

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U902E) and Caruso Acquisition Co. II, LLC for an Order Authorizing the Sale of Property Pursuant to Public Utilities Code § 851.

A.13-02-\_\_\_\_\_

**APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY  
AND CARUSO ACQUISITION CO. II, LLC FOR AN ORDER  
AUTHORIZING THE SALE OF PROPERTY PURSUANT TO  
PUBLIC UTILITIES CODE § 851**

**PUBLIC VERSION**

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February 27, 2013

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**I.  
INTRODUCTION**

Pursuant to Public Utilities Code § 851 and Articles 2 and 3 of the Rules of Practice and Procedure before the Public Utilities Commission of California (the “Commission”), San Diego Gas & Electric Company (“SDG&E”) and Caruso Acquisition Co. II, LLC (“Caruso”) respectfully request authorization for SDG&E to sell approximately 48.78 gross acres of land<sup>1</sup> (the “Sale Parcel”), along with related intangible personal property (together, the “Property”), and subject to the buyer’s exercise of option rights to purchase up to approximately 159.79 gross acres of adjacent land along with related intangible personal property (together, the “Option Parcel”), located in Carlsbad (the “City”), San Diego County, California, on the terms and conditions specified in the Purchase and Sale Agreement dated as of July 31, 2012, between SDG&E and Caruso. A true and correct copy of the Purchase and Sale Agreement is attached as

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<sup>1</sup> References in this Application to “gross acres” refer to the property boundary of each described parcel that extends to and includes all or a portion of Cannon Road, a public street in the City of Carlsbad the land rights for which are evidenced by one or more easements in favor of the City. SDG&E will deed the gross acreage to the Buyer.

Exhibit A. Terms and conditions of the agreement provide that SDG&E shall reserve and maintain all easements required for present and future use of its electric transmission and distribution and gas facilities. It is estimated that the reserved utility electric easements will consist of approximately 12.27 acres of the 48.78 acre Sale Parcel; the electric transmission portion of the easement area is 12.02 acres. The properties are more particularly described below.

## **II. BACKGROUND**

In the early 1950's SDG&E purchased approximately 670 acres of land in the City of Carlsbad, California. The Encina Power Plant was constructed on the most westerly portion of that land and began operations in November 1954. To facilitate operation of the power plant, SDG&E rehabilitated certain lagoon waters known as the Agua Hedionda Lagoon. The Lagoon consists of three portions – that most westerly called the Outer Lagoon, the middle section primarily beneath the existing rail corridor and freeway called the Middle Lagoon, and the remaining portion of the body of water adjacent to the northern boundary of the properties subject of this application called the Inner Lagoon. In the late 1960's Interstate 5 was constructed and effectively divided the SDG&E property ownership to those portions east and west of the freeway. On May 20, 1999, SDG&E sold the power plant to Cabrillo Power I (see, Decisions 98-10-055 dated October 22, 1998 and 99-02-073 dated February 18, 1999). Subsequently, SDG&E received approvals from the City of Carlsbad and California Coastal Commission to remap the entirety of the approximately 670 acres into eleven distinct parcels. The purpose of the mapping was to (1) create separate parcels of land that were sold to Cabrillo Power I for operation of the power plant including all lagoon waters, (2) address the separation of the property by construction of the freeway, (3) recognize the separation of the land from the

bodies of water, and (4) recognize the remaining SDG&E owned land east of the freeway that, except for operation of the overhead electric and underground gas lines, was not connected to the power plant or substation operations remaining west of the freeway. The mapping process was finalized by recording eleven Certificates of Compliance with the San Diego County Recorder on October 11, 2001, and thereafter recording a Record of Survey with the San Diego County Recorder on April 12, 2002, in the Book of Record of Survey Maps at Page 17350. It should further be noted that in the mid-1990's, the City of Carlsbad caused Cannon Road to be extended easterly, resulting in another division of SDG&E owned land, being either north or south of Cannon Road. The lands discussed in this Application are located north of Cannon Road.

The Sale Parcel is bordered, generally, by the San Diego Freeway (I-5) to the west, Cannon Road to the south, the Agua Hedionda Lagoon to the north, and the Option Parcel to the east. The Option Parcel is bordered, generally, by the Sale Parcel to the west, Cannon Road and other SDG&E owned land not a part of this transaction to the south, the Agua Hedionda Lagoon to the north, and other largely-undeveloped land to the east. The intangible personal property associated with the land includes any assignable governmental entitlements, permits, approvals, and licenses related to the land.

An underground gas pipeline and overhead electric transmission and distribution lines owned by SDG&E traverse both parcels and, except for access required for the operation and maintenance of the utility facilities, the parcels are not otherwise used by SDG&E, and SDG&E has no planned use for them. In addition, the Sale Parcel is subject to various water utility and roadway easements, as well as a deed restriction imposed by the California Coastal Commission on the most northerly portions of both parcels to the lagoon shoreline disallowing any development as defined in Section 30106 of the Coastal Act, however maintenance of overhead

and underground utility facilities is permitted. Portions of the Sale Parcel and the Option Parcel are also currently used in agricultural operations by a third-party licensee. Portions of both parcels immediately adjacent to the Agua Hedionda Lagoon are leased to the City for public access purposes from the adjacent waters, and a portion of the Option Parcel is also leased to the City for public park purposes although the City has never improved the parkland leasehold for said purposes and it remains vacant.

Caruso Acquisition Co. II, LLC is an affiliate of Caruso Affiliated. Caruso Affiliated is a respected developer of unique, high-end retail, entertainment, residential, and hospitality properties. Its properties include: The Grove, in Los Angeles; the Americana at Brand, the Residences, and the Excelsior, all co-located in Glendale; the Commons at Calabasas; the Promenade at Westlake; the Village at Moorpark, in Thousand Oaks; Encino Marketplace; the Lakes at Thousand Oaks; Waterside at Marina Del Rey; and Burton Place in Los Angeles. Caruso Affiliated is currently developing three additional properties: 8500 Burton Way in Los Angeles, which is a residential development; the Linq in Las Vegas (a retail and entertainment center scheduled to open in 2013); and the new Miramar Beach Hotel and Bungalows in Montecito. Caruso is acquiring the Sale Parcel with the intention to develop one or more similar types of commercial developments and, potentially, to purchase the Option Parcel.

It should be noted that by vote of the citizens of the City in November 2006, land use restrictions on the Option Parcel and other properties in the City not owned by SDG&E were approved, and implementing City ordinances adopted since that time have codified those land use restrictions thereby allowing only certain open space uses agricultural uses, provided, however, all utility uses subject to the jurisdiction of the California Public Utilities Commission are excluded from the use restrictions in the City ordinance. A specific plan, including the

specific locations of any developments, however, has not yet been established as Caruso intends to complete a comprehensive community outreach process to garner community input before doing so.

The transactions contemplated by the Purchase and Sale Agreement include the outright sale of the Sale Parcel, and the potential sale of all or a portion of the Option Parcel if Caruso exercises the purchase option granted under the agreement for acreage within that parcel. SDG&E will retain suitable easements over and under the land for utility purposes, which will enable it to continue to operate and maintain the utility facilities within those easements.

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**III.  
COMPLIANCE WITH THE COMMISSION'S  
RULES OF PRACTICE AND PROCEDURE**

SDG&E and Caruso provide the following information in compliance with the Commission's Rules of Practice and Procedure:

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<sup>2</sup> [BEGIN CONFIDENTIAL-- [REDACTED]  
[REDACTED] --END CONFIDENTIAL]

**A. Information Regarding the Parties to the Transaction. Rules 2.1(a) and 3.6(a)**

1. The Seller: The exact legal name of the seller is San Diego Gas & Electric Company. SDG&E is a corporation organized and existing under the laws of the State of California. The location of SDG&E's principal place of business is 8306 Century Park Court, San Diego, CA 92123. SDG&E is an investor-owned utility engaged in the purchase, sale, and transmission of gas and electricity in San Diego County, and of electricity in small portion of Orange County, California. For over 100 years, SDG&E has generated, transmitted, and distributed safe and reliable energy to individual, businesses, and institutions.

2. The Buyer: The exact legal name of the buyer is Caruso Acquisition Co. II, LLC. Caruso is a privately-owned, limited liability company organized and existing under the laws of the State of California. The location of Caruso's principal place of business in California is 101 The Grove Drive, Los Angeles, CA 90036. Caruso is an affiliate of Caruso Affiliated and was formed for the purpose of acquiring and developing the land that is the subject of this application.

**B. Contact for Communications. Rule 2.1(b)**

Correspondence and other communications regarding this application should be directed to:

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**C. Articles of Incorporation and Financial Statement. Rules 2.2 and 2.3.**

A copy of SDG&E's Restated Articles of Incorporation as last amended, presently in effect and certified by the California Secretary of State, was filed with the Commission on August 31, 2009 in connection with SDG&E's Application No. 09-08-019, and is incorporated herein by reference. A copy of Caruso's Articles of Organization and a current certificate of status (good standing certificate) is attached to this application as Exhibit D.

SDG&E's financial statement, balance sheet and income statement for the six-month period ending September 30, 2012 are included with this Application as Exhibit B.

