory of each Party. No waiver of any provision of this Agreement shall be enforceable against a Party unless it is set forth in a writing executed by such Party.

9.7 Assurances to Act in Good Faith. The City and Developer each agree to take all actions contemplated by this Agreement, including timely depositing funds as required herein, and shall use their respective best efforts to negotiate a Proposed Lease in accordance with the provisions of this Agreement.

9.8 Attorneys' Fees. In the event of any litigation between the Parties arising out of or concerning this Agreement, the prevailing Party shall not be entitled to recover from the other Party its actual and reasonable attorneys' fees.

9.10 Governing Law. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

9.11 Purpose of Agreement. It is expressly understood and agreed by the Parties that this is an Agreement regarding the conduct of good faith contract negotiations only and does not convey any interest in the Site whatsoever. This Agreement is not intended to constitute a binding agreement by the City to lease the Site or commit the City to develop all or any portion of Site, to financially participate with the Developer in the development of the Proposal, nor is it intended to constitute a binding agreement to enter into a Proposed Lease or any other contract. No Party shall be legally bound to consummate construction of the Proposal unless and until a Proposed Lease or other contract has been executed and delivered by the Parties. Notwithstanding any other provision hereof, neither the Developer nor the City shall be under any obligation to approve or execute any Proposed Lease during or upon conclusion of this Agreement. Any Party may refuse to approve and execute any Proposed Lease at its sole and absolute discretion, with or



without cause. In the event that a Proposed Lease is approved and executed by the Parties, this Agreement shall be superseded by such Proposed Lease. It is expressly understood that notwithstanding this Agreement, the Proposal may be modified or not implemented at all depending on a number of factors including but not limited to compliance with the California Environmental Quality Act.

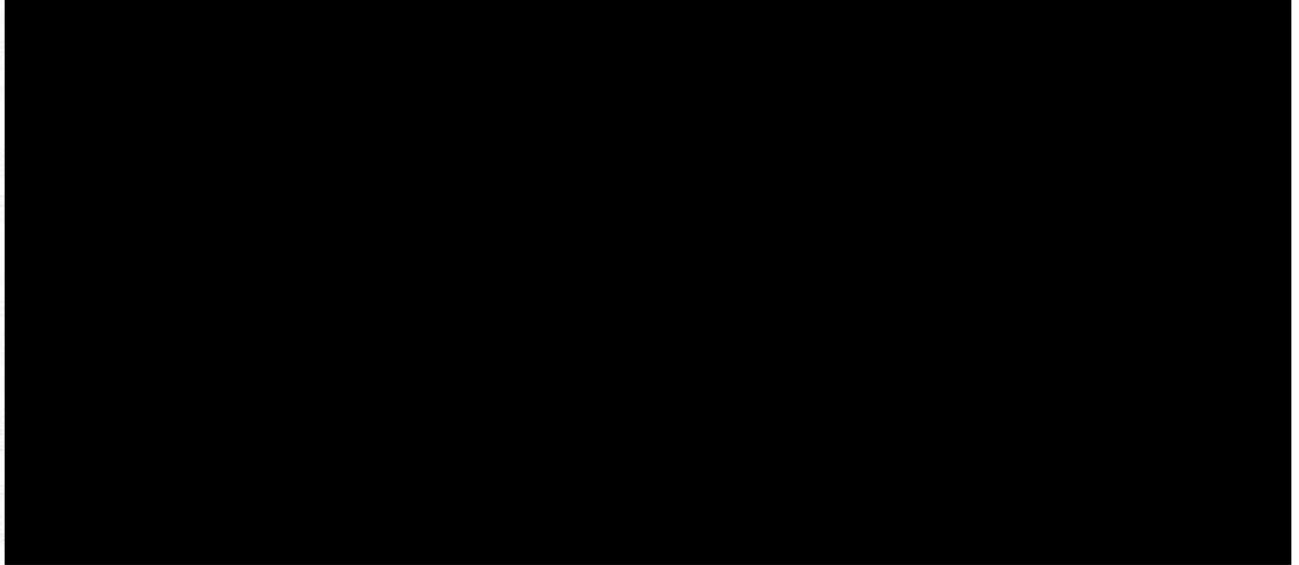
9.12 No Commissions. The City shall not be liable for any real estate commission or any broker's fees which may arise in relation to the Proposal. The City represents that it has engaged no broker, agent, or finder in connection with this transaction, and the Developer agrees to hold the City harmless from any claim by any broker, agent, or finder retained by the Developer.

9.13 Time of Essence. Time is of the essence of each provision set forth in this Agreement.

**[SIGNATURES ON FOLLOWING PAGE]**

EXHIBIT A

PROPERTY DESCRIPTION



**EXHIBIT B**

**PROPERTY DEPICTION**

**Aerial Vicinity Map**

