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CITY OF LONG BEACH / CALIFORNIA STATE LANDS COMMISSION QUEENSWAY BAY EXCHANGE AGREEMENT

The parties to this Agreement are the State of California, acting by and through the California State Lands Commission, hereinafter "STATE", the City of Long Beach, as trustee pursuant to, *inter alia*, Chapter 676 of the Statutes of 1911, Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended, hereinafter "TRUSTEE", and the City of Long Beach, a municipality, hereinafter "CITY", the above collectively referred to as "Parties". The City of Long Beach, when being generally described or when acting in its dual role as TRUSTEE and CITY is hereinafter referred to as "City of Long Beach" or "City".

RECITALS

A. Upon its admission to the United States of America on September 9, 1850, the State of California, by virtue of its sovereignty under the Equal Footing Doctrine of the Constitution of the United States, received in trust for the people of California all right, title, and interest in previously ungranted tidelands and submerged lands within its boundaries for certain public trust purposes including but not limited to commerce, navigation, and fisheries.

B. Pursuant to the provisions of Division 6 of the Public Resources Code, including Sections 6216 and 6301, the California State Lands Commission is vested with all jurisdiction and authority as to the right, title, and interest in all ungranted tidelands and submerged lands held by California in trust for the benefit of all the people of the State and the reversionary and residual interest of the State as to public trust lands legislatively granted to local governments.

C. TRUSTEE is trustee of the tidelands and submerged lands granted to it by the California Legislature, pursuant to, *inter alia*, Chapter 676 of the Statutes of 1911, Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended (hereinafter "Granting Statutes"), which granted to the City of Long Beach the State's right, title and interest in and to all of the State's tidelands and submerged lands, within the then existing boundaries of the City of Long Beach, including the QUEENSWAY BAY PARCELS (as hereinafter defined), in trust for the public, and subject to certain terms, conditions, exceptions and reservations.

D. This Agreement concerns eight parcels of real property located in the City of Long Beach, County of Los Angeles, State of California, historically in and adjacent to the Los Angeles River and San Pedro Bay (shown for reference purposes only on Exhibit A) referred to throughout this Agreement, for convenience, as the "Subject Property." The Subject Property consists of five proposed trust termination parcels within the Queensway Bay Development Plan Phase II (shown for reference purposes only on Exhibit B), which are referred to throughout this Agreement as the "QUEENSWAY BAY PARCELS" (described in Exhibits C- 1 through C-5 and Exhibits E-1 through E-5) and three parcels situated north of the tidelands boundary set by Chapter 138 and east of the Los Angeles River, which are referred to throughout this Agreement as the "LOS ANGELES RIVER PARCELS" (described in Exhibits D-1 through D-3). Exhibits A through N are attached to this Agreement and are incorporated herein by this reference.

E. The QUEENSWAY BAY PARCELS collectively consist of 3.05± acres of tidelands and submerged lands, largely filled prior to 1960, with a small portion filled in 1964. This fill was part of a larger program of harbor improvement, flood control and shoreline configuration conducted by TRUSTEE. A significant portion of this filled land has remained undeveloped and vacant for over 20 years. These 3.05 acres are a relatively small portion of the 319 acre Queensway Bay Development Plan Area and the thousands of acres of filled tidelands and submerged lands and thousands of unfilled trust lands held by TRUSTEE.

F. Historically, the area of the Queensway Bay Development Area Phase II was a public seaside resort area incorporating the water, public beach and a large privately operated commercial attraction known as the Pike Amusement Park. The park attracted millions of people to the Long Beach waterfront in the Twentieth Century. Beginning in 1964, the City filled approximately 113 acres of the waterfront lying within the Queensway Bay Development Area and generally southerly of the QUEENSWAY BAY PARCELS. This fill moved the shoreline further south and separated downtown further from the waterfront.

G. In 1980, the City of Long Beach adopted and the California Coastal Commission certified a Local Coastal Program (LCP) for the waterfront. Within the Queensway Bay Development Plan Area, the LCP called for a new downtown marina and marina green, hotels and other visitor serving facilities, and a new elevated pedestrian promenade to link downtown to the waterfront. The City implemented provisions of the LCP, but as of 1992 there were still significant areas of vacant land and an undeveloped connection between downtown and the waterfront. During that same year, the City started a second planning process to create the Queensway Bay Development Plan.

H. In May of 1995, the California Coastal Commission unanimously certified the Queensway Bay Development Plan as an amendment to the LCP of 1980. The City of Long Beach's goals for the Queensway Bay Development Plan are as follows:

1. To create the premier world-class urban waterfront attraction for Southern California.
2. To strengthen the position of downtown Long Beach as a major center of commerce, entertainment and recreation within the greater Los Angeles region.
3. To increase convention and tourist visitations, promoting Long Beach as a visitor destination from which all other regional attractions can be easily accessed.

4. To create an environment and mix of private and public attractions that have a strong Southern California ambience and a specific identity that is unique to Long Beach.
5. To create a family destination attraction which appeals to a broad range of age groups, income levels and ethnic backgrounds and which engages the visitor in a variety of wholesome and uplifting recreational and educational activities.
6. To achieve a level of quality, design, construction and operation which evokes a sense of permanence of value and creates an environment in which the visitor feels welcome, comfortable and safe.