**D. CEQA Compliance. Rule 2.4.**

The CPUC views a transfer of land for which approval under Public Utilities Code § 851 is required as *potentially* being a "project" subject to review under the California Environment Quality Act ("CEQA"), Public Resources Code §§ 210000 *et seq.*, depending on the nature of any plans for subsequent development or other uses of the land that would result in environmental impacts. (*See, e.g.*, Decision 06-05-026.). Although CEQA generally requires environmental review whenever a public agency proposes to approve or to carry out a project that may have a significant effect on the environment, "[a]n activity that is not a 'project' as

defined in the Public Resources Code (see § 21065) and the CEQA Guidelines (see § 15378) is not subject to CEQA. (CEQA Guidelines § 15060, subd. (c)(3).” (*Muzzy Ranch Co. v. Solano County Airport Land Use Comm’n*, (2007) 41 Cal.4<sup>th</sup> 372, 380.)

In this instance, the proposed transfer clearly portends the possibility of future environmental impacts. However, the proposed transfer is not a “project” and CEQA review in connection with the instant application would be premature. Review must take place “as early as feasible in the planning process to enable environmental consideration to influence program and design,” but it also must be “late enough to provide meaningful information for environmental assessment.” (14 CCR § 15004 (b).) Caruso simply does not have development plans at this time to enable meaningful review. And, because CEQA review will be undertaken by local agencies “when there is a more developed proposal,” deferral of such review is clearly compatible with the Commission’s obligations under CEQA. (*See, e.g.*, Decision 01-01-039.)

Indeed, as explained by the Court of Appeals in *Friends of the Sierra Railroad v Tuolumne Park and Recreation District* (2007) 147 Cal.App.4<sup>th</sup> 643; rev. denied, *Friends of the Sierra R.R. v. Tuolumne Park & Rec. Dist.* (2007) Cal. LEXIS 4694, the absence of definitive development plans on Caruso’s part precludes this application from being deemed a “*project*” for which review under CEQA is required.

In that case, the Court addressed a local agency’s failure to undertake CEQA review in connection with the transfer to an Indian tribe of historically-significant right-of-way that was expected to facilitate the Tribe’s ability to build a hotel, commercial development, and homes on underlying property owned by the Tribe. While noting that “there is every reason to believe the Tribe acquired the right-of-way to further its plans for developing [its land], the Court held that the transfer did not amount to a “project” under CEQA because “no particular development plans

had been announced.” (147 Cal.App.4<sup>th</sup> at 651.) The Court explained that “*some* plan with an identifiable impact on the right-of-way would have to be on the table before the CEQA review process could be meaningfully carried out.” (*Id.*, emphasis in original.) Notably, the Court observed that “There is no reason why CEQA review cannot be triggered by a transfer of ownership away from a public agency if development plans are presented at the same time, but that is not what happened here.” (*Id.*)

Moreover, the Court rejected the notion that an agency has some sort of duty to ferret out a transferee’s plans in order to accelerate the CEQA review:

“FSR’s brief argues that TPRD should have compelled the Tribe to present development plans before deciding to transfer the property and suggests that this compulsion could be part of a CEQA remedy in this case: TPRD ‘should, and easily could, have required the Tribe to publicly disclose its future development plans for the West Side Property prior to the District’s final consideration of the land exchange. The District failed to carry out that duty.’ We know of no authority for this kind of remedy and FSR has cited none. TPRD had as much *power* to extract conditions of this kind from its buyer as any other seller in a real estate transaction has, but it did not have a *duty* to extract them. We do not think CEQA compels public agencies, or empowers petitioners, to force property owners to create or disclose development plans for the purpose of accelerating environmental review. At least it does not do that under the circumstances presented here.” (147 Cal.App.4<sup>th</sup> at 659 - 660.)

The circumstances addressed by the Court in *Friends of the Sierra Railroad* are very similar to those here, both in terms of the potential magnitude of the likely development and the absence of definitive plans. Thus, it is fully appropriate that the Court’s holding in that case informs the Commission’s procedure in this proceeding.

While the Commission, in 2001, adopted a process of delaying § 851 approval in cases such as this until environmental review by the lead local agency has been completed, thus allowing the Commission to carry out its obligations as a “responsible agency” (*see*, Decision 01-11-071), that process is not consistent with the Court’s holding in *Friends of the Sierra*

*Railroad* with respect to what constitutes a *project* to which the Commission's review obligations attach. Further, requiring environmental review to be undertaken prior to approving the transfer under § 851 could have potentially substantial and harsh impacts on Caruso because Caruso would be obligated to bear the risk and cost of obtaining the necessary development entitlements, including the cost of CEQA review, before it has an absolute right to purchase the property.

Therefore, SDG&E and Caruso submit that review of this application under CEQA is not required by law or the public interest.

**E. Description of the Property Involved in the Transaction, Including Book Cost and Original Cost. Rule 3.6(b).**

1. Description.

The property subject to the transaction includes two parcels, the Sale Parcel, which is approximately 48.78 gross acres of land, and the Option Parcel, which is approximately 159.79 gross acres of land north of Cannon Road. Both parcels are located in the City of Carlsbad and are largely undeveloped. An underground gas pipeline and an overhead electric transmission and distribution lines owned by SDG&E traverse both parcels. In addition, the Sale Parcel is subject to various water utility and roadway easements. Portions of both parcels are also currently used in agricultural operations by a third-party licensee, and portions of both parcels immediately adjacent to Agua Hedionda Lagoon are leased to the City for public access purposes. A portion of the Option Parcel is also leased to the City for public park purposes. As noted previously portions of the property are also subject to a deed restriction in favor of the California Coastal Commission that prohibits development but does permit maintenance of overhead and underground utility facilities.

For accounting purposes, SDG&E tracks land assets by State Board of Equalization (“SBE”) parcel number and internal asset numbers. Concerning the lands subject of this application, the numbering system and acres shown as SBE parcels and/or SDG&E asset numbers are not consistent with the parcel identification numbering and acres associated with the San Diego County Assessor Maps or the legal descriptions that are described in the Agreement of Purchase and Sale and accordingly would conflict. For purposes of this Application, the lands are described solely with reference to the assigned SBE or internal SDG&E asset numbers.

In this case, the Sale Parcel (48.78 acres) is a portion of State Board of Equalization (SBE) Parcel Map 141-37-73J, Parcel 7 which is shown in SDG&E’s accounting records as a total of 195.20 acres. The Option Parcel (as described herein being the land north of Cannon Road) is approximately 159.79 gross acres being approximately 115.24 gross acres of a portion of SBE Parcel 141-37-73J, Parcel 7 together with approximately 44.55 gross acres of a portion of SBE Parcel Map 141-37-73J, Parcel 8. Specific land within each SBE Parcel is identified in SDG&E’s records by reference to various asset numbers.<sup>3</sup>

## 2. Book Value of the Property (the Sale Parcel).

As indicated above, the Sale Parcel is land identified in SDG&E’s records as a portion of SBE Parcel 141-37-73J, Parcel 7. The purchase dates and total original costs (the same as the current book value) of the specific land assets of this parcel can be derived directly from SDG&E’s records. However, because only portions of these assets will be the subject of the sale (as those assets have been re-categorized over time), it is not possible to determine the precise original cost of the Sale Parcel. Instead, SDG&E determined the portion of the original cost that

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<sup>3</sup> The Sale Parcel includes acreage identified by Asset Nos. 2026073, 2026074, 2119502, 2119505, 2119506, and 2119509. Land in the Option Parcel includes acreage identified by Asset Nos. 2026073, 2026074, 2026075, 2119502, 2119505, 2119506, 2119507, and 2119509.

should be attributed to the subject assets using the following methodology that takes into account (1) the portion of the Sale Property attributed to electric transmission use, (2) the portion of the Sale Property assigned to Non-utility Land, (3) the January 1, 1998 effective date of FERC jurisdiction over electric transmission property, and (4) deleting portions of the described SBE parcel 141-37-73K, Parcel 7 located south of Cannon Road and not a part of this Application or the calculations described herein:

First, it was determined that 92.55 acres of SBE Parcel 141-37-73K, Parcel 7 is held as Electric Transmission Property. The ratio to that number of the 12.02 acres proposed to be sold within the Sale Parcel that is the Electric Transmission portion, is 12.99%. Thus, SDG&E determined that the book value reasonably attributable to the Electric Transmission Property being sold should be approximately 12.99% of the total book value for that category of all land in SBE Parcel 141-37-73J, Parcel 7.

Second, using the ratio of the non-electric transmission acreage being sold (48.78 acres less 12.02 acres in the electric transmission corridor) to the total non-electric transmission acreage in SBE Parcel 7<sup>4</sup> (106.26 acres) SDG&E determined that the book value reasonably attributable to the non-electric transmission property being sold should be approximately 35% of the total book value for that category of land in SBE Parcel 141-37-73J, Parcel 7.

The following tables show the book values attributable to the portions of the land that are the subject of the proposed sale:

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<sup>4</sup> Asset Nos. 2026073 and 2026074.

