

1348/13

1948 PAGE 13

SCALE: 1" = 200'

SHEET 3 OF 9 SHEETS

TRACT No. 062845

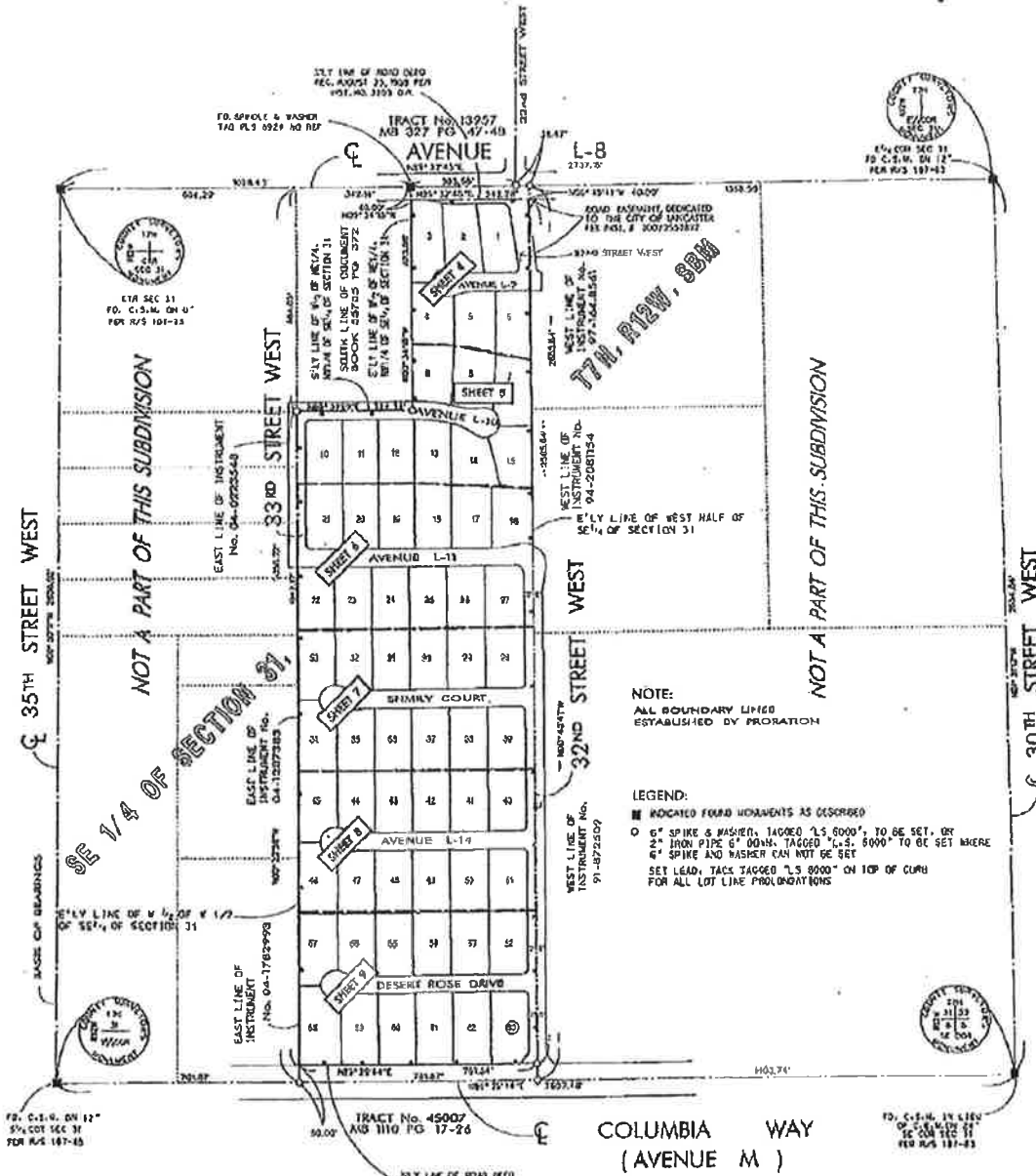
IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES,
STATE OF CALIFORNIA

83 LOTS

WILLIAM S. KISH L.S. 6000

35.01 ACRES

SURVEY DETAIL AND INDEX SHEET



INDICATES THE BOUNDARY OF THE LAND
SUBDIVIDED BY THIS MAP

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lancaster
Attn: City Engineering Division
44933 Fern Avenue
Lancaster, California 93534

This document is exempt from the payment of a recording
fee pursuant to Government Code Section 6103.

SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT
(Cal. Gov't Code § 66499(a)(4))

THIS SUBDIVISION IMPROVEMENT AND LIEN AGREEMENT (this "Agreement") is made this ____ day of _____, 2016 (the "Date of Agreement"), by and between the **CITY OF LANCASTER**, a California municipal corporation and charter city (the "City"), and **PELICAN LANDING, LP**, a California limited partnership (the "Developer").

RECITALS

A. Developer is the owner of Tract Map No. 062845, including all real property associated therewith, in the City of Lancaster, California, which is legally described in Exhibit "A" attached hereto and incorporated herein (the "Property" or "Tract"). Developer purchased the Property from Davidon Homes (the "Original Developer") on March 22, 2016.

B. The City approved Tentative Tract Map No. 062845 on February 21, 2006 (the "Tentative Map"), subject to certain conditions of approval as set forth in Resolution No. 06-08 (the "Conditions of Approval"), which conditions include construction of certain public improvements as set forth herein below.

C. The City approved a final subdivision map for the Tract (the "Map") on January 8, 2008, and Original Developer recorded Map in the Recorder's Office of the County of Los Angeles on May 14, 2008 in Book 1348, Pages 11 to 19 of Maps.

D. Original Developer did not complete all of the public improvements required by the Conditions of Approval for the Tract.

E. Pursuant to the applicable provisions of the Subdivision Map Act of the State of California and applicable City ordinances, Developer and City enter into this Agreement for the timely construction and completion of the remaining public improvements for the Tract and the furnishing of the security therefore.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. Subdivision Development Lien. This Agreement shall constitute a lien (the "Subdivision Development Lien") on the Property in the amount of Five Million Seven Hundred

Sixty-Three Thousand Seven Hundred Dollars (\$5,763,700.00). The Subdivision Development Lien is established pursuant to Government Code Section 66499(a)(4), to secure the performance of the Developer's obligations contained in this Agreement. The Subdivision Development Lien shall be in first position, and shall not be subordinate to any other lien or deed of trust on the Property; provided, however, that the Subdivision Development Lien may be in a junior position and subordinate to other liens and/or deeds of trust if and to the extent the appraised value of the Property and any additional collateral deposited by Developer in its sole discretion on or after the Date of Agreement (provided that such additional collateral shall be reasonably acceptable to City) exceeds the sum of the aggregate total of any senior liens and/or deeds of trust and 150% of the amount of the Subdivision Development Lien. To the extent that it is necessary for some other lienholder(s) to subordinate its/their lien(s) on the Property and/or Additional Property in order to ensure that the Subdivision Development Lien is in first position, the Developer shall obtain from said lienholder(s) a subordination of lien agreement in a form approved by the City in its sole discretion.

2. Construction and Installation of Improvements. Developer shall construct and install all Improvements as hereinafter provided:

2.1. Performance of Work. The Developer, at its sole cost and expense, will cause to be constructed the public improvements for the Tract described in Exhibit "B" attached hereto and incorporated by reference (collectively, the "Improvements"). The Developer will do all work and furnish all materials necessary, in the opinion of the City Engineer, to complete the Improvements in accordance with the plans and specifications on file in the office of the City Engineer or with any changes or modifications required or ordered by the City Engineer which, in his or her reasonable determination, are necessary or required to complete the Improvements (collectively, the "Work"). The Developer shall maintain the Improvements clear of all debris, weeds, and other materials which inhibit the performance of the Improvements or become a public nuisance until such time as the Improvements have been completed and accepted by the City. Should the Developer fail to act promptly in accordance with the immediately preceding sentence and fail to cure such default within the time specified in Section 6.1, the City may, at its option, perform the necessary work and the Developer shall pay to the City the actual cost of such maintenance plus fifteen percent (15%).

2.2. Work, Places and Grades to be Fixed by Engineer. All of the Work is to be done at the places, with the materials, in the manner and at the grades shown upon the plans and specifications therefor, as approved by and to the satisfaction of the City Engineer.

2.3. Repairs and Replacements. The Developer shall replace, or have replaced, or repair, or have repaired, as the case may be, all survey monuments shown on the Map which have been damaged, disturbed, or destroyed prior to City's acceptance of such monuments, and shall replace, or have replaced, repair, or have repaired, as the case may be, or pay to the owner, the entire cost of replacement or repairs, of any and all property damaged or destroyed by reason of any work of Developer done hereunder. Any such repair or replacement or payment pursuant to this Section 2.3 shall be to the satisfaction of and subject to the approval of the Development Services Director.

