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LADERA DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
AGREEMENT	4
1. SECTIONS; DEFINITIONS AND EXHIBITS	4
1.1 Sections and Paragraphs	4
1.2 Definitions	4
1.2.1 Annual Monitoring Review	4
1.2.2 Approval Date	4
1.2.3 Build-out Phasing Plan	4
1.2.4 Building and Improvement Standards	4
1.2.5 COUNTY	4
1.2.6 County	4
1.2.7 COUNTY Development Agreement Resolution	4
1.2.8 Development	5
1.2.9 Development Agreement Legislation	5
1.2.10 Development Approval(s)	5
1.2.11 Development Exactions	5
1.2.12 Development Plan	5
1.2.13 Economic Expectations	5
1.2.14 Effective Date	6
1.2.15 Existing Development Approvals	6
1.2.16 Existing Land Use Ordinances	6
1.2.17 Existing Land Use Regulations	6
1.2.18 Financing District	6
1.2.19 General Plan	6
1.2.20 General Plan Review	6
1.2.21 Governing Policies	6
1.2.22 Land Use Ordinances	6
1.2.23 Land Use Regulations	7
1.2.24 Local Agency	7
1.2.25 MPAH	7
1.2.26 Mortgage	7
1.2.27 Mortgagee	7
1.2.28 Ordinance Number 3570	7
1.2.29 OWNER	7
1.2.30 OWNER's Obligations	8
1.2.31 Project	8
1.2.32 Property	8
1.2.33 Public Facilities	8
1.2.34 Regulations	8
1.2.35 Reservations of Authority	8

1.3 Exhibits 9

2. MUTUAL BENEFITS AND ASSURANCES 9

2.1 Purposes of Agreement 9

2.2 Undertakings and Assurances Contemplated and Promoted by
Development Agreement Legislation 10

2.3 Bargained For; Reliance by Parties 10

3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS 10

3.1 In General; Public Benefits 10

3.2 Dedication, Construction and Conveyance of Public
Facilities 11

 a. In General 11

 b. Public Facilities; Subdivision Requirements 11

3.3 Relationship of Parties 11

3.4 Public Works 11

3.5 Obligations of COUNTY Regarding Public Facilities 11

3.6 Financing and Provisions of Public Facilities 12

3.7 Future Fee Programs 12

3.8 No Further Development Exactions for Public Facilities 14

3.9 Replacement, Repair, Maintenance and Operation 14

3.10 No Limitation on Objections 14

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY 14

4.1 Specified Policies 14

 a. Permitted Uses 14

 b. Number of Units, Density and Intensity 15

 c. Maximum Height and Size of Buildings 15

 d. Reservations and Dedication of Lands for Public Purposes
and Undertakings for Provision of Public Facilities 15

 e. No Density Increases 15

	<u>Page</u>
f. Timing of Development	15
g. Moratoria; Phasing of Development	16
h. Development Exactions	16
4.2 Regulation of Development	17
a. In General	17
b. Vested Rights	17
4.3 Limitations, Reservations and Exceptions	17
a. Future Regulations	17
b. State and Federal Laws and Regulations	17
c. Public Health and Safety	18
d. Building and Improvement Standards	18
e. Processing Fees and Charges	18
f. Full Extent of Law	18
4.4 Further Assurances to OWNER Regarding Exercise of Reservations of Authority	19
a. Adoption of General Plan and Development Plan	19
b. Assurances to OWNER	19
c. Judicial Review	20
4.5 Regulation by Other Public Agencies	22
5. PERIODIC REVIEWS	22
5.1 Annual Review	22
5.2 Five-Year General Plan Review	23
6. TRANSFERS AND ASSIGNMENTS	23
6.1 Transfer and Assignments of Rights and Interests	23
a. Rights and Interests Appurtenant	23
b. Allocation of Density	24
c. Subject to Terms of Agreement	25
d. Release of OWNER	25

6.2 Termination of Agreement with Respect to Individual Parcels
Upon Sale to Public 26

7. ANNEXATION AND INCORPORATION 26

7.1 Transfer of Development Agreement Pursuant to
Government Code 26

7.2 Exhibit D Obligations 26

8. TERM OF AGREEMENT. 27

8.1 Stated Term 27

8.2 Rights and Duties Following Termination 27

 a. In General 27

 b. Survival of Terms 27

9. AMENDMENT 28

10. PROCESSING OF REQUESTS AND APPLICATIONS 28

11. DEFAULT AND REMEDIES 29

11.1 Remedies in General 29

11.2 Termination of Agreement for Default of OWNER 30

11.3 Termination of Agreement for Default of COUNTY 30

11.4 Specific Performance 30

11.5 Appointment of Referee 31

12. THIRD PARTY LITIGATION 32

12.1 General Plan Litigation 32

 a. Litigation 32

 b. Revision of General Plan 32

 c. Suspension of Obligations 33

 d. Option to Terminate 33

13. ESTOPPEL CERTIFICATE 33

14. EFFECT OF AGREEMENT ON TITLE 34

14.1 Covenants Run with The Land 34

14.2 No Dedication or Lien 35

14.3 Termination Upon Final Sale 35

15. MORTGAGEE PROTECTION; CERTAIN RIGHTS OR CURE 35

15.1 Mortgagee Protection 35

15.2 Mortgagee Not Obligated 35

15.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure 36

15.4 Bankruptcy 36

16. MISCELLANEOUS PROVISIONS 36

16.1 Recordation of Agreement 36

16.2 Entire Agreement 37

16.3 Severability 37

16.4 Interpretation and Governing Law 37

16.5 Section Headings 37

16.6 Singular and Plural 37

16.7 Joint and Several Obligations 37

16.8 Time of Essence 37

16.9 Waiver 38

16.10 No Third Party Beneficiaries 38

16.11 Force Majèure 38

16.12 Attorneys Fees 38

16.13 Mutual Covenants 38

16.14 Notices 39

16.15 Successors and Assigns 39

16.16 Counterparts 40

SIGNATORIES 40

EXHIBITS

LADERA DEVELOPMENT AGREEMENT
(Govt. Code Sections 65864-65869.5)

THIS AGREEMENT ("Agreement") is entered into this _____ day of December 3, 1996, by and between Ladera Development Company, LLC, a Delaware limited liability company ("OWNER"), and the COUNTY OF ORANGE, a political subdivision, organized and existing under the laws of the State of California ("COUNTY").

RECITALS

This Agreement is entered into based upon the following facts:

A. When used in these Recitals, each of the terms defined in Section 1 of this Agreement shall have the meaning given to it therein.

B. Government Code Sections 65864-65869.5 authorize COUNTY to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, in order to, among other things: encourage and provide for the development of public facilities in order to support the development of new housing; provide certainty in the approval of development projects in order to avoid the waste of resources and the escalation in the cost of housing and other development to the consumer and to encourage investment in and commitment to comprehensive planning which will make maximum efficient utilization of resources at the least economic cost to the public; provide assurance to developers that they may proceed with their projects in accordance with existing policies, rules and regulations, subject to their conditions of approval; and strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic costs of development.

C. OWNER holds legal title to the Property. The Property consists of approximately 2,500 acres. The Property is located in the unincorporated portion of southern Orange County, east of the City of Mission Viejo and north of the City of San Juan Capistrano.

OWNER desires and intends to develop the Property as a large scale, residential development for the uses and purposes set forth in the Development Plan. The Development of the Property requires substantial early and major capital expenditures and investments with respect to the construction and installation of major infrastructure and facilities, both on-site and off-site, of sufficient capacity to serve the future residents of the Property as anticipated by the General Plan and, in some instances, existing communities.

D. The general plan provides balanced and diversified land uses and imposes appropriate standards and requirements with respect to land development and usage so as to maintain the overall quality of life and of the environment within the County. COUNTY has determined that the Development Plan implements the goals and policies of COUNTY's General Plan and of all specific plans (as referenced in Government Code Sections 65450 et seq.) applicable to the Project.

E. Pursuant to Government Code Section 65865, COUNTY has adopted the COUNTY Development Agreement Resolution, establishing procedures and requirements for the consideration of proposed development agreements.

F. COUNTY has approved the Development Plan and the Existing Development Approvals in order to protect the interests of COUNTY's existing and anticipated citizens and the quality of their community and environment through the planned development process. As part of the process of approving the Development Plan and the Existing Development Approvals, COUNTY has undertaken, pursuant to the California Environmental Quality Act ("CEQA"), the required analyses of the environmental effects which would be caused by the Project. On October 17, 1995, the COUNTY Board of Supervisors adopted Resolution No. 95-782 certifying Environmental Impact Report No. 555. In addition to other matters which COUNTY took into consideration in its analyses of the environmental effects which would be caused by the Project, COUNTY scrutinized with particular care the adverse impacts associated with vehicular traffic conditions within the County and the availability of adequate levels of public services and facilities within the County, including, without limitation, library, sheriff, fire and paramedic protection, open space and community parks. COUNTY has imposed a series of mitigation measures in connection with the development of the Project to reduce or eliminate the anticipated adverse impacts on traffic conditions and on levels of public services and facilities within the County.

G. As consideration for the assurances provided by this Agreement, COUNTY has requested that OWNER provide, and OWNER is willing to provide, additional public benefits as described in Exhibit D of this Agreement. The COUNTY has determined that the public benefits for which OWNER is obligated, together with the mitigation measures imposed by the COUNTY on the Project, adequately provide for the health, safety and welfare needs of the existing and future residents of the Property and the population of adjacent areas of the County subject to the provisions of this Agreement with respect to future monitoring programs.

H. The Public Facilities to be provided by OWNER, will benefit not only the Project, but also in many instances adjacent areas and, in the case of roadways, and the sports park (see Exhibit D), regional populations. Given the regional significance of these improvements and facilities, COUNTY desires to obtain, and OWNER is willing to assist in providing, the Public Facilities in an orderly phased manner.

I. The COUNTY has found and determined that this Agreement: (i) is consistent with COUNTY's General Plan and with all specific plans (as referenced in Government Code Sections 65450 et seq.) applicable to the Project; (ii) is in the best interests of the health, safety and general welfare of COUNTY, its residents and the public; (iii) is entered into pursuant to and constitutes a present exercise of the police power by COUNTY; and (iv) is entered into pursuant to and in compliance with the requirements of Section 65867 of the Development Agreement Legislation and the COUNTY Development Agreement Resolution; and the COUNTY Board of Supervisors has adopted an ordinance authorizing the execution of this Agreement.

J. COUNTY desires to be assured that if the Property is annexed to, or included within the boundaries of, a Local Agency, OWNER's obligations will be completed to the extent required by this Development Agreement irrespective of the exercise of jurisdiction by the Local Agency. For that reason, this Agreement will provide assurances that the Exhibit D obligations will survive any transfer of land use jurisdiction to a Local Agency.

K. A Fiscal Impact Report, has been prepared for the project to analyze fiscal impacts on, among other items, the COUNTY's General Fund. This Agreement is intended to document that the Project will result in a positive fiscal impact on the COUNTY General Fund.

L. Based on the foregoing, OWNER and COUNTY desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the foregoing recitals of fact, the mutual covenants contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the parties agree as follows:

1. SECTIONS; DEFINITIONS AND EXHIBITS.

1.1 Sections and Paragraphs.

Any reference in this Agreement to a "Section" is a reference to the indicated numbered section or subsection of this Agreement and a reference to a "Paragraph" is a reference to the indicated paragraph of a Section.

1.2 Definitions.

The following terms when used in this Agreement shall be defined as follows:

1.2.1 "Annual Monitoring Review" means the annual review required pursuant to Section 5 hereinbelow.

1.2.2 "Approval Date" means October 17, 1995, when the COUNTY Board of Supervisors first adopted the Development Plan defined below.

1.2.3 "Build-out Phasing Plan" means an advisory, non-binding plan to be prepared by OWNER pursuant to Section 5 hereinbelow showing the intended schedule for the completion of the Development of the Property in accordance with the Development Plan and this Agreement, together with such other information regarding the anticipated Development as shall be reasonably requested by COUNTY.

1.2.4 "Building and Improvement Standards" means Regulations of COUNTY which are of general application which establish regulations and standards for the building, construction and installation of structures and associated improvements such as and including, without limitation, COUNTY's building, plumbing, mechanical, grading, swimming pool, sign and fire codes.

1.2.5 "COUNTY" means the County of Orange, a political subdivision of the State of California.

1.2.6 "County" means the geographical area within the boundaries of COUNTY.

1.2.7 "COUNTY Development Agreement Resolution" means the resolution adopted by the Board of Supervisors of

COUNTY establishing a procedure for the consideration and approval of development agreements pursuant to the Development Agreement Legislation.

1.2.8 "Development" means the improvement of the Property for purposes of effecting the structures, improvements and facilities comprising the Project including, without limitation: grading, the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of structures and buildings; and the installation of landscaping; but not including the maintenance, repair, reconstruction or redevelopment of any structures, improvements or facilities after the construction and completion thereof.

1.2.9 "Development Agreement Legislation" means Section 65864 through 65869.5 of the California Government Code as it exists on the Effective Date.

1.2.10 "Development Approval(s)" means site-specific plans, maps, permits and other entitlements to use of every kind and nature approved or granted by COUNTY in connection with the Development of the Property, including but not limited to: feature plans, area plans and site plans tentative and final subdivision tract maps, vesting tentative maps, conditional and special use permits and grading, building and other similar permits.

1.2.11 "Development Exactions" means requirements of COUNTY in connection with or pursuant to any Land Use Ordinance or Development Approval for the dedication of land or property, the payment of fees or money or the construction or improvement of public facilities in order to lessen, offset, mitigate or compensate for the adverse impacts of the Project on environmental or other public concerns or interests or for the improvement, construction or acquisition of any public infrastructure, facilities or property.

Said term shall not include assessments, and taxes unless exacted as a condition of development under a Development Approval nor shall it include any requirements for the purpose of or with respect to the replacement, repair, maintenance or operation of public infrastructure, facilities and property or the provision of public services.

1.2.12 "Development Plan" means the Ladera Planned Community and regulations with respect thereto adopted by COUNTY Board of Supervisors on October 17, 1995 by Ordinance No. 3945, as amended to the Effective Date.

1.2.13 "Economic Expectations" means economic expectations with respect to the completion of the Project

in accordance with the Governing Policies taking into consideration technical, financing, market and other factors.

1.2.14 "Effective Date" means the effective date of this Agreement which is the effective date of the Ordinance approving this Agreement.

1.2.15 "Existing Development Approvals" means those certain Development Approvals in effect on the Effective Date with respect to the Property.

1.2.16 "Existing Land Use Ordinances" means those certain Land Use Ordinances in effect on the Effective Date.

1.2.17 "Existing Land Use Regulations" means those certain Land Use Regulations in effect on the Effective Date and includes "Existing Development Approvals" and "Existing Land Use Ordinances." Exhibit B sets forth the Land Use Regulations in effect on the Approval Date and shall be adjusted to reflect the Existing Land Use Regulations as of the Effective Date. This adjustment shall occur as provided in Exhibit B of this Agreement.

1.2.18 "Financing District" means any assessment district, special district, community facilities district (CFD), maintenance district, or other similar district, legal entity, or mechanism formed pursuant to the provisions of legislation in effect at the time the Financing District is formed. The purpose of a Financing District is to finance the construction, acquisition and/or maintenance of public improvements and facilities, and the provision of public services. Examples include districts formed under the Improvement Act of 1911, the Municipal Improvement Act of 1913 and the Mello-Roos Community Facilities District Act of 1982.

1.2.19 "General Plan" means the General Plan of COUNTY.

1.2.20 "General Plan Review" means the review of the General Plan conducted by COUNTY referred to in Section 5.2.

1.2.21 "Governing Policies" means (i) the policies specified in Section 4.1; (ii) the Existing Land Use Ordinances; and (iii) the Development Plan. "Governing Policies" does not include Existing Development Approvals.

1.2.22 "Land Use Ordinances" means the ordinances adopted by the Board of Supervisors of COUNTY which govern the permitted uses of land, the density and intensity of use, and the design, improvement, and

construction standards and specifications applicable to the Development of Property, including, but not limited to: the General Plan, the Development Plan, specific plans, zoning ordinances, planned community district ordinances, development moratoria and growth management and phased development programs, ordinances establishing Development Exactions, subdivision and park codes and Building and Improvement Standards.

1.2.23 "Land Use Regulations" means Regulations of COUNTY which govern the permitted uses of land, density and intensity of use and the design, improvement, and construction standards and specifications applicable to the Development of the Property, including, but not limited to, mitigation measures required in order to lessen or compensate for the adverse impacts of the Project on the environment and other public interests and concerns. Land Use Regulations include, but are not limited to, Land Use Ordinances, Development Approvals and Development Exactions. The term Land Use Regulations does not include, however, Regulations relating to the conduct of business, professions and occupations generally; taxes and assessments other than Development Exactions; Regulations for the control and abatement of nuisances; encroachment and other permits and the conveyances of rights and interests which provide for the use of or entry upon public property; and any exercise of the power of eminent domain.

1.2.24 "Local Agency" means any city into which the Property may be annexed or incorporated.

1.2.25 "MPAH" means the Master Plan of Arterial Highways component of the Transportation Element of the General Plan (the "MPAH"), which designates routes for commuter, secondary, primary and major arterial highways, and transportation corridors, "smartstreets" and freeways within the County.

1.2.26 "Mortgage" means a mortgage, deed of trust or sale and leaseback arrangement or other transaction in which the Property, or a portion thereof or an interest therein, is pledged as security, contracted for in good faith and for fair value.

1.2.27 "Mortgagee" means the holder of the beneficial interest under a Mortgage, or the owner of the Property, or interest therein, under a Mortgage.

1.2.28 "Ordinance Number 3570" means Sections 7-9-700 through 7-9-713 of the Codified Ordinances of the County of Orange, as in effect on the Effective Date. Those Sections were originally enacted by Ordinance 3570.

1.2.29 "OWNER" means Ladera Development Company, LLC.

1.2.30 "OWNER's Obligations" means the obligations of OWNER to pay the sums, build and construct the improvements, dedicate the lands and improvements and undertake and perform the other actions described in Section 3.

1.2.31 "Project" means the development project contemplated by the Development Plan with respect to the Property, including but not limited to on-site and off-site improvements, as such development project is further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.2.32 "Property" means the land described in Exhibit A. A reference to the "Project Site" is intended to refer to the Property. The Property consists of approximately 2,500 acres.

1.2.33 "Public Facilities" means i) those certain public lands and facilities to be improved, constructed and dedicated or conveyed to the public; and ii) other public benefits as described in Exhibit D, all of which OWNER is obligated to provide pursuant to Section 3.1.

1.2.34 "Regulations" means laws, statutes, ordinances, and codes (including the Building and Improvements Standards), resolutions, rules, regulations and orders; approvals, denials and conditional approvals in connection with tentative, vesting tentative and final subdivision maps, parcel maps, conditional and special use permits and other permits of every kind and character; programs; and official policies and actions of COUNTY; together with amendments to all of the foregoing.

1.2.35 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER in Section 4.2 and reserved to COUNTY therein and in Section 4.3.

1.3 Exhibits.

The reference to a specified "Exhibit" in this Agreement is a reference to a certain one of the exhibits listed below, as determined by the accompanying letter designation, which exhibits are attached hereto and by this reference made a part hereof.

<u>Exhibit Designation</u>	<u>Description</u>
A	Description of Property.
B	Existing Land Use Regulations.
C	Memorandum of Understanding Regarding The Prima Deshecha Landfill Between COUNTY and the City of San Juan Capistrano.
D	Benefits to COUNTY and its Residents.
E	Development Phasing Plan
F	Particular Conditions and Mitigation Measures Contained in the Land Use Ordinances, Development Approvals and Mitigation Monitoring Programs Which are Satisfied or Partially Satisfied Through Adoption and Implementation of the Development Agreement.
G	Ladera PC Development Edge.

2. MUTUAL BENEFITS AND ASSURANCES.

2.1 Purposes of Agreement.

This Agreement is entered into for the purpose of carrying out the Development Plan for the Project in a manner that will ensure certain anticipated benefits to both COUNTY (including, without limitation, the existing and future residents and populations of COUNTY) and OWNER as described in the RECITALS, in Exhibit D, and as follows:

a. To provide and assure to COUNTY certain public facilities and benefits and to provide for the anticipated levels of residents and populations of the Property, the County and adjacent areas, all as provided for in the General Plan;

b. To provide to OWNER assurances regarding the Regulations that will be applicable to the Development of the Property that will justify the undertakings and commitments of OWNER described in Paragraph a. above and the investment in on-site and off-site public facilities and improvements as set forth in the Development Plan and this Agreement.

2.2 Undertakings and Assurances Contemplated and Promoted by Development Agreement Legislation.

The mutual undertakings and assurances described above and provided for in this Agreement are for the benefit of COUNTY and OWNER and promote the comprehensive planning, private and public cooperation and participation in the provision of public facilities, and the effective and efficient development of infrastructure and facilities supporting development which was contemplated and promoted by the Development Agreement Legislation.

2.3 Bargained For; Reliance by Parties.

The assurances provided to OWNER in Section 4 are provided pursuant to and as contemplated by the Development Agreement Legislation, bargained and in consideration for the undertakings of OWNER set forth in Section 3 of this Agreement and are intended by COUNTY to be and have been relied upon by OWNER to its detriment in undertaking the obligations and covenanting as provided in Section 3 hereinbelow and in this Agreement generally and in expending monies and making improvements pursuant to this Agreement with respect to the County Road System Improvements, the Public Facilities and the Project.

3. OWNER'S OBLIGATIONS; PROVISION OF PUBLIC BENEFITS.

3.1 In General; Public Benefits.

OWNER shall be obligated to, and shall, perform all of the duties and obligations provided for or required by any provisions of the existing General Plan, the Development Plan and the Existing Development Approvals in connection with the Development of the Property. OWNER shall be obligated to provide the Public Facilities and other public benefits as described in Exhibit D, and to comply with any and all requirements set forth in Exhibit D for securing or guaranteeing the performance of the OWNER's obligations as described in Exhibit D. (Some obligations required by the Development Plan also are set forth in Exhibit D.)

Conditions of the existing General Plan, the Development Plan and the Existing Development Approvals which will be satisfied or partially satisfied through the adoption and implementation of this Agreement are set forth in Exhibit F.

3.2 Dedication, Construction and Conveyance of Public Facilities.

a. In General.