I. The Queensway Bay Development Plan as proposed includes:

1. Phase I (largely publicly funded with emphasis on infrastructure and public facilities, completed in June 1998):
 - a. The construction of a new commercial harbor which would be the home to historic ships, dinner cruises, whale watching vessels, fishing boats, diving boats and other vessels.
 - b. The south shore, where the Queen Mary and the old Spruce Goose dome are located, linked to the heart of the plan via a water taxi system.
 - c. Retention of the Queen Mary in place.
 - d. The construction of an events park and the construction of a boat launch ramp.
 - e. An aquarium and parking structure on the west-end of the harbor.
2. Phase II (a largely privately funded tourist orientated commercial development, construction not yet begun):
 - a. Involves the development of restaurants, retail and entertainment uses, on an 18 acre site between downtown Long Beach and the waterfront (including the 3.05 acre QUEENSWAY BAY PARCELS).
 - b. Four acres of Phase II are along the waterfront and 14 acres are located northerly of Shoreline Drive. The proposed Phase II land uses include constructing a public street to provide a connection from downtown to the waterfront, wide sidewalks, and open plazas and commercial uses, including multiplex movie theaters, a large-format movie theater, large and small scale retail stores, a day spa, restaurants, and parking areas.

J. The Queensway Bay Development Plan has been reviewed for environmental impact pursuant to the California Environmental Quality Act ("CEQA"). In December 1994, the City had Environmental Impact Report E-13-94, SCH #94081033 ("EIR") prepared and adopted it on December 19, 1994. The EIR reviewed the environmental impacts of the Queensway Bay Development Plan. City prepared an addendum to the EIR in July 1996, addressing changes not relevant to Phase II. City prepared a Mitigated Negative Declaration in April 1998, addressing changes to Phase II. There has been no legal challenge to the EIR, the Addendum, and the Negative Declaration, which are now conclusively presumed valid under CEQA. In 1998 the Coastal Commission again amended the LCP and increased the authorized commercial floor space from 535,000 square feet to 627,000 square feet. The Coastal Commission approved a permit (5-98-156) for the project on February 3, 1999 and has subsequently amended the permit on five occasions: November 2, 1999; December 9, 1999; February 15, 2000; March 14, 2000; and January 11, 2001.

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K. Certain uses proposed in Phase II of the Queensway Bay Development Plan by the City have resulted in a number of citizens and groups raising contentions that the Long Beach statutory grants and the Public Trust Doctrine do not allow for such uses.

L. The Queensway Bay Development Plan provides for a variety of uses, some of which are clearly within the parameter of accepted public trust uses and needs. They include a marina, yacht harbor, wetland, public walkways, open space and other public access related amenities. The Queensway Bay Development Plan also provides for hotels, restaurants, parking and other uses that are necessary and incidental to accommodate visitors to public trust lands.

M. City entered into an Amended and Restated Disposition and Development Agreement (hereinafter, "RESTATED AGREEMENT") by and between the City of Long Beach and DDR OliverMcMillan LP (hereinafter "DEVELOPER") on December 30, 1999, which provides for the development and operation of certain improvements within the 18 acre Phase II Development Area, including the 3.05 acre QUEENSWAY BAY PARCELS, pursuant to a ground lease. The RESTATED AGREEMENT was amended by the Supplement to the Amended and Restated Disposition and Development Agreement entered into on February 23, 2001, between the City of Long Beach and DEVELOPER (then and currently known as DDR Urban LP) (hereinafter "SUPPLEMENT"); the RESTATED AGREEMENT, as amended by the SUPPLEMENT, is hereinafter referred to as the "D&D AGREEMENT".

N. Subsequent to City's entering into the RESTATED AGREEMENT with DEVELOPER, the issue of potential conflict between uses proposed in the Queensway Bay Development Plan and the Public Trust land uses authorized under the Public Trust Doctrine and the Granting Statutes was brought to the attention of the California State Lands Commission by a number of residents of Long Beach. Pursuant to Commission direction, a public workshop on the matters raised by the residents in Long Beach was held on July 20, 2000. The staff reported to the Commission on the workshop on April 24, 2001. The Commission directed the staff to work with the City of Long Beach and the Attorney General's Office to seek a resolution of the issues involving Public Trust land uses.

O. The QUEENSWAY BAY PARCELS are located within a relatively small portion of the area covered by the Queensway Bay Development Plan (3.05 acres out of 319). On these parcels the City proposes to locate, among other things, a movie-theater complex, a bookstore and a large-scale retail store. Such uses, while public, are neither water dependent nor water oriented. STATE believes that they fall outside traditional Public Trust uses. The City has determined that these proposed uses are a necessary element of the overall plan for the area and that they will provide a practical contribution to the public visitor serving attraction of the development. Other important factors that contend for the inclusion of these uses within the project area include the apparent low demand or need for traditional public trust uses north of Shoreline Drive, as evidenced by the decades of under or non-use of the area, and the isolation of these parcels -- being separated from the current waterfront by a six-lane expressway. These factors, taken together with a proposed pedestrian walkway across the expressway, indicate that the City intends to draw the public to its urban waterfront as opposed to creating an additional barrier to public use. The TRUSTEE believes that these proposed uses are consistent with the Public Trust Doctrine and the Granting Statutes.

P. Long Beach Harbor is one of the world's great ports, and its operations have developed primarily on lands consisting of filled tide and submerged lands lying southerly and westerly of the subject area and separated from this area by the relocated Los Angeles River mouth. The development of non-harbor related uses for the QUEENSWAY BAY PARCELS will not interfere with the requirements of commerce and navigation in Long Beach Harbor.