**Electric Transmission Property**

<b>Asset No.</b>	<b>Purchase Date</b>	<b>Total Original Cost (Book Value)</b>	<b>Attributable Book Value of Subject Land</b>
2119502	6/30/52	\$ 3,251.99	\$ 422.35
2119505	6/30/53	\$ 2,020.00	\$ 262.35
2119506	6/30/53	\$ 36,091.52	\$ 4,687.41
2119509	6/30/65	\$ 1,805.57	\$ 234.5

**TOTAL** \$ 43,169.08                      \$ 5,606.62

**Non- Electric Transmission Property**

<b>Asset No.</b>	<b>Purchase Date</b>	<b>Total Original Cost (Book Value)</b>	<b>Attributable Book Value of Subject Land</b>
2026073	6/30/52	\$ 3,280.79	\$ 1,134.97
2026074	6/30/53	\$ 76,085.41	\$ 26,321.28

**TOTAL** \$ 79,366.20                      \$ 27,456.25

2. Book Value of the Option Parcel .

It is not possible to determine the book value of land that will be conveyed if Caruso exercises its option under the Purchase and Sale Agreement until the option is exercised because Caruso may elect to purchase less than the entire portion of the Option Parcel. However, using the same methodology that was followed to determine book values for the Sale Parcel, SDG&E is able to provide book values for the specific assets for the noted SBE Parcels (portions of which comprise the Option Parcel). And, at such time as Caruso exercises its option, SDG&E will be able to determine the book value reasonably attributable to the acreage to be sold.

The land potentially subject to the option includes a 115.24 gross acre portion of SBE Parcel 141-37-73J, Parcel 7 which has a total gross acreage of 195.2 gross acres. The original book costs of the assets included in said SBE Parcel are as set forth above. The remaining land potentially subject to the option includes 44.55 gross acres of SBE Parcel 141-37-73J, Parcel 8,

which has a total gross acreage of 56.53 acres. 49.63 percent of the total book value of SBE Parcel 141-37-73J, Parcel 8, is held under Electric Transmission Property accounts. Therefore, SDG&E submits that an equivalent percentage of acreage should be deemed Electric Transmission Property. Once the actual acreage of Electric Transmission Property under the option is known, for both SBE parcels respectively, the book values reasonably attributable to all of the conveyed assets can be determined following the same methodology used in the case of the Sale Parcel. The following table identifies the book values that are known at this time.

**Electric Transmission Property**

<b>Asset No.</b>	<b>Purchase Date</b>	<b>Total Original Cost (Book Value)</b>	<b>Attributable Book Value of Subject Land</b>
2119507	6/30/53	\$ 5,867.09	\$ TBD
		\$	\$
		\$	\$
		\$	\$
<b>TOTAL</b>		<b>\$ 5,867.09</b>	<b>\$ TBD</b>

**Non- Electric Transmission Property**

<b>Asset No.</b>	<b>Purchase Date</b>	<b>Total Original Cost (Book Value)</b>	<b>Attributable Book Value of Subject Land</b>
2026075	6/30/53	\$ 5,954.97	\$ TBD
		\$	\$
<b>TOTAL</b>		<b>\$ 5,954.97</b>	<b>\$ TBD</b>

As discussed in section III.H “Treatment of Gain on Sale,” below, SDG&E proposes to submit the [BEGIN CONFIDENTIAL--XXXXXXXXXX--END CONFIDENTIAL] paid for the Property and the Option Parcel, along with identification of the actual property conveyed pursuant to the option, within a reasonable time following closing. Such information will include the calculation of the book value attributable to the property sold under the option as



determined in the manner described above. Accordingly, SDG&E and Caruso request that the Commission waive the requirement to provide further information regarding the book value of the Option Parcel at this time.

**F. Detailed Reasons on the Part of Each Party for Entering into the Transaction and All Facts Warranting the Same. Rule 3.6(c).**

Caruso seeks to acquire the Property for the purpose of developing the Property in a manner similar to the other developments undertaken by Caruso Affiliated, as described above in section II. Caruso may potentially acquire all or a portion of the Option Parcel for continued open space and agricultural uses. Caruso views the Property and Option Parcel as unique and very-well suited for these types of uses and development. However, no specific plan for development has been established at this point. Instead, the specifications of the development, including the types of uses and improvements that will constitute the development, as well as their location and design, will be defined and refined over a multi-year period with community input and in conjunction with state and local planning processes.

An electric transmission line, electric distribution line and a gas pipeline owned by SDG&E traverse the Property and Option Parcel. Except for the continued operation of those facilities or future utility uses to be accommodated within the proposed reserved easements together with access required to operate and maintain those facilities, neither the Sale Parcel nor the Option Property are otherwise used by SDG&E, and SDG&E has no other planned use for either parcel. By selling the property, both SDG&E and its ratepayers will benefit significantly through a sharing of the proceeds in accordance with the Commission's rules for allocating gains on sale.

In connection with the conveyance of the land, SDG&E will reserve appropriate easements enabling it to continue to use and access the land for utility purposes, both existing

and future. Descriptions of the easements are described in Exhibit A to the Purchase and Sale Agreement (at pp. A-1 to A-4). Thus, the sale will not have an adverse effect on the public interest because SDG&E will continue to have the ability, without interference from the buyer, to use the land for the purposes of its on-going provision of safe and reliable utility service.

**G. Purchase Price and Terms of Payment. Rule 3.6(d).**

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**H. Treatment of Gain on Sale.**

SDG&E requests that the proceeds from the sale of the Sale Parcel and acreage within the Option Parcel be allocated in accordance with the rules established by Decision 06-05-041, as modified by Decision 06-12-043, which apply where, as here, there are gains from the sale of non-depreciable utility assets previously held for use in the provision of service to utility customers.

The Commission's rules for allocating gain from the sale of non-depreciable utility property, other than electric transmission property, ordinarily require that 67% of the gain be allocated to utility ratepayers and the remaining 33% to shareholders. (D. 06-05-041, Ordering Paragraph 1, as modified by D.06-12-043, *mimeo.*, p. 21.)<sup>5</sup> However, where the property has been held in and out of rate base over time, which is the case here, only the portion of the gain that is attributable to the period of time when the property was in rate base is subject to this percentage allocation rule, and the portion of the gain that is attributable to the period of time when the property was held outside of rate base is allocated entirely to shareholders. (D. 06-05-041, Ordering Paragraph 14.) The Commission has adopted a rebuttable presumption that the portion of gain attributable to a period when property was held out of rate base should mirror the portion of time that the property was out of rate base. (*Id.*, Ordering Paragraph 14.)

In the case of the Sale Parcel the assets now held in FERC Electric Transmission Property accounts were included in rate base until January 1, 1998. The other assets comprised by the Sale Parcel were in rate base until they were re-categorized as Non-Utility Land on June

---

<sup>5</sup> Gains on sale of electric transmission property are allocated according to the rules of the Federal Energy Regulatory Commission ("FERC"). (D.06-05-041, Ordering Paragraph 13.)

1, 1988. SDG&E believes the gain from sale of these assets should be attributed to the periods in which the assets were in or out of rate base in accordance with the mirroring presumption.

SDG&E has attached, as Exhibit C, illustrative schedules showing calculations and allocations of gain on the Sale Parcel [BEGIN CONFIDENTIAL-- [REDACTED] --END CONFIDENTIAL]. As this exhibit shows, approximately [BEGIN [REDACTED] -END CONFIDENTIAL] 61% of after-tax gain on the sale of the Property should be allocated to shareholders, and approximately [BEGIN [REDACTED] --END CONFIDENTIAL] 39% of after-tax gain on the sale of the Property should be allocated to ratepayers.<sup>6</sup> [BEGIN CONFIDENTIAL-- [REDACTED] --END CONFIDENTIAL]

SDG&E has not included with this application a schedule illustrating the allocation of gain on the sale of the Option Parcel due to the considerable uncertainty of the specific assets that Caruso will elect to acquire if it exercises the option and the obvious lack of pricing information. However, as in the case of the assets comprising the Sale Parcel, the assets comprising the Option Parcel which are now held in Electric Transmission Property or Non-Utility Land accounts, were previously in rate base. Thus, the allocations of gain from the sale of those assets should be made using the same methodology that will apply to the Sale Parcel gains, once the information needed to do so is known, specifically, the book value for each

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<sup>6</sup> Ratepayer gain, with a gross-up for taxes, is approximately [BEGIN [REDACTED] --END CONFIDENTIAL].

category of acreage to be transferred (as determined in the manner specified in section III.E, above) and the purchase price for the Option Parcel.

For the reasons discussed above, the calculation and allocation of gain for both parcels must be deferred until a reasonable time after the closing. Therefore, SDG&E proposes that the specific cost and price information required to do so be provided in a compliance advice letter filing submitted within 45 days following closing. Such a process is consistent with procedures that have been followed in other instances where the amount of gain was unsettled. For example, in Decision 07-03-037, which addressed a proposed sale of multi-jurisdictional property by PacifiCorp, PacifiCorp apparently was only able to provide an estimate of the expected gain at the time its application was considered. Consequently, the Commission ordered PacifiCorp to file an advice letter providing the final calculation and allocation of gain, with supporting data, within 45 days of closing. (*Id.* at Ordering Paragraph 3.) Similarly, in Decision 02-12-020, which addressed the sale by PG&E of streetlighting facilities to the City of Manteca, the Commission approved the allocation of gain as proposed in the application (which allocated 100% to shareholders) but deferred the determination of the actual gain allocation to a later compliance advice letter procedure.