2.4. Supervision by Developer. The Developer, its manager or its authorized agent shall personally supervise the Work on said Improvements, or have a competent foreman or superintendent on the Work at all times during progress, with authority to act for the Developer.

2.5. Inspection by City. City shall have the right at all times during performance of the Work to enter onto the Property as necessary, and without charges or fees, to inspect the Work,

so long as City representatives comply with all safety rules. The Developer shall at all times maintain proper facilities, and provide safe access for inspection by City, to all parts of the Work, and to the shops wherein the Work is in preparation. Inspection by the City or City representatives shall not constitute acceptance by the City nor shall such inspection result in a waiver.

2.6. Commencement of the Work of Improvements. The Developer shall commence the work of Improvements on or before the third (3rd) anniversary of the Date of Agreement (the "Commencement Date"), or within such further time as may be granted by the City Council in its sole discretion.

2.7. Completion. The Developer shall complete all work of Improvements within two (2) years from the Commencement Date, or within such further time as may be granted by the City Council in its sole discretion. Work of Improvements will be deemed complete on the date that the City Council authorizes final acceptance of the Improvements.

3. Permits and Fees.

3.1. Permits; Compliance with Law. The Developer shall, at the Developer's expense, obtain all necessary permits and licenses for the construction of the Improvements, give all necessary notices and pay all fees (including subdivision fees) and taxes required by law.

3.2. Cash Charges. The Developer shall pay to the City in cash such subdivision fees (the "Cash Charges") that have been established by ordinance or by the City Council in conferring approval or extension of time to said Subdivision.

4. Substitution of Security and Termination of the Subdivision Development Lien. Prior, and as a condition precedent to the City issuing any building permit relative to the Property after the Date of Agreement, the Developer shall provide the City with substitute improvement security ("Substitute Security") consisting of security for the faithful performance of this Agreement, security for the payment of labor, materials and equipment furnished to construct the Improvements pursuant to this Agreement, and security for the setting of monuments shown on the Map. The City agrees to terminate the Subdivision Development Lien following receipt of acceptable Substitute Security. Substitute Security and termination of the Subdivision Development Lien shall be subject to the requirements set forth in this Section 4.

4.1. Improvement Security. The Developer shall deposit with the City an adequate and satisfactory Substitute Security which fully secures all the Developer's obligations under this Agreement (the "Improvement Security") in accordance with the provisions of Section 66499 of the Government Code of California, the City of Lancaster Subdivision Ordinance, Sections 16.32.020 of the Lancaster Municipal Code, and this Section. The Improvement Security shall be executed by a surety acceptable to the City and shall include the following: (1) security in an amount equal to at least one hundred percent (100%) of the estimated cost of Improvements (as evidenced by a Bond Estimate Form approved by the City Engineer), including City inspection costs and costs of enforcement of this Agreement (the "Cost of Improvements") as security for the faithful performance of this Agreement; (2) separate security in an amount equal to at least fifty percent (50%) of the estimated Cost of Improvements as security for the payment of all persons performing labor and furnishing materials to construct the Improvements in connection with this Agreement; and (3) security in the amount of ten percent (10%) of the Cost of Improvements to guarantee the Improvements against defective work, labor or material for one (1) year following City's acceptance

of the Improvements (which may be provided by a retention provision in the security as set forth in Section 5.2). If, at any time after deposit of the Improvement Security, the surety on said securities is no longer acceptable to the City, the Developer agrees to and shall replace said securities with securities of equal or greater value or penal sum, issued by an acceptable surety within ten (10) days after receiving notice that said surety is unacceptable.

4.2. Monument Security. The Developer shall deposit with the City Substitute Security in the form of a cash deposit or cashier's check in the amount of Sixteen Thousand Three Hundred Dollars (\$16,300.00) (the "Monument Security") as security for the faithful performance of all work of setting monuments shown on the Map and as security for the payment of the engineer(s) or surveyor(s) who set said monuments. If the Developer refuses or fails to complete the work of setting monuments, or if the Developer refuses or fails to pay the engineer(s) or surveyor(s) for setting the monuments, the City shall have the right to expend all, or a portion of, the Monument Security without notice to the Developer, for purposes of completing the setting of said monuments and/or paying said engineer(s) or surveyor(s). The Monument Security shall be retained by City until all of the following conditions have been met: (1) all work of setting monuments has been completed, (2) all work of setting monuments has been approved and accepted by City Council, and (3) the City has received written verification from surveyor(s) or engineer(s) that he/she/they have been paid in full for such work.