Q. The controversy surrounding the proposed land uses for a portion of the 14- acre Phase II development of the Queensway Bay project lying north of Shoreline Drive has caused delays in the implementation of Phase II of the Queensway Bay Development Plan and the ability of the City to convey adequate title for the leasehold interest as required by the D&D AGREEMENT. Therefore, to settle the title problem that has arisen as a result of the controversy, the CITY has requested that STATE consider the exchange of the 3.05 acres (QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E, described in Exhibit C-1 through C-5 and E-1 through E-5, respectively) for the 10± acres of land in the vicinity of the Los Angeles River (LOS ANGELES RIVER PARCELS 1-3, described in Exhibits D-1 through D-3, respectively).

R. CITY has requested that STATE facilitate the proposed exchange by STATE accepting title to QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E from TRUSTEE and, as part of a further exchange, terminating the public trust interest of the State and exchanging the QUEENSWAY BAY PARCELS with CITY for the LOS ANGELES RIVER PARCELS 1, 2 and 3 pursuant to Public Resources Code Section 6307.

S. TRUSTEE and STATE also agree upon closing of escrow to enter simultaneously into a 49-year lease for the LOS ANGELES RIVER PARCELS acquired from CITY.

T. CITY agrees that it will indemnify, defend and hold STATE and TRUSTEE harmless from any and all claims and liability that might arise from the transaction or that are connected with the lands involved in the transaction.

U. The LOS ANGELES RIVER PARCELS are lands located within the Mexican land grant *Rancho Cerritos*, which was granted on May 22, 1834, to Dona Manuela Nieto by Governor Jose Figueroa, surveyed by the United States in 1866, confirmed by the United States District Court on January 10, 1867, and patented by the United States on December 7, 1867.

V. The QUEENSWAY BAY PARCELS have been filled and reclaimed and all five parcels are above the current mean high tide line and a minimum distance of 550 feet from the present location of the shoreline.

W. Specific portions of the Subject Property, QUEENSWAY BAY PARCELS A1, C1, C/D, D1, and E, are not necessary for public trust purposes of navigation, commerce and fisheries, and the lands to be acquired, LOS ANGELES RIVER PARCELS 1-3 because of their configuration and location, can be used more effectively by TRUSTEE in furtherance of public trust purposes than the filled trust lands to be conveyed.

X. Resolution of the title dispute over land use issues involving the QUEENSWAY BAY PARCELS, if not consummated by agreement of the parties, could require costly, protracted, and vigorously disputed litigation, with uncertain results.

Y. In the interest of settlement, STATE, CITY and TRUSTEE have conducted independent studies and evaluations of the Parties' respective factual and legal positions. A property interest evaluation study completed by STATE has shown that the value of the lands and interests to be conveyed to STATE, as described above, are greater than the value of the STATE interest in the lands to be quitclaimed by STATE to CITY.

Z. STATE is authorized by Division 6 of the Public Resources Code, including Section 6307, to exchange interests in real property held by the State by reason of its sovereignty for interests in other lands of equal or greater value.

AA. STATE by approval of agenda item #89, as amended, at its meeting of September 17, 2001, approved this Agreement, subject to the conditions relating to timing, phasing and land use as set forth in paragraph I. H. below.

BB. The Parties consider it expedient, necessary and in the best interests of the State of California, CITY, TRUSTEE, and the public to resolve this title dispute by agreement, thereby avoiding the potential substantial costs, time delays, and uncertainties of litigation and have reached the following Agreement that provides:

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the terms set forth below and for valuable consideration, the receipt of which is hereby acknowledged, the Parties mutually agree to the following terms and conditions and to convey certain property rights as follows:

I. PROPERTY INTEREST EXCHANGE AND CONVEYANCES

A. TRUSTEE to convey QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E to STATE. In consideration of STATE's cooperation and assistance in facilitating the exchange of properties of TRUSTEE with CITY and STATE and the lease to TRUSTEE of the properties acquired by STATE from CITY, TRUSTEE agrees to remise, release, and forever quitclaim all its right, title and interest existing by virtue of the Granting Statutes in the following real property to STATE, excepting therefrom all mineral rights which will remain subject to the Granting Statutes, but without the right of surface entry to a depth of two hundred (200) feet below the surface:

1. QUEENSWAY BAY PARCEL A1 (in the form of the deed attached as Exhibit C-1).
2. QUEENSWAY BAY PARCEL C1 (in the form of the deed attached as Exhibit C-2).
3. QUEENSWAY BAY PARCEL C/D (in the form of the deed attached as Exhibit C-3).
4. QUEENSWAY BAY PARCEL D1 (in the form of the deed attached as Exhibit C-4).
5. QUEENSWAY BAY PARCEL E (in the form of the deed attached as Exhibit C-5).

B. CITY to convey LOS ANGELES RIVER PARCELS 1, 2 and 3 to STATE. In consideration of the agreement by STATE to convey QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E to CITY, as provided in paragraph I. C. below, CITY agrees to convey all its right, title and interest in the following real property to STATE:

1. LOS ANGELES RIVER PARCEL 1 (in the form of the deed attached as Exhibit D-1).
2. LOS ANGELES RIVER PARCEL 2 (in the form of the deed attached as Exhibit D-2).
3. LOS ANGELES RIVER PARCEL 3 (in the form of the deed attached as Exhibit D-3).