The Public Facilities to be dedicated (in the case of lands) and constructed by OWNER and dedicated or conveyed to COUNTY as described in Exhibit D, shall be completed in accordance with the provisions of Exhibit D and designs, specifications and standards promulgated by COUNTY in accordance with the then current Regulations, and dedicated and conveyed to COUNTY in fee, free of all liens and encumbrances of every kind and nature except as expressly set forth in Exhibit D or agreed in writing by COUNTY. All such dedications shall be accomplished in a manner meeting the approval of the COUNTY.

b. Public Facilities; Subdivision Requirements.

Public Facilities required by the Development Plan are subject to standard subdivision requirements of general application.

3.3 Relationship of Parties.

In performing OWNER's Obligations, OWNER is acting under this Agreement as an independent contractor and is not acting as the agent or employee of COUNTY nor shall anything in this Agreement be construed as creating between OWNER and COUNTY a partnership or joint venture for any purpose.

3.4 Public Works.

If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to COUNTY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work subject to the same engineering specifications and standards as would be applicable to COUNTY or such other public agency should it have undertaken such construction.

3.5 Obligations of COUNTY Regarding Public Facilities.

In any instance where OWNER is required to construct any Public Facilities on lands not owned by OWNER as a condition precedent to the performance of such obligation, COUNTY shall provide or cause to be provided the real property rights and interests necessary for the construction of such Public Facilities. Where those property rights and interests are to be acquired by any Financing District including the project site, OWNER shall have no obligation to pay for such rights or interests except that OWNER shall pay all reasonable administrative

costs of COUNTY (including but not limited to the administrative costs of condemnation) related to the acquisition and transfer of said rights and interests. Where those real property rights and interests are acquired for ownership by COUNTY and not by a Financing District, OWNER shall reach agreement with COUNTY for payment by OWNER of all reasonable costs, including land costs, incurred in acquiring those real property rights and interests. In no event, shall COUNTY have any obligation to pay for such acquisition. COUNTY's only obligation is to use at its option its power of eminent domain to acquire such property at OWNER's expense. (Note: this provision does not mean that OWNER is required to acquire any real property rights or interests related to OWNER's "Fair Share Contributions" for the off-site traffic mitigation program as set forth in Exhibit D.)

Notwithstanding the above, since OWNER has agreed to dedicate the right-of-way for Antonio Parkway as provided in Exhibit D, attached, COUNTY shall construct the initial four lanes of Antonio Parkway from its existing terminus to Ortega Highway in accordance with the Memorandum of Understanding between COUNTY and San Juan Capistrano (see attached Exhibit C), and no amendment to such Memorandum of Understanding shall amend COUNTY's obligations hereunder without written approval from OWNER.

3.6 Financing and Provision of Public Facilities.

a. Desire to Consider Formation of Financing District.

Upon the request of OWNER, the parties shall cooperate in exploring the use of Financing Districts and other similar Project-related public procedures and institutions for financing OWNER's obligation for public improvements, land acquisition, facilities, and services under this Agreement as described in Exhibit D and the Development Approvals, whether located within or outside the Property.

b. No Obligation to Form District.

Notwithstanding the foregoing, it is acknowledged that nothing contained in this Agreement shall be construed as requiring COUNTY to form a Financing District or cause a Financing District to issue or sell bonds.

3.7 Future Fee Programs.

County Ordinance Number 3570 (set forth in Article 7, Sections 7-9-700 to 7-9-713 of the Codified Ordinances of Orange County) ("Ordinance Number 3570") establishes a means by which development fees will be required of development

projects where supporting facilities will be needed to provide public services.

OWNER has agreed to provide the Public Facilities and other public benefits as described in Exhibit D. In certain instances, the obligations of OWNER in providing such facilities and services are in excess of OWNER's pro rata share (and may include, in effect, amounts reflecting benefits to existing development or development anticipated in the distant future) of the costs of such facilities and services as determined pursuant to Ordinance Number 3570.

It is acknowledged by the parties that the Development of the Property in accordance with the Governing Policies and the Existing Land Use Regulations will provide for orderly growth in accordance with the policies and goals set forth in the COUNTY General Plan, as implemented through its Growth Management Program. Subject to the provisions below, OWNER shall participate, on a pro rata basis in the manner as provided for in COUNTY Ordinance Number 3570, in any future fee programs (which are not Development Exactions for the purpose of providing the Public Facilities and other public benefits as described in Exhibit D) and which are adopted by the COUNTY Board of Supervisors in accordance with the Growth Management Program which include the Project as a portion of the respective area of benefit.

Participation in any such future fee program shall be subject to the following:

a. COUNTY shall use its best efforts to establish fair and equitable fee programs to allocate the costs of any facilities and services to be funded by the programs.

b. Notwithstanding any other provision of this Section 3.7, if, as a result of an initiative, COUNTY is compelled by a court of competent jurisdiction to construct additional public facilities within the Project for the purpose of benefiting the Project, then OWNER shall be subject to any fee program adopted pursuant to Ordinance Number 3570 for the purpose of funding such additional facilities. Nothing in this Section shall prohibit OWNER from appealing any such judicial determination.

c. While the parties acknowledge the appropriateness of the Growth Management Program as a procedure for monitoring and providing for future residents and populations, OWNER is concerned that COUNTY could attempt to decrease the rights and interests of OWNER provided for in Section 4 under the guise of providing increased facilities for future residents or the public. Accordingly, in adopting any such program which is in conflict with the Governing Policies, COUNTY shall reasonably find and determine that the future needs of the

residents or the public require such facilities.

3.8 No Further Development Exactions for Public Facilities.

Except as expressly provided elsewhere in this Agreement and subject to the Reservations of Authority provided in Section 4.3, OWNER shall have no obligation to participate in, pay, contribute or otherwise provide any further Development Exactions imposed by COUNTY for the installation, acquisition, construction or completion of the Public Facilities described in Exhibit D.

3.9 Replacement, Repair, Maintenance and Operation.

Except as expressly provided in Section 3.1 to the contrary, the replacement, repair, and maintenance of any of the Public Facilities after the completion and acceptance thereof by COUNTY and during the term of this Agreement shall not be the subject of a fee with respect to, or a condition of, any Development Approval regarding, and no fee, tax or assessment shall be levied by COUNTY on, any undeveloped lands within the Property for any such purposes with respect to such completed and accepted Public Facilities which does not include similarly situated and benefited developed lands.

3.10 No Limitations on Objections.

Nothing in this Section 3 shall be construed as limiting OWNER's right to object before the COUNTY Board of Supervisors or to judicially challenge the adoption of any of the future fee programs or to otherwise take any action in opposition to the adoption of any such programs.

4. REGULATIONS GOVERNING THE DEVELOPMENT OF THE PROPERTY.

4.1 Specified Policies.

The following policies set forth in this Section 4.1 are consistent with and/or are provided for in or contemplated by the Existing Land Use Ordinances, including the General Plan and the Development Plan.

a. Permitted Uses.

The uses permitted hereunder in accordance with the Existing Land Use Ordinances, are as set forth in the Development Plan and include, without limitation, residential, neighborhood commercial, public facilities, recreation and conservation.

b. Number of Units, Density and Intensity.

The maximum number of dwelling units permitted in the Project shall be 8,100, as set forth in the Development Plan. The Project shall also be permitted to develop, pursuant to the Development Plan, a total of 854,000 square feet of various uses in the Urban Activity Center and an additional 275,000 square feet of commercial uses in other areas of the Project.

c. Maximum Height and Size of Buildings.

The maximum height of structures within the Property is as set forth in the Development Plan.

d. Reservations and Dedication of Lands for Public Purposes and Undertakings for Provision of Public Facilities.

The obligations of the OWNER to reserve and dedicate lands for public purposes and to provide the Public Facilities are set forth in Section 3 and Exhibit D.

e. No Density Increases.

COUNTY has expressed interest in ensuring the provision of regional and community level infrastructure, and is pursuing the use of development agreements as a method whereby a level of assurance can be achieved concerning the service demands within planned communities so that adequate long-range plans for needed infrastructure can be developed and implemented. COUNTY and OWNER acknowledge that the establishment of land use density and dwelling unit maximums as set forth in Section 4.1.b. are necessary for facility planning efforts. OWNER intends not to apply for residential increases for the Project, and COUNTY intends not to revise the maximum density and dwelling unit totals as set forth in Section 4.1.b. during the term of this Agreement, thus ensuring that appropriate facilities and services are planned and implemented. Further, OWNER intends not to apply for any intensification of non-residential uses within the Property which would be inconsistent with or would unduly burden existing and planned public facilities and services. Notwithstanding the foregoing, density may be allocated by OWNER in accordance with Paragraph 6.1b.

f. Timing of Development.

The parties acknowledge that the most efficient and economic Development of the Property depends upon numerous factors such as market orientation and demand, interest rates, competition and similar factors and that

generally it will be most economically beneficial to the ultimate purchasers to have the rate of Development determined by OWNER. Accordingly, the timing, sequencing and phasing of Development shall be as determined by OWNER in its sole subjective business judgment and discretion except that the rate of Development shall not exceed that permitted by the Phasing Schedule set forth in Exhibit E and shall be in accord with the Existing Land Use Regulations, subject to the Reservations of Authority provided in Section 4.3 and the other terms and conditions of this Agreement.

g. Moratoria; Phasing of Development.

The parties acknowledge and agree that the Governing Policies contemplate and provide for the phasing of the Development of the Property and that except as expressly provided in this Agreement, no moratorium, ordinance, resolution, initiative or other Land Use Regulation or limitation on the conditioning, rate, timing or sequencing of the Development of the Property or any portion thereof shall apply to or govern the Development of the Property during the term hereof whether affecting parcel or subdivision maps (whether tentative, vesting tentative, or final), building permits, occupancy permits or other entitlements to use issued or granted by COUNTY. In the event of any such subsequent action, OWNER shall continue to be entitled to apply for and receive Development Approvals in accordance with the Existing Land Use Regulations, subject only to the exercise of the Reservations of Authority set forth in Section 4.3 and the terms of this Agreement.

h. Development Exactions.

In addition to and not in limitation of the foregoing, or the provisions of Section 4.2, except and subject to the Reservations of Authority, COUNTY shall not levy or require:

(i) any further Development Exactions except those provided for in this Agreement or which are provided for or required by the Existing Land Use Regulations (including, but not limited to the existing General Plan, the Development Plan, and Existing Development Approvals) which include, but are not limited to, Development Exactions which may be required by COUNTY in accordance with its current subdivision standards and policies (including, without limitation, as to the amount, time and method of payment); or

(ii) any further Development Exactions for the Public Facilities.

4.2 Regulation of Development.

a. In General.

Notwithstanding any future action of COUNTY, whether by ordinance, resolution, initiative or otherwise, during the term of this Agreement, the rules, regulations and official policies applicable to and governing the Development of the Property shall be the Existing Land Use Regulations (including the Conditions of Approval) together with amendments and additions adopted pursuant to the Reservations of Authority provided in Section 4.3.

b. Vested Rights.

In developing the Property, OWNER is provided and assured the vested right to require that the Land Use Regulations of COUNTY applicable to and governing the Development of the Property during the term hereof shall be as provided in this Section 4.2.

4.3 Limitations, Reservations and Exceptions.

Notwithstanding anything to the contrary set forth in Section 4.2 hereinabove, in addition to the Existing Land Use Regulations, only the following Land Use Regulations adopted by COUNTY hereafter shall apply to and govern the Development of the Property ("Reservations of Authority"):

a. Future Regulations.

Future COUNTY Land Use Regulations which (i) are not in conflict with the Governing Policies; or (ii) are in conflict with the Governing Policies and the application of which to the Development of the Property has been consented to in writing by OWNER.

b. State and Federal Laws and Regulations.

Existing and future State and federal laws and regulations, together with any COUNTY Land Use Regulations, programs and actions, or inaction, which are reasonably (taking into consideration, among other things, the assurances provided to OWNER hereunder) adopted or undertaken by COUNTY in order to comply with State and federal laws and regulations; provided, that in the event that State or federal laws and regulations prevent or preclude compliance with one or more provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such State and federal laws and regulations, in which event this Agreement shall remain in full force and effect to the extent that it is not inconsistent with such laws and regulations and that

performance of the remaining provisions would not be inconsistent with the intent and purposes of this Agreement;

c. Public Health and Safety.

Land Use Regulations which are adopted by COUNTY, which may be in conflict with the Governing Policies which are reasonably necessary in order to protect the public health and safety;

d. Building and Improvement Standards.

Subject to Section 7 below, present and future Building and Improvement Standards, except that (taking into consideration the assurances to OWNER in this Section 4) any future amendment thereto which significantly reduces the amount of land within the Property which can be utilized for structures and improvements or significantly increases the amount of open space within the Project under the Development Plan shall not be considered a provision of any of the Building and Improvement Standards included within the exception provided by this Paragraph 4.3.d and shall not apply to and govern the Development of the Project unless it complies with another exception under this Section 4.3 (such as, for example, Paragraph 4.3.c);

e. Processing Fees and Charges.

Processing fees and charges of every kind and nature imposed or required by COUNTY under current or future Regulations covering the actual costs of COUNTY in (i) processing applications and requests for permits, approvals and other actions and (ii) monitoring compliance with any permits issued or approvals granted or the performance of any conditions with respect thereto or any performance required of OWNER hereunder; and

f. Full Extent of Law.

The parties acknowledge and agree that COUNTY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to COUNTY all of its police power which cannot be so limited. Notwithstanding the foregoing, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to COUNTY all such power and authority which cannot be restricted by contract.

4.4 Further Assurances to OWNER Regarding Exercise of Reservations of Authority.

a. Adoption of General Plan and Development Plan.

In preparing and adopting the General Plan and the Development Plan and in granting the Existing Development Approvals, COUNTY fully and comprehensively considered the health, safety and welfare of the existing and future residents and populations of the County as required by CEQA. Without limiting the generality of the foregoing, in preparing and adopting the General Plan and Development Plan, the COUNTY Board of Supervisors carefully considered and determined the projected needs (taking into consideration the planned development of the Project, the County and adjacent areas) for sheriff, fire, library, paramedic and similar facilities and services within the Project, the County and adjacent areas, the general carrying capacity of the Property, the needs of the residents for open space and parks and the appropriateness of the number of units to be developed and the density and intensity of the development comprising the Project.

The parties acknowledge that the allocation of development within the Property as part of future Development Approvals is subject to various considerations pursuant to the Existing Land Use Regulations such as the location of particular wildlife populations, earthquake fault zones, cultural resources or other site specific considerations. Further, the parties acknowledge that in certain instances, the development of the Property may be restricted and adversely affected and impacted by future Land Use Regulations adopted by COUNTY as provided in Section 4.3.

b. Assurances to OWNER.

The parties further acknowledge that the public benefits to be provided by OWNER to COUNTY pursuant to this Agreement are in consideration for and reliance upon assurances that the Property can be developed in accordance with the Existing Land Use Regulations (subject to the terms of this Agreement). Accordingly, while recognizing that the Development of the Property may be affected by exercise of the Reservations of Authority and the requirement that OWNER participate in future public facilities as set forth in Section 3.7, OWNER is concerned that normally the Courts extend to local agencies significant deference in the adoption of Land Use Regulations which might permit COUNTY to attempt to apply inconsistent Land Use Regulations in the future under the guise of the Reservations of Authority or the COUNTY's authority to require OWNER's participation under Section 3.7. Accordingly, OWNER desires assurances

that COUNTY will not inequitably further restrict or limit the Development of the Property in conflict with the provisions of Section 4.1 and 4.2 except in strict accordance with the Reservations of Authority or Section 3.7.

c. Judicial Review.

(i) Burdens of Proof.

Based on the foregoing, in the event OWNER judicially challenges (including the procedure pursuant to Section 12.5) the application of a future Land Use Regulation as (A.) being in conflict with Section 4.2 and as (B.) exceeding or violating the Reservations of Authority or Section 3.7, OWNER shall bear the burden of proof in establishing that such Regulation was applied in conflict with the Governing Policies. In the event that OWNER bears its burden of proof and establishes that such Regulation is in conflict with the Governing Policies, COUNTY shall thereafter bear the burden of proof in establishing that such Regulation was adopted pursuant to and in accordance with Section 3.7 or the Reservations of Authority.

(ii) Considerations.

Considerations, among others, in determining whether any such future COUNTY Land Use Regulation was properly applied pursuant to the Reservations of Authority shall include:

(A) with respect to any future Land Use Regulations adopted by COUNTY pursuant to paragraphs 4.3.b. (with respect to federal and state regulation) or 4.3.c. (with respect to the protection of public health and safety), the extent to which such regulation substantially impairs the rights of OWNER under Section 4.2 and is (1) to be unreasonably borne only by OWNER and the Project (taking into consideration the obligations of OWNER under this Agreement) rather than being also borne by other lands and interests, or (2) unreasonable taking into consideration other reasonable and practicable alternatives; and

(B) with respect to any future Land Use Regulations adopted pursuant to Paragraph 4.3.c. (with respect to the protection of public health and safety):

(1) Whether, and the extent to which, the concerns which are the subject of the proposed Land Use Regulation were considered and/or provided for in the adoption of the Existing Land Use Regulations or this Agreement; and

(2) The greater the severity of the

adverse impact of the Land Use Regulation on the reasonable Economic Expectations of OWNER (taking into consideration the extent of any mitigation of such impacts provided by COUNTY in connection with such Regulation, for example, by the transfer of development density), the greater the showing required of COUNTY that the concerns addressed are legitimate and that such Regulation is reasonable taking into consideration such concerns.

The parties believe that the foregoing Considerations are appropriate under the law and are not intended to, and shall not, limit the authority of COUNTY with respect to the police power which cannot be limited by contract. Further, said considerations shall be interpreted, supplemented and revised to reflect subsequent judicial determinations and State legislative enactments further defining the extent and nature of the authority of local agencies which must be reserved and cannot be limited by contracts such as this Agreement.

(iii) Administrative Findings and Burden of Proof.

(A) COUNTY Findings and Determinations.

As a condition precedent to adopting any Land Use Regulation or taking any action requiring the action or approval of the COUNTY Board of Supervisors which is in conflict with the Governing Policies, after providing OWNER with reasonable notice and an opportunity to be heard, COUNTY shall make specific findings and determinations as to the basis for applying such Land Use Regulation to the Development in accordance with Section 4.3 or Section 3.7.

(B) OWNER's Burden of Proof.

As a condition precedent to any claim by OWNER that a proposed Land Use Regulation does not comply with the Reservations of Authority or Section 3.7 and, therefore, cannot be applied to and govern the Development of the Property (whether in a judicial proceeding or otherwise), OWNER shall raise the claim at the COUNTY Board of Supervisors hearing (and may raise it earlier) at which the proposed Land Use Regulation is considered and shall present all information then in its possession upon which it shall rely or present in any judicial proceeding, including, but not limited to, information regarding OWNER's reasonable Economic Expectations, and, in addition, shall provide at such time any further information regarding OWNER's Economic Expectations reasonably requested by COUNTY. In the event that the proposed Land Use Regulation is of a kind that is not heard by or appealable to the COUNTY Board of Supervisors and provided that OWNER is given reasonable prior notice, as a condition precedent to any such claim,

OWNER shall raise the claim and provide the above information as a protest to the agent or representative of COUNTY promulgating or applying the proposed Regulation.

4.5 Regulation by Other Public Agencies.

It is acknowledged by the parties that other public agencies not within the control of COUNTY possess authority to regulate aspects of the Development of the Property separately from or jointly with COUNTY and this Agreement does not limit the authority of such other public agencies. For example, pursuant to Government Code Section 66477(i), in the event that an agency provides services or facilities, it is permitted, and that agency has a right to participate jointly with COUNTY to determine the location of land to be dedicated or in lieu of fees to be paid for specified purposes, provided that COUNTY shall exercise its authority subject to this Agreement.

If any requirement of this Agreement can not be implemented because of the actions of another jurisdiction, this Agreement shall continue in full force and effect and COUNTY may require OWNER to provide public benefits of no greater expense (including regulatory processing expenses such as filing fees, consultant fees, legal fees, and mitigation expenses), subject to the provisions of Exhibit D regarding substitute improvements and all required environmental and regulatory review. Any such modifications to public benefits shall not be considered an amendment to this Agreement unless those modifications are inconsistent with Paragraphs 4.1.a., b., c. and d.

5. PERIODIC REVIEWS.

5.1 Annual Review.

COUNTY and OWNER shall review the performance of this Agreement, and the Development of the Project, at least once every 12-month period from the Effective Date. As part of such Annual Monitoring Review, within 30 days after each anniversary of this Agreement, OWNER shall deliver to COUNTY:

- a. a then current Build-out Phasing Plan for the project; and
- b. all information reasonably requested by COUNTY (i) regarding OWNER's performance under this Agreement demonstrating that OWNER has complied in good faith with terms of this Agreement and (ii) as required by the Existing Land Use Ordinances.

If as a result of such periodic review, COUNTY finds and determines, on the basis of substantial evidence,

that OWNER has not complied in good faith with any of the terms or conditions of this Agreement, COUNTY may terminate this Agreement as provided in Section 12.2.

5.2 Five-Year General Plan Review.

Every five years following the Effective Date, COUNTY intends to conduct a review of the General Plan as it applies to the Project. OWNER shall cooperate with COUNTY in the conducting of this review and in developing mutually acceptable revisions to the General Plan and the Development Plan pursuant thereto; provided, however, that neither COUNTY nor OWNER shall have any obligation to agree to such changes.

6. TRANSFERS AND ASSIGNMENTS.

6.1 Transfer and Assignments of Rights and Interests.

a. Rights and Interests Appurtenant.

Except as provided in Section 6.1c, the rights and interests conveyed and provided herein to OWNER benefit and are appurtenant to the Property. OWNER has the right to sell, assign and transfer any and all of its rights and interests and to delegate any and all of its duties and obligations hereunder; provided, however, that such rights and interests may not be transferred or assigned except in strict compliance with the following conditions precedent:

(i) Said rights and interests may be transferred or assigned only together with and as an incident of the transfer and assignment of the portions of the Property to which they relate, including any foreclosure of a Mortgage or a deed in lieu of such foreclosure; and

(ii) Concurrent with any such assignment or transfer or within five (5) business days thereafter, OWNER shall notify COUNTY in writing of such assignment or transfer, the portions of the Property to which the assignment or transfer is appurtenant, and the name and address (for purposes of notices hereunder) of the transferee or assignee, together with the corresponding number of dwelling units or non-residential square footage which are included within such transfer and OWNER and the assignee or transferee shall notify COUNTY whether the assignee or transferee has assumed any of OWNER's Obligations under this Agreement and which of OWNER's Obligations have been assumed (failure of OWNER to strictly comply with the timing of this Subsection 6.1.a(ii) shall not constitute a material breach of this Agreement);

(iii) Prior to or concurrent with such assignment or transfer, OWNER shall either make an offer of

dedication to COUNTY of all rights-of-way and lands necessary to complete the Public Facilities within or through the portions of the Property being assigned or transferred in accordance with the provisions of Section 3.1 or provide COUNTY with the binding commitment and agreement of the proposed assignee or transferee, in a form reasonably acceptable to COUNTY, irrevocably committing said proposed assignee or transferee to offer to dedicate said rights-of-way or lands to COUNTY in accordance with the provisions of Section 3.1 as soon as the appropriate legal descriptions are provided; and

(iv) Prior to or concurrent with such assignment or transfer, either (A) OWNER shall prepay all fees described in Exhibit D attributable to the portions of the Property being assigned or transferred or (B) the proposed assignee or transferee shall assume the obligations of OWNER with respect to the payment of such fees and shall provide COUNTY with an agreement, in a form reasonably acceptable to COUNTY, assuming such obligation and irrevocably committing said proposed assignee or transferee to pay such fees in accordance with the terms of Exhibit D.