In accordance with these precedents, SDG&E and Caruso request that the Commission approve the process discussed above for calculating and allocating the gain on the transferred process in its decision in this proceeding and determine the specific amounts to be so allocated upon review of a compliance advice letter to be filed by SDG&E within 45 days following the closing.

**I. Purchase and Sale Agreement. Rule 3.6(f).**

A copy of the Purchase and Sale Agreement is attached as Exhibit A.

**J. Categorization, Need for Hearing. Rule 2.1(c).**

1. Proposed Category: SDG&E and Caruso propose that this application be categorized as ratesetting.
2. Need for Hearing: SDG&E and Caruso do not anticipate that this proceeding will involve any issues of contested fact. Therefore, no hearing should be required.
3. Issues: The sole issues that need to be decided in this proceeding are whether the proposed sale is consistent with the public interest and whether the proposed allocation of the gain from sale conforms to the Commission's requirements.
4. Proposed Schedule: The Applicants respectfully propose the following procedural schedule:<sup>7</sup>

February 25, 2013:	Filing of Application
Notice + 30 days:	Protests due
+ 10 days:	Reply due (if needed)
+ 30 days:	Proposed Decision
+ 30 days:	Commission Decision

**J. Service. Rule 1.9(c).**

This is a new application. No service list has been established. As shown by the certificate of service attached hereto, notice of availability of this application has been served on the persons identified on the service list pertaining to SDG&E's most recent General Rate Case Application No. A.10-12-005. The Applicants will provide copies of the Application to additional parties upon request or as directed by the Commission.

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<sup>7</sup> This schedule assumes that the application is uncontested, and that neither hearings nor briefings are required.

#### **IV. CONCLUSION**

Wherefore, the Applicants respectfully request that the Commission issue an order:

1. Finding that the proposed transfer of property described herein, subject to the terms and conditions of the Purchase and Sale Agreement (*see*, Exhibit A), does not require review under CEQA;
2. Authorizing SDG&E, under Section 851, to convey the property described herein, subject to the terms and conditions of the Purchase and Sale Agreement (*see*, Exhibit A); and
3. Granting such other and further relief as the Commission deems proper.

Respectfully submitted this 27<sup>th</sup> ,day of February, 2013, on behalf of both Applicants,

By /s/ Allen K. Trial  
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San Diego, California 92101  
Telephone: (619) 699-5162  
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[ATrial@semprautilities.com](mailto:ATrial@semprautilities.com)

Attorney for  
SAN DIEGO GAS & ELECTRIC COMPANY

SAN DIEGO GAS & ELECTRIC COMPANY, SELLER

By: /s/ Lee Schavrein  
Lee Schavrien  
San Diego Gas & Electric Company  
Senior Vice President – Financial, Regulatory & Legislative Affairs

CARUSO ACQUISITION CO. II, LLC, BUYER

By: /s/ Rick J. Caruso  
Rick J. Caruso  
President & Chief Executive Officer  
Caruso Acquisition Co. II, LLC  
101 The Grove Drive  
Los Angeles, California 90036  
Telephone: (323) 900-8100  
E-mail: [bross@carusoaffiliated.com](mailto:bross@carusoaffiliated.com)



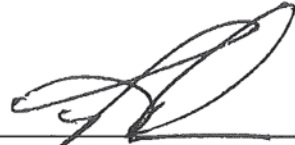
**VERIFICATION**

I, Rick J. Caruso, am an officer of Caruso Acquisition Co. II, LLC ("Caruso"), and am authorized to make this application on its behalf.

The statements in, and exhibits to, the application relating to Caruso are true and correct to the best of my knowledge, except as to those matters that are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of February, 2013, at San Diego, California.

  
Rick J. Caruso

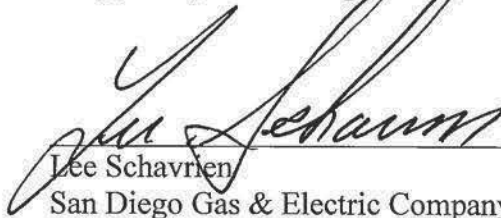
**VERIFICATION**

I, Lee Schavrien am an officer of San Diego and Electric Company, and am authorized to make this application on its behalf.

The statements in the application and the exhibits thereto are true and correct to the best of my knowledge, except as to those matters that are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 22<sup>nd</sup> day of February, 2013, at San Diego, California.



Lee Schavrien  
San Diego Gas & Electric Company  
Senior Vice President – Financial, Regulatory &  
Legislative Affairs

## SUMMARY OF EXHIBITS

Exhibit A – Purchase and Sale Agreement

Exhibit B – SDG&E Financial Statements

Exhibit C – Illustrative Gain on Sale Calculation

Exhibit D - Caruso Organization Documents

# **EXHIBIT A**

Purchase and Sale Agreement

**EXECUTION VERSION**

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**PURCHASE AND SALE AGREEMENT  
AND JOINT ESCROW INSTRUCTIONS**

**BETWEEN**

**SAN DIEGO GAS & ELECTRIC COMPANY,  
AS SELLER**

**AND**

**CARUSO ACQUISITION CO. II, LLC,  
AS BUYER**

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**DATED AS OF JULY 31, 2012**

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**PROPERTY:  
APPROXIMATELY 48.23 ACRES  
CARLSBAD, CALIFORNIA**

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*LIST OF DEFINED TERMS*

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------------	-----

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**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This Purchase and Sale Agreement and Joint Escrow Instructions (this "Agreement") is made and entered into by and between Buyer and Seller as of the Effective Date (as those terms are defined below).

***RECITALS***

A. Defined terms are indicated by initial capital letters. Defined terms shall have the meanings set forth herein, whether or not such terms are used before or after the definitions are set forth.

B. Buyer desires to purchase the Property (as defined in Section 2.1) and obtain an option to purchase the Option Parcel (as defined in Section 14.1), and Seller desires to sell the Property and grant an option to Buyer to purchase the Option Parcel, all upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants, and agreements set forth herein, the sums to be paid by Buyer to Seller, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Buyer and Seller agree as follows:

**ARTICLE 1**  
**BASIC INFORMATION**

**1.1 Certain Basic Terms.** The following defined terms shall have the meanings set forth below:

1.1.1 **Seller:** San Diego Gas & Electric Company, a California corporation.

1.1.2 **Buyer:** Caruso Acquisition Co. II, LLC, a California limited liability company, or its assignee in accordance with the provisions of Section 13.1.

1.1.3 **Purchase Price:** [REDACTED]

1.1.4 **Earnest Money:** [REDACTED] referred to herein as the "Earnest Money" and shall be deposited, held, released, and disbursed in accordance with Section 4.1 and Section 4.5. All references to the Earnest Money, or any portion thereof, shall include all interest thereon.

1.1.5 **Title Company:** [REDACTED]

1.1.6 Escrow Agent:

[REDACTED]

1.1.7 Broker:

None.

1.1.8 Effective Date:

July 31, 2012.

1.1.9 Inspection Period:

[REDACTED] subject to extension under the limited circumstances described in Section 2.2 and Section 2.3, as to which TIME IS OF THE ESSENCE.

[REDACTED] :

[REDACTED]

[REDACTED]

[REDACTED]

1.1.12 Closing Date:

[REDACTED]

1.2 Closing and Other Costs. Closing and other costs shall be allocated and paid as follows:

Cost	Responsible Party
[REDACTED]	[REDACTED]
Title Report required to be delivered pursuant to <u>Section 6.1</u>	Seller
Premium for the CLTA portion of the premium for the Title Policy required to be delivered pursuant to <u>Section 6.4</u>	Seller
Subject to <u>Section 6.4</u> , premium for any upgrade of the Title Policy to ALTA or additional coverage, any endorsements to the Title Policy desired by Buyer, any inspection fee charged by the Title Company, and any other Title Company charges	Buyer
Costs of obtaining any survey and/or any revisions, modifications, or re-certifications thereto	Buyer
Recording Fees	Buyer ½ Seller ½

Any transfer taxes	Seller
Any escrow fee charged by Escrow Agent for holding the Earnest Money or conducting the Closing	Buyer ½ Seller ½
Real Estate Sales Commission payable to Broker	Not applicable
Appraisal for the Option Parcel to be obtained pursuant to <u>Section 14.3</u>	Buyer

**1.3 Notice Addresses:**

Buyer:

Caruso Acquisition Co. II, LLC  
 101 The Grove Drive  
 Los Angeles, California 90036  
 Attention: Bryce Ross  
 Telephone: (323) 900-8198  
 Facsimile: (323) 900-8101  
 E-mail: [brross@carusoaffiliated.com](mailto:brross@carusoaffiliated.com)

with a copy to:

Caruso Affiliated  
 101 The Grove Drive  
 Los Angeles, California 90036  
 Attention: David Silva, General Counsel  
 Telephone: (323) 900-8100  
 Facsimile: (323) 900-8101  
 E-mail: [dsilva@carusoaffiliated.com](mailto:dsilva@carusoaffiliated.com)

and:

Attention: Joel Moskowitz, General Counsel  
 Telephone: (323) 900-8100  
 Facsimile: (323) 900-8101  
 E-mail: [jmoskowitz@carusoaffiliated.com](mailto:jmoskowitz@carusoaffiliated.com)

and a copy to:

Donfeld & Rollman  
 11355 W. Olympic Boulevard, Suite 200  
 Los Angeles, California 90064  
 Attention: Jeffrey E. Donfeld, Esq.