C. STATE to patent and convey QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E to CITY. In consideration of the agreement by CITY to convey to STATE the LOS ANGELES RIVER PARCELS 1, 2 and 3, as provided for in paragraph I. B. above, STATE agrees to patent and convey to CITY all of the right, title and interest to be acquired pursuant to I. A. above, free of the public trust for commerce, navigation and fisheries as provided for in paragraph II. C. below, in and to the following real property:

1. QUEENSWAY BAY PARCEL A1 (in the form of the deed attached as Exhibit E-1).
2. QUEENSWAY BAY PARCEL C1 (in the form of the deed attached as Exhibit E-2).
3. QUEENSWAY BAY PARCEL C/D (in the form of the deed attached as Exhibit E-3).
4. QUEENSWAY BAY PARCEL D1 (in the form of the deed attached as Exhibit E-4).
5. QUEENSWAY BAY PARCEL E (in the form of the deed attached as Exhibit E-5).

D. STATE to grant to TRUSTEE a Lease for LOS ANGELES RIVER PARCELS 1, 2 and 3. In consideration of the agreement by TRUSTEE to convey to STATE all its right, title and interest in the QUEENSWAY BAY PARCELS A1, C1, C/D, D1 and E, as provided in paragraph I. A. above, and the agreement by CITY to convey to STATE all its right, title and interest in the LOS ANGELES RIVER PARCELS 1, 2 and 3, as provided in paragraph I. B. above, STATE agrees to grant to TRUSTEE a 49-year lease with STATE for the LOS ANGELES RIVER PARCELS acquired from CITY consistent with the form shown in Exhibit N.

E. STATE's Agreement to Accept the Property Interests to be Conveyed as provided in Paragraph I.A. STATE agrees to accept the property interests conveyed by TRUSTEE as provided for in paragraph I. A. above. Acceptance shall be made by the execution and recordation of Certificates of Acceptance in the form of those attached as Exhibits F, G, H, I and J.

- F. STATE's Agreement to Accept the Property Interests to be Conveyed as provided in Paragraph I.B.** STATE agrees to accept the property interests conveyed by CITY as provided for in paragraph I. B. above. Acceptance shall be made by the execution and recordation of Certificates of Acceptance in the form of those attached as Exhibits K, L and M.
- G. STATE, TRUSTEE and CITY to Cooperate.** STATE, TRUSTEE and CITY shall expeditiously pursue obtaining the legislation necessary for STATE to transfer to TRUSTEE fee title, in trust, to LOS ANGELES RIVER PARCELS 1, 2 and 3.
- H. CONDITIONS OF STATE APPROVAL.**
1. The CITY and DEVELOPER shall have all necessary agreements in place and effective prior to June 1, 2002. This means that the "Closing" under the **D&D AGREEMENT** must take place on or before May 31, 2002.
 2. The DEVELOPER must proceed with development of the project without phasing, except as otherwise provided in Section 3 of the **SECOND AMENDED AND RESTATED GROUND LEASE**, between the City of Long Beach, as Landlord and DDR Urban LP, as Tenant (hereinafter the "**GROUND LEASE**"), a copy of which is attached to the **SUPPLEMENT** as Exhibit C. CITY shall deliver to STATE a copy of the final plans for construction no later than 21 days prior to commencement of construction; the scope of STATE's review of said plans shall be limited to verifying that the improvements to be constructed on a particular QUEENSWAY BAY PARCEL are within the boundaries of that parcel and substantially as shown on Exhibit O. Construction, commencing with grading activities, shall begin immediately upon the Close of Escrow, as defined in paragraph IV. E., below, and shall be diligently pursued to completion. For purposes of this paragraph I.H., "completion" shall be deemed to have occurred with respect to the improvements to be constructed on a QUEENSWAY BAY PARCEL, and such improvements shall be deemed to have been "completed", when both of the following have occurred with respect thereto: (i) such improvements shall have opened for business, meaning that the tenant or operator thereof has commenced doing business with the public from such improvements; and (ii) a Certificate of Completion shall have been recorded in the Official Records of Los Angeles County for such parcel as provided for in Section 5.2 of the **D&D AGREEMENT**.
 3. The initial use of each structure on the five QUEENSWAY BAY PARCELS (or in the case of QUEENSWAY BAY PARCEL C/D, on the second floor thereof) shall be as stated and reflected on Exhibit O.
 4. If the deadline described in paragraph I. H. 1. above, is not met, subject to the provisions of paragraph I. H. 7. below, the PARTIES agree that this Agreement shall be of no further force and effect and escrow shall automatically terminate as provided in paragraph IV. G. 3. below.