Any attempt to assign or transfer any right or interest in this Agreement except in strict compliance with this Section 6, shall be null and void and of no force and effect.

COUNTY shall have no duty or obligation of any kind or nature to maintain a record of such transfers or assignments of portions of the Property or numbers and allocations of units involved or to notify or advise prospective or actual assignees or transferees or others of such assignments or the resulting allocation of units with respect to the Property or under this Agreement.

b. Allocation of Density and Intensity.

It is acknowledged that the density and intensity of development provided by the Governing Policies may be distributed by OWNER disproportionately throughout the Property in accordance with and subject to the Existing Land Use Regulations. COUNTY shall not be obligated to the successors of OWNER to advise or notify any such successor or any other person as to the density of development allowed under this Agreement or any of the Land Use Regulations with respect to any particular portion of the Property; provided, however, that COUNTY shall upon the request of OWNER enter into further agreements in a recordable form allocating to the various portions of the Property the then allowable density of units pursuant to the Governing Policies. Such an agreement may include provisions relating to the assumption of certain of OWNER's obligations hereunder and the allocation of the benefits and burdens of this

Agreement, all as specifically provided in this Section 6. The reasonable costs and expenses of COUNTY in considering and responding to any such request shall be reimbursed to COUNTY by OWNER forthwith upon the request of COUNTY.

c. Subject to Terms of Agreement.

Following any such assignment or transfer of any of the rights and interests of OWNER under this Agreement, the exercise, use and enjoyment thereof shall continue to be subject to the terms of this Agreement to the same extent as if the assignee or transferee were OWNER. Without limiting the generality of the foregoing,

(i) in order to claim or benefit from any right or interest hereunder or provision hereof (including but not limited to the rights of OWNER under Section 12), any subsequent assignee or transferee shall have no right, and shall be obligated not, to claim damages from or against COUNTY under Section 12;

(ii) the further assignment or transfer of any of the rights or interests under this Agreement shall be made only in accordance with and subject to the terms of this Section 6.1; and

(iii) the right and interests assigned or transferred are subject to termination in accordance with this Agreement.

Notwithstanding the foregoing, the assignee or transferee of any of the rights and interests of OWNER shall take said rights and interests subject to this Agreement and shall have no duty or obligation to perform OWNER's Obligations or other affirmative covenants of OWNER under this Agreement unless such obligations and covenants are expressly assumed in connection with the conveyance of said rights and interests; provided, however, that any such assignee on acceptance of such assignment or transfer and without any other assumption or action shall be bound and obligated to, and shall, perform the duties and obligations of OWNER under and with respect to Section 3.2.

d. Release of OWNER.

Notwithstanding the assignment or transfer of portions or all of the Property or rights or interests under this Agreement, OWNER shall continue to be obligated under this Agreement unless released or partially released by COUNTY with respect to OWNER's obligations and the other duties and obligations of OWNER under this Agreement, which release or partial release shall be provided by COUNTY upon the full satisfaction by OWNER of the following conditions:

(i) OWNER is not then in default under this Agreement;

(ii) OWNER has provided COUNTY with the written notice required under Paragraph 6.1a.; and

(iii) Such assignee or transferee has assumed such duties and obligations as to which OWNER is requesting to be released and has provided COUNTY with security and other assurances equivalent to those which were provided by OWNER assuring COUNTY that OWNER's Obligations and the other duties and obligations of OWNER under this Agreement for which OWNER is being released will be fully and strictly performed as provided in this Agreement.

6.2 Termination of Agreement With Respect to Individual Parcels Upon Sale to Public.

Notwithstanding any provisions of this Agreement to the contrary, the burdens of this Agreement shall terminate as to any lot which has been finally subdivided and individually (and not in "bulk"), leased (for a period of longer than one year) or sold to the purchaser or user thereof and thereupon and without the execution or recordation of any further document or instrument such lot shall be released from and no longer be subject to or burdened by the provisions of this Agreement; provided, however, that the benefits of this Agreement shall continue to run as to any such lot until a building is constructed on such lot, or until the termination of this Agreement, if earlier, at which time this Agreement shall terminate as to such lot.

7. ANNEXATION AND INCORPORATION.

7.1 Transfer of Development Agreement Pursuant to Government Code.

If the Property is annexed to or incorporated within a city (a "Local Agency") the provisions of Government Code Section 65865.3 shall apply, to the extent those provisions remain applicable at the time of incorporation or annexation.

7.2 Exhibit D Obligations.

COUNTY has entered into this Agreement to provide maximum assurances to its residents that the Public Facilities will be completed as contemplated by this Agreement. To assure completion of those Public Facilities which will remain of substantial interest to COUNTY even after annexation or incorporation (see Exhibit D), OWNER agrees not to enter into any agreement with the Local Agency to modify this Agreement after annexation to the Local

Agency or to apply for any Development Permits from the Local Agency if (i) those actions would reduce or eliminate OWNER's Obligations listed in Exhibit D and (ii) COUNTY has not consented to those actions in writing. Prior to consenting to any annexation of the property, OWNER shall enter into an agreement with COUNTY to either a) provide security for its Exhibit D obligations in the same time and manner set forth in this Agreement and any subsequent modifications; or b) grant COUNTY the continuing right to enforce OWNER's Exhibit D obligations as set forth in this Agreement.

8. TERM OF AGREEMENT.

8.1 Stated Term.

This Agreement shall become effective on the Effective Date and unless earlier terminated pursuant to the provisions of this Agreement shall continue in effect for a period of twenty (20) years.

8.2 Rights and Duties Following Termination.

a. In General.

Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligations to have been performed prior to said termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to said termination, except as follows:

b. Survival of Terms.

In the event that this Agreement is terminated for any reason other than the default of OWNER, the rights and duties of the parties shall be as set forth in Paragraph 8.2a. except as provided in this Paragraph 8.2b. as follows:

(i) Reimbursement.

COUNTY acknowledges that in connection with certain fee programs, OWNER may have participated financially in excess of OWNER's Pro-rata Share in the cost of the Public Facilities, in which case COUNTY shall cooperate in good faith to cause other benefited undeveloped lands and owners thereof to be identified, and COUNTY shall, to the extent feasible, attempt to require such other landowners to reimburse to OWNER, through COUNTY, that portion of such costs incurred by OWNER in excess of its Pro-Rata Share, as reasonably determined by COUNTY which has not been previously reimbursed by COUNTY or an Assessment

District or a CFD. OWNER acknowledges that COUNTY is limited in the manner in which it may collect or require such reimbursement and that COUNTY may be unable to cause OWNER to be reimbursed for such costs.

(ii) Assurances for Completed Milestones.

Exhibit E references "milestones" contained in the Development Plan and/or this Agreement. These milestones reflect specific actions which must occur before OWNER is entitled to proceed with specific phases of development. Where this Agreement is terminated and (1) at the time of termination, OWNER has met the obligations of OWNER referenced in Exhibit E for a specific phase and (2) OWNER's Exhibit D obligations have been fully performed to the extent required at the time of termination, any changes before or after termination to the Existing Land Use Regulations shall not be applicable to any phases of the Project for which the obligations of OWNER referenced in Exhibit E were satisfied on the date of termination. OWNER shall retain its vested right under this Agreement to complete those phases under the Existing Land Use Regulations through the original term of this Agreement as set forth in Section 8.1 above so long as OWNER performs all of the duties and obligations associated with those phases as set forth in Section 3.1. The assurances of this Agreement, however, shall not continue to apply after termination to any phases of development for which the Obligations of OWNER referenced in Exhibit E were not met at the time of termination.

9. AMENDMENT.

Subject to the provisions of Section 7 and Section 11, this Agreement may be amended or canceled only by the mutual agreement of the parties in accordance with Government Code Section 65868, in a writing executed by the parties and recorded in the official records of COUNTY.

10. PROCESSING OF REQUESTS AND APPLICATIONS.

COUNTY shall process any applications for action pursuant to this Agreement, or for permits or approvals for Development of the Property, under the procedures for the processing of applications for such applications which are then in effect; provided, however, as provided in Section 4, no subsequently adopted Regulation (including, without limitation, any moratorium or other phasing of development) shall be applicable and delay the acceptance or processing of any such application except in strict accordance with the Existing Land Use Regulations or Land Use Regulations adopted by COUNTY pursuant to the Reservations of Authority. As provided above, the standards applied in approving or disapproving such applications shall be as set forth in the

Existing Land Use Regulations, subject to the Reservations of Authority.

11. DEFAULT AND REMEDIES.

11.1 Remedies in General.

It is acknowledged by the parties that COUNTY would not have entered into this Agreement if it were to be liable in damages under or with respect to this Agreement or the application thereof.

a. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement; except that COUNTY shall not be liable in damages to OWNER, or to any assignee, transferee of OWNER or any other person, and OWNER covenants not to sue for or claim any damages, for:

(i) any breach of, or which arise out of, this Agreement;

(ii) the taking, impairment or restriction of any right or interest conveyed or provided hereunder or pursuant hereto; or

(iii) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement;

b. provided, however, that the foregoing does not limit the liability of COUNTY, if any, for damages which:

(i) are not for a breach of this Agreement or which do not arise under this Agreement;

(ii) are not with respect to any right or interest conveyed or provided hereunder or pursuant hereto; and

(iii) do not arise out of or which are not connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement to, on or the application of, any Regulation of COUNTY.

Without limiting the generality of the foregoing, and as an example, in the event that COUNTY refuses to issue building permits under and in accordance with a Vesting Tentative Map approved by COUNTY, OWNER would be entitled to whatever remedies at law or in equity which are available, including, if available under law, the right to monetary damages.

11.2 Termination of Agreement for Default of OWNER.

COUNTY in its discretion may terminate this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under, or to comply in good faith with the terms of, this Agreement (hereinafter referred to as "default"); provided, however, COUNTY may terminate this Agreement pursuant to this Section only after providing written notice to OWNER of the default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 30 days after the effective date of such notice or, in the event that such default cannot be cured within such 30 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 30 day period and to diligently proceed to complete such actions and cure such default. COUNTY shall provide OWNER an opportunity to be heard concerning any proposed termination prior to any final action by COUNTY.

11.3 Termination of Agreement for Default of COUNTY.

OWNER in its discretion may terminate this Agreement by written notice to COUNTY after the default by COUNTY in the performance of a material term of this Agreement and only after notice by OWNER thereof to COUNTY and, where the default can be cured, the failure of COUNTY to cure such default within 30 days after the effective date of such notice or, in the event that such default cannot be cured within such 30 day period, the failure of COUNTY to commence to cure such default within such 30 day period and to diligently proceed to complete such actions and to cure such default.

11.4 Specific Performance.

The parties acknowledge that monetary damages and remedies at law generally are inadequate and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to both parties based on the following reasons and facts:

a. the unavailability of monetary damages against COUNTY provided in Section 12.1 hereinabove;

b. OWNER's Obligations provided for in Section 3 were bargained for by COUNTY and given in return for assurances by COUNTY to OWNER regarding the Regulations that would be applicable to the Development of the Property, which assurances were in turn relied upon by OWNER in undertaking OWNER's Obligations;

c. due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun; after such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property, or portions thereof, and provide other benefits; OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sums of money which would adequately compensate OWNER for such efforts;

d. the inability of OWNER to recover and receive back its capital investment in the Public Facilities to be provided to COUNTY as part of OWNER's Obligations and to replan and provide for different uses of the Property once such facilities and infrastructure have been completed;

e. the use of the Property for the purposes and uses described in the Development Plan is unique; and

f. the public need and concern for the Public Facilities to be provided by OWNER as part of OWNER's Obligations as well as for the benefits that can be obtained from the long-term and comprehensive planning and stability contemplated by the Development Agreement Legislation.

Further, the parties acknowledge that for the reasons set forth above (particularly because of the lack of monetary damages available to OWNER), in connection with any judicial proceeding regarding the performance of this Agreement, rights, or the interests and duties of the parties hereunder, including a proceeding pursuant to Section 12.5, it is appropriate for, and the parties shall cooperate in requesting (whether by stipulations or otherwise) the court with jurisdiction to proceed expeditiously and to retain jurisdiction until the underlying conflict or dispute has been fully resolved.

11.5 Appointment of Referee.

As an alternative procedure hereunder, a party initiating legal action hereunder may request that the action be heard by a reference from the Orange County Superior Court pursuant to Code of Civil Procedure Sections 638 et seq. OWNER and COUNTY, in such case, shall use their best efforts to agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before him. If OWNER and COUNTY are unable to

agree upon a referee within ten (10) days of a written request to do so by either party, either party may seek to have a referee appointed pursuant to Section 640 of the Code of Civil Procedure. The cost of such proceeding (exclusive of the attorneys fees and cost of the parties) shall be borne equally by the parties. Any referee selected pursuant to this Section 12.5 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. In the event that an alternative method of resolving disputes concerning the application, enforcement or interpretation of development agreements is provided by legislative or judicial action after the Effective Date, the parties may, by mutual agreement, select such alternative method.

12. THIRD PARTY LITIGATION.

12.1 General Plan Litigation.

a. Litigation.

As set forth above, COUNTY has determined that this Agreement is consistent with the General Plan and that the General Plan meets all of the legal requirements of State law. OWNER has reviewed the General Plan and concurs with COUNTY's determination. The parties acknowledge that:

(i) there has been litigation challenging the legality, validity and adequacy of certain provisions of the General Plan;

(ii) in the future there may be other similar challenges to such provisions of the General Plan as well as others; and

(iii) if successful, such challenges could delay or prevent the performance of this Agreement and the Development of the Property.

In addition to the other provisions of this Agreement, including, without limitation, the provisions of Section 12, COUNTY shall have no liability under this Agreement for any failure of COUNTY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan or this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

b. Revision of General Plan.

If for any reason the General Plan or any part thereof is hereafter judicially determined as provided above

to be invalid or inadequate or not in compliance with the State or federal Constitutions, laws or regulations, this Agreement shall remain in full force and effect and upon the adoption or amendment of any General Plan provision which is necessary in order to comply with State or federal Constitutions, laws or regulations to cure such invalidity or inadequacy, together with any amendments of the Development Plan and the Land Use Regulations which are necessary in order to comply with the portions of such new or revised General Plan which are necessary to avoid the invalidation of this Agreement, the reference in Section 4 to the General Plan shall thereafter mean and refer to such portions of the new or amended General Plan and such amendments in the Development Plan and Land Use Regulations.

c. Suspension of Obligations.

In the event that Development of the Property is enjoined or prevented from proceeding by any judicial order or determination in connection with the determinations regarding the General Plan referred to above and the subsequent proceedings with respect thereto referred to in Paragraph b. of this Section, the time for performance of the obligations of the parties hereunder shall be extended as provided in Section 17.11.

d. Option to Terminate.

In the event that any such amendments of the General Plan or the Development Plan or Land Use Regulations result in a reduction in the number of units or the density or intensity, or timing, sequencing or phasing of Development or otherwise adversely impact the Economic Expectations of OWNER in connection with the Project, OWNER may terminate this Agreement by notice in writing to COUNTY and recorded in the official records of COUNTY.

13. ESTOPPEL CERTIFICATE.

Either party may, at any time, and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party, (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting party is not in default in the performance of its obligations under this Agreement, or if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. The Director of the Environmental Management Agency of COUNTY (or his designee) shall have the right to execute any certificate requested by

OWNER hereunder. COUNTY acknowledges that a certificate hereunder may be relied upon by transferees and Mortgagees. In accordance with Section 12, COUNTY shall have no liability for monetary damages to OWNER, any Transferee or Mortgagee, or any other person in connection with, resulting from or based upon the issuance of any certificate hereunder.

14. EFFECT OF AGREEMENT ON TITLE.

14.1 Covenants Run With The Land.

Subject to the provisions of Sections 6 and 16:

a. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring any rights or interests in the Property, or any portion thereof, whether by operation of laws or in any manner whatsoever and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns;

b. All of the provisions of this Agreement shall be enforceable as equitable servitude and constitute covenants running with the land pursuant to applicable law;

c. Each covenant to do or refrain from doing some act on the Property hereunder (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with such lands and (iii); is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person having any interest therein derived in any manner through any owner of such lands, or any portion thereof, and shall benefit each party and its lands hereunder, and each other person succeeding to an interest in such lands.

Notwithstanding any of the foregoing or in this Agreement to the contrary, any assignee or transferee or Mortgagee which acquires any right or interest in or with respect to the Property or any portion thereof shall take and hold such rights and interests subject to this Agreement and shall not have been deemed to have assumed the OWNER's Obligations of the other affirmative duties and obligations of OWNER hereunder except:

(A) to the extent that any of such assignees, transferees or Mortgagees have expressly assumed any of the duties or obligations of OWNER hereunder;

(B) if any such assignee, transferee or Mortgagee accepts, holds, or attempts to exercise or enjoy the rights or interests of OWNER hereunder, it shall have assumed the obligations of OWNER under Section 12; and

(C) to the extent that the performance of any duty or obligation by OWNER is a condition precedent to the performances of a covenant by COUNTY, it shall continue to be a condition to COUNTY's performance hereunder.

14.2 No Dedication or Lien.

Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, the title to the Property.

14.3 Termination Upon Final Sale.

As provided in Section 6.2, without the requirement of any further writing or action on the part of any party hereto, this Agreement shall terminate as to specific lots as provided therein.

15. MORTGAGEE PROTECTION; CERTAIN RIGHTS OF CURE.

15.1 Mortgagee Protection.

This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof, including the lien of any Mortgage. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof, by a Mortgagee (whether under or pursuant to a Mortgage, foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise), shall be subject to all of the terms and conditions contained in this Agreement.

15.2 Mortgagee Not Obligated.

Notwithstanding the provisions of Section 16.1 above, no Mortgagee shall have an obligation or duty under this Agreement to perform OWNER's Obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; except that to the extent that any covenant to be performed by OWNER is a condition to the performance of a covenant by COUNTY, the performance thereof shall continue to be a condition precedent to COUNTY's performance hereunder.

15.3 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

If COUNTY receives notice from a Mortgagee requesting a copy of any notice of default given OWNER hereunder and specifying the address for service thereof, and records a copy of each request in the official records of COUNTY in the manner required under Civil Code Section 2924b with respect to Requests for Notices of Default, then COUNTY shall deliver to such Mortgagee, concurrently with service thereon to OWNER, any notice given to OWNER with respect to any claim by COUNTY that OWNER has not complied in good faith with the terms of this Agreement or has committed an event of default. Each Mortgagee shall have the right (but not the obligation) for a period of ninety (90) days after the receipt of such notice from COUNTY to cure or remedy, or to commence to cure or remedy, the claim of default or noncompliance set forth in the COUNTY's notice. If the default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continuity through foreclosure, a receiver or otherwise, and shall thereafter remedy or cure the default or noncompliance within thirty (30) days after obtaining possession. If any such default or noncompliance cannot, with diligence, be remedied or cured within such thirty (30) day period, then such Mortgagee shall have such additional time as may be reasonably necessary to remedy or cure such default or noncompliance if such Mortgagee commences cure during such thirty (30) day period, and thereafter diligently pursues and completes such cure.

15.4 Bankruptcy.

Notwithstanding the foregoing provisions of Section 15, if any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving OWNER or COUNTY, the times specified in Section 15.3 for commencing or prosecuting foreclosure or other proceedings shall be extended for the period of the prohibition, provided that such Mortgagee is proceeding expeditiously to terminate such prohibition and in no event for a period longer than one year.

16. MISCELLANEOUS PROVISIONS.

16.1 Recordation of Agreement.

This Agreement and any amendment or cancellation hereof shall be recorded in the Official Records of COUNTY by the Clerk of the Board of Supervisors within the period

required by Section 65868.5 of the Government Code.

16.2 Entire Agreement.

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

16.3 Severability.

If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

16.4 Interpretation and Governing Law.

This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

16.5 Section Headings.

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

16.6 Singular and Plural.

As used herein, the singular of any word includes the plural.

16.7 Joint and Several Obligations.

If any obligation of OWNER hereunder to COUNTY is the obligation of more than one person, such obligation and any liability with respect thereto shall be joint and several among the obligees.

16.8 Time of Essence.

Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

16.9 Waiver.

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

16.10 No Third Party Beneficiaries.

The only parties to this Agreement are OWNER and COUNTY. This Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

16.11 Force Majeure.

Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond such party's control, government regulations, court actions (such as restraining orders or injunctions) or other causes beyond such party's control. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years or for a period which would cause this Agreement or provisions hereof to be void as violating the rule against perpetuities.

16.12 Attorneys' Fees.

In any action or undertaking to enforce the provisions of this Agreement, each of the parties hereto shall bear its own attorneys fees.

16.13 Mutual Covenants.

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

16.14 Notices.

All notices required or provided for under this Agreement shall be in writing and delivered in person or sent certified mail, postage prepaid and addressed as follows:

If to COUNTY:

Orange County Board of Supervisors
10 Civic Center Plaza
Santa Ana, California 92701
ATTN: Clerk of the Board

With a copy to:

Manager, Advance Planning Division
Environmental Management Agency
300 North Flower Street
PO Box 4048
Santa Ana, CA 92702-4048

If to OWNER:

Ladera Development Company LLC
28811 Ortega Highway
PO Box 9
San Juan Capistrano, CA 92693
ATTN: Mr. Steve Schrank

with a copy to:

Brobeck, Phleger & Harrison LLP
One Market Plaza, Spear Street Tower
San Francisco, CA 94105
ATTN: Stephen R. Finn, Esquire

Any notice given as required herein shall be deemed given seventy-two (72) hours after deposit in the United States mail or upon receipt. A party may change its address for notices by giving notice in writing to the other party as required herein and thereafter notices shall be addressed and transmitted to the new address.