Telephone: (310) 312-8080  
 Facsimile: (310) 312-8014  
 E-mail: [jdonfeld@dkrlaw.com](mailto:jdonfeld@dkrlaw.com)

Seller:

San Diego Gas & Electric Company  
 8335 Century Park Court  
 San Diego, California 92123-1530  
 Attention: Jim Seifert  
 Telephone: (858) 637-3714  
 Facsimile: (858) 637-3766  
 E-mail: [jseifert@semprautilities.com](mailto:jseifert@semprautilities.com)

with a copy to:

Sempra Energy  
 101 Ash Street, HQ11  
 San Diego, California 92101  
 Attention: Marie Lewis, Managing Attorney  
 Telephone: (619) 699-5049  
 Facsimile: (619) 699-5150  
 E-mail: [mlewis@sempra.com](mailto:mlewis@sempra.com)

and:

Attention: Ruth Love  
 Telephone: (858) 637-3738  
 Facsimile: (858) 637-3766  
 E-mail: [rlove@semprautilities.com](mailto:rlove@semprautilities.com)

and a copy to:

Polsinelli Shughart LLP  
 1801 Century Park East, Suite 1801  
 Los Angeles, California 90067  
 Attention: Lisa Greer Quateman, Esq.  
 Telephone: (310) 556-1801  
 Facsimile: (310) 861-1091  
 E-mail: [lquateman@polsinelli.com](mailto:lquateman@polsinelli.com)

**ARTICLE 2**  
**PROPERTY, SITE PLAN, AND RESERVED UTILITY EASEMENT USE**

**2.1 Property.** Subject to the terms and conditions of this Agreement, Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title, and interest in and to the following property (collectively, the "**Property**"):

**2.1.1 Real Property.** The land described in Exhibit A hereto and generally depicted on Exhibit A-1 hereto (the "**Land**"), together with (i) the rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances thereon or in anywise appertaining thereto, if any, and (ii) all strips and gores and any land lying in the bed of any street, road, or alley, open or proposed, if any, adjoining the Land (collectively, the "**Real Property**"); provided, however, Seller shall reserve the utility easements described in Exhibit A hereto and depicted on Exhibit A-1 hereto (the "**Reserved Utility Easements**"), together with all improvements located thereon.

**2.1.2 Intangible Personal Property.** All intangible personal property related to the Land (which is subject to Section 2.1.1, and excluding the items described in the next sentence), including: all governmental entitlements, permits, approvals, and licenses, if any (to the extent assignable without cost to Seller unless Buyer pays such cost) (all of the items described in this Section 2.1.2 collectively referred to as the "**Intangible Personal Property**"). Intangible Personal Property shall not include (i) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including budgets prepared by or on behalf of Seller or any affiliate of Seller, (ii) any documents, materials, or information which are subject to attorney/client, work product, or similar privilege, which constitute attorney/client communications with respect to the Property and/or Seller, or which are subject to a confidentiality agreement that prohibits disclosure of such documents, materials, or information by Seller, (iii) any trade name, mark, or other identifying material that includes the name "San Diego Gas & Electric Company," "Sempra Energy," or any derivative thereof, (iv) any intangible personal property related to the Reserved Utility Easements or Seller's operations in, on, or in any way connected with the Reserved Utility Easements or Seller's other utility operations or (v) any intellectual property of any kind, whether patents, trademarks, copyrights, trade secrets or otherwise.



[REDACTED]

**2.3 Reserved Utility Easement Use.** Buyer [REDACTED]

[REDACTED] at Buyer's sole cost, construct ingress and egress roads, service roads, pedestrian walkways, surface parking, landscaping, lighting, signage, and sub-surface utility improvements within the Reserved Utility Easements (the "**Encroaching Uses**"). A form of access, maintenance and right of way use agreement for the Encroaching Uses is attached hereto as Exhibit B (the "**Access, Maintenance and Right of Way Use Agreement**"). Notwithstanding anything to the contrary in this Agreement, the Access, Maintenance and Right of Way Use Agreement, with such changes as mutually agreed to by Buyer and Seller prior to the Closing (as defined in Section 8.1), including commercially reasonable mortgagee protections provisions (but in no event shall the rights of Seller be diminished nor the rights of Buyer be enhanced) will not be executed and will not be binding until the Closing. [REDACTED]

[REDACTED]

**ARTICLE 3**  
**PURCHASE PRICE**

**3.1** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

3.1.4 [REDACTED]

3.1.5 [REDACTED]

**ARTICLE 4**  
**EARNEST MONEY**

**4.1 Deposit and Investment of Earnest Money.** Buyer shall deposit the Earnest Money with Escrow Agent as follows:

4.1.1 [REDACTED]

4.1.2 [REDACTED]

[REDACTED]

**4.1.4 Investment of Earnest Money.** Escrow Agent shall invest the Earnest Money in one or more federally insured interest-bearing accounts, and all interest accruing thereon shall be credited to Buyer or Seller in accordance with the terms of this Agreement. Escrow Agent shall not commingle the Earnest Money with any funds of Escrow Agent or others, and shall promptly provide Buyer and Seller with confirmation of the investments made. Such account shall have no penalty for early withdrawal.

**4.2 Opening of Escrow.** For the purposes of this Agreement the escrow shall be deemed opened (the "**Escrow Opening**") on the date that Escrow Agent receives a copy of this Agreement fully executed by Buyer and Seller and Escrow Agent [REDACTED]. Buyer and Seller shall use their best efforts to cause the Escrow Opening to occur within two (2) Business Days after the Effective Date. Escrow Agent shall promptly notify Buyer and Seller in writing of the date of the Escrow Opening. Buyer and Seller agree to execute, deliver, and be bound by any reasonable or customary supplementary escrow instruction or other instruments reasonably required by Escrow Agent to consummate the

transaction contemplated by this Agreement; provided, however, that no such instruments or instructions shall be inconsistent or in conflict with, amend, or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments or instructions and the terms of this Agreement, then the terms of this Agreement shall control.

**4.3 Form; Failure to Deposit.** The Earnest Money shall be in the form of a certified or cashier's check or the wire transfer to Escrow Agent of immediately available U.S. federal funds. If Buyer fails to timely deposit any portion of the Earnest Money within the time periods required under this Agreement, as to which TIME IS OF THE ESSENCE, then (i) this Agreement shall be deemed automatically terminated, (ii) thereafter the parties hereto shall have no further rights or obligations hereunder, other than those that by their terms survive the termination of this Agreement, and (iii) any Earnest Money that has previously been deposited by Buyer with Escrow Agent and is not nonrefundable pursuant to Section 4.5 shall be immediately delivered to Buyer.

**4.4 Independent Consideration.** The First Deposit being delivered by Buyer includes the amount of [REDACTED] as independent consideration for Seller's performance under this Agreement ("**Independent Consideration**"), which shall be retained by Seller in all instances. If the Closing occurs or if this Agreement is terminated for any reason, Escrow Agent shall first disburse to Seller from the First Deposit the Independent Consideration. The Independent Consideration shall be nonrefundable under all circumstances and shall not be applied to the Purchase Price at Closing. Buyer and Seller expressly acknowledge and agree that (i) the Independent Consideration plus Buyer's agreement to pay the costs provided in this Agreement, including, without limitation, the costs of any survey [REDACTED] and Buyer's agreement to deliver the Reports (as defined in Section 5.4) to Seller, has been bargained for as consideration for Seller's execution and delivery of this Agreement and for Buyer's review, inspection, and termination rights during the Inspection Period, and (ii) such consideration is adequate for all purposes under any Applicable Laws (as defined in Section 5.7) or judicial decision.

**4.5 Disposition of Earnest Money.** The Earnest Money shall be disbursed as follows:

**4.5.1** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.5.3 [REDACTED]

**4.5.4 Disposition of Earnest Money at Closing or Termination.** The Earnest Money, less the Independent Consideration, shall be applied as a credit against the Purchase Price at Closing. In the event of a termination of this Agreement by either Seller or Buyer for any reason, Escrow Agent is authorized to deliver the Earnest Money on deposit with Escrow Holder to the party hereto entitled to same pursuant to the terms hereof (less the Independent Consideration if Buyer is entitled to the Earnest Money) within two (2) Business Days (or as soon thereafter as the current investment can be liquidated and disbursed) following receipt by Escrow Agent and the non-terminating party of written notice of such termination from the terminating party, unless the other party hereto notifies Escrow Agent that it disputes the right of the other party to receive such Earnest Money. In such event, Escrow Agent may interplead the Earnest Money on deposit with Escrow Holder into a court of competent jurisdiction in San Diego County or Los Angeles County. All attorneys' fees and costs and Escrow Agent's costs and expenses incurred in connection with such interpleader shall be assessed against the party that is not awarded the Earnest Money, or if the Earnest Money is distributed in part to both parties, then in the inverse proportion of such distribution.

**ARTICLE 5**  
**DUE DILIGENCE AND ENTITLEMENTS**

**5.1 Due Diligence Materials To Be Delivered.** Buyer hereby acknowledges that it is in receipt of all documents and materials described in Exhibit C attached hereto (the "Property Documents"), and that such Property Documents were received on or before the Effective Date.