4.3. Termination of Subdivision Development Lien. No later than thirty (30) days following the City's acceptance of the Substitute Security, the City shall cause to be duly executed and acknowledged by the City and recorded with the office of the County Recorder of Los Angeles County, an instrument which shall terminate the Subdivision Development Lien created by this Agreement. Upon recording of said instrument, the Subdivision Development Lien shall be of no further force or effect. Notwithstanding the foregoing, all other provisions of this Agreement shall remain in full force and effect.

5. Warranty Period and Retention of Substitute Security.

5.1. Repair or Reconstruction of Defective Work. The Developer warrants that all Work and Improvements shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year from the date on which the City accepts the Work and Improvements as complete in accordance with the plans and specifications approved by the City Engineer. If, within a period of one (1) year after final acceptance of the work performed under this Agreement, any structure or part of any structure furnished and/or installed or constructed, or caused to be installed or constructed by the Developer, or any of the work done under this Agreement, fails to fulfill any of the requirements of the Agreement or the specifications referred to herein, the Developer shall, without delay and without cost to City, repair or replace or reconstruct any defective or otherwise unsatisfactory part or parts of the work or structure. Should the Developer fail to act promptly or in accordance with this requirement, or should the exigencies of the case require repairs or replacements to be made before the Developer can be notified, City may, at its option, make the necessary repairs or replacements or perform the necessary work and the Developer shall pay to the City the actual cost of such repairs plus fifteen percent (15%).

5.2. Retention of Improvement Security. Unless otherwise provided for under the Improvement Security, the City shall retain at least ten percent (10%) of the Improvement Security for faithful performance for a period of one (1) year after final acceptance of the Work performed under this Agreement, to guarantee corrective work throughout the warranty period described in

Section 5.1. The security for payment of labor and materials shall be retained by City for a period of ninety (90) days after final acceptance of the Improvements, after which the security for payment of labor and materials may be reduced to an amount equal to the amount of all claims, for which claims of lien have been recorded and notice given in writing to the City Council. The retained portion of the security for payment of labor and materials shall continue to be retained until the settlement of all such claims and obligations for which security was given.

6. Default and Remedies.

6.1. Events of Default. Each of the following events shall constitute an “Event of Default”:

- (a) Failure or delay by the Developer or any of Developer’s contractors, subcontractors, agents or employees to perform any material term or provision of this Agreement; or
- (b) The Developer’s refusal or failure to commence construction of the required Improvements within the time specified herein, or any extensions thereof; or
- (c) The Developer’s refusal or failure to obtain prosecution of the work, or any severable part thereof, with such diligence as will insure completion of the required Improvements within the time specified herein, or any extensions thereof; or
- (d) The Developer’s refusal or failure to complete the required Improvements within the time specified herein, or any extensions thereof; or
- (e) The Developer’s refusal or failure to provide the City with acceptable Substitute Security in accordance with the provisions of this Agreement; or
- (f) The Developer is adjudged a bankrupt, the Developer makes a general assignment for the benefit of Developer’s creditors, or a receiver is appointed in the event of Developer’s insolvency.

6.2. Remedies Prior to Substitution of Security. Prior to the substitution of security and upon the occurrence of any Event of Default, the City may pursue any and all rights and remedies available at law or in equity, including without limitation:

- (a) Any action at law or in equity as may be permitted by this Agreement in order to recover all damages necessary to compensate the City for the Developer’s failure to perform its agreements, obligations or undertakings hereunder; or otherwise arising out of the events of default; or
- (b) Reversion of the Property to acreage pursuant to Government Code Section 66499.11 *et seq.* and all other applicable law.

6.3. Remedies After Substitution of Security. After substitution of the security and upon the occurrence of any Event of Default, the City may pursue, in addition to those remedies

set forth in Section 6.2 above, any and all rights and remedies available at law, in equity, or under the terms of this Agreement that the City has against the Developer and/or surety(ies) that issued the security for faithful performance and security for payment of labor and materials.

7. Performance by Surety.

7.1. Notice of Breach and Default. If an Event of Default occurs after the substitution of security, the City Engineer or City Council may serve written notice upon the Developer and the Developer's surety in accordance with Section 8.8, of the Developer's default.