16.15 Successors and Assigns.

The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

16.16 Counterparts.

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

OWNER:

Ladera Development Company, LLC
a Delaware Limited Liability Company

By: Richard J. Neill

Its: Chairman

By: Anthony R. Morso

Its: Chief Executive Officer

COUNTY

THE COUNTY OF ORANGE, a political subdivision of the State of California

By: Voyce K. Stanton

Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD.

ATTEST

By: Alim Davidson, Deputy
DARLENE J. BLOOM
Clerk of the Board of Supervisors,
County of Orange, California

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of CALIFORNIA

County of Orange

On December 3, 1996 before me, Kath Weathers Notary Public

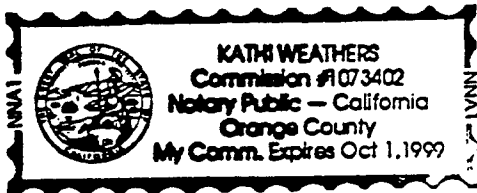
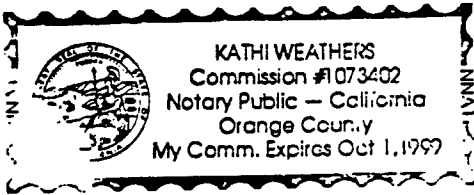
DATE

NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Richard J. O'Neill & Anthony R. Moiso

NAME(S) OF SIGNER(S)

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



WITNESS my hand and official seal.

Kath Weathers

SIGNATURE OF NOTARY

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
 CORPORATE OFFICER

TITLE(S)

- PARTNER(S)
 LIMITED
 GENERAL

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

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

DESCRIPTION OF ATTACHED DOCUMENT

Ladera Development Agreement
TITLE OR TYPE OF DOCUMENT

40

NUMBER OF PAGES

December 3, 1996
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A

Description of Property

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88304.33(A)
 10-02-95
 Revised
 10-04-95
 10-05-95
 10-10-95

**LEGAL DESCRIPTION
 FOR
 LADERA PLANNED COMMUNITY**

Parcel C of Lot Line Adjustment LL 95-007 in the Unincorporated Territory of the County of Orange, State of California, recorded October 5, 1995 as Instrument No. 19950438155 of Official Records in the office of the County Recorder of said County.

TOGETHER with those portions of Parcels B and D of said Lot Line Adjustment LL 95-007 described as follows:

Beginning at the Southeast corner of said Parcel C, said corner being the beginning of a curve concave Northeasterly having a radius of 2350.00 feet, a radial line to said corner bears South 68°51'34" West; thence Southeasterly 189.27 feet along said curve through a central angle of 4°36'53"; thence South 38°30'20" West 1609.46 feet; thence South 71°50'27" West 1032.04 feet; thence South 28°19'35" West 582.64 feet; thence South 60°44'14" West 1204.11 feet; thence North 85°45'13" West 453.81 feet; thence North 51°07'25" West 1085.55 feet; thence North 72°40'53" West 1136.82 feet; thence South 21°23'53" West 327.56 feet; thence South 63°07'51" West 1067.44 feet; thence North 62°44'08" West 854.43 feet; thence North 27°40'58" West 668.87 feet; thence North 17°11'34" East 609.20 feet; thence North 32°03'51" East 532.58 feet; thence North 24°46'49" West 438.71 feet; thence North 4°08'40" East 521.19 feet; thence North 20°06'59" West 2104.52 feet; thence North 7°19'40" East 2307.00 feet; thence North 38°25'25" East 269.13 feet to an angle point in the Westerly line of said Parcel C; thence along said Westerly line and the Southerly line of said Parcel C, the following courses: South 7°19'40" West 2403.72 feet, South 20°06'59" East 2198.92 feet, South 4°08'40" West 513.24 feet, South 24°46'49" East 511.95 feet, North 89°59'53" East 4885.00 feet, North 28°03'59" East 685.92 feet and North 89°59'53" East 1870.00 feet to the point of beginning.

ALSO TOGETHER with that portion of said Parcel B described as follows:

Beginning at the Southerly terminus of that certain course shown as "N 05°01'10" W 1453.50' " for a portion of the Easterly line of said Parcel C; thence North 5°01'10" West 130.04 feet along said Easterly line to a point on a non-tangent

LEGAL DESCRIPTION-CONTINUED
FOR LADERA PLANNED COMMUNITY
PAGE 2

88304.33(A)
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Revised
10-04-95
10-05-95
10-10-95

curve concave Northerly having a radius of 3000.00 feet, a radial line to said point bears South $2^{\circ}36'47''$ East; thence leaving said Easterly line, Easterly 243.63 feet along said curve through a central angle of $4^{\circ}39'11''$; thence South $9^{\circ}36'11''$ West 180.48 feet to a point on said Easterly line, said Easterly line being a non-tangent curve concave Northerly having a radius of 3000.00 feet, a radial line to said point bears South $5^{\circ}49'35''$ West; thence Westerly 203.08 feet along said curve and said Easterly line through a central angle of $3^{\circ}52'43''$ to the point of beginning.

ALSO TOGETHER with that portion of said Parcel B described as follows

Commencing at the Northwesterly terminus of that certain course shown as "N $43^{\circ}25'19''$ W 305.80' " for a portion of the Easterly line of said Parcel C, said terminus being also the beginning of a tangent curve concave Northeasterly having a radius of 2350.00 feet; thence Northwesterly 746.98 feet along said curve, being also said Easterly line, through a central angle of $18^{\circ}12'44''$ to the TRUE POINT OF BEGINNING, a radial line to said point bears South $64^{\circ}47'25''$ West; thence continuing Northwesterly and Northerly 1289.56 feet along said curve and said Easterly line through a central angle of $31^{\circ}26'28''$ to the Northerly line of said Parcel B; thence South $41^{\circ}43'07''$ East 185.09 feet along said Northerly line to a point on a non-tangent curve concave Easterly having a radius of 1800.00 feet, a radial line to said point bears North $76^{\circ}17'30''$ West; thence leaving said Northerly line, Southerly 1140.20 feet along said curve through a central angle of $36^{\circ}17'37''$ to the true point of beginning.

EXCEPTING therefrom that portion of said Parcel C described as follows:

Beginning at the Easterly terminus of that certain course shown as "N $78^{\circ}31'01''$ E 378.05' " for a portion of the general Northerly line of said Parcel C; thence along said general Northerly line, the following courses: North $20^{\circ}16'46''$ East 215.48 feet, North $64^{\circ}09'26''$ East 718.64 feet and South $41^{\circ}43'07''$ East 519.66 feet; thence leaving said general Northerly line, South $89^{\circ}14'24''$ West 470.43 feet to the Easterly prolongation of that certain course described above as "N $78^{\circ}31'01''$ E 378.05' "; thence South $78^{\circ}31'01''$ West 609.08 feet along said prolongation to the point of beginning.

ALSO EXCEPTING therefrom that portion of said Parcel C described as follows:

Beginning at the Northerly terminus of that certain course shown as "N $17^{\circ}23'18''$ E 1951.69' " for a portion of the Easterly line of said Parcel C; thence along said Easterly line, the following courses: South $17^{\circ}23'18''$ West 1951.69 feet, South

LEGAL DESCRIPTION-CONTINUED
FOR LADERA PLANNED COMMUNITY
PAGE 3

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10-05-95
10-10-95

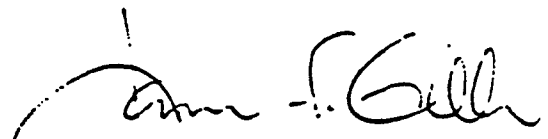
70°29'36" East 538.25 feet, South 17°36'32" East 1357.38 feet and South 53°53'50" West 396.54 feet; thence leaving said Easterly line, North 48°22'53" West 528.25 feet; thence North 23°01'01" East 316.44 feet; thence North 2°03'20" East 705.26 feet; thence North 78°16'17" West 396.24 feet; thence North 29°32'52" West 369.27 feet; thence North 7°00'28" East 347.38 feet; thence North 51°09'30" East 398.09 feet; thence North 6°49'21" East 495.55 feet; thence North 50°13'21" East 157.27 feet; thence North 9°36'11" East 655.05 feet to a point on said Easterly line, said Easterly line being a non-tangent curve concave Northerly having a radius of 3000.00 feet, a radial line to said point bears South 5°49'35" West; thence Easterly 160.63 feet along said curve and said Easterly line through a central angle of 3°04'04" to the point of beginning.

ALSO EXCEPTING therefrom that portion of said Parcel C described as follows:

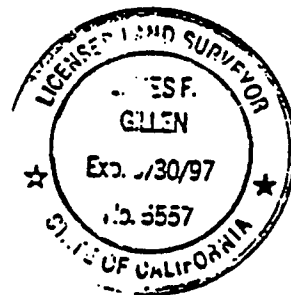
Beginning at the Northwestern terminus of that certain course shown as "N 43°25'19" W 305.80' " for a portion of the Easterly line of said Parcel C, said terminus being also the beginning of a tangent curve concave Northeasterly having a radius of 2350.00 feet; thence Northwesternly 746.98 feet along said curve, being also said Easterly line, through a central angle of 18°12'44" to a point of cusp with a tangent curve concave Northeasterly having a radius of 1800.00 feet, a radial line to said point bears South 64°47'25" West; thence leaving said Easterly line, Southerly 654.60 feet along said curve through a central angle of 20°50'12" to a point of tangency with the Northwesternly prolongation of that certain course described above as "N 43°25'19" W 305.80' "; thence South 43°25'19" East 94.20 feet along said prolongation to the point of beginning.

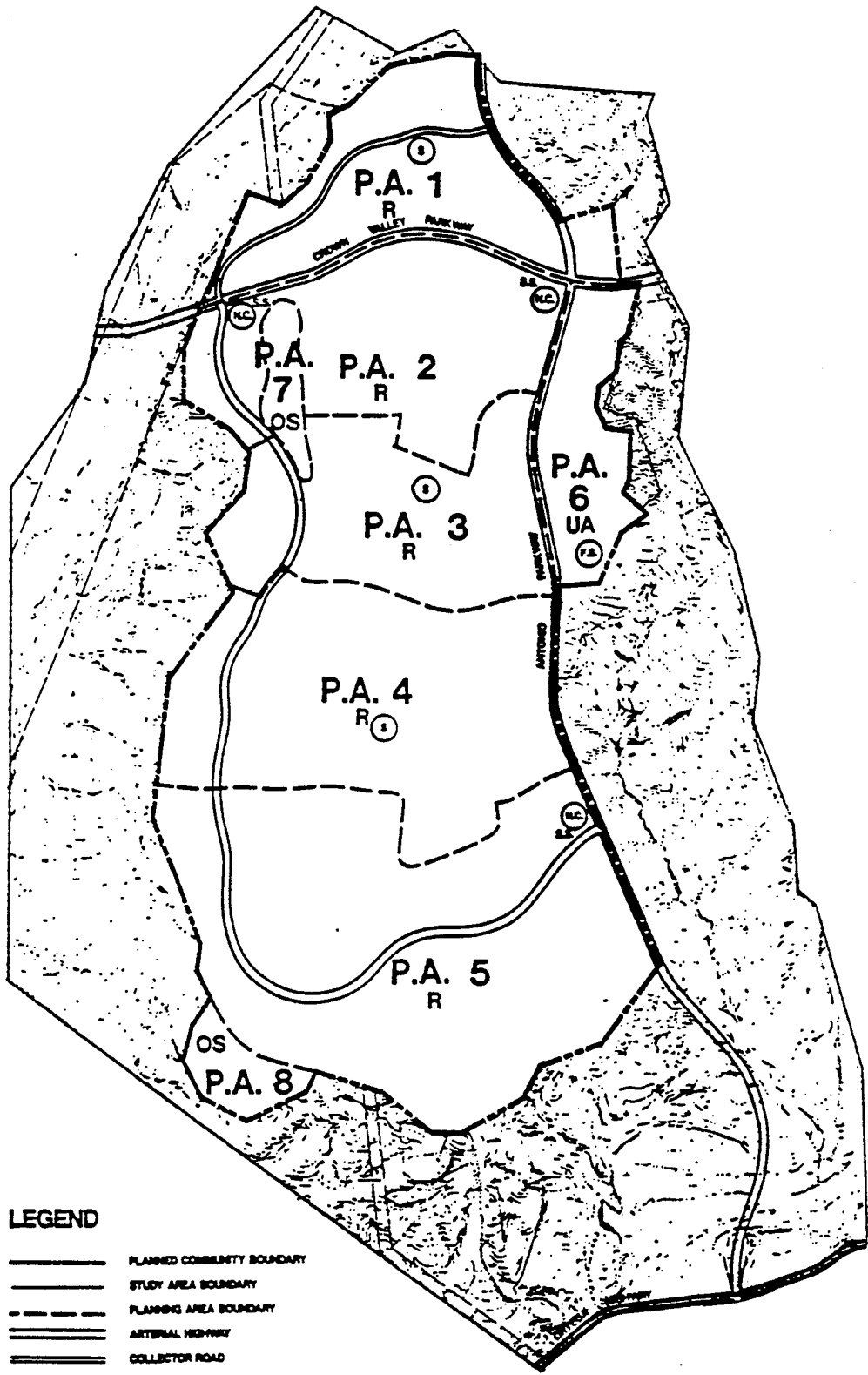
Contains an area of 2390.008 acres, more or less.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements, if any, of record.



JAMES F. GILLEN, LS 5557





LEGEND

- PLANNED COMMUNITY BOUNDARY
- STUDY AREA BOUNDARY
- - - - - PLANNING AREA BOUNDARY
- ==== ARTERIAL HIGHWAY
- ==== COLLECTOR ROAD
- P.A. 3 PLANNING AREA NO.
- Ⓜ NEIGHBORHOOD CENTER / COMMERCIAL
- Ⓝ FIRE STATION
- Ⓢ SCHOOL
- Ⓟ SERVICE STATION
- OS OPEN SPACE
- R RESIDENTIAL
- UA URBAN ACTIVITY

LADERA PLANNED COMMUNITY DEVELOPMENT PLAN

PLANNING AREA	RESIDENTIAL			URBAN ACTIVITY		COMM.		OPEN SPACE		PUBLIC FACILITIES			TOTALS		COMMUNITY PROFILE	
	MAXIMUM DWELLING UNITS	NET ACRES*	NET DENSITY	NET ACRES*	MAX. SF. (000)	NET ACRES	MAX. SF. (000)	OPEN SPACE NET ACRES	LOCAL PARK NET ACRES*	COMMUNITY FACILITIES NET ACRES*	SCHOOL NET ACRES**	ARTERIAL ROADS NET ACRES*	GROSS ACRES	GROSS DENSITY	CATEGORY	RANGE
1	1140	221	5.2						7		10	11	249	4.6	141	MEDIUM DENSITY 3.5-5.0 DU/AC.
2	1880	333	5.6			**	**		11			17	386	4.9	141	MEDIUM DENSITY 3.5-5.0 DU/AC.
3	1670	289	5.8						10		20	10	329	5.1	142	MEDIUM DENSITY 5.0-6.5 DU/AC.
4	1650	472	3.5						11		10	10	503	3.3	133	MED. LOW DENSITY 2.0-3.5 DU/AC.
5	1560	674	2.4			**	**		20			27	721	2.2	131	MED. LOW DENSITY 2.0-3.5 DU/AC.
6	200			m	854					1		8	120	13	6.0	URBAN ACTIVITIES CENTERS
7								42					42		5.1	REC.
8								40					40		5.1	REC.
TOTALS	8100	1989		m	854	25	275	82	59	1	40	83	2390			

- * NET ACRES AS REFLECTED IN THIS TABLE INCLUDE SLOPES.
- ** TOTAL COMMERCIAL ACREAGE NOT TO EXCEED 25 AC.
TOTAL COMMERCIAL SQ. FT. NOT TO EXCEED 275,000 SQ. FT.
- *** SCHOOL SITE SIZE MAY VARY DEPENDING ON DISTRICT REQUIREMENTS.

LADERA PLANNED COMMUNITY STATISTICAL TABLE

EXHIBIT B

Existing Land Use Regulations

LADERA DEVELOPMENT AGREEMENT

EXHIBIT B

Existing Land Use Regulations

The following list is intended to reflect the principal Land Use Regulations in effect on the Approval Date. It does not, and is not intended to represent, an exhaustive study of County files to identify each and every Land Use Regulation in effect on the Approval Date. Either OWNER or COUNTY may establish independently in the future that a Land Use Regulation not listed below was, in fact, in effect on the Approval Date.

Those Land Use Regulations in effect on the Approval Date include:

1. Land Use Ordinances -

As of the Approval Date, the Land Use Ordinances applicable to the Property are:

- a. Ordinance No. _____ by which County adopted this Development Agreement;
- b. COUNTY's General Plan including:
General Plan Amendments - Land Use Element Amendment 95-3/
Community Profile Amendment 95-2 and
Transportation Element
Amendment 95-2- (Resolution No. 95-783)
- c. The Codified Ordinances of the County of Orange as in effect on the Approval Date including:
Zone Change 94-5 (Ordinance No. 3945)

2. Development Approvals -

As of the Approval Date, the Development Approvals applicable to the Property are:

- a. Final Environmental Impact Report No. 555
(Resolution No. 95-782)
- b. Site Development Permit PA960035
- c. Negative Declaration No. IP96-30
- d. Antonio Parkway 4(d) Rule Interim Take
Permit/Interim Habitat Loss Mitigation Plan

This Exhibit B shall be adjusted to reflect any Development Approvals occurring between the Approval Date and the Effective Date.

3. Development Exactions:

As of the Approval Date, Development Exactions include all Development Exactions set forth as Conditions of Project approval and identified in the ordinances and resolutions adopted by COUNTY authorizing (i) approval of this Agreement (ii) certification of EIR No. 555 and (iii) approval of the General Plan Amendments and Zone Change for the Ladera Planned Community.

4. Mitigation Monitoring Program

On October 17, 1995, COUNTY's Board of Supervisors approved a Mitigation Monitoring Program for the Project. This program sets forth mitigation measures for the project which were identified in EIR No. 555 for Antonio Parkway and the Ladera Planned Community, as well as other Project conditions required by COUNTY for development of the Property.

This Exhibit B shall be modified to reflect any changes in the Mitigation Monitoring Program occurring between the Approval Date and the Effective Date.

MW:ramPA03-217
(6291)6101708150912

EXHIBIT C

Memorandum of Understanding Regarding The
Prima Deshecha Landfill Between COUNTY
and the City of San Juan Capistrano

**MEMORANDUM OF UNDERSTANDING
REGARDING
THE PRIMA DESHECHA LANDFILL**

between

THE CITY OF SAN JUAN CAPISTRANO

and

THE COUNTY OF ORANGE

TABLE OF CONTENTS

PREAMBLE	1
SECTION 1. GENERAL PLAN AMENDMENT/GENERAL DEVELOPMENT PLAN	1
A. Road Improvements	2
B. Ridgeline Preservation	3
C. Sound/Visual Berms	3
D. Park Use Financing Plan	3
E. Traffic Circulation	3
SECTION 2. SOLAG RELOCATION	4
SECTION 3. HOST FEE	4
SECTION 4. TONNAGE LIMITATIONS	4
SECTION 5. RECIPROCAL COOPERATION	5
A. Processing General Development Plan	5
B. Cooperation on Antonio Parkway	5
C. Cooperation on Solid Waste Facilities Permit	5
SECTION 6. STATUS OF CITY AND INDEMNIFICATION	5
SECTION 7. REPORTS AND INFORMATION	6
SECTION 8. BINDING EFFECT	6
SECTION 9. EXHIBITS INCORPORATED	6
SECTION 10. FORCE MAJEURE	6
SECTION 11. NOTICES	7
SECTION 12. AMENDMENTS	7
EXHIBIT A. MAP OF LANDFILL AREA	8
EXHIBIT B. PROJECT SCHEDULE	9

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN JUAN CAPISTRANO
AND THE COUNTY OF ORANGE REGARDING
THE PRIMA DESHECHA LANDFILL**

This Memorandum of Understanding is made and entered into this 12TH day of September, 1995, by and between the County of Orange, hereinafter referred to as the "COUNTY" and the City of San Juan Capistrano, hereinafter referred to as the "CITY."

PREAMBLE

The Prima Deshecha Landfill "LANDFILL" is one of the three active landfills owned and operated by the COUNTY as part of its landfill system. By COUNTY Ordinance, COUNTY may contract to provide solid waste disposal services to governmental entities and/or solid waste haulers for municipal solid waste originating outside of the COUNTY ("Out-of-County Waste") provided said contracts meet certain conditions specified in Orange County Codified Ordinance ("OCCO") § 4-3-116. The COUNTY is considering entering into contracts to accept Out-of-County Waste at the LANDFILL. It is the intent of the COUNTY to participate in the mitigation of any potential impacts on the CITY.

The purpose of this Memorandum of Understanding is to identify the understanding of the parties as to how the COUNTY will reasonably mitigate these impacts on the CITY.

The COUNTY is currently under a Stipulated Order of Compliance and Agreement in operating the LANDFILL. The present Solid Waste Facility Permit (SWFP) was authorized at a time when the LANDFILL was operating at a level of approximately seven hundred and fifty (750) tons per day. The COUNTY is currently accepting approximately eleven hundred (1,100) tons per day of the municipal solid waste at the LANDFILL and is presently submitting a request for a revised SWFP for authorization to operate the LANDFILL at a proposed four thousand (4,000) tons per day. Any contracts entered into for disposal services of Out-of-County Waste shall not cause the tonnage to exceed four thousand (4,000) tons per day.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

SECTION I. GENERAL PLAN AMENDMENT/GENERAL DEVELOPMENT PLAN.

CITY has received a payment of twenty thousand dollars (\$20,000) from COUNTY which represents the deposit for processing the COUNTY's application for General Plan Amendment. Any unused balance shall be refunded to COUNTY.

A Road Improvements - If COUNTY begins accepting Out-of-County Waste at the LANDFILL, COUNTY shall be lead agency for design and construction of Antonio Parkway, a minimum four-lane roadway between Oso Parkway and Ortega Highway, by May 31, 1999. COUNTY shall be responsible for certification of an Environmental Impact Report ("EIR") by the Board of Supervisors, contribution of right-of-way from the property owners, setting aside sufficient funds for its design, construction, maintenance, drainage, slopes and environmental mitigation, including the cost of clearing any title obligations.