5. Should the conditions provided for in paragraphs I. H. 2. and 3. above, not be met, this Agreement shall remain in force and effect. However, as to any parcel in violation of the conditions in paragraphs I. H. 2. or I. H. 3. above, if the violation has not been cured by the date that is 60 days after STATE's delivery of written notice thereof to CITY, DEVELOPER and each person or entity that is holder or beneficiary of a deed of trust, mortgage or similar lien recorded against the GROUND LEASE affecting that parcel, then that parcel shall revert to its status as lands held by TRUSTEE subject to the Granting Statutes, and CITY shall execute and record a deed and any other necessary instrument transferring the parcel to its prior trust status.
6. The Close of Escrow provided for in paragraph IV. E. below may occur simultaneously with the Closing under, and as provided in Section 4.2. of the **D&D AGREEMENT**, but shall otherwise not occur prior to the Closing under the **D&D AGREEMENT**.
7. The deadlines provided for in paragraphs I. H. 1. and 2. above shall be extended when a Party to this Agreement or a party to the **D&D AGREEMENT** is unable to meet a deadline for close of escrow or commencement of construction due to one or more of the following events which proximately causes such delay: strikes, lockouts, acts of war, acts of God, acts of the public enemy, or litigation by third parties that results in a court order temporarily preventing closing of escrow or construction. The extension shall be only for so long as the event causing the delay continues and is the proximate cause of the delay.
8. This Agreement shall survive its recordation; provided, however, that the foregoing provisions of this paragraph I. H. shall cease to be of any further force and effect as to each of the QUEENSWAY BAY PARCELS when the initial improvements to be constructed thereon have been completed, as such term is defined in paragraph I. H. 2. above. Without limiting the foregoing, from and after the date of such completion with respect to a particular QUEENSWAY BAY PARCEL, CITY, or its lessee, as authorized by CITY, may alter the use of such parcel and shall not be required to seek any sort of approval from STATE with regard to any future use. Not later than thirty (30) business days after CITY's, or its lessee's, request therefor at any time after the date of completion with respect to a particular QUEENSWAY BAY PARCEL, the Executive Officer of the California State Lands Commission shall deliver to CITY and CITY's lessee an instrument in recordable form that recites that the terms of paragraphs I. H. 1 through I. H. 7. of this Agreement have been complied with and are of no further force or effect as to such parcel.

II. **STATE LANDS COMMISSION FINDINGS.** STATE, by its approval of agenda item 89 at its meeting of September 17, 2001 and authorization of the execution of this Agreement, finds and declares the following, which findings and declarations II. B. through II. H. below shall become effective only upon Close of Escrow as provided herein:

- A. This Agreement and the activities contemplated hereby are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to

Title 14 of the California Code of Regulations, Section 15061 as a statutorily exempt project pursuant to Public Resources Code Section 21080.11, a land exchange agreement settling title disputes.

- B. This Agreement is in the best interests of the State and consistent with public trust needs to enhance the configuration and utility of the property adjacent to the shoreline for improvement of public access to the water and development of the upland. Among other things:
1. The conveyances contemplated by this Agreement will result in trust property being expanded to an area adjacent to the shoreline of the Los Angeles River for the improvement of the public's access to the water and protection and development of the property for open space, wetlands restoration, and public education and recreation; and
 2. Public Trust purposes are promoted; in that the LOS ANGELES RIVER PARCELS 1, 2 and 3 conveyed to the STATE and leased to TRUSTEE as Public Trust lands, will be managed for purposes consistent with the Granting Statutes including, but not limited to, Chapter 676 of the Statutes of 1911, Chapter 102 of the Statutes of 1925, Chapter 158 of the Statutes of 1935, and Chapter 138 of the Statutes of 1964, First Extraordinary Session, as amended.
- C. The conveyances made pursuant to this Agreement will not interfere with but rather enhance the public's rights of navigation, fishing and access to the Pacific Ocean and the Los Angeles River, which lies adjacent to and connects with existing public trust lands in Long Beach held in trust by TRUSTEE.
- D. The value of the LOS ANGELES RIVER PARCELS is equal to, or greater than, the value of the QUEENSWAY BAY PARCELS.
- E. The trust termination parcels (QUEENSWAY BAY PARCELS) consisting of 3.05± acres, which collectively are a relatively small area of the hundreds of acres of filled (less than 1 % of filled area within the Queensway Bay Planning area) and thousands of acres of unfilled public trust lands held by TRUSTEE, have been evaluated as to their current physical character and trust utility; have been filled and reclaimed as the result of a highly beneficial program of harbor development and have been excluded from the public channels for more than 30 years, are no longer in fact tidelands or submerged lands and are not available or susceptible of being used for navigation or fishing.
- F. The LOS ANGELES RIVER PARCELS are of such a configuration and location that they can be used more efficiently by STATE and TRUSTEE in furtherance of public trust purposes than the QUEENSWAY BAY PARCELS to be conveyed to CITY.
- G. The LOS ANGELES RIVER PARCELS are to be accepted by STATE as Public Trust lands for the benefit of the People of the State of California, to be held by STATE in perpetuity for public trust purposes, subject to the authority of STATE to lease this property for public trust purposes, such as provided for in

paragraph I. D. and the authority of the Legislature to control and to make statutory grants in trust of the LOS ANGELES RIVER PARCELS, such as contemplated by paragraph I. G.

- H. Pursuant to Public Resources Code Section 6307, on the date provided for in this Agreement and consistent with its terms, the QUEENSWAY BAY PARCELS any and all public trust interest or state sovereign title therein will be terminated.