7.2. Performance by Surety or City. Following a notice of default served pursuant to Section 7.1, the Developer's surety shall have the duty to take over and complete the Work and the Improvements herein specified; provided, however, that if the surety, within thirty (30) days after the serving upon it of such notice of default, does not give City written notice of its intention to take over the performance of said Work or does not, within thirty (30) days after giving City notice of such election, commence to complete the Work City may take over the work and prosecute the same to completion, by contract or by any other method City may deem advisable, for the account and at the expense of the Developer, and the Developer's surety shall be liable to City for any costs or damages occasioned City thereby; and, in such event, City, without liability for so doing, may take possession of, and utilize in completing the Work, such materials, appliances, plant and other property belonging to the Developer as may be on the site of the Work and necessary therefor.

8. Release of Original Developer's Security. Within ten (10) days after recordation of this Agreement on the Property, City shall release and return all improvement security deposited with City for the Tract by or on behalf of the Original Developer, including, without limitation, City of Lancaster Bond for Faithful Performance number 070004820 in the penal sum of \$4,008,600.00, City of Lancaster Bond for Labor and Materials number 070004820 in the penal sum of \$2,004,300.00 (both issued by Liberty Mutual Insurance Company, and a cash deposit for monumentation in the amount of \$16,300.00.

9. General Provisions.

9.1. Hold Harmless. The Developer hereby binds itself, its executors, administrators, successors, and assigns and agrees to indemnify, defend and hold City, its elective and appointive boards, commissions, officers, agents and employees, harmless from any liability for or claims for damage for personal injury, including death, as well as from any liability for or claims for damage to property, both real and personal, which may arise from or be caused by the Developer's or the Developer's contractor's, subcontractor's, agent's or employee's operations under this Agreement. The Developer agrees to, and shall, defend City and its elective and appointive boards, commissions, officers, agents and employees from any suits or actions at law or in equity for damage caused, or alleged to have been caused, by reason of any of the aforesaid operations. It is understood that City does not, and shall not waive any right against the Developer which it may have by reason of the aforesaid hold-harmless agreement, because of the acceptance by City, or the deposit with City by the Developer, of the Improvement Security or Cash Charges (as herein defined). It is further understood that this Section shall apply to all damages and claims for damages of every kind suffered, or alleged to have been suffered, by reason of any of the aforesaid operations referred to in this Section, regardless of whether the City has prepared, supplied or approved of, plans and/or specifications for the Subdivision.

9.2. Time of Essence. Time is of the essence with respect to the performance of each and every obligation and condition of this Agreement. The City Council may in its sole and absolute discretion further extend the time for completion of the Improvements. Any such extension may be granted without notice to any surety securing all or any portion of the Developer's obligations hereunder, and extensions so granted shall not relieve any surety of its liability under the Improvement Security or Monument Security (as herein defined) or this Agreement to guarantee the faithful performance of this Agreement. The City Council shall be the sole and final judge as to whether or not good cause has been shown to entitle the Developer to an extension.

9.3. Relationship Between City and Developer. Neither the Developer nor any of the Developer's agents or contractors are or shall be considered to be agents of City in connection with the performance of Developer's obligations under this Agreement.

9.4. Emergencies. If, in the reasonable judgment of the City Engineer, conditions exist that cause, or may cause, a hazard to life or property, the City Engineer may cause such conditions to be modified on an emergency basis without notice to the Developer. Neither the City Engineer, the City or its agents shall be held liable to the Developer for damages arising out of such emergency actions, and to the extent that the actions taken are for the maintenance of safety to life and property that would not have existed had the Developer's operations not been in progress, the cost of such emergency measures so taken by the City shall be reimbursed to the City by the Developer.

9.5. Attorney's Fees. In addition to any other amounts to be paid by the Developer hereunder, the Developer shall pay all actual and reasonable costs, expenses and fees, including reasonable attorney's fees, incurred by the City in successfully enforcing the Improvement Security furnished by the Developer hereunder.

9.6. Alteration of Agreement. The Developer hereby stipulates and agrees that no addition, alterations or modifications to this Agreement or to the plans and specifications referred to herein, including any extension of time within which the Work hereunder may be completed, shall in any way affect its obligations on the Improvement Security furnished hereunder.

9.7. Surety to Include Issuer of Letter of Credit or Bond. The term surety as used herein shall include the issuer of any letter of credit or bond which is acceptable to the City as Improvement Security under this Agreement.