It is further agreed that in order to accept Out-of-County Waste at the LANDFILL that the following schedule of events must be met:

i. COUNTY Board of Supervisors shall set aside all funding for the design and construction of Antonio Parkway in accordance with the following schedule:

COUNTY shall accumulate gas tax funds over two (2) successive fiscal years beginning in 1995-96. COUNTY shall include with its adopting resolutions for its budget, a finding that the funding, design and expedited construction of Antonio Parkway between Oso Parkway and Ortega Highway is its highest priority capital project. In addition, this agreement, including this budget priority, shall be included as an executory contract to be assumed under any "Plan of Adjustment" to be filed by the Bankruptcy Court.

ii. COUNTY Board of Supervisors shall "Award Contract" for construction of Antonio Parkway by December 31, 1997.

iii. Start of construction to commence within 90 days of award of contract and be maintained as a continuous operation until completion, except for delays caused by acts of nature.

iv. Antonio Parkway to be completed not as a toll road and open for public use no later than May 31, 1999.

If the above stated schedule is not met, the COUNTY will cease acceptance of all Out-of-County Waste at the LANDFILL until said milestones have been met. The COUNTY shall hold CITY harmless from any claims that may arise due to other contractual agreements that COUNTY has with separate third parties related to the construction of Antonio Parkway. CITY agrees not to interfere with any contracts between COUNTY and third parties. Changes to the above schedule may be discussed as part of a thirty (30) day meet and confer period prior to the expiration of the above dates. Any extension of the above performance dates can only be authorized upon agreement of both COUNTY and CITY.

COUNTY will not submit an application for revision of SWFP No. 30-AB-0019 subsequent to the application for revision of SWFP No. 30-AB-0019 currently being reviewed by the staff of the Local Enforcement Agency ("LEA") and California Integrated Waste Management Board ("CIWMB") until a contract has been awarded for the construction of Antonio Parkway.

COUNTY agrees to incorporate the above construction schedule for Antonio Parkway as a mitigation measure in the EIR currently being prepared for the CITY's General Plan Amendment and the COUNTY's General Development Plan ("GDP") for the LANDFILL. Said mitigation measure shall be in full force and effect in accordance with the provision of the California Environmental Quality Act ("CEQA").

B. Ridgeline Preservation - The COUNTY will install and maintain final landfill grades which result in no silhouetting above and along the General Plan - designated "major ridgeline" which forms the northern and western edges of the LANDFILL site boundary such that no landfill operations or placement of landfill materials will visually encroach upon the designated General Plan ridgeline or be viewed from Ortega Highway.

C. Sound/Visual Berms - COUNTY agrees to construct an earthen berm per Exhibit A in order to buffer residential units from noise generated by vehicles travelling to LANDFILL on La Pata. Said berm shall be a minimum four to five (4 to 5) feet high, and nine hundred (900) feet long and be designed such that it may be constructed so as to not require the acquisition of any additional right-of-way by the COUNTY. Further, berm shall be designed to be accommodated by existing topography, without requiring retaining structures or significant grading. Construction should include hydroseeding or other method of erosion control. COUNTY agrees to repair berm as necessary. The berm is to be constructed prior to importation of Out-of-County Waste to LANDFILL in 1997.

D. Park Use Financing Plan - COUNTY agrees that the GDP will include a requirement that the ultimate recreational uses to be established on the site within CITY limits following closure of the landfill operations shall be mutually agreed upon by COUNTY and CITY. It is further agreed that the GDP will include a financial analysis and financial plan.

E. Traffic Circulation - Any agreement for Out-of-County Waste will require that Out-of-County Waste be delivered via I-5 Freeway to Ortega Highway to La Pata Avenue. Any other alternate route must be approved by the Director of Engineering and Building or his designee. CITY's approval shall not be unreasonably withheld.

Any agreement for Out-of-County Waste will require that Out-of-County Waste be delivered to the LANDFILL in transfer trailer vehicles, approximately twenty (20) tons of cargo, so as to reduce adverse traffic impacts unless approved in writing by City Manager or his designee.

SECTION 2. SOLAG RELOCATION.

When an application is submitted, COUNTY will expedite review of conditional use permits within ninety (90) days excepting appeals for the relocation of Solag Disposal Company to property owned by the San Juan Company, a California limited partnership, and San Juan Partnership No. I, a California limited partnership, or any property whereby COUNTY has jurisdiction over the land use permit process or construction permit process, and COUNTY will not unreasonably withhold permits for such relocation.

SECTION 3. HOST FEE.

The COUNTY will pay the CITY no less than eighty-one cents (\$.81) per ton for each ton of Out-of-County Waste deposited in the LANDFILL, regardless of whatever tip fee is finally negotiated, for as long as such Out-of-County Waste continues to be deposited in the LANDFILL ("Host Fee"). Said Host Fee is mitigation for LANDFILL access only and is not compensation for acceptance of solid waste.

Payment of the Host Fee will be made quarterly within one (1) month of the close of collection for the quarter for all loads which are composed of Out-of-County Waste. A subsequent payment will be made within twenty (20) days of receipt of origin of waste data from the hauler of any mixed loads composed of both Out-of-County Waste and In-County Waste. Mixed loads shall be prorated. Should the COUNTY's gate fee be increased after the COUNTY begins providing disposal services for Out-of-County Waste, the Host Fee will be adjusted. The adjustment to the Host Fee will be made according to the following formula utilizing a floating decimal. The new adjusted Host Fee will be rounded to the nearest whole cent.

$$N = C \times (A/B)$$

A = The new adjusted gate fee for Out-of-County Waste

B = The current gate fee for Out-of-County Waste

C = The current Host Fee for the CITY

N = The new Host Fee for the CITY

SECTION 4. TONNAGE LIMITATIONS.

Landfill operation will be limited to a maximum of four thousand (4,000) tons per day of municipal solid waste for the length of time the LANDFILL is in operation.

Any SWFP issued by the State of California or LEA shall specifically stipulate a maximum daily tonnage limitation of four thousand (4,000) tons per day and an annual tonnage limitation (based

on three hundred and seven [307] operating days per year) of one million, two hundred and twenty-eight thousand (1,228,000) tons of municipal solid waste.

Importation shall begin January of 1997, and shall not exceed two thousand (2,000) tons per day for any day prior to completion of Antonio Parkway. Antonio Parkway shall not be constructed as a toll road. If construction of Antonio Parkway is not completed by May 31, 1999, COUNTY will discontinue use of LANDFILL for the disposal of Out-of-County Waste, and shall cease all LANDFILL operation above two thousand (2,000) tons per day of municipal solid waste of any kind, including In-County Waste. Said limitations shall remain in effect until Antonio Parkway is completed and open to public traffic.

SECTION 5. RECIPROCAL COOPERATION.

A. Processing General Development Plan - The CITY will proceed with processing the application submitted by the COUNTY for an amendment to its General Plan reflecting the interim landfill use of the site occupied by the LANDFILL and will present that amendment to the City Council no later than November 21, 1995. In order to meet this obligation, the COUNTY shall submit a draft EIR to the CITY no later than September 22, 1995. The CITY and COUNTY agree to the schedule and milestones for processing the General Plan Amendment contained in Exhibit B, attached and incorporated by this reference excepting appeals. If CITY fails to meet its milestones for processing General Plan Amendments, CITY shall not object to COUNTY obtaining extensions of Senate Bill (SB) 17 (Craven)(Stats. 1995, Chapter 4 uXX).

B. Cooperation on Antonio Parkway - CITY shall cooperate with COUNTY in providing necessary information and other actions required by the COUNTY in the preparation and certification of the EIR for both Antonio Parkway and the LANDFILL GDP and process any necessary permits, right of entry agreement, and applications involved in the funding and construction of the road.

C. Cooperation on Solid Waste Facilities Permit - The CITY will cooperate with the COUNTY by providing the COUNTY with any necessary documents or clearances required by the LEA or the CIWMB so as to enable the COUNTY to complete its pending permit revision application, including, but not limited to information required by Public Resources Code Section 50000.5. Once CITY has acted on the General Plan Amendment, CITY shall provide LEA and CIWMB with records of action.

SECTION 6. STATUS OF CITY AND INDEMNIFICATION.

The CITY and COUNTY desire to leave no doubt as to their respective roles, and that by entering into this Memorandum of Understanding, CITY is not thereby becoming an "Arranger" as that term is used in CERCLA § 107 (a)(3), and that it is the COUNTY, not the CITY, which is "Arranging For" the disposal of Out-of-County Waste in LANDFILL which may contain hazardous, toxic, harmful or corrosive substances.

COUNTY agrees to defend, indemnify and hold CITY, and its officers, employees and agents harmless for all claims, injury, death or damage to property resulting solely from the acts or omissions of the COUNTY, its officers, employees, agents for liability arising from any activity of the COUNTY, its officers, employees, agents taken pursuant to the provisions of this Memorandum of Understanding including liability arising due to delivery of Out-of-County Waste to the LANDFILL. CITY agrees to defend, indemnify and hold COUNTY, and its officers, employees and agents harmless for all claims, injury, death or damage to property resulting solely from the acts or omissions of the CITY, its officers, employees, agents for liability arising from any activity of the CITY, its officers, employees and agents taken pursuant to the provisions of this Memorandum of Understanding. If the CITY's negligence combines with the COUNTY's negligence to cause injury, the parties agree that liability will be apportioned as determined by a court of competent jurisdiction. Neither party shall request a jury apportionment.

SECTION 7. REPORTS AND INFORMATION.

The CITY reserves the right to inspect the records of the COUNTY and the right to audit and to recompute any amounts deemed payable under this Memorandum of Understanding. Any such audit must be at CITY expense and take place within thirty-six (36) months of the close of each of the fiscal years. Any additional amount due must be paid within thirty (30) days following written notice to the COUNTY by the CITY. This notice shall include a copy of the audit report.

SECTION 8. BINDING EFFECT.

Each covenant, obligation, and condition contained in this Memorandum of Understanding shall inure to the benefit of and be binding upon the parties to this Memorandum of Understanding. If LANDFILL is transferred by COUNTY, COUNTY will provide in any such agreement that subsequent operator will comply with all requirements of this Memorandum of Understanding, which apply to the operation of the LANDFILL.

SECTION 9. EXHIBIT INCORPORATED.

Exhibits "A" through "B" are attached to and incorporated in this Memorandum of Understanding by reference.

SECTION 10. FORCE MAJEURE.

Should the performance of the obligations of either party under this Memorandum of Understanding be interrupted or delayed by any occurrence not occasioned by the conduct of either party to this Memorandum of Understanding, whether that occurrence is an act of God, war, civil insurrection, fire, flood, storm, strikes, lockouts, or by any law, regulation, or order of any federal or state court, that party's performance under this Memorandum of Understanding shall be excused for whatever period of time after the occurrence is reasonably necessary to remedy the effects of that occurrence.

SECTION 11. NOTICES.

Any notice required or permitted by this Memorandum of Understanding shall be in writing and sufficiently given if delivered in person or sent by certified or registered mail, postage prepaid, to the notice address of the respective parties set forth in this Memorandum of Understanding. Changes in the respective addresses to which such notices may be directed may be made from time to time by any party by notice to the other party. The present addresses of the parties are:

COUNTY: County of Orange
EMA/Integrated Waste Management Department
Attn: Director

Location for Direct Deliveries and Certified Mail:
320 North Flower Street, Suite 400
Santa Ana, CA 92703

Mailing Address:
P.O. Box 4048
Santa Ana, CA 92702-4048

CITY : City of San Juan Capistrano
Attn: City Manager

Mailing Address:
32400 Paseo Adelanto
San Juan Capistrano, CA 92675

SECTION 12. AMENDMENTS.

Neither this Memorandum of Understanding nor any provision hereof may be changed, modified, amended or waived except by written agreement duly authorized and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the dates opposite their respective signatures:

COUNTY OF ORANGE, a political subdivision of the State of California

DATED: 9-12-95

By: Gaddi Vasquez
Gaddi Vasquez, Chairman of its Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Kathleen E. Goodno
Kathleen E. Goodno, Acting Clerk of the Board of Supervisors of Orange County, California

APPROVED AS TO FORM:
LAURENCE M. WATSON CHIEF ASSISTANT COUNTY COUNSEL

Geoffrey K. Hunt DATED: 9/11/95
Geoffrey K. Hunt, Deputy

CITY OF SAN JUAN CAPISTRANO

DATED: September 19, 1995

By: Carolyn Nash
Carolyn Nash, Mayor

ATTEST:

Cheryl Johnson
Cheryl Johnson, City Clerk

APPROVED AS TO FORM:*

Richard K. Denhafer DATED: _____
Richard Denhafer, City Attorney of the City of San Juan Capistrano, California 9/19/95

*Note: document Exhibit A

19970027386

EXHIBIT A

TYPICAL SECTION

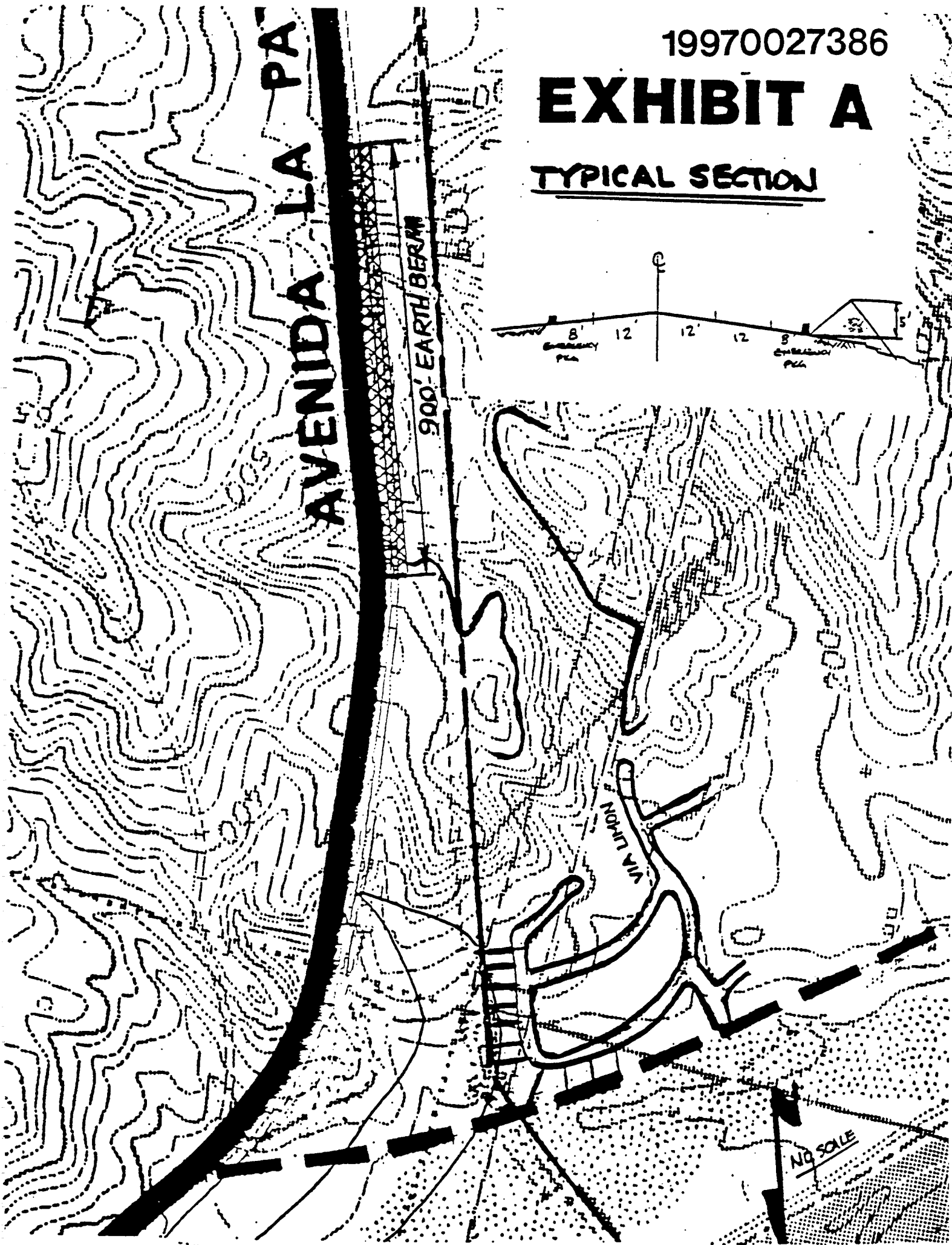


EXHIBIT B

PRIMA DESHECHA LANDFILL
 MOU & EIR 548
 PROJECT SCHEDULE

SEPTEMBER 5, 1995

- | | | |
|----|------------------------------------------------------------------|-----------------------------------------------------------------|
| A. | Prepare Revised Draft EIR - | August 24 through September 15, 1995 |
| B. | City Council Execute MOU -
Board of Supervisors Execute MOU - | September 8, 1995
September 12, 1995 |
| C. | Print Revised Draft EIR - | September 15 through September 17, 1995 |
| D. | Distribution of Revised Draft EIR - | September 18, 1995 |
| E. | 45-Day Public Review Period ¹ - | September 19 through November 2, 1995 |
| F. | Prepare Response to Comments - | November 2 through November 7, 1995 |
| G. | City/County Commission(s) - | Week of November 13th |
| H. | City Council/Certifies EIR/Adopts GPA -
B/S Certifies EIR - | November 21, 1995
November 21, 1995 (Special Meeting needed) |
| I. | Permit Approval by CIWMB - | December 1995 |

¹ The following items will begin during this period: staff reports, response to comments received early, mitigation monitoring and reporting program, findings of fact and statements of overriding consideration.

FIRST AMENDMENT
TO MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF SAN JUAN CAPISTRANO AND
THE COUNTY OF ORANGE REGARDING
THE PRIMA DESHECHA LANDFILL

This First amendment is made and entered into this 21 day of Nov, 1995, by and between the County of Orange, hereinafter referred to as "COUNTY", and the City of San Juan Capistrano, hereinafter referred to as "CITY", and is made to the Memorandum of Understanding between the parties dated September 12, 1995, hereafter collectively referred to as the MOU.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The Sound/Visual Berms Section, is amended by deleting Paragraph, Section 1, C Sound/Visual Berms in its entirety, and substituting the following:

Paragraph I, C, - Sound/Visual Berm

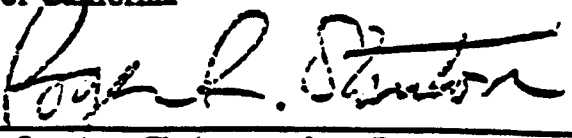
CITY and COUNTY agree to cooperate in the construction of an earthen berm per Exhibit A in order to buffer residential units from noise and view of vehicles traveling to LANDFILL on La Para. Said berm shall be approximately eight (8) feet high, and nine hundred (900) feet long. Berm shall be designed in a manner to minimize the need for extra right-of-way and to accommodate existing topography as much as possible. CITY and COUNTY shall agree on technical specifications of berm design prior to its construction. Should additional right-of-way be needed, CITY and COUNTY agree to cooperate in negotiations with appropriate landowner (s).

If the California Integrated Waste Management Board receives a letter from the City of San Juan Capistrano by November 27, 1995, which satisfies the General Plan Consistency requirements of Public Resources Code Section 50000, COUNTY shall pay total cost of said berm, including but not limited to, engineering and design, right of way acquisition and construction costs. Construction shall include hydroseeding or similar method of erosion control. COUNTY agrees to repair berm as necessary. Construction shall be completed within one (1) year of permit issuance. If General Plan Consistency finding pursuant to Section 50000 is not sent by City to the CIWMB by November 27, 1995, COUNTY's share of total cost shall be \$45,000 and construction shall begin at a date mutually agreed to by CITY and COUNTY.


All other terms and conditions of the agreement remain unchanged.