**5.2 Physical Due Diligence.** Commencing on the Effective Date and, unless this Agreement is terminated, continuing until the Closing, Buyer and its employees, representatives, consultants, contractors, agents, and designees (collectively, the "Buyer Parties") shall have reasonable access to the Property at all reasonable times (subject to the rights of any tenants on the Property) for the purpose of conducting reasonably necessary tests, including surveys, biological assessments, soil samplings, and archeological, architectural, engineering, geotechnical, and environmental inspections and tests; provided, however, that: (i) Buyer must give Seller reasonable (but in any event not less than forty-eight (48) hours) prior telephone or written notice of any such entry onto the Property by Buyer or the Buyer Parties, and Seller shall have the right to have a representative present at all times while Buyer or any Buyer Parties are on the Property; (ii) prior to any entry onto the Property, Buyer shall deliver one or more certificates of insurance to Seller evidencing that Buyer and the Buyer Parties (including Buyer's agent, Caruso Management Inc.) have in place (and Buyer and the Buyer Parties shall maintain as set forth in the last sentence of this Section 5.2) (a) comprehensive general liability or commercial general liability insurance, with limits of at least One Million Dollars (\$1,000,000) per occurrence and not less than Two Million Dollars (\$2,000,000) in the aggregate, for bodily injury, death, and property damage, and (b) workers'

compensation insurance and employer's liability insurance, in accordance with Applicable Laws (as defined in Section 5.7), all covering any accident arising in connection with the presence of Buyer and/or the Buyer Parties on the Property, which insurance shall (1) name as additional insureds thereunder Seller and such other parties holding insurable interests as Seller may designate, (2) contain a waiver of subrogation clause and a cross-liability and severability of interest clause, (3) provide that such insurance coverages may not be modified or terminated except upon not less than thirty (30) days prior written notice to Seller, (4) issued by a reputable insurance company having a rating of at least "A-VII" by Best's Rating Guide (or a comparable rating by a successor rating service), and (5) otherwise be subject to Seller's reasonable prior approval; (iii) any and all tests shall be conducted by Buyer in compliance with Buyer's responsibilities set forth in Section 5.7 below; and (iv) Buyer and the Buyer Parties may not, without Seller's prior written approval, which may be granted or withheld in Seller's reasonable discretion, perform any Phase II environmental assessment of the Property (which, if conducted with Seller's approval, shall be consistent with applicable American Society for Testing and Materials (ASTM) standards), take any soil borings on the Property, excavate on the Property, or conduct any other activities on the Property if any such act would materially disturb or change the physical condition of the Property. Buyer shall bear the cost of all such inspections or tests and, using Seller's Generator ID number, shall be responsible to properly handle, contain and dispose, at Buyer's expense, of waste materials generated by those tests, which obligation shall survive the termination of this Agreement. All insurance applicable to Buyer and Caruso Management Inc. hereunder shall remain in full force and effect until the fifth (5th) anniversary of the Closing and all insurance applicable to any other Buyer Parties hereunder shall remain in full force and effect through the term of this Agreement, as the same may be extended or terminated as provided in this Agreement.

**5.3 Due Diligence/Termination Right.** Buyer shall have until 5:00 p.m. (California time) of the last day of the Inspection Period (the "**Due Diligence Approval Deadline**") in which to (i) examine, inspect, and investigate the Property Documents and the Property and, in Buyer's sole and absolute judgment and discretion, determine whether the Property is acceptable to Buyer, (ii) obtain all necessary internal approvals, and (iii) satisfy all other contingencies of Buyer, but excluding those contingencies set forth in Section 5.9, Section 5.10, and Section 5.11 and the conditions set forth in Section 8.2. If, on or before the Due Diligence Approval Deadline, Buyer shall determine based upon such examination, inspection, or investigation that the Property is not acceptable to Buyer, then Buyer shall have the right to terminate this Agreement by written notice delivered to Seller and Escrow Agent on or before the Due Diligence Approval Deadline (the "**Due Diligence Termination Notice**"). If, however, on or before the Due Diligence Approval Deadline, Buyer shall notify Seller and Escrow Agent in writing that it has determined, in its sole and absolute discretion, [REDACTED] (the "**Due Diligence Approval Notice**"), Buyer shall be deemed to have waived its right to terminate this Agreement pursuant to this Section 5.3, and Buyer shall be deemed to have acknowledged that it has received or had access to, and has approved, all necessary information relating to the Property and conducted and approved all inspections and tests of the Property that it considers important. If on or before the Due Diligence Approval Deadline Buyer shall either fail to deliver to Seller and to Escrow Agent the Due Diligence Termination Notice or the Due Diligence Approval Notice, or shall timely deliver the Due Diligence Termination Notice, Buyer shall be deemed to have elected to terminate this Agreement pursuant to this Section 5.3 and in such case the parties hereto shall have no further rights or obligations under this Agreement, other than those which, by their terms, survive the termination hereof, and the First Deposit plus interest accrued on the First Deposit, less the Independent Consideration, shall be promptly returned to Buyer. TIME IS OF THE ESSENCE for the delivery of the Due Diligence Termination Notice before the Due Diligence Approval Deadline.

**5.4 Return of Documents and Reports.** As additional consideration for the transaction contemplated herein, Buyer shall provide to Seller, immediately following receipt of same by Buyer, copies of all third party reports, surveys, assessments, investigations, and studies (collectively, the "**Reports**" and, individually, a "**Report**"), prepared for Buyer in connection with its due diligence review of the Property, including any and all Reports involving structural or geological conditions,

environmental conditions, Hazardous Materials (as defined in Section 12.4.1), or Hazardous Materials contamination of the Property, if any, which Reports shall be addressed to both Seller and Buyer at no cost to Seller. Buyer's obligation to deliver the Reports to Seller shall survive the termination of this Agreement.

5.5



5.7 **Buyer's Responsibilities.** In conducting any inspections, investigations, or tests of the Property and/or Property Documents, Buyer and the Buyer Parties shall: (i) conduct all activities within the Property in a manner designed to minimize any interference with all other uses of, and the operation and maintenance of, the Property by Seller or its employees, contractors, subcontractors, consultants, tenants, and licensees, including, but not limited to, the tenants under the Farming License (as defined in Section 7.1.1) and that certain Lease dated as of November 10, 1975 between Seller and the City of Carlsbad, recorded on August 30, 1976 as Instrument No. 76-282404 of the official records of San Diego County, California (the "**Hub Park Lease**"), and if any conflict arises between Buyer's activities within the Property and such other uses of the Property, then Seller shall have the final authority to resolve any such conflicts; (ii) not damage any part of the Property (unless such damage is repaired in accordance with clause (viii) below); (iii) not injure or otherwise cause bodily harm to Seller or its agents, guests, invitees, licensees, contractors, tenants, consultants, and employees; (iv) comply with all federal, state, county, municipal, and other local laws, statutes, codes, ordinances, rules, regulations, directives, policies, decisions, guidelines, and orders now or hereafter applicable to Buyer related to Buyer's activities on the Property, including, without limitation, all Environmental Laws (as defined in Section 12.4.2) (collectively, as the same may be amended from time to time, "**Applicable Laws**"); (v) promptly notify

Seller of any violation of Applicable Laws relating to the Property of which Buyer becomes aware, and cure any violation of Applicable Law caused by Buyer or the Buyer Parties within ten (10) days after receiving notice of such violation, including obtaining any necessary permits, provided that if such violation is not capable of being cured within ten (10) days, Buyer shall commence to cure such violation within such ten (10) day period and shall diligently prosecute such cure to completion; (vi) promptly pay when due the costs of all tests, investigations, and examinations done with regard to the Property; (vii) not permit any liens to attach to the Real Property by reason of the exercise of its rights hereunder; (viii) promptly repair any damage to the Property resulting directly or indirectly from any such inspection or tests such that the Property is in a condition which is as close as is commercially reasonable to the condition of the Property prior to such damage; provided, however, to the extent that any mechanics lien, claim or demand attaches to the Property due to or arising from Buyer's inspections, investigations, tests or otherwise, Buyer shall at its sole cost and expense, and within thirty (30) days following such lien, claim or demand, either (a) remove such lien, claim or demand or (b) furnish a surety bond in an amount equal to One Hundred Fifty Percent (150%) of the amount of any such lien, claim or demand indemnifying Seller against liability for the same; (ix) not place, release, generate, or dispose of any Hazardous Materials on the Property in violation of any Applicable Laws and Buyer shall promptly remediate, in accordance with all Applicable Laws, any contamination of the Property that results from the placement, release, generation, or disposal of any Hazardous Material on the Property by Buyer or the Buyer Parties; and (x) not reveal or disclose prior to Closing any information obtained during its inspection of the Property and the Property Documents to anyone, except its consultants, attorneys, tax preparers, subcontractors, architects, engineers, and as may be otherwise required by Applicable Law. Buyer's obligations under this Section 5.7 shall survive the termination of this Agreement.