9.8. Notices. All notices and other communications hereunder shall be in writing and mailed via certified mail, return receipt requested, or personally delivered to the appropriate party at the address set forth in this Section 8.8, or, as to any party, at any other address in the State of California as shall be designated by it in a written notice sent to the other party. Notices shall be effective upon receipt.

To City:

City of Lancaster
44933 North Fern Avenue
Lancaster, California 93534-2461
Attention: City Engineer

To Developer:

Pelican Landing, LP
1000 Dove St., Ste. 300
Newport Beach, CA 92660
Attention: Nelson Chung

9.9. Approvals. Except as otherwise expressly provided herein, wherever in this Agreement the consent or approval of a party is required to an act by or for the other party, such consent or approval shall not be unreasonably withheld, conditioned or delayed.

9.10. Successors and Assigns. All of the terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the parties, their respective heirs, successors, representatives, assigns, officers, directors, agents, partners, servants, employees, and affiliated corporations or companies.

9.11. Headings. The headings contained in this Agreement have been inserted for convenience only and in no way define or limit the scope of interpretation of the Agreement.

9.12. Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

9.13. Corporate Authority. Each individual executing this Agreement on behalf of a public or private corporation, nonprofit corporation, partnership or other entity or organization, represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, partnership, entity or organization and that this Agreement is binding upon same in accordance with its terms. The Developer shall, at City's request, deliver a certified copy of its board of directors' resolution or certificate authorizing or evidencing such execution.

9.14. Effective Date of Agreement. This Agreement shall become effective as of the Date of Agreement or the date upon which the City Council approves the Map, whichever occurs later.

[Signatures appear on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

CITY:

CITY OF LANCASTER, a California municipal corporation and charter city

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

Allison E. Burns, Esq.
City Attorney

DEVELOPER:

PELICAN LANDING, LP., a California limited partnership

By: Nelson Chung & Associates, Inc., its General Partner

By: _____
Nelson Chung, President

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF LANCASTER, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

LOTS 1 THROUGH 63, INCLUSIVE, OF TRACT NO. 062845, IN THE CITY OF LANCASTER, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 1348, PAGES 11 THROUGH 19, INCLUSIVE OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT THEREFROM, 50 PERCENT MINERAL DEPOSITS, OILS, GASES, AND OTHER HYDROCARBON SUBSTANCES OF EVERY KIND AND NATURE CONTAINED IN SAID LAND BELOW A DEPTH OF 500 FEET FROM THE SURFACE THEREOF WITHOUT RIGHT TO ENTER UPON THE SURFACE OR WITHIN THE SAID 500 FEET FROM THE SURFACE FOR REMOVAL OF SAID DEPOSITS, AS RESERVED BY PACIFIC STATES CORPORATION, A CORPORATION, IN DEED RECORDED MARCH 28, 1957 AS INSTRUMENT NO. 2043, IN BOOK 54052, PAGE 291 OF OFFICIAL RECORDS.

APN: 3109-036-001; 3109-036-002; 3109-036-003; 3109-036-004; 3109-036-005; 3109-036-006; 3109-036-008; 3109-036-009; 3109-036-011; 3109-036-012; 3109-036-013; 3109-036-014; 3109-036-015; 3109-036-016; 3109-036-017; 3109-036-018; 3109-036-019; 3109-036-020; 3109-036-021; 3109-036-022; 3109-036-023; 3109-036-024; 3109-036-025; 3109-036-026; 3109-036-027; 3109-036-028; 3109-036-041; 3109-036-042; 3109-036-043; 3109-036-044; 3109-036-045; 3109-036-046; 3109-036-047; 3109-036-048; 3109-036-049; 3109-036-050; 3109-036-051; 3109-036-052; 3109-036-053; 3109-036-054; 3109-036-055; 3109-036-056; 3109-036-057; 3109-036-058; 3109-036-059; 3109-036-060; 3109-036-061; 3109-036-062; 3109-036-063; 3109-036-064; 3109-036-065; 3109-036-066; 3109-036-067; 3109-036-068; 3109-036-069; 3109-036-070; 3109-036-071; 3109-036-072; 3109-036-073; 3109-036-074; 3109-036-075; 3109-036-076; 3109-036-077

EXHIBIT "B"

DESCRIPTION OF IMPROVEMENTS

All public improvements shown in the improvement plans for the Tentative Map, including, without limitation, all grading and paving of streets, construction of curbs and gutters, crossgutters and sidewalks, installation of drainage and sanitary sewerage facilities, provision of an underground utility and street lighting system, installation of street signs, landscaping, parkway trees, water system and all related facilities.