COUNTY OF ORANGE, a political subdivision of the State of California

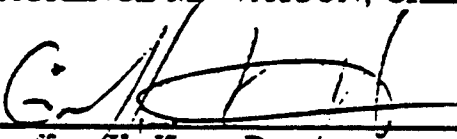
DATED: NOV 21 1995

By: 
Roger Stinson, Chairman of the Board of Supervisors

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD


Kathleen E. Goodno, Acting Clerk of the Board of Supervisors of Orange County, California

APPROVED AS TO FORM:
LAURENCE M. WATSON, CHIEF ASSISTANT COUNTY COUNSEL


Geoffrey R. Hunt, Deputy

DATED: 11/22/95

CITY OF SAN JUAN CAPISTRANO

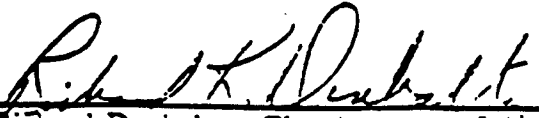
DATED: January 2, 1996

By: 
Wyatt Hart, Mayor

ATTEST:


Cheryl Johnson, City Clerk

APPROVED AS TO FORM:


Richard Denhalter, City Attorney of the City of San Juan Capistrano, California

DATED: 2/1/96

EXHIBIT D

Benefits to County and its Residents

EXHIBIT D

BENEFITS TO COUNTY AND ITS RESIDENTS

The public benefits to be received by COUNTY and its residents as a result of the Development Agreement ("Agreement") to which this Exhibit D is attached are summarized as follows:

TABLE D-1		
Principal Public Benefits Conferred Pursuant to This Agreement Which Are in Addition to Those Benefits Required by the Project Conditions of Approval		
PUBLIC BENEFIT	ASSURANCES	TIMING (FOR GREATER DETAIL, SEE EXHIBITS E & F)
Dedication and Construction of a 15-Acre Regional Sport Park in Addition to Local Park Code Requirement	Building Permit and Certificate of Use and Occupancy Milestones: Security for Phase Two Improvements	A) Grading of the entire Sports Park and installation of all field light standards concurrent with first grading phase for development B) Construction of 50% of Sports Park prior to the 1000th building permit and/or 300th certificate of use and occupancy (excluding model homes and apartments) C) Completion of all Sports Park improvements prior to the 3000th building permit and/or 2300th certificate of use and occupancy (excluding model homes and apartments)
Early Offer to Dedicate Right-of-Way for Antonio Parkway (160 Acres +/-)	Development Agreement Approval	A) Irrevocable offer to dedicate right-of-way subsequent to approval of Development Agreement B) Fee dedication of right-of-way with 60 days of COUNTY's submittal of deeds
Waiver of the Right to Receive Compensation from COUNTY for use of Open Space for Mitigation Purposes (200 Acres +/-)	Development Agreement Approval	A) Allow COUNTY to perform mitigation concurrent with First Grading Contract for Antonio Parkway without payment by COUNTY. B) Conditional offer to set-aside land and restrict uses concurrent with Development Agreement Approval
Offer to Dedicate Right-of-Way for La Pata Sound Berm (3.5 Acres +/-)	Development Agreement Approval	A) Allow COUNTY to enter property and construct sound berm concurrent with Antonio Parkway Construction Entry Permit (Phase 1) B) Irrevocable offer to dedicate right-of-way concurrent with Development Agreement Approval C) Fee dedication of sound berm area within 60 days of COUNTY's submittal of deed
Accelerated Payment to COUNTY for Project's Share of Antonio Parkway Extension Project	Building Permit Milestones	A) Starting with the 500th building permit, make payments consistent with the schedule shown in TABLE D-2 B) Pay total obligation for 8100 dwelling units prior to issuance of the 7001st residential building permit

Accelerated Payment to COUNTY for Project's Share of Off-Site Transportation Costs (Excluding Crown Valley Parkway in Mission Viejo)	Building Permit Milestones	A) Starting with the 500th building permit, make payments consistent with the schedule shown in TABLE D-2 B) Pay total obligation for 8100 dwelling units prior to issuance of the 7001st residential building permit
Project Assumption of Responsibility for Unfunded Regional Share of Antonio Parkway from Oso Parkway to Southerly PC Boundary	Development Agreement Approval; Building Permit Approval	OWNER shall design and construct ultimate widening of Antonio Parkway as provided for in GPA Conditions and Exhibit D as contained herein
Offer to Dedicate La Pata Road Right-of-Way (1.5 Acres +/-)	Development Agreement Approval	Fee dedication within 60 days of COUNTY's submittal of deed
Early Offer to Dedicate Right-of-Way for Ortega Highway (2.3 Acres +/-)	Development Agreement Approval	Fee dedication within 60 days of COUNTY's submittal of deed
Project Assumption of Responsibility for Unfunded Regional Share of Crown Valley Parkway from Easterly Mission Viejo Boundary to Easterly Ladera PC Boundary	Development Agreement Approval; Building Permit Milestones	OWNER shall design, construct and open Crown Valley Parkway to its ultimate 6-lanes as provided for in GPA Conditions and Exhibit D as contained herein
Dedication and Construction of Arroyo Trabuco Regional Riding and Hiking Trail	Development Agreement Approval; Building Permit Milestones	Construction and offer of dedication prior to the first residential building permit (excluding model homes)
Phased Open Space Conservation Easement of Approximately 1600 Acres with Potential for Fee Ownership by COUNTY	Development Agreement Approval	A) Development agreement permits COUNTY, under specified conditions, to acquire open space in fee twenty years after approval of development agreement B) Prior to first area plan approval, execute agreement with a phasing plan for recordation of conservation easements
Phased Contribution of \$250,000 for COUNTY General Purposes	Development Agreement Approval; Grading Permit Approval; Building Permit Milestones	A) \$25,000 within 30 days of execution of development agreement B) \$100,000 upon issuance of the first grading permit C) \$62,500 upon issuance of the 2000th building permit D) \$62,500 upon issuance of the 5000th building permit
Payment of Increased Fee for Sheriff Facilities	Development Agreement Approval; Building Permit Approval	A) Fee established through approval of development agreement B) Fee per Section VII of Exhibit D
Payment of Increased Fee for Library Facilities	Development Agreement Approval; Building Permit Approval	A) Fee established through approval of development agreement B) Fee per Section VI of Exhibit D

The public benefits are detailed as follows:

I. TRANSPORTATION

A. BACKGROUND INFORMATION

A General Plan Amendment ("GPA") and Zone Change for the Ladera Planned Community ("Ladera PC" or "Project") were approved by the Board of Supervisors on October 17, 1995. The environmental impacts of developing the Ladera PC were addressed in Environmental Impact Report No. 555 ("EIR No. 555"). The Ladera PC is subject to conditions ("Conditions of Approval") establishing certain obligations including the provision of specified public circulation improvements.

Obligations for on-site arterial highways pursuant to the Conditions of Approval include pro-rata participation in construction of both Antonio Parkway and Crown Valley Parkway as well as fair share obligations for related off-site roadway improvements. The Conditions of Approval include requirements for the dedication of right-of-way for Antonio Parkway and Crown Valley Parkway. A document entitled "Method for Establishment of Fair Share Capacity and Costs" dated October 29, 1996, lists several of the assumptions which were the basis of costs agreed to herein.

Project development is tied in large measure to the phased implementation of improvements to the on-site and off-site arterial highway systems. However, the Conditions of Approval do not specify the exact dates for satisfaction of the OWNER's obligation to dedicate right-of-way or construct improvements. Instead, construction is tied to development milestones. For example, certain improvements must be provided prior to the issuance of building permits for specified levels of Project development.

In furtherance of, and in addition to, the Conditions of Approval, this Agreement defines, quantifies, and memorializes the specific obligations of the OWNER to the implementation of circulation improvements which not only mitigate the Project's impacts but which also provide additional circulation benefits. The public benefits beyond the OWNER's pro-rata obligations are benefits pursuant to this Agreement. The benefits to the circulation system, and other public benefits, that are in addition to those required by the Conditions of Approval are summarized in TABLE D-1 above and described in detail below.

The adoption and implementation of this Agreement will satisfy or partially satisfy certain Conditions of Approval. Those Conditions of Approval which are fulfilled or partially fulfilled are listed in Exhibit F to this Agreement together with a brief explanation of how they are fulfilled. It will be noted that certain of the Conditions of Approval listed in

Exhibit F are being modified (pursuant to their terms), based on a supplemental traffic study approved by COUNTY. These modifications, which are effective with execution of this Agreement, primarily involve the fulfillment of the intent of the conditions. In the case of GPA Condition No. 24, requiring OWNER's participation in a Back Country Road Fee Program (BCRFP) to be established by COUNTY, requirements are being established in this Agreement in lieu of participation in a BCRFP (see Exhibit F). The satisfaction of these requirements by OWNER will provide public benefits equal to or greater than the BCRFP.

The provision of circulation improvements must consider other factors as well. For example, at the time COUNTY was processing the Ladera PC proposal, COUNTY was also developing bankruptcy recovery strategies. One strategy resulted in the execution of a Memorandum of Understanding ("MOU") with the City of San Juan Capistrano on September 12, 1995 (and amended on November 12, 1995) concerning the Prima Deshecha landfill ("Landfill") and the acceptance of Out-of-County Waste. The amended MOU is included as Exhibit C of this Agreement.

The MOU specifies certain obligations concerning Antonio Parkway as follows: "If County begins accepting Out-of-County Waste at the Landfill, County shall be lead agency for design and construction of Antonio Parkway, a minimum four-lane roadway between Oso Parkway and Ortega Highway, by May 31, 1999. County shall be responsible for certification of an Environmental Impact Report ("EIR") by the Board of Supervisors, contribution of right-of-way from the property owners, setting aside sufficient funds for its design, construction, maintenance, drainage, slopes and environmental mitigation, including the cost of clearing any title obligations." The MOU also specifies a schedule of events to facilitate completion of construction of Antonio Parkway (not as a toll road) and to make it available for public use no later than the May 31, 1999 deadline.

This Agreement does not alter the provisions of the MOU between the COUNTY and the City of San Juan Capistrano. To the contrary, although OWNER is not obligated under the Conditions of Approval to meet the MOU schedule for Antonio Parkway improvements (the "Antonio Parkway Extension Project"), it has agreed to work with COUNTY to meet that schedule as an additional public benefit pursuant to this Agreement.

B. ROADWAY IMPROVEMENTS

1. Antonio Parkway

OWNER has certain obligations concerning the dedication of rights-of-way and the construction of Antonio

Parkway from its existing terminus to Ortega Highway pursuant to the Conditions of Approval. These require the Project's participation for the funding of these improvements. The initial four lanes of Antonio Parkway from its existing terminus to Ortega Highway shall be constructed by COUNTY pursuant to its MOU with the City of San Juan Capistrano. However, as set forth in the following commitments, OWNER has agreed to contribute more than required by the Conditions of Approval and/or to provide for earlier compliance with certain Conditions of Approval. These additional public benefits are among these summarized in TABLE D-1 and are more particularly described as follows:

a. OWNER shall offer to dedicate in fee to COUNTY within sixty (60) days of COUNTY's submittal of deeds to OWNER all rights-of-way for Antonio Parkway (as said rights-of-way shall finally be established by mutual consent of OWNER and COUNTY) from its existing terminus south of Oso Parkway to Ortega Highway. Said right-of-way shall be sufficient to construct Antonio Parkway as a six lane major arterial highway. Said dedication shall be irrevocable and shall include the roadway and all permanent slopes on the east side of the Antonio Parkway adjacent to areas designated as open space, and the ultimate right-of-way southerly of the Ladera PC boundary through the open space area. Said dedication shall acknowledge COUNTY's obligations pursuant to Section 3.5 of this Agreement to construct the Antonio Parkway Extension Project. The subsequent Construction Entry Permit that provides for dedication shall reserve to OWNER all rights necessary for OWNER to enter the right-of-way and construct a roadway facility of sufficient capacity to accommodate all Project traffic in the event COUNTY for any reason fails to construct the Antonio Parkway Extension Project subject to normal public property permit requirements of COUNTY.

Said right-of-way shall be free and clear of any and all mortgages, deeds of trust, leases, delinquent taxes and monetary liens, but COUNTY shall take such right-of-way subject to the easements and other encumbrances shown in Attachment 1 to this Exhibit D. Said dedication shall be written in a manner meeting the approval of the Director, EMA, his successor or designee. OWNER shall in any event execute rights-of-way deeds prior to COUNTY opening Antonio Parkway for public use. COUNTY shall install and maintain all permanent non-irrigated drought tolerant landscaping for all manufactured slopes within the rights-of-way accepted by COUNTY at COUNTY's expense. OWNER and/or its successors or assignees shall have no responsibility for any future landscape enhancement or maintenance of said permanent slopes.

b. Pursuant to COUNTY Agreement No. D96-050, COUNTY and OWNER have entered into a Construction Entry Permit ("Phase 1 Entry Permit") for Phase 1 of the Antonio Parkway Extension Project. COUNTY and OWNER are also currently negotiating a

Construction Entry Permit for the remainder of the Antonio Parkway Extension Project. As required by the Phase I Entry Permit, and subject to all the terms and conditions set forth in a. above, OWNER shall transfer title to COUNTY of a mutually acceptable portion of the Phase 1 construction area for the roadway and all permanent slopes within sixty (60) days of COUNTY's request, at no cost to COUNTY. Notwithstanding any provisions to the contrary in the Phase 1 Entry Permit, COUNTY shall take fee title to the rights-of-way conveyed to it by OWNER.

c. OWNER shall pay to COUNTY 55% of the cost of the initial four (4) lane Antonio Parkway project (including bridges) from the existing terminus south of Oso Parkway to Ortega Highway based upon information contained in the supplemental traffic study prepared by Austin-Foust dated October 1996 and approved by COUNTY ("1996 Supplemental Traffic Study"). OWNER shall have no responsibility for the remaining 45% of the four-lane project cost. OWNER shall be responsible for the construction of the remaining two lanes of Antonio Parkway from its current terminus south of Oso Parkway to the southern boundary of the Planned Community as provided for in the General Plan Conditions of Approval. OWNER shall be responsible for 59% of the associated cost of constructing these remaining two lanes as further described in Section 5 herein.

d. OWNER proposes to accelerate payment of its Antonio Parkway obligation tied to issuance of residential building permits (with no distinction made between attached and detached units, and excluding milestones related to the issuance of building permits for non-residential construction). The total four-lane Antonio Parkway obligation will be paid to COUNTY prior to issuance of the 7001st residential building permit. Payments are proposed in 1000 unit increments from the 500th to the 4500th residential building permit and in 500 unit increments thereafter until the 7000th residential building permit. This accelerates payment compared to a rate proportioned to buildout of 8,100 residential building permits. A matrix of the proposed payment schedule is detailed in TABLE D-2 below.

TABLE D-2
 PAYMENT SCHEDULE FOR ANTONIO PARKWAY
 AND
 OFF-SITE TRAFFIC MITIGATION

Milestone (Cumulative Res Building Permits)	Percentage of Total Residential Units	Percentage of Total Obligations
0	0	0
500	6	11
1500	19	22
2500	31	34
3500	43	45
4500	56	58
5000	62	66
5500	68	73
6000	74	85
6500	80	93
7000	86	100

e. Access rights for Phase I of the Antonio Parkway Extension Project are addressed in the Phase I Entry Permit. Restricted access rights for grading, construction and/or the performance of other activities relating to the implementation of Phase II of Antonio Parkway as a four lane facility shall be granted by OWNER to COUNTY and its assigns or designees in conjunction with the Construction Entry Permit for that phase (Phase II Entry Permit). The Phase II Entry Permit shall be substantially in the form of the Phase I Entry Permit.

f. OWNER shall also grant to COUNTY restricted access rights for grading, construction and/or the performance of other activities relating to the implementation of future phases of Antonio Parkway to its ultimate six-lane configuration. Said access rights shall be in a form reasonably satisfactory to COUNTY and shall be granted to COUNTY within 60 days of its request.

g. In connection with grading of the Antonio Parkway Extension Project, COUNTY will be required to carry out riparian and oak woodland restoration, coastal sage scrub restoration and seasonal ponding restoration as mitigation. Pursuant to the Phase I Entry Permit, OWNER has granted COUNTY a non-exclusive, non-transferable license to use approximately 200 acres of the 1,600 acre Ladera PC open space area for the limited purpose of satisfying this mitigation requirement. The areas designated for mitigation in the Phase I Entry Permit contain more acreage than COUNTY may need for mitigation. The final areas for mitigation shall be approved by OWNER in accordance with the Phase I Entry Permit. OWNER

agrees that the requirement in the Phase I Entry Permit that COUNTY pay OWNER \$50,000 per acre for each acre used for mitigation of the four-lane roadway, excluding borrow sites and canyon fills, will be deleted upon approval of this Agreement by COUNTY (see Section II.A below).

2. Crown Valley Parkway

a. OWNER shall be responsible for construction of Crown Valley Parkway to its MPAH designation between the boundary of the City of Mission Viejo and the eastern PC boundary in accordance with the phasing schedule set forth in Exhibit E attached to this Agreement. OWNER's share shall be 72% of the cost of the construction of Crown Valley Parkway to its ultimate six-lane major arterial highway from the easterly boundary of the City of Mission Viejo to the easterly boundary of the Ladera PC as determined by the 1996 Supplemental Traffic Study. COUNTY may construct Crown Valley Parkway in lieu of OWNER upon mutual agreement of the parties to this Agreement.

Additional financial responsibilities of OWNER toward Crown Valley Parkway are described in Section 5 herein. Should COUNTY agree to take the lead to construct any or all segments of Crown Valley Parkway, COUNTY and OWNER shall enter into an agreement to define the role and responsibilities of each party. Said agreement shall be completed in a mutually acceptable time prior to the road construction milestone to facilitate execution of the obligations therein.

b) As an additional public benefit beyond that required by the Conditions of Approval, OWNER shall participate, on an accelerated basis, in study efforts to comply with Ladera PC GPA Conditions Nos. 24, 26, and 27 in order to establish OWNER's fair share and phasing requirements for Crown Valley Parkway in the City of Mission Viejo.

The above study efforts shall be in consultation with the City of Mission Viejo in order to establish the fair share basis for the required agreement between the City and OWNER related to Crown Valley Parkway. Said study shall be concluded to the reasonable satisfaction of COUNTY prior to issuance of the 2601st building permit.

c) The City of Mission Viejo may seek to partially fund Crown Valley Parkway improvements within the City and off-site (within lands owned by OWNER) from other sources. To the maximum extent feasible, COUNTY shall cooperate with the City in obtaining funds from other sources.

d) To the extent that such funds described in c. above are obtained and used for Crown Valley Parkway within OWNER's land, COUNTY may count these funds toward COUNTY's 35% obligation of the unfunded share for Crown Valley Parkway.

3. Off-site Traffic Mitigation Improvements

a. OWNER's responsibility for off-site traffic mitigation improvements ("Off-site Traffic Mitigation") is to pay COUNTY, pursuant to the milestones established in TABLE D-2, its fair share for said improvements. OWNER's fair share cost obligation and schedule of payment to the COUNTY is established herein.

b. The fair share costs of the Off-site Traffic Mitigation, including OWNER's obligation, have been established by the 1996 Supplemental Traffic Study prepared by Austin-Foust and the Concept Design and Engineers Estimate prepared by Williamson and Schmid dated October 1996, (1996 Engineers Estimate) both of which studies were prepared in accordance with COUNTY Growth Management Policies. The OWNER's share of Off-site Traffic Mitigation is \$3,325,000 which shall constitute the off-site cost cap for OWNER (OWNER's Cap) relative to this mitigation.

c. Pursuant to this Agreement, the COUNTY shall:

i. receive funds established as the OWNER's Cap for the Off-site Traffic Mitigation (excluding Crown Valley Parkway in the City of Mission Viejo) on an incremental basis as defined in TABLE D-2; and

ii. administer and disperse the funds to construct Off-site Traffic Mitigation projects.

d. COUNTY shall retain the flexibility to disburse said funds to an affected jurisdiction if said jurisdiction assumes all obligations to construct said improvements and relieves COUNTY and OWNER of all further obligations thereto.

e. Certain off-site improvements may require approval of other agencies such as cities, CalTrans and/or resource agencies. The Ladera PC is generally responsible for only a share of the total cost of these improvements. Because of these limitations, neither COUNTY nor OWNER have assurances that these improvements will be in place consistent with the timing depicted in the development milestones.

f. Compliance with the terms of this Agreement shall be the total obligation of OWNER towards the Off-site Traffic Mitigation, and no further exactions, limitations on phasing, or additional exactions shall be placed against OWNER or COUNTY with regard to the Off-site Traffic Mitigation.

4. Set Asides And Substitute Improvements

a. COUNTY shall set aside 21% of each incremental payment by OWNER for the four-lane Antonio Parkway payments provided

in TABLE D-2. The amount set aside shall not exceed a cumulative amount equal to the OWNER's Cap of \$3,325,000 established for OWNER pursuant to Section 3.b above and GPA Conditions of Approval Nos. 24 and 27 for Off-site Traffic Mitigation. COUNTY may use all incremental payments provided in TABLE D-2 plus interest, except this 21% set aside, for any eligible Road Fund purpose at the sole discretion of COUNTY.

b. COUNTY shall manage the funds set aside in a separate deposit account to be used solely for the purposes set forth in this Agreement and shall coordinate with the affected Growth Management Areas ("GMA's") to allocate money to roadway projects which satisfy the Off-site Traffic Mitigation. COUNTY, after determining compliance with the California Environmental Quality Act (CEQA), and obtaining the concurrence of GMA 9 and/or GMA 10, if such concurrence is necessary, may use the funds for alternate projects other than those identified in the Conditions of Approval and as further refined in the 1996 Supplemental Traffic Study and 1996 Engineers Estimate. In such event, neither OWNER's nor COUNTY's obligation for the Off-site Traffic Mitigation shall exceed the OWNER's Cap.

c. Prior to expenditure of funds for an alternate project, COUNTY and, if necessary, the affected GMA must approve in writing that OWNER has complied with GPA Conditions of Approval Nos. 24 and 27 and associated mitigation measures and shall acknowledge in reviewing any future PC's or other developments of OWNER, that the OWNER's share of off-site mitigation improvements will be considered satisfied as completed. Neither OWNER nor COUNTY shall have any further responsibility for said Project improvements.

d. The amount of funds set aside for off-site mitigation shall be considered a public benefit to the extent the funding is accelerated prior to the Ladera PC development milestone which generates the respective traffic demand.

5. Unfunded Costs

a. As noted above, OWNER's Antonio Parkway commitment is to pay COUNTY 55% of the cost of constructing four (4) lanes of Antonio Parkway (including bridges) from its existing terminus south of Oso Parkway to Ortega Highway. COUNTY will initially allocate the necessary funds to cover 100% of the costs in order to complete the Antonio Parkway Extension Project pursuant to its current construction schedule and MOU.

b. "Unfunded costs" means costs for those portions of roadways, intersections, or other infrastructure improvements for which there is not a currently identified funding source. For purposes of this agreement, "unfunded costs" are the non-OWNER 28% share of Crown Valley Parkway between the boundary of Mission Viejo and the eastern boundary of the

Ladera Planned Community and the non-OWNER 41% share of the two future lanes on Antonio Parkway from its current terminus to the southern boundary of the Ladera Planned Community.

c. The "unfunded costs" associated with the proposed two (2) additional lanes of Antonio Parkway and the proposed ultimate improvement of Crown Valley Parkway, will be addressed as follows:

i. OWNER and COUNTY agree that the obligation for the unfunded regional share of Antonio Parkway, between its existing terminus near Oso Parkway and the southerly Ladera PC boundary, and Crown Valley Parkway, between the Mission Viejo city boundary and the easterly Ladera PC boundary, shall be shared 65%/35% between OWNER and COUNTY, respectively.

ii. OWNER, in consideration of COUNTY's setting aside 21% of the four-lane Antonio Parkway payment funds for Off-site Traffic Mitigation, will assume COUNTY's 35% obligation for unfunded future improvements on Antonio Parkway and Crown Valley Parkway. COUNTY shall have no further obligation for the construction of Antonio Parkway between Oso Parkway and the southerly Ladera PC boundary, and Crown Valley Parkway between the Mission Viejo city boundary and the easterly Ladera PC boundary, so long as the cap for Off-site Traffic Mitigation is within 5% of the estimated unfunded share of Antonio and Crown Valley Parkway costs based upon unit bid prices received from the Antonio Parkway Extension Project. This unfunded share of segments of both Antonio Parkway and Crown Valley Parkway shall be established no later than 60 days following receipt of bids for the Antonio Parkway Extension Project as provided in I.B.7 below. The calculation of the engineering and administrative cost portion of these cost estimates shall be based on: (A) the methodology set forth in ASCE Manual No. 45 Consulting Engineering -- A Guide for the Engagement of Engineering Services, most current edition, "ARBA Technical Bulletin No. 253" of the American Road Builders Association, as referenced in ASCE Manual No. 45; (B) cost data gathered under the Foothill Circulation Phasing Plan ("FCPP") and used in calculating allowable reimbursements; (C) other data which the COUNTY may have to establish such costs; or (D) some combination of items A, B, and C above.

d. COUNTY may seek to partially or fully fund its share of "unfunded costs" for Crown Valley Parkway and/or Antonio Parkway from other sources. To the extent COUNTY obtains said funds, COUNTY can reduce its share of the "unfunded costs" for these facilities and reduce the 21% set-aside of any increment in an amount equal to the funds obtained.

e. The Ladera PC shall have no financial obligation or milestone limitation beyond the four lane widening for any future widening of Antonio Parkway southerly of the PC

boundary (see Exhibit F). Other future developments may subsequently have an obligation for contributing to this widening.