III. ADDITIONAL PROVISIONS

- A. **Acceptance of Conveyances and Consent to Recording.**
By execution of this Agreement, STATE, TRUSTEE and CITY agree to accept the herein described conveyances of land and consent to the recording of the conveyances and other documents executed pursuant to this Agreement.
- B. **Further Assurances.**
So long as authorized by applicable laws to do so, the Parties will perform such other acts, and execute, acknowledge and deliver all further documents, conveyances and other instruments that may be necessary to effectuate fully the provisions of this Agreement.
- C. **Execution before a Notary Public.**
All signatures of the Parties to this Agreement and all documents executed pursuant to this Agreement shall be acknowledged before a Notary Public and a certificate of acknowledgment shall be attached to allow them to be recorded in the Office of the Recorder of Los Angeles County, California.
- D. **Counterparts.**
This Agreement may be executed in any number of counterparts and each executed counterpart shall have the same force and effect as an original and as if all of the Parties to the aggregate counterparts had signed the same instrument. The Escrow Agent established pursuant to paragraph IV may detach any signature page of this Agreement from any counterpart of this Agreement without impairing any signatures thereon, and may attach it to another counterpart of this Agreement identical in form hereto for the purpose of creating an integrated document or documents. The Escrow Agent shall deliver an original signed counterpart to each Party.
- E. **CITY to Indemnify and Hold STATE and TRUSTEE Harmless.**
CITY shall indemnify, defend and hold STATE and TRUSTEE harmless from any and all claims, liability, losses, costs and expenses (including without limitation, those which may arise from the release, threatened release or existence of hazardous substances on, over or under the Parcels described in Exhibits C-1 through C-5, D 1 through D-3, and E-1 through E-5, hereto) that may arise from this Agreement or the lands involved in the exchange.

F. No Admission or Effect if Agreement Not Made Effective.

In the event this Agreement does not become effective, as provided in paragraph IV. F., nothing herein shall constitute, or be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title to or interest in the Subject Property.

G. No Effect on Other Lands.

The provisions of this Agreement do not constitute, nor are they to be construed as, an admission by any Party or evidence concerning the boundaries, physical character, or character of title to or interest in any lands outside the Subject Property.

H. Exemptions.

This Agreement and the conveyances provided herein are exempt from 1) the Subdivision Map Act pursuant to Government Code Section 66412 (e); 2) the California Environmental Quality Act pursuant to Public Resources Code Section 21080.11; 3) the California Coastal Act pursuant to Public Resources Code Section 30416 (c); and 4) the Property Acquisition Law pursuant to Government Code Section 15853 (c).

I. Binding Agreement.

All the terms, provisions, and conditions of this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties.

J. Modification.

No modification, amendment, or alteration of this Agreement shall be valid unless in writing and signed by all of the Parties to this Agreement.

K. No Effect on Other Government Jurisdiction.

This Agreement does not exempt the Parties from the regulatory, environmental, land use or other jurisdiction of any federal, state, local, or other government entity.

L. Headings.

The title headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be considered in construing this Agreement.

M. Allocation of Costs and Expenses.

The expenses and fees of escrow incurred by the Escrow Agent, including those associated with recordation of this document and other documents necessary to effectuate this Agreement, shall be borne by CITY. All other fees, costs and expenses of any attorney, engineer or other person employed or retained by a Party hereto in connection with the transaction underlying this Agreement shall be borne by that party, or as otherwise agreed to.

N. Title Insurance.

The Parties shall each obtain a policy of title insurance insuring their titles. CITY shall pay the costs of each Party's insurance.

IV. Escrow

- A. The Parties designate and authorize Stewart Title Company, Los Angeles Division, 505 North Brand Blvd, Suite 1200, Glendale, CA 91203, (818) 502-2700 to act as the Escrow Agent for all purposes of this Agreement. The Escrow Agent is directed to accept a fully executed copy of this Agreement as instructions of the Parties. Additional joint escrow instructions may be submitted by the Parties.
- B. The Escrow Agent shall execute a counterpart to this Agreement for the limited purpose of accepting the rights, duties and responsibilities set forth in this Agreement pertaining to the Escrow Agent.
- C. Deposits by Parties:
 - 1. STATE shall deposit the following documents into escrow:
 - a. A certified copy of a Minute Item of a California State Lands Commission public hearing showing the Commission's approval of this Agreement and the Commission's authorization that the Agreement, Deeds and Certificates of Acceptance be executed on STATE's behalf.
 - b. This Agreement, duly and properly executed by STATE.
 - c. Certificates of Acceptance duly and properly executed by the STATE in the form of Exhibits F, G, H, I and J attached hereto.
 - d. Certificates of Acceptance duly and properly executed by STATE in the form of Exhibits K, L and M attached hereto.
 - e. Duly and properly executed Deeds in the form of Exhibits E-1, E-2, E-3, E-4 and E-5 attached hereto.
 - e. Lease PRC 8325.9, in the form of Exhibit N, which provides for a 49-year term to TRUSTEE.
 - f. Written approval of the condition of title for LOS ANGELES RIVER PARCELS 1, 2 and 3, respectively, as shown in Escrow Agent's Proforma Reports, Order Nos. 370111549, 370075198, and 370111295.
 - 2. TRUSTEE shall deposit the following into escrow:
 - a. A certified copy of an official action of the City of Long Beach, as trustee (TRUSTEE), authorizing the execution of this Agreement and acceptance of Lease PRC 8325.9.
 - b. This Agreement, duly and properly executed by TRUSTEE.
 - c. Duly and properly executed Deeds in the form of Exhibits C-1, C-2, C-3, C-4 and C-5 attached hereto.
 - d. Duly and properly executed copy of Lease PRC 8325.9, in the form of Exhibit N.
 - 3. CITY shall deposit the following documents into escrow:

- a. A certified copy of an official action of the City of Long Beach, as a municipality (CITY), authorizing the execution of this Agreement.
 - b. This Agreement, duly and properly executed by CITY.
 - c. Written approval of the condition of title for the QUEENSWAY BAY PARCELS as described in Exhibits E-1, E-2, E-3, E-4 and E-5, as shown in Escrow Agent's Preliminary Reports, Order No. 350046803, dated August 17, 2001.
 - d. Duly and properly executed Deeds in the form of Exhibits D-1, D-2 and D-3 attached hereto.
 - e. Certificates of Acceptance duly and properly executed by the CITY for the property described in the Deeds attached as Exhibits E-1, E-2, E-3, E-4 and E-5, attached hereto.
4. CITY/TRUSTEE shall deposit one of the following documents into escrow:
- a. A certified copy of the recorded Memorandum Of Lease as provided for in Section 4.2 of the **RESTATED AGREEMENT** and Section 24 of the **GROUND LEASE**, or
 - b. If this Agreement is to have a simultaneous close of escrow with the Closing under the **D&D AGREEMENT** as provided for in paragraph I. H. 6. above, then a fully executed Memorandum of Lease.

D. Notification of Deposit.

Upon receipt of all documents described in paragraph IV. C., above, and when it is prepared to issue any and all policies of title insurance requested by the Parties pursuant to paragraph III. N., above, Escrow Agent shall notify the Parties of its intention to close escrow, to record the documents as described in paragraphs IV. E.1.a., b., c. and d., below, along with any other necessary documents and shall set a date certain for such recordation and closing.

E. Close of Escrow.

1. At 8:00 a.m., or as early as possible, on the date chosen for Close of Escrow, the Escrow Agent shall perform the following acts in the order set forth:
 - a. Record the duly and properly executed copy of this Agreement.
 - b. Record the duly and properly executed Deeds, referred to in paragraphs I. A., I. B. and I. C., in that sequence, together with their respective duly and properly executed Certificates of Acceptance.
 - c. Record the duly and properly executed Lease PRC 8325.9 (entering the recording date thereon).
 - d. Issue any policies of title insurance requested by any of the Parties pursuant to paragraph III. N., above.
2. The term "Close of Escrow" shall mean the date and time of recording.
3. When all the documents have been recorded, the Escrow Agent is authorized and directed to deliver copies of the recorded Agreement to the Parties and original deeds to the grantees thereof. The original of the Agreement shall be returned to the STATE.

F. Effective Date.

This Agreement shall not become effective until signed by all the Parties and recorded as provided herein.

G. Termination of Escrow.

1. If the Escrow Agent believes it is unable to close the escrow, the Escrow Agent shall immediately notify the Parties in writing.
2. In the event escrow is terminated, the Escrow Agent shall immediately give notice of this fact to each of the Parties and return all documents and monies to each of the Parties depositing the same.
3. If the escrow is terminated, and each Party has performed its respective duties hereunder, this Agreement shall terminate simultaneously with the termination of the escrow and thereafter no Party shall have any rights, duties, claims or obligations under this Agreement.
4. If the escrow is terminated and if any Party has failed to perform its respective duties hereunder, each Party shall have such rights and remedies as provided by law and in equity for the failure of such other Party to perform.
5. In the event of the termination of this Agreement, CITY shall compensate the Escrow Agent for services it rendered and reimburse it for expenses incurred.

V. EXHIBITS

A. The exhibits to this Agreement are as follows:

- Exhibit A Site map showing location of SUBJECT PROPERTY
- Exhibit B Map of Queensway Bay Development Area
- Exhibit C - 1 Form of Deed for QUEENSWAY BAY PARCEL A1 to STATE
- Exhibit C - 2 Form of Deed for QUEENSWAY BAY PARCEL C1 to STATE
- Exhibit C - 3 Form of Deed for QUEENSWAY BAY PARCEL C/D to STATE
- Exhibit C - 4 Form of Deed for QUEENSWAY BAY PARCEL D1 to STATE
- Exhibit C - 5 Form of Deed for QUEENSWAY BAY PARCEL E to STATE
- Exhibit D - 1 Form of Deed for LOS ANGELES RIVER PARCEL 1 to STATE
- Exhibit D - 2 Form of Deed for LOS ANGELES RIVER PARCEL 2 to STATE
- Exhibit D - 3 Form of Deed for LOS ANGELES RIVER PARCEL 3 to STATE
- Exhibit E - 1 Form of Deed for QUEENSWAY BAY PARCEL A1 to CITY
- Exhibit E - 2 Form of Deed for QUEENSWAY BAY PARCEL C1 to CITY
- Exhibit E - 3 Form of Deed for QUEENSWAY BAY PARCEL C/D to CITY
- Exhibit E - 4 Form of Deed for QUEENSWAY BAY PARCEL D1 to CITY
- Exhibit E - 5 Form of Deed for QUEENSWAY BAY PARCEL E to CITY
- Exhibit F Certificate of Acceptance and Consent to record by STATE of QUEENSWAY BAY PARCEL A1
- Exhibit G Certificate of Acceptance and Consent to record by STATE of QUEENSWAY BAY PARCEL C1
- Exhibit H Certificate of Acceptance and Consent to Record by STATE of QUEENSWAY BAY PARCEL C/D
- Exhibit I Certificate of Acceptance and Consent to Record by STATE of QUEENSWAY BAY PARCEL D1
- Exhibit J Certificate of Acceptance and Consent to Record by STATE of QUEENSWAY BAY PARCEL E

- Exhibit K Certificate of Acceptance and Consent to Record by STATE of LOS ANGELES RIVER PARCEL 1
- Exhibit L Certificate of Acceptance and Consent to Record by STATE of LOS ANGELES RIVER PARCEL 2
- Exhibit M Certificate of Acceptance and Consent to Record by STATE of LOS ANGELES RIVER PARCEL 3
- Exhibit N Form of Lease PRC 8325.9
- Exhibit O Site Plan and list of Queensway Bay Parcels identifying designated land uses

B. All preliminary recitals of and exhibits to this Agreement, (Exhibits A through O), are hereby incorporated by reference within it.