5.8

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



5.11 Post-Entitlements Period. Upon completion of the Entitlements Period, and Buyer's election

[REDACTED]

[REDACTED]

5.13 [REDACTED]



**ARTICLE 6**  
**TITLE AND SURVEY**

**6.1 Title Report.** Buyer hereby acknowledges that it is in receipt of: (i) a current preliminary title report (the "**Title Report**") issued by the Title Company, and (ii) copies of all documents of record referred to in the Title Report as exceptions to title to the Property or hyperlinks within the Title Report to such documents of record. A copy of all updates to the Title Report obtained by Buyer shall be delivered to Seller within two (2) Business Days after receipt of the same and Buyer shall request that Title Company deliver the same directly to Seller.

**6.2 Updated Survey.** Buyer may elect, at its sole cost and expense, to obtain a new survey or revise, modify, or re-certify any existing survey ("**Survey**") as necessary in order for the Title Company to delete the survey exception from the Title Policy or to otherwise satisfy Buyer's objectives.

**6.3 Title Review.** During the Inspection Period, Buyer shall review title to the Property as disclosed by the Title Report and the Survey. Seller shall have no obligation to cure title objections except for monetary liens created by, under, or through Seller, which monetary liens, if any, Seller shall, at Seller's expense cause to be released or insured over at or prior to Closing (with Seller having the right to apply the Purchase Price or a portion thereof for such purpose and Seller having the right to elect, without obligation, to provide an indemnity to the Title Company in connection therewith). Subject to Section 7.1 below, Seller further agrees to remove any Voluntary Encumbrances (as defined in Section 7.1.2 below) to title which are voluntarily created by, under, or through Seller after the expiration of the Inspection Period without Buyer's consent. If Buyer notifies Seller of its disapproval of any title objections on or before the date which is thirty (30) days prior to the last day of the Inspection Period, Seller shall have the right, but not the obligation, within fifteen (15) days of receiving written notice of Buyer's disapproval ("**Seller's Title Election Period**"), to remove any disapproved exceptions or provide assurances reasonably satisfactory to Buyer that such exceptions will be removed on or before the Closing (and any failure by Seller to respond during Seller's Title Election Period shall be deemed to constitute Seller's election not to cause such disapproved exceptions to be removed on or before the Closing). With respect to any such exception, it shall be sufficient for purposes hereof for Seller to commit in writing, within Seller's Title Election Period, to remove such exception at or before the Closing. If Seller cannot or does not elect in its sole discretion to remove any of the disapproved exceptions within Seller's Title Election Period, other than monetary encumbrances which Seller is obligated to cause to be released or insured over pursuant to the terms of this Agreement, Buyer shall have until the end of the Inspection Period to elect to purchase the Property without the cure or removal of such exception(s) or terminate this Agreement as provided in Section 5.3. If Buyer does not terminate this Agreement on or before the end of the Inspection Period as provided in Section 5.3, then Buyer shall conclusively be deemed to have approved the state of title of the Property (including, without limitation, any disapproved exceptions that Seller has not agreed to remove on or before Closing as provided herein). Any exceptions or encumbrances not objected to by Buyer within the Inspection Period shall be deemed approved by Buyer as a Permitted Exception (as defined below). The term "**Permitted Exceptions**" shall mean: (i) all non-delinquent real property taxes and assessments; (ii) all matters created by, through, or under Buyer; (iii) all easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way, and all other exceptions in the Title Report that Title Company has not agreed to remove from the Title Report as of the end of the Inspection Period and that Seller is not required to, or has not agreed to, remove as provided above; and (iv) items shown on the Survey which have not been removed as of the end of the Closing (or if Buyer does not obtain a Survey, all matters that a current, accurate survey of the Property would show).

**6.4 Delivery of Title Policy at Closing.** It is a condition to the Closing for Buyer's benefit that Title Company shall deliver at Closing, or unconditionally commit, prior to the end of the Inspection Period, to issue, to Buyer a binder for, a CLTA owner's title policy and a lender's policy insuring Buyer's fee simple title to the Real Property in the amount of the Purchase Price and the lender's mortgage,

respectively, subject only to the standard exceptions and exclusions from coverage contained in such policy, and to the Permitted Exceptions (the "Title Policy"), and Buyer and Seller shall use diligent efforts to cause Title Company to deliver at Closing or be unconditionally committed prior to the end of the Inspection Period to issue the Title Policy. Buyer may elect to upgrade the Title Policy to an ALTA Extended Coverage policy and obtain any endorsements so long as the Closing is not delayed, provided that Buyer shall pay the premium for such upgrade and endorsements, other than endorsements that Seller has agreed to provide during the Seller's Title Election Period.

**ARTICLE 7**  
**OPERATIONS AND RISK OF LOSS**

**7.1 Ongoing Operations.** From the Effective Date through Closing:

**7.1.1**



**7.1.2 Encumbrances.** Subject to Section 7.1.1, after the expiration of the Inspection Period, Seller shall not voluntarily encumber the Property with any easements, encumbrances, covenants, conditions, restrictions, reservations or rights-of-way, whether or not of record, that would survive the Closing Date (collectively, the "**Voluntary Encumbrances**"), without Buyer's prior written consent, which approval may be granted in Buyer's sole and absolute discretion.

**7.1.3 Maintenance.** Seller shall maintain the Property in a manner that is necessary or appropriate for Seller's use of the Property, as determined by Seller in its sole discretion. During the period from the Effective Date through Closing, with respect to any written notices Seller receives from any governmental authority of any violations of law applicable (or alleged to be applicable) to the Property, Seller shall cause to be cured any such violations of law subject to any such notice which would have a material adverse impact on Buyer's ability to develop the Property in accordance with the Proposed Development Plan, provided and on condition that such violation pertains to a condition which was created subsequent to the Effective Date.

**7.1.4 General Order 69-C.** Notwithstanding anything to the contrary in this Agreement, Seller shall have the right to commence or resume the use of the Property whenever in the interest of its service to its patrons or consumers it shall appear necessary or desirable to do so, as provided in General Order 69-C or any revision thereof or amendment thereto, issued by the CPUC.

**7.2 Risk of Loss.** Except as provided in the last sentence of this Section 7.2, (i) Buyer assumes the risk of loss in connection with the Property; (ii) Buyer may not terminate this Agreement if,

prior to Closing, all or any portion of the Property is damaged or if any portion of the Property shall be taken or appropriated by a public or quasi public authority exercising the power of eminent domain (a "Condemnation Act"); and (iii) in the event of a Condemnation Act, Buyer shall proceed with the purchase of the Property without any adjustment of the Purchase Price and Buyer shall receive all of any award or payment made in connection with such Condemnation Act. Buyer shall have the right to terminate this Agreement by written notice to Seller within ten (10) Business Days after first receiving notice of such Condemnation Act in the event that due to the Condemnation Act the size of the Real Property or any of Development Area 1 or Development Area 2 or the Expanded Utility Easement Area (as such areas are depicted on Exhibit A-1 attached hereto) is decreased by ten percent (10%) or more, and upon such termination Buyer shall receive a refund of the Earnest Money, less the Independent Consideration, and the parties hereto shall have no further rights or obligations under this Agreement, other than those that by their terms survive the termination of this Agreement.

**7.3 California Civil Code Section 1662.** Subject to Buyer's rights set forth in the last sentence of Section 7.2 hereof, Seller and Buyer each expressly waive the provisions of California Civil Code Section 1662 and hereby agree that the provisions of this Agreement shall govern the parties' obligations in the event of any damage or destruction to the Real Property or the taking of all or any part of the Real Property, as applicable.

**7.4 Condemnation Rights Unimpaired.** Notwithstanding anything to the contrary contained in this Agreement or elsewhere, nothing contained in this Agreement shall impair, waive or otherwise affect any rights of Seller under any Applicable Laws to condemn any portion of the Property, including but not limited to any rights of Seller under California Public Utilities Code Sections 612 and 615 (or amendment or successor statute thereto). The provisions of this Section 7.4 shall survive the Closing or any earlier termination of this Agreement.

## **ARTICLE 8** **CLOSING**

**8.1 Closing.** The consummation of the transactions contemplated herein ("Closing") shall occur on the Closing Date at the offices of Escrow Agent (or such other location as may be mutually agreed upon by Seller and Buyer). **TIME IS OF THE ESSENCE FOR THE CLOSING TO OCCUR NO LATER THAN THE CLOSING DATE.** Funds shall be deposited into and held by Escrow Agent in a closing escrow account with a bank reasonably satisfactory to Buyer and Seller. Upon satisfaction or completion of all closing conditions and deliveries, the parties shall direct Escrow Agent to immediately record and deliver the closing documents to the appropriate parties and make disbursements according to the closing statements executed by Seller and Buyer.

**8.2 Conditions to Parties' Obligation to Close.** In addition to all other conditions set forth herein, the obligations (i) of Seller to consummate the transactions contemplated herein are conditioned on the satisfaction of the matters set forth in Section 8.2.1, Section 8.2.2, Section 8.2.3, Section 8.2.5 and Section 8.2.6 hereof, and (ii) of Buyer to consummate the transactions contemplated herein are conditioned on the satisfaction of the matters set forth in Section 8.2.1 through Section 8.2.6 hereof.

**8.2.1 Representations and Warranties.** The other party's representations and warranties contained herein shall be true and correct in all material respects as of the Effective Date and as of the Closing Date.