6. Ortega Highway and La Pata Avenue

The Conditions of Approval include certain OWNER obligations for improvements to the Ortega Highway and La Pata Avenue Intersection as required for the Antonio Parkway Extension Project.

a. As an added public benefit pursuant to this Agreement, OWNER shall execute an irrevocable dedication of right-of-way in fee for those segments of La Pata Avenue and Ortega Highway needed to facilitate establishment of the new intersection of La Pata/Antonio/Ortega as defined by COUNTY approved project plans within sixty (60) days following COUNTY submittal of deeds to OWNER.

b. In order to implement the MOU, and as an added public benefit pursuant to this Agreement, OWNER shall also execute an irrevocable dedication of right-of-way in fee for those required segments of La Pata Avenue needed to facilitate construction of the noise berm as defined in the MOU and COUNTY plans within sixty (60) days following COUNTY submittal of deeds to OWNER.

7. Credit for OWNER or COUNTY Share of the Cost for Circulation Improvements

An off-site cost cap for OWNER's fair share of off-site circulation improvements has been established and made part of this Agreement (see above discussion regarding the OWNER's Cap).

Costs for the COUNTY's 35% regional unfunded share (hereinafter referred to as "COUNTY's Share") of the Antonio and Crown Valley Parkways will be established after bid opening for the third phase of Antonio Parkway but not later than, as provided for in Section 5.c.ii herein. The first three phases of construction will include substantially all mitigation, grading, drainage, pavement and bridges for the Antonio Parkway Extension Project except for intersection widening on Ortega Highway and La Pata Avenue.

When the COUNTY's Share is established to the satisfaction of COUNTY and OWNER, the following adjustments will be made to the Antonio Parkway payment due at the 5000th permit as identified in TABLE D-2. If the COUNTY's Share is more than 5% greater than the OWNER's Cap, the Antonio Parkway payment will be decreased in an amount equal to 35% of the difference between the COUNTY's Share and the OWNER's Cap minus 5% of OWNER's cap. If the difference between the COUNTY's Share and the OWNER's Cap is less than 5%, then no

adjustment will be made. If the OWNER'S Cap is more than 5% greater than the COUNTY'S Share, the Antonio Parkway payment at the 5000th permit will increase by 65% of the difference. (See Attachment 2 to this Exhibit D for further details regarding the formulas to be used in the adjustment of the Antonio Payment). The following example illustrates the application of this provision:

Example: If the OWNER'S Cap is established at \$3,600,000:

<u>COUNTY'S SHARE</u>	<u>OWNER'S CAP</u>	<u>Difference (%)</u>	<u>Difference (\$)</u>	<u>Antonio Payment Adjustment</u>
4.0 M	3.6	11.0%	.4M	-\$77,000
3.9 M	3.6	8.3%	.3M	-\$42,000
3.8 M	3.6	5.6%	.2M	-\$7,000
3.7 M	3.6	2.8%	.1M	0
3.6 M	3.6	0	0	0
3.5 M	3.6	-2.8%	-.1M	0
3.4 M	3.6	-5.6%	-.2M	+\$130,000

If COUNTY or another jurisdiction is successful in acquiring any grant funding or contributions from other agencies for Crown Valley Parkway design or construction the amount of such funding shall be transferred back to COUNTY in that, following receipt of the monies, OWNER shall increase the next Antonio Parkway milestone payment by an equivalent amount.

II. REGIONAL OPEN SPACE

A. OWNER shall enter into an agreement with COUNTY, pursuant to Condition of Approval No. 9 of the Ladera PC, which includes a plan for recordation of a conservation easement ("Conservation Easement") in phases ("Phasing Plan"), as the Project is developed, over the approximately 1,600 acre open space area as designated in the Ladera PC GPA and Zone Change. OWNER shall thereafter record the Conservation Easement in phases consistent with the Phasing Plan subject to the Southern Subregion Natural Communities Conservation Plan (NCCP) and in a manner meeting the approval of the Director, EMA, his successor or designee. The first phase of the open space area Conservation Easement to be recorded shall include all lands which OWNER has provided to COUNTY for habitat mitigation pursuant to the Phase I Entry Permit for Antonio Parkway and shall occur no later than May 31, 1999. As of the approval of this Development Agreement, COUNTY shall be absolved of all responsibility for payment (\$50,000 per acre) for said habitat lands pursuant to the Phase I Entry Permit notwithstanding any requirement to the contrary in the Phase I Entry Permit.

B. A conservation entity ("Conservancy") shall be established by OWNER no later than May 31, 1999 to manage those portions of the approximately 1,600 acre open space area consistent with the goals and policies set forth in the Conservation Easement and the NCCP; provided, however, that in the event of a conflict between the goals and policies of the conservation easement and the NCCP, the NCCP shall control. The Conservancy shall develop an access management plan specifying those conditions under which limited public uses and access may be granted within the Conservation Easement area consistent with the NCCP and the Conservation Easement.

C. No sooner than twenty years after the date of approval of this Agreement the COUNTY may, at its discretion, review the performance of the Conservancy, or other managing entity responsible for the management of the Conservation Easement area, to determine whether said entity is managing the property consistent with the goals and policies as set forth in the Conservation Easement and the NCCP. Should the COUNTY reasonably determine that said goals and policies are not being met, the fee title to those portions of the 1,600 acre open space area over which the Conservation Easement has been recorded shall be transferred to COUNTY or its designee.

D. Notwithstanding any other provision of this Section II, OWNER shall have the right, at its discretion, to utilize the 1,600 acre open space area for the purpose of mitigating the biological impacts of development of this Project and any other projects developed on properties which are included within that area commonly known as Rancho Mission Viejo, so long as said mitigation is consistent with the goals and

policies of the Conservation Easement and the NCCP.

III. LOCAL PARKS

A. OWNER shall irrevocably offer to COUNTY upon completion of the first phase of the facility as stated in A.5. below, and COUNTY shall accept, a 15 acre active-sports community park site adjacent to the planned extension of Crown Valley Parkway, and the Arroyo Trabuco, and westerly of the Southern California Edison power lines easement (the "Edison easement") as conceptually noted on Exhibit G attached to this Agreement. OWNER's offer shall include all sports fields improvements including, but not limited to field layout, turf, irrigation systems and landscaping, backstops, fences, goal posts and nets, benches, sidewalks, restrooms, parking facilities and related equipment. Said obligation shall be above and beyond the requirements of COUNTY's local park code ("Local Park Code Requirement") for the Project pursuant to the Conditions of Approval, shall be contingent on OWNER proceeding with Development of the Project as evidenced by OWNER obtaining a grading permit for the first grading phase of the Ladera PC, and shall be implemented in compliance with the following terms and conditions:

1. Development of this sports park ("Sports Park") shall be consistent with a park plan ("Park Plan") presented to COUNTY by OWNER prior to the issuance of any grading permit for the Ladera PC and shall be reviewed and subject to approval by COUNTY. OWNER shall convey the 15 acre Sports Park site directly to COUNTY upon completion of the first phase of the facility. At the time of such conveyance, OWNER shall post security to ensure completion of the second phase which will be constructed later by OWNER as stated in A.5. below. COUNTY shall own, maintain and operate the Sports Park. COUNTY, and any lessee of COUNTY, shall maintain and operate the facility in accordance with that separate agreement being entered into concurrently by COUNTY and OWNER ("Sports Park Operating Agreement"), and any authorized amendments thereto, so as not to unreasonably adversely impact the neighboring residential community.

2. OWNER shall grade the Sports Park and access road and install field sports light standards for the entire 15 acre site concurrent with the first grading phase for the Ladera PC. The installation of the field sports light standards shall be subject to and contingent on obtaining subsequent approvals discussed in III.A.4 below.

3. OWNER shall conduct a photometric analysis for ballfield lighting based on the Park Plan. Said analysis will be subject to certain performance criteria and standards which will be utilized to evaluate and mitigate impacts on surrounding residential and open space areas and will be conveyed to COUNTY. The applicable performance standards are

set forth in the Sports Park Operating Agreement.

4. Prior to installation of the ballfield lights, OWNER shall, in coordination with COUNTY, prepare a lighting plan which is consistent with the photometric analysis provided pursuant to 3. above, and COUNTY shall process, at its expense, any and all permits to allow the ballfield lights to be constructed and operated, including any environmental documentation required pursuant to CEQA. This process will be done separately from any permitting process for any other portion of the Ladera PC. If COUNTY has not authorized OWNER to install field sports light standards within nine months of receiving the photometric analysis and Park Plan from OWNER, OWNER shall not be required to install the field sports light standards.

5. OWNER shall construct the Sports Park improvements in phases as follows:

a. ultimate sports facilities and related parking covering 7.5 acres as delineated on a COUNTY approved Park Plan pursuant to A.1. above shall be improved such that all improved facilities (including lighting) are fully usable prior to the issuance of the 1000th residential building permit and/or the issuance of the 300th Certificate of Use and Occupancy (excluding model homes and apartments); and

b. the remaining 7.5 acres of the Sports Park improvements including all permanent structures and total lighting provisions shall be installed prior to the issuance of the 3000th residential building permit and/or the issuance of the 2300th Certificate of Use and Occupancy (excluding model homes and apartments).

6. OWNER shall construct all Sports Park improvements as defined in III.A. above up to a maximum cost ("Maximum Cost") of \$1,250,000, which cost shall be adjusted annually from the date of this Agreement for inflation using the California Construction Index but which shall not under any circumstances exceed \$1,450,000, notwithstanding any other provision of this Agreement. The Maximum Cost includes the on-site utility extensions, the ballfield lighting and all other Sports Park improvements to be constructed by OWNER. Should OWNER choose to develop and COUNTY concur with any additional improvements beyond the Maximum Cost, said improvements will be creditable against Ladera's Local Park Code Requirement. Sports Park development will maximize the opportunity for multiple field use.

B. OWNER may provide additional park acreage and improvements (subject to C. below) within the Edison easement. Should OWNER choose and the COUNTY concur to develop any additional park acreage adjoining the Sports Park beyond the 15 acres developed, it shall be creditable against Ladera's Local Park Code Requirement. If OWNER improves and provides

any additional adjoining park acreage outside of the Edison easement, the COUNTY shall own, maintain and operate said additional acreage as part of the Sports Park. Any additional adjoining park acreage or improvements OWNER provides within the Edison easement, which COUNTY agrees to accept upon its completion shall be subject to COUNTY review and approval prior to it's acceptance.

C. Community-wide, any public local park, or a portion of any public local park, within an Edison easement shall be granted 50% credit against the local park requirements for the Ladera PC where said park, or portion thereof, would otherwise qualify for full park credit; provided, however, that no more than 25% of the Local Park Code Requirement may be met by parks located within an Edison easement. A discussion of park locations and credit relative to the Edison easement will be included within a community-wide context in the Master Park Implementation Plan ("MPIP") to be prepared for the Ladera PC by OWNER prior to approval of the first Area Plan pursuant to III.D. below.

D. Interim credit against Ladera's Local Park Code Requirement will be granted for the Sports Park facility. This credit may be utilized to limit the park needs of the first 3,000 dwelling units. OWNER, prior to approval of the first Area Plan, shall prepare an MPIP for the Ladera PC. The MPIP will further provide for the construction of other parks within the community at a rate of 1.6 times the normal requirement for the remaining 5,100 dwelling units. (Assuming total use of the interim park credit, this 1.6 ratio would be reduced to reflect the installation of all creditable facilities, as approved by COUNTY, constructed in conjunction with the first 3,000 dwelling units.) Upon buildout of the Ladera PC, the MPIP will provide for the satisfaction of the entire Local Park Code Requirement within the community through parks other than the 15 acre Sports Park.

IV. DEVELOPMENT EDGE

COUNTY agrees to the development edge as depicted on the Ladera PC Development Edge exhibit (see attached Exhibit G). Only canyon fills necessary to set the development edge in the location shown, drainage improvements, any required "best management practices" facilities for water quality purposes and regional trails shall be allowed beyond the development edge. Fuel modification associated with the development, as well as roads and community-level landscaping, shall occur within the development area (shaded area) as shown on Exhibit G.

V. TRAILS.

A. OWNER agrees to construct an extension of the Arroyo Trabuco Regional Riding and Hiking Trail proximate to the Arroyo Trabuco sand and gravel mining operation. The proposed

trail will extend from the southerly boundary of the Las Flores Open Space Area to the boundary of the City of Mission Viejo. If COUNTY obtains approval from the City of Mission Viejo, OWNER will extend the trail southerly to the City of San Juan Capistrano boundary. The trail extension would be located either in the Arroyo Trabuco, adjacent to the Arroyo Trabuco or along the westerly boundary of the Ladera PC, or in any combination of these optional locations. OWNER shall construct the trail (in an alignment approved by COUNTY, approval of which shall not be unreasonably withheld) and shall offer to dedicate a relocatable, 16-foot, non-exclusive easement to COUNTY over the trail alignment prior to issuance of the first residential building permit (other than model homes) or COUNTY's construction of the trail connection through the Las Flores Open Space Area, whichever occurs later. OWNER shall have no obligation to provide said riding and hiking trail unless OWNER proceeds with Development of the Project as evidenced by OWNER applying for a residential building permit for the Ladera PC.

B. At its discretion, OWNER may use existing unimproved ranch roads, in whole or in part, to provide said riding and hiking trail. OWNER may also choose to perform new grading to connect trail links. COUNTY may accept the trail, provided the alignment is acceptable to COUNTY. OWNER agrees to clear and grade the trail prior to COUNTY's acceptance. OWNER will construct a barrier (4 or 5-strand barbed wire fence) along one side of the trail (at OWNER's discretion) to restrict access from the trail to other properties and to avoid impacts to/from cattle grazing operations. If COUNTY does not accept the trail, COUNTY shall not require a riding and hiking trail within the Arroyo Trabuco as a condition of any subsequent development approval or permit granted for the Project.

C. Other allowed uses within the trail easement may include, but are not limited to, access for security, management of the adjacent properties and fire management, as well as other similar uses so long as they do not materially interfere with the use of the easement for trail purposes.

VI. LIBRARY

A. OWNER shall pay a library fee of Two Hundred Dollars (\$200) for each residential dwelling unit, to be paid at the issuance of each building permit. This represents an increased funding commitment for library operations and facilities beyond that previously required for the Project through the Conditions of Approval.

B. OWNER shall cooperate with COUNTY in analyzing the feasibility of implementing alternative methods of satisfying the library needs of the community.

VII. SHERIFF

A. Sheriff's Station

Pursuant to Section VII.C below (Schedule of Payment), OWNER shall make the financial contributions required pursuant to Section VII.C below toward the provision of the Sheriff facilities described below (the "Sheriff's Stations").

1. Description of Facility

The term "Sheriff Stations" shall include: the land; buildings; furnishings; equipment; parking areas; driveways; sidewalks; walls and fences; landscaping; water, sewer, gas and electricity pipelines, transmission lines and facilities; and other ancillary and incidental buildings, fixtures, structures and improvements necessary to provide Sheriff and related services to the then present and future residents, populations and public of and within the Property and the area of benefit for the Sheriff's South East and Aliso Viejo Stations. The standards utilized in making the foregoing determinations as to the size, quality and nature of the facilities required shall be the customs, practices, and standards in effect on the Effective Date.

2. OWNER's Obligation

Subject to the Maximum Amount set forth below, OWNER shall bear and pay its pro-rata share of the costs of the Sheriff's Stations. For purposes of this Section and Section C of this Agreement, OWNER's pro-rata share of the costs of the Sheriff's Stations shall equal the lesser of a. OWNER's pro-rata share (expressed as a percentage) of the actual costs of the Sheriff's Stations ("Actual Cost of Sheriff's Stations") or b. OWNER's pro-rata share (expressed as a percentage) multiplied by \$8,800,000 ("Estimated Cost of Sheriff's Stations") as such number is adjusted annually after the Effective Date for inflation utilizing the most recent quarterly report of the Real Estate Research Council of Southern California's Office Building Construction Cost Index (the "Index"). In addition to its pro-rata share, OWNER shall also bear and pay an additional portion of said costs, as partial consideration for this Agreement, which is necessary to cover the remainder of the costs of said facilities; and provided, however, that in no event shall the aggregate of said pro-rata share and said additional portion of such costs exceed \$814,880 (the "Maximum Sheriff's Stations Amount", except that any unpaid portion of OWNER's cost obligation shall be subject to adjustment annually for inflation, after the Effective Date, utilizing the Index). Such additional portion in excess of OWNER's pro-rata share shall be subject to contribution and reimbursement as provided below. OWNER's obligation shall remain in effect during the term of this

Agreement regardless of the date of occupancy of the Sheriff's Stations.

3. Contribution and Reimbursement to the Costs of the Facilities

COUNTY shall require that all future development within the unincorporated area of the COUNTY lying within the Sheriff's South East and Aliso Viejo Stations area of benefit pay its pro rata share of the costs of said facilities. COUNTY shall also require that any developer of lands within the Sheriff's South East and Aliso Viejo Stations area of benefit entering into a development agreement with COUNTY, pay an additional sum to COUNTY, which additional sum bears the same ratio to the pro-rata share of such developer as the additional sum required to be paid by OWNER (including amounts to be advanced subject to reimbursement as provided below) bears to OWNER's pro-rata share of the costs of said facilities.

In the event the cost of the Sheriff's Stations exceeds \$8,800,000, any amounts collected by COUNTY which were not taken into account in computing OWNER's contribution shall first be used to fund the excess cost. After the excess cost is completely funded, any such remaining funds shall be paid by COUNTY to OWNER and other contributors under development agreements or other contributors of more than their pro-rata share in proportion to their individual pro-rata shares as reimbursement for, and to the extent of, the amounts, if any, paid by them in excess of their respective pro-rata shares but only to the extent, however, that OWNER has not previously been reimbursed by COUNTY or a financing district.

B. Sheriff Patrol and Investigator Cars

Based on the schedule below, OWNER shall make the financial contributions toward the purchase and equipping of seven patrol cars and one investigator car as described below which are necessary to serve the project.

1. Description of Patrol and Investigator Cars

The term, "Patrol Car" shall include: a new automobile of the make and model currently in use by the Orange County Sheriff's Department; video camera; radio; shot gun; other equipment necessary for use as a patrol car. The term, "Investigator Car" shall include: a new automobile of the make and model currently in use by the Orange County Sheriff's Department; radio, other equipment necessary for use as an investigator car.

2. OWNER's Obligation

OWNER shall bear and pay to COUNTY, pursuant to the

schedule set forth in C. below, the sum of \$273,060, which is the total of the costs of purchasing seven patrol cars and one investigator car, which are necessary to provide Sheriff services to the Project ("Maximum Car Amount"). In no event shall OWNER's obligation exceed the Maximum Car Amount except that any unpaid portion of OWNER's cost obligation shall be adjusted annually for inflation after the Effective Date using a rate of 3 percent.

C. Schedule of Payment

1. OWNER shall pay to COUNTY the following sums, which are the aggregate of the Maximum Sheriff's Stations Amount and the Maximum Car Amount and which include all of OWNER's obligations in regard to Sheriff facilities, cars, and equipment, according to the following schedule:

<u>PAYMENT AMOUNT</u> ¹	<u>PAYMENT DUE</u>
\$ 25,000	Concurrent with execution of this Agreement
\$ 25,000	Prior to issuance of 1st building permit
\$ 25,000	Prior to issuance of 250th building permit
\$ 25,000	Prior to issuance of 500th building permit
\$150,000	Prior to issuance of 1,000th building permit
\$150,000	Prior to issuance of 2,000th building permit
\$150,000	Prior to issuance of 3,000th building permit
\$150,000	Prior to issuance of 4,000th building permit
\$150,000	Prior to issuance of 5,000th building permit
\$150,000	Prior to issuance of 6,000th building permit
\$ 87,940 plus additional	Prior to issuance of 7,000th building permit

amounts reflecting inflationary increases as provided above, and less any credits due to OWNER as a result of the Actual Cost of Sheriff's Stations being less than the Estimated Cost of Sheriff's Stations as provided above.

2. OWNER shall have the right, in its sole and absolute discretion, to pay any or all of the payment amounts in advance of the schedule set forth above.

1. Seventy-five percent (75%) of each payment shall be applied towards the Maximum Sheriff's Stations Amount, with the balance applied towards the Maximum Car Amount.

VIII. FIRE PROTECTION

The Orange County Fire Authority ("OCFA") previously placed conditions of approval on this project. These conditions of approval are satisfactory to both OCFA and OWNER and provide for future mitigation of any adverse impacts caused by the Project.

IX. OTHER PUBLIC BENEFITS

OWNER shall pay COUNTY \$250,000 for general COUNTY programs and projects in accordance with the following schedule:

\$ 25,000	within 30 days after execution of this Agreement
\$100,000	at issuance of first grading permit
\$ 62,500	at issuance of 2,000th building permit
\$ 62,500	at issuance of 5,000th building permit

Said funds may be used at the discretion of COUNTY for development of fiscal impact report guidelines, general plan updates, childcare, or other purposes reasonably related to general fund impacts caused by Ladera PC.

X. SECURITY FOR PERFORMANCE OF WORK

The obligations of OWNER under this Agreement to fund the second phase of the Sports Park shall be secured by cash, an irrevocable letter of credit or other security, or combination of security, acceptable to COUNTY, in a sufficient sum (not to exceed the maximum amount in connection therewith) to assure completion and the faithful performance of OWNER's obligations under Section III.A.1. The amount of such security shall be reduced by the availability of Financing District bond proceeds, if available, to satisfy the obligations of OWNER under that section.

XI. DEFINITION OF TERMS

Unless otherwise indicated, the terms used in this Exhibit D shall be defined as provided in the Agreement to which this Exhibit D is attached.

XII. TIMING OF DEVELOPMENT AND BENEFITS

There is no requirement under this Agreement, including any exhibit attached hereto, that OWNER must initiate or complete Development of any phase of the Project nor that Development be initiated or completed within any period of time. Furthermore, notwithstanding any other provision of this Agreement and any exhibit attached hereto to the contrary, OWNER's obligation and duty to provide those Public Facilities and other public benefits described in Section I through X above, which are tied to a specific development milestone, shall be contingent on the occurrence of that development

milestone. OWNER shall have no obligation to provide any specific component of said Public Facilities or other public benefits unless and until the development milestone triggering OWNER's responsibility for that specific component of the Public Facilities and other public benefits occurs.