VI. Notifications

All notices to be given to any Party by another Party shall be in writing, addressed to such Party at its address set forth below, and deemed to have been given: a) when delivered in person to an officer or agent of the other Party or Parties, or b) when delivered by Federal Express or other similar overnight delivery service, or c) when received by telephonic facsimile, if confirmed and followed within one (1) business day by mailing the original. Any notice given in any other fashion shall be deemed to have been given when actually received by the addressee. Any Party may change its address by giving written notice to all other Parties. The addresses of the Parties are as follows:

STATE: California State Lands Commission
100 Howe Avenue, Suite 100 South
Sacramento, CA 95825-8202
Attention: Curtis L. Fossum
Senior Staff Counsel
Fax number (916) 574-1855

Copy to: Attorney General's Office
300 South Spring Street, 12th Floor
Los Angeles, CA 90013
Attention: Alan Hager
Deputy Attorney General
Fax number (213) 897-2801

TRUSTEE: City of Long Beach, as Trustee
333 West Ocean Blvd.
13th Floor - City Hall
Long Beach, CA 90802
c/o Henry Taboada, City Manager
Fax number (562) 570-6583

CITY: City of Long Beach, as a Municipality
333 West Ocean Blvd.
13th Floor - City Hall
Long Beach, CA 90802
c/o Henry Taboada, City Manager
Fax number (562) 570-6583

Approved as to form:

BILL LOCKYER
Attorney General

State of California

By: _____



ALAN HAGER
Deputy Attorney General

Stewart Title Company hereby agrees to act as the Escrow Agent under this Agreement and to perform the duties required herein.

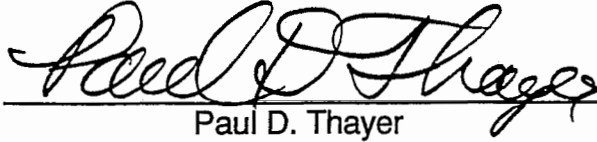
By: _____

Dated: _____

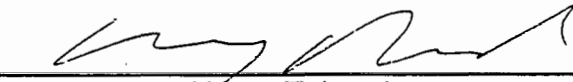
Title: _____

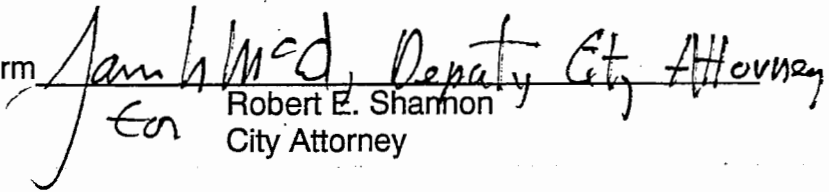
To witness this Agreement, a duly authorized officer of each party has executed it below on the date opposite each signature.

STATE OF CALIFORNIA
CALIFORNIA STATE LANDS COMMISSION

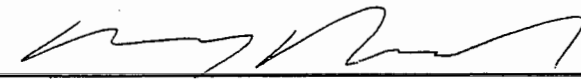
Date: 4-29-02 By: 
Paul D. Thayer
Executive Officer

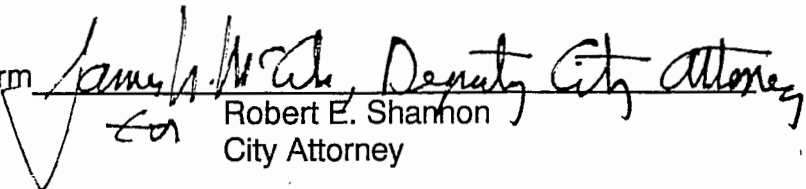
CITY OF LONG BEACH, AS TRUSTEE OF STATE

Date: 4-26-02 By: 
Henry Taboada
City Manager

Approved as to form 
for Robert E. Shannon
City Attorney

CITY OF LONG BEACH, AS A MUNICIPALITY

Date: 4-26-02 By: 
Henry Taboada
City Manager

Approved as to form 
for Robert E. Shannon
City Attorney

ACKNOWLEDGMENTS OF SIGNATURES TO BE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

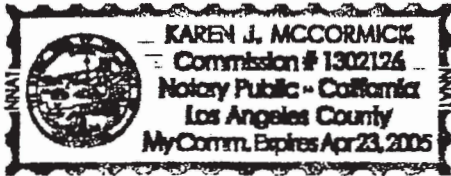
State of California

County of Los Angeles

On April 26, 2002 before me, Karen J. McCormick, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared HENRY TABOADA
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.

Karen J. McCormick
Signature of Notary Public

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

IN APPROVAL WHEREOF, I, GRAY DAVIS, Governor of the State
of California, have set my hand and caused the seal of the State
of California to be hereunto affixed pursuant to Section 6107 of
the Public Resources Code of the State of California. Given
under my hand at the City of Sacramento this _____ day of
_____, TWO THOUSAND AND TWO.

GRAY DAVIS
GOVERNOR

Attest:

BILL JONES
SECRETARY OF STATE