ATTACHMENT 1 TO EXHIBIT D

LIST OF EASEMENTS AND ENCUMBRANCES

TO ANTONIO PARKWAY RIGHT-OF-WAY

<u>HOLDER OF EASEMENT</u>	<u>DESCRIPTION</u>	<u>RECORDING INFORMATION</u>
San Diego Gas & Electric	Roadway Easement	O. R. 94-0443053
San Diego Gas & Electric	Pole-Line Easement with Access Rights	O. R. 93-091210
San Diego Gas & Electric	Pole-Line Easement with Access Rights	O. R. 84-505668
Southern California Telephone	Underground Telephone Line with Access Rights	Book 1102, Page 323 & Book 1121, Page 423
Santa Margarita Water District	Pipeline Easement with Access Rights	O. R. 93-0491739
Santa Margarita Water District	Pipeline Easement with Access Rights	O. R. 87-500482 (Pending Modification)
Santa Margarita Water District	Pipeline Easement with Access, Slope and Drainage Rights	O. R. 87-500483 (Pending Modification)
Capistrano Valley Water District	Pipeline Easement with Access Rights	O. R. 93-0806019 (Pending Modification)
Santa Margarita Company	6" Waterline at Station 92+80 (approximate)	Not recorded - being modified by County as part of Antonio Construction Project
Santa Margarita Company	8" Waterline at Station (TBD) (approximate)	Not recorded - being modified by County as part of Antonio Construction Project

ATTACHMENT 2 TO EXHIBIT DFORMULAS FOR ADJUSTMENT OF
ANTONIO PARKWAY PAYMENT

CS = COUNTY SHARE
OC = OWNER'S CAP

If CS > OC or CS = OC or CS < OC
If difference < 5%
No adjustments will be made.

If CS > OC
If difference > 5%
Then adjustment = $-.35$ (Difference $-.05$ OC)
Example: CS = 4.0M, OC = 3.6M, Difference = 11% = .4M

$$\text{Adjustment} = -.35(.4M - .05(3.6)) = -.35(.4M - .18M) = \$-77,000$$

If CS < OC
If difference > 5%
Then adjustment = $.65$ (difference)
Example: CS = 3.4M, OC = 3.6M, Difference = 5.6% = .2M

$$\text{Adjustment} = .65(.2M) = \$130,000$$

EXHIBIT E

Development Phasing Plan

LADERA DEVELOPMENT AGREEMENT

EXHIBIT E

DEVELOPMENT PHASING PLAN

(Related to Development Agreement
Public Benefits set forth in Exhibit D)

<u>Building Permit Milestone</u> ¹				
	Public Benefit	Dwelling Unit No.	Cumulative Dwelling Units	Notes/Remarks
1.A	Waive Right to Receive Compensation from COUNTY for Use of Open Space for Mitigation Purposes	0	0	Upon approval of Development Agreement
1.B	Pay \$25,000 for General COUNTY Purposes	0	0	To be paid within 30 days of execution of Development Agreement
1.C	Pay \$25,000 for Sheriff Facilities	0	0	To be paid within 30 days of execution of Development Agreement
1.D	Pay \$100,000 for General COUNTY Purposes	0	0	To be paid upon issuance of first grading permit
1.E	Grade Sports Park and Access Road and Install Field Sports Light Standards	0	0	To be performed concurrent with first development grading phase
1.F	Construct and Dedicate Arroyo Trabuco Riding & Hiking Trail;	0	0	Prior to first residential building permit
1.G	Pay \$25,000 for Sheriff Facilities	0	0	Prior to first residential building permit
1.H	Record Conservation Easement over First Phase of Open Space	N/A	N/A	To be recorded no later than May 31, 1999
1.I	Dedication of Antonio Parkway Right-of-Way	0	0	To be offered within 60 days of COUNTY's request

1. No building permit milestones are tied to non-residential development.

Building Permit Milestone

	Public Benefit	Dwelling Unit No.	Cumulative Dwelling Units Units	Notes/Remarks
1.J	Dedication of La Pata Berm Right-of-Way	0	0	Dedication to be offered per terms of the Phase I Construction Entry Permit (Agreement No. D96-050)
1.K	Dedication of Ortega Highway widening Right- of-Way	0	0	To be offered within 60 days of COUNTY's request
1.L	Dedication of La Pata Road Right-of-Way	0	0	To be offered within 60 days of COUNTY's request
2.	Pay \$25,000 for Sheriff Facilities	250	250	Described in Exhibit D, Section VII
3.A	Pay 11% of Antonio Obligation & Off-Site Traffic Mitigation	500	500	Described in Exhibit D, Table D-2
3.B	Pay \$25,000 for Sheriff Facilities	500	500	Described in Exhibit D, Section VII
4.A	Construct 50% (7.5 acres of Sports Park (playfields);	1000	1000	Footnotes ² and ³
4.B	Pay \$150,000 for Sheriff Facilities	1000	1000	Described in Exhibit D, Section VII
5.	Pay 22% of Antonio Obligation & Off-Site Traffic Mitigation	1500	1500	Described in Exhibit D, Table D-2
6.A	Pay \$62,500 for General COUNTY Purposes	2000	2000	Described in Exhibit D, Section IX
6.B	Pay \$150,000 for Sheriff Facilities	2000	2000	Described in Exhibit D, Section VII
7.	Pay 34% of Antonio Obligation & Off-Site Traffic Mitigation	2500	2500	Described in Exhibit D, Table D-2

2. Alternative milestone of 300 Use and Occupancy Certificates (UOC's)

3. Both building permit and UOC milestones exclude Model Homes and Apartments.

Building Permit Milestone

	Public Benefit	Dwelling Unit No.	Cumulative Dwelling Units Units	Notes/Remarks
8.A	Construct Remaining 50% (7.5 acres) of Sports Park (Playfields) and remaining facilities	3000	3000	Footnotes ⁴ and ⁵
8.B	Pay \$150,000 for Sheriff Facilities	3000	3000	Described in Exhibit D, Section VII
9.	Pay 45% of Antonio Obligation & Off-Site Traffic Mitigation	3500	3500	Described in Exhibit D, Table D-2
10.	Pay \$150,000 for Sheriff Facilities	4000	4000	Described in Exhibit D, Section VII
11.	Pay 58% of Antonio Obligation & Off-Site Traffic Mitigation	4500	4500	Described in Exhibit D, Table D-2
12.A	Pay \$62,500 for General COUNTY Purposes	5000	5000	Described in Exhibit D, Section IX
12.B	Pay 66% of Antonio Obligation & Off-Site Traffic Mitigation	5000	5000	Described in Exhibit D, Table D-2
12.C	Pay \$150,000 for Sheriff Facilities	5000	5000	Described in Exhibit D, Section VII
13.	Pay 73% of Antonio Obligation & Off-Site Traffic Mitigation	5500	5500	Described in Exhibit D, Table D-2
14.A	Pay 85% of Antonio Obligation & Off-Site Traffic Mitigation	6000	6000	Described in Exhibit D, Table D-2
14.B	Pay \$150,000 for Sheriff Facilities	6000	6000	Described in Exhibit D, Section VII

4. Alternative milestone of 2300 Use and Occupancy Certificates (UOC's)

5. Both building permit and UOC milestones exclude Model Homes and Apartments.

Building Permit Milestone

	Public Benefit	Dwelling Unit No.	Cumulative Dwelling Units Units	Notes/Remarks
15.	Pay 93% of Antonio Obligation & Off-Site Traffic Mitigation	6500	6500	Described in Exhibit D, Table D-2
16.A	Pay 100% of Antonio Obligation & Off-Site Traffic Mitigation	7000	7000	Described in Exhibit D, Table D-2
16.B	Pay \$87,940 for Sheriff Facilities plus additional amounts reflecting inflationary increases as provided in Exhibit D, Section VII.	7000	7000	Described in Exhibit D, Section VII

EXHIBIT F

Particular conditions and mitigation measures
contained in
the land use ordinances, development approvals and
mitigation monitoring programs which are satisfied
or partially satisfied through adoption and implementation
of the Development Agreement

LADERA DEVELOPMENT AGREEMENT

EXHIBIT F

PARTICULAR CONDITIONS AND MITIGATION MEASURES CONTAINED IN
THE LAND USE ORDINANCES, DEVELOPMENT APPROVALS AND
MITIGATION MONITORING PROGRAMS WHICH ARE SATISFIED
OR PARTIALLY SATISFIED THROUGH ADOPTION AND IMPLEMENTATION
OF THE DEVELOPMENT AGREEMENT

Listed below are the conditions of approval and mitigation measures which are satisfied or partially satisfied through adoption and implementation of the Development Agreement or which have been previously satisfied through OWNER and/or COUNTY actions together with a brief explanation of how the conditions and mitigations measures have been fulfilled. Conditions or mitigations not addressed herein are to be satisfied consistent with the provisions as established in Resolution No. 95-783, Ordinance No. 3945, and EIR 555 adopting this Project.

1. GPA 2: Prior to the approval of an Area Plan or Tentative Tract Map (except for financing purposes), the landowner shall submit a Fiscal Impact Report ("FIR") to EMA Manager of Advance Planning that shall provide an analysis of the fiscal impact of the development of the Ladera Planned Community on the County General Fund using the County's fiscal impact methodology in effect at the time of the submittal. Upon review of the FIR by EMA Manager of Advance Planning and Manager of Financial and Management Services in consultation with the County Administrative Office the landowner shall enter into an agreement with the County to mitigate any negative fiscal impacts occurring as a result of the Ladera Planned Community as deemed appropriate by the County.

FULFILLMENT OF GPA 2: OWNER has submitted to COUNTY a Fiscal Impact Report dated October 28, 1996, prepared by Al Gobar and Associates. COUNTY has reviewed that Fiscal Impact Report as part of the review of, and prior to the approval of, the Development Agreement. See Recital K of the Development Agreement. Approval of this Fiscal Impact Report by the Director of Planning prior to the execution of the Development Agreement fulfills the requirement established for Area Plan approval.

2. GPA 5: Prior to recordation of a final parcel/tract map (except for financing purposes), the applicant shall enter into a Public Facilities Implementation and Security Agreement with the County of Orange that provides for the following:

- a. Payment of the project's pro rata share of the cost of sheriff facilities and equipment needed to serve the project.
- b. Facilities costs may include the pro rata share of land acquisition, construction, furnishing and equipment for new facilities or upgrading and refurbishing existing facilities.

MM 33: Public Services - During the preparation of Area Plans for the proposed land use plan, the project proponent shall coordinate with Orange County Sheriff Coroner Department (OCSCD) and the California Highway Patrol (CHP) to ensure that an adequate level of police protection services would be provided.

MM 34: Public Services - Prior to the issuance of building permits or the recordation of final tract/parcel maps for the land use plan, whichever occurs first, the project proponent shall pay development fees on a pro rata basis, or enter into other financing agreements (i.e., Public Facilities Implementation and Security Agreement) with the County of Orange, for Sheriff substation facilities.

FULLFILLMENT OF GPA 5 AND MM 34 : OWNER has reached agreement with OCSCD to pay to COUNTY a specified amount for Sheriff facilities. See Section VII of Exhibit D. This payment will serve as total satisfaction of the above-referenced condition of approval and mitigation measure.

FULLFILLMENT OF MM 33: By executing this agreement with COUNTY, as the sole provider of Sheriff's services and facilities (with the exception of traffic enforcement), OWNER has no further obligation to coordinate with the Sheriff. This agreement will serve as partial satisfaction of this mitigation measure.

- 3. GPA 7: Prior to recordation of a final parcel/tract map (except for financing purposes), the applicant shall enter into a Public Facilities Implementation and Security Agreement with the County of Orange that provides for the following:
 - a. Payment of the project's pro rata share of the cost of library facilities and equipment needed to serve the project.
 - b. Facilities costs may include the pro rata share of land acquisition, construction, furnishing and equipment for new facilities or upgrading and refurbishing existing facilities.

MM 46: Public Services - Prior to the recordation of any final tract/parcel map for the proposed land development

area, the project proponent shall pay appropriate developer fees, or enter into other financing agreements (i.e., Public Facilities Implementation and Security Agreement), as determined by the County of Orange, for needed library facilities.

FULFILLMENT OF GPA 7 AND MM 46: OWNER has agreed to pay to COUNTY a specified amount for each residential dwelling unit prior to the issuance of each building permit. See Section VI of Exhibit D. This payment will serve as total satisfaction of the above-referenced condition of approval and mitigation measure.

4. GPA 9: The area shown as Category 5 - Open Space of Exhibit 1-3 entitled "Proposed General Plan Land Use Amendment," of EIR 555 shall be preserved as permanent open space by the landowner. Prior to the approval of the first Area Plan, the landowner shall enter into an agreement with the County identifying the method of open space preservation, the eventual ownership of the property, the precise acreage of the approximately 1,600 acre open space area, the proposed uses of the open space, including agricultural uses determined to be consistent with NCCP, the protection of natural resources, the provision for public access consistent with resource protection and the phasing of open space preservation areas consistent with development phasing.

MM 57: Recreation - During the preparation of Area Plans for the proposed land use plan, the provision for, and potential dedication of, existing open space resources, such as Chiquita Ridge, Arroyo Trabuco south to the Mission Viejo Materials lease, and other open space areas to be used as regional recreational facilities, and/or regional open space shall be further evaluated through consultation with the Manager, Harbors, Beaches, and Parks (HBP)/Program Planning Division, in accordance with the goals and policies of the County of Orange Recreation and Resources Elements.

MM 60: Recreation - During preparation of Area Plans for the proposed land development plan, the project proponent shall prepare a component addressing the open space and trail network. This component shall be subject to the approval of the Manager, HBP/Program Planning Division.

FULFILLMENT OF GPA 9, MM 57 and MM 60: OWNER and COUNTY have reached agreement relating to certain regional open space dedications and requirements. (See Section II of Exhibit D). In that section, OWNER and COUNTY have identified the method of open space preservation through the requirement of recordation of phased conservation easements in lieu of dedications, and confirmed OWNER's retention of fee title to the property for a minimum of twenty years. The methodology for determining the

precise acreage to be protected, the proposed allowed uses and the phasing for recordation of the conservation easements will be determined in a separate agreement prior to approval of the first Area Plan. Upon execution of this separate agreement, which agreement will be reasonably acceptable to COUNTY and which will contain performance criteria, GPA 9 will be satisfied.

County agrees that there will be no further requirement to evaluate or provide open space within the Arroyo Trabuco in implementing the Ladera PC. In summary, the provisions in Exhibit D for the 1,600 acre open space area, the proposed regional riding and hiking trail and the Sports Park serve as Ladera PC's total responsibility toward open space and regional recreational facilities. Performance as provided herein fulfills mitigation measures 57 and 60.

5. GPA 20: Building permit issuance shall be phased in accordance with any Board of Supervisors approved growth management phasing plan pertaining to the timely provision of public services and facilities. A valid Board of Supervisors approved development agreement pertaining to the property which includes a development phasing plan shall satisfy the requirements of this condition. This condition shall be noted on the final map.

FULFILLMENT OF GPA 20: Exhibits D and E set forth a variety of tables and schedules pursuant to which OWNER and COUNTY have agreed to a Development Phasing Plan that matches the development of residential units with public services and facilities. This fulfills the requirements of GPA 20, although OWNER remains subject to GPA 26.

6. GPA 23: Within 60 days of delivery by the County of Orange ("County") to the landowner of completed right-of-way documents, including maps and deeds, for the Antonio Parkway alignment from its existing terminus south of Oso Parkway to Ortega Highway, the landowner shall make an irrevocable offer of dedication to the County of Orange of the right-of-way consistent with said right-of-way documents. The right-of-way offer shall include provisions to ensure access to existing agricultural and commercial uses.

FULFILLMENT OF GPA 23: With this Development Agreement, OWNER has agreed to irrevocably offer to dedicate the Antonio Parkway alignment as set forth in Section I.B-1 of Exhibit D. This dedication will satisfy the condition.

7. GPA 24: Prior to the approval of the first Area Plan, landowner at its cost, shall participate in a study to prepare and implement a Back Country Road Fee Program

(BCRFP). The County shall coordinate said fee program development with the affected cities. The Ladera Planned Community ("Project") shall participate on a pro rata share basis in said program which shall memorialize project's responsibilities toward:

- a. Crown Valley Parkway from its existing terminus in Mission Viejo to the easterly Planned Community (PC) boundary;
- b. Crown Valley Parkway from the easterly PC boundary to the FTC;
- c. Off-site circulation improvements required of this Project as identified in the May, 1995 Traffic Study, or refinements to this study pursuant to conditions of development approval.
- d. Crown Valley Parkway modifications including but not limited to any necessary widening within the Cities of Mission Viejo and Laguna Niguel; and
- e. Antonio Parkway, including all bridges, from its existing terminus south of Oso Parkway to Ortega Highway.

Said pro rata share determination may consider exclusion of costs directly associated with roadway improvements necessary to specifically accommodate trash trucks utilized exclusively for trash importation. It may include the cost of access to ranch land for agricultural and commercial uses and the cost to prepare the BCRFP.

FULFILLMENT of GPA 24: Pursuant to GPA 24, and a further directive in the Board of Supervisors resolution approving the Ladera PC, EMA convened interjurisdictional forums with representatives from the County and adjacent cities to develop a comprehensive traffic improvement and phasing program to address highway deficiencies similar to the FCPP process. The objectives of this effort included establishment of an updated transportation improvement program (based on cumulative traffic impacts) and fair share improvement obligations by all future land uses in participating jurisdictions and the prioritization of road fee program expenditures among all eligible projects, including but not limited to Antonio Parkway and Crown Valley Parkway. Notwithstanding this effort, the cities' representatives declined to support any road fee program to be established within their respective city limits. Consequently, OWNER and COUNTY have determined that the road fee program is unnecessary because:

1. COUNTY has established, in consultation with the

affected jurisdictions, OWNER's fair share obligation for the mitigation measures identified pursuant to the approved supplemental Traffic Study prepared by Austin-Foust in October 1996; and

2. COUNTY and OWNER have established an implementation mechanism for Crown Valley Parkway and Antonio Parkway (within OWNER's landholdings) which: A) assure implementation consistent with GPA 24; and B) assure that the funds for OWNER's pro rata share would be available to construct those facilities in phases consistent with the Development Phasing Plan and the provisions of GPA Nos. 24, 25 and 26.

OWNER and COUNTY agree that the actions to be taken under Section I of Exhibit D are in lieu of the BCRFP and will fulfill the conditions set forth in a., c., d. and e. of GPA 24 including agreements relating to Crown Valley Parkway and Antonio Parkway. See Section I of Exhibit D.

Certain additional issues apply to the segment of Crown Valley Parkway from the easterly boundary of the Ladera PC to the FTC. In negotiations with COUNTY related to the Project's obligations for implementing Crown Valley Parkway and Antonio Parkway within OWNER's landholdings, OWNER accepted an obligation for those facilities which was in excess of the pro rata share obligation (excluding any consideration of an unfunded regional share).

Additionally, the implementation of that segment of the roadway is linked to the extension of the FTC and to future entitlement and development of lands which are not within OWNER's control. Lastly, it has been determined that, in the absence of that linkage, sufficient capacity has been provided in Antonio Parkway and Crown Valley Parkway to accommodate the Project's traffic which would have used that segment. Therefore, COUNTY and OWNER agree that the pro rata obligation for GPA 24b will also be satisfied through the implementation of Crown Valley Parkway and Antonio Parkway as provided for in this Agreement.

8. GPA 25a: In order to maintain acceptable level of service (LOS) pursuant to the Project's Traffic Study, the following Phasing Plan for circulation improvements is required. Unless otherwise constructed by the County, the following circulation improvements shall occur consistent with the development milestones listed below:
 - a. Prior to issuance of any building permit:
 - (1) A construction contract shall be awarded for either

Antonio Parkway or Crown Valley Parkway as a four-lane road, consistent with County's arterial highway design standards, from the existing terminus of each to the future intersection of Crown Valley Parkway and Antonio Parkway.

FULFILLMENT OF GPA 25a: GPA 25a(1) has been partially satisfied in that COUNTY has already awarded a Construction Contract for a portion of Antonio Parkway. The remainder of Antonio Parkway will be covered by a Construction Contract which COUNTY will enter into shortly after execution of this Development Agreement. See Section I of Exhibit D.

9. GPA 25c(3): In order to maintain acceptable level of service (LOS) pursuant to the Project's Traffic Study, the following Phasing Plan for circulation improvements is required. Unless otherwise constructed by the County, the following circulation improvements shall occur consistent with the development milestones listed below:

c. Prior to the issuance of any building permit in excess of 5,001 d.u.:

- (1) . . .
- (2) . . .
- (3) Landowner shall enter into an Agreement with the County, subject to the approval of the Director, Environmental Management Agency (EMA), that identifies the means by which County will receive the right-of-way for Crown Valley Parkway between Antonio Parkway and the FTC.

FULFILLMENT of GPA 25c(3): In connection with GPA 25c(3), COUNTY and OWNER have identified a means by which COUNTY will receive right-of-way for Antonio Parkway. The method of receiving rights-of-way for Crown Valley Parkway has been determined as discussed above in the section entitled FULFILLMENT of GPA 24. See Exhibit D. This condition 25c(3) is totally satisfied.

10. GPA 27 and MM 9. Prior to the approval of the first Area Plan for the proposed land development plan, Landowner shall enter into an Agreement with the County of Orange to memorialize a fair share funding mechanism through a more detailed traffic design study to fund or provide financial security for improvements at locations listed below. The land use assumptions for the cities of Mission Viejo and Laguna Niguel will be re-evaluated and the County shall coordinate these assumptions and study with the affected jurisdictions. The fair share Agreement will establish a

total financial participation cap for both short-range and long-range time periods and will provide a mechanism to verify that the fair share improvements are still necessary in subsequent phases based on an updated traffic study. The total financial participation can be modified to reflect additional improvements needed to mitigate traffic impacts or deletions of improvements no longer necessary, as determined by the County in coordination with the affected city or cities, provided that the total financial participation cap is not increased.

If improvements are found to be unnecessary or other improvements are found to be more effective, as identified by the County in coordination with the affected city or cities, alternative mitigation measures can be determined.

The County shall deliver all monies or financial security received from landowner for said fair share intersection improvement obligations to the affected city jurisdiction which then assumes the obligation to implement said intersection improvements. Provisions for Ortega Highway right-of-way widening shall be credited to the landowner's pro rata obligation.

FULFILLMENT of GPA 27 and MM 9: The requirements set forth in Section I.B. of Exhibit D of the Development Agreement totally fulfill this above-referenced condition and mitigation measure. Said requirements have been established pursuant to the conclusions of the October, 1996 traffic study and the Conceptual Design and Engineer's estimate report by Williamson and Schmid.

EXHIBIT G

Ladera PC Development Edge