**8.2.2 Deliveries.** As of the Closing Date, the other party shall have tendered all deliveries to be made at Closing.

**8.2.3 Actions, Suits, etc.** There shall exist no pending or threatened actions, suits, arbitrations, attachments, proceedings, assignments for the benefit of creditors, insolvency,

bankruptcy, reorganization, or other proceedings, against the other party that would materially and adversely affect such other party's ability to perform its obligations under this Agreement.

**8.2.4 Title Insurance Policy.** On or before the Closing, Title Company shall be irrevocably committed to issue the Title Policy, subject only to the Permitted Exceptions.

**8.2.5 Performance of Obligations.** On or before the Closing, Buyer and Seller shall have each performed all of their obligations to be performed on or prior to the Closing in accordance with this Agreement.

**8.2.6**



So long as a party is not in default hereunder, if any condition to such party's obligation to proceed with the Closing hereunder has not been satisfied as of the Closing Date (or such earlier date as is provided herein), such party may, in its sole discretion, terminate this Agreement by delivering written notice to the other party on or before the Closing Date (or such earlier date as is provided herein), or elect to close (or to permit any such earlier termination deadline to pass) notwithstanding the non-satisfaction of such condition, in which event such party shall be deemed to have waived any such condition. In the event such party elects to close (or to permit any such earlier termination deadline to pass), notwithstanding the non-satisfaction of such condition, said party shall be deemed to have waived each such condition, and there shall be no liability on the part of any party hereto for breaches of representations and warranties of which the party electing to close had or was deemed to have knowledge as of the Closing.

**8.3 Seller's Deliveries in Escrow.** As of or prior to the Closing Date, Seller shall deliver in escrow to Escrow Agent the following:

**8.3.1 Grant Deed.** A grant deed in the form of Exhibit E hereto, executed and acknowledged by Seller, conveying to Buyer Seller's interest in the Real Property (the "Grant

Deed"). ESCROW AGENT IS HEREBY INSTRUCTED NOT TO SHOW THE CONSIDERATION FOR THE DEED ON THE FACE THEREOF, BUT RATHER TO ANNEX A SEPARATE CERTIFICATE THERETO AFTER RECORDING.

**8.3.2 Assignment of Intangible Personal Property.** An Assignment of Intangible Personal Property in form of Exhibit F hereto executed by Seller.

**8.3.3 Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Seller by applicable state and local law in connection with the conveyance of the Real Property.

**8.3.4 FIRPTA.** A Foreign Investment in Real Property Tax Act affidavit in the form of Exhibit G hereto executed by Seller and a Form 590 withholding exemption certificate, as required pursuant to Section 18662 of the California Revenue and Taxation Code.

**8.3.5 Access, Maintenance and Right of Way Use Agreement.** The Access, Maintenance and Right of Way Use Agreement executed by Seller.

**8.3.6 Additional Documents.** Any additional documents that Escrow Agent, Title Company, or a party hereto may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation, or warranty of Seller or result in any new or additional obligation, covenant, representation, or warranty of Seller under this Agreement beyond those expressly set forth in this Agreement).

**8.4 Buyer's Deliveries in Escrow.** As of or prior to the Closing Date, Buyer shall deliver in escrow to Escrow Agent the following:

**8.4.1 Conveyancing or Transfer Tax Forms or Returns.** Such conveyancing or transfer tax forms or returns, if any, as are required to be delivered or signed by Buyer by applicable state and local law in connection with the conveyance of the Real Property.

**8.4.2 Authority.** Evidence of the existence, organization, and authority of Buyer and of the authority of the persons executing documents on behalf of Buyer reasonably satisfactory to the underwriter for the Title Policy.

**8.4.3 Access, Maintenance and Right of Way Use Agreement.** The Access, Maintenance and Right of Way Use Agreement executed by Buyer.

**8.4.4 Additional Documents.** Any additional documents that Seller, Escrow Agent, Title Company, or a party hereto may reasonably require for the proper consummation of the transaction contemplated by this Agreement (provided, however, no such additional document shall expand any obligation, covenant, representation, or warranty of Buyer or result in any new or additional obligation, covenant, representation, or warranty of Buyer under this Agreement beyond those expressly set forth in this Agreement).

**8.5 Possession.** Seller shall deliver possession of the Property to Buyer upon the Closing, subject to the Permitted Exceptions.

**8.6 Closing Statements.** As of or prior to the Closing Date, Seller and Buyer shall deposit with Escrow Agent executed estimated closing statements consistent with this Agreement in the form and substance reasonably acceptably to Seller, Buyer and Escrow Agent.

**8.7 Purchase Price.** At or before Noon local time on the Business Day immediately preceding the Closing Date, Buyer shall deliver to Escrow Agent the Purchase Price, less the Earnest Money that is applied to the Purchase Price, plus or minus applicable prorations, in immediate, same-day U.S. federal funds wired for credit into Escrow Agent's escrow account, which funds must be delivered in a manner to permit Escrow Agent to deliver good funds to Seller or its designee on the Closing Date (and, if requested by Seller, by wire transfer); in the event that Escrow Agent is unable to deliver good funds to Seller or its designee on the Closing Date, then Escrow Agent shall revise the closing statements and related prorations as necessary.

**ARTICLE 9**  
**PRORATIONS, CLOSING COSTS, COMMISSIONS**

**9.1 Prorations.** At Closing, the following items shall be prorated as of the Closing Date with all items of income and expense for the Property being borne by Buyer from and after (and including) the Closing Date:

**9.1.1 Taxes.** All real and personal ad valorem taxes and assessments relating to the Property (collectively, the "Taxes"). Buyer hereby acknowledges that the Property is centrally assessed by the California State Board of Equalization (the "State Tax Board") due to the nature of Seller's business as a public utility company. Buyer hereby acknowledges that, depending on when the Closing occurs, the State Tax Board may not take action to remove Seller as the record owner of the Property on the local assessment roll for the tax fiscal year following the tax fiscal year in which the Closing occurs, even though Seller shall not own the Property for any part of that tax fiscal year. If this situation occurs, Seller will be billed a real estate tax for the next tax fiscal year by the local tax collector. In this event, Seller hereby agrees to pay the real estate taxes billed to Seller for the next tax fiscal year as and when they come due, and Buyer agrees to reimburse Seller for such taxes through Escrow Agent, or, if escrow has already closed, Buyer agrees to pay such amount directly to Seller. Not less than five (5) calendar days before the Closing Date, Seller shall deliver to Buyer, for Buyer's review, and Escrow Agent, a schedule showing proration of current year real estate taxes on the Property, which is consistent with Seller's past practices, and, if necessary and available, real estate taxes on the Property for the next tax fiscal year, together with supporting documentation. Any supplemental Taxes relating to the fiscal tax year of Closing arising out of a change in ownership resulting from the transactions contemplated by this Agreement shall be paid by Buyer when due and payable. To the extent that invoices for Taxes include property other than the Property, appropriate and equitable prorations as reasonably and mutually agreed to by Buyer and Seller shall be made.

**9.1.2 Utilities.** Buyer shall take all necessary steps to effectuate the transfer of all utilities to its name as of the Closing Date, and where necessary, post deposits with the utility companies. Seller shall pay all utility charges and other operating expenses attributable to the Property to, but not including the Closing Date and Buyer shall pay all utility charges and other operating expenses attributable to the Property on or after the Closing Date.

**9.1.3 Tax Appeals.** With respect to any property tax appeals or reassessments filed by Seller for tax years prior to the year in which the Closing occurs, Seller shall be entitled to the full amount of any refund or rebate resulting therefrom, and with respect to any property tax appeals or reassessments filed by Seller for the tax year in which the Closing occurs, Seller and Buyer shall share the amount of any rebate or refund resulting therefrom (after first paying to Seller all costs and expenses incurred by Seller in pursuing such appeal or reassessment) in proportion to their respective periods of ownership of the Property for such tax year. Seller shall have the right to pursue or elect not to pursue any such appeals in its sole discretion. The provisions of this Section 9.1.3 shall survive the Closing.

**9.1.4 Other Items.** Except as otherwise provided in this Section 9.1, all other items as are normally prorated and adjusted in the sale of property similar to the Property shall be prorated as of the Closing Date in the manner consistent with common practice in the County of San Diego.

**9.2 Closing Costs.** Closing costs shall be allocated between Seller and Buyer in accordance with Section 1.2. If, through no fault of either party, the Closing does not occur, Buyer and Seller shall share equally all of Escrow Agent's fees and charges; provided, however, that if the transaction fails to close as the result of a default under this Agreement by either party, then such defaulting party shall bear all of Escrow Agent's fees and charges in accordance with Section 11.5. Except as otherwise expressly provided in Section 4.5.4, Section 5.8, Section 5.9.2, Section 5.13, Section 9.4, and Section 11.4 of this Agreement, each party shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this Agreement and the consummation of the transaction contemplated hereby. All costs and expenses other than as provided for in Section 1.2 shall be allocated between Buyer and Seller in accordance with the customary practice of San Diego County.

**9.3 Final Adjustment After Closing.** If final bills are not available or cannot be issued prior to Closing for any item being prorated under Section 9.1, then (except as provided in Section 9.1.1 regarding Taxes) Buyer and Seller agree to allocate such items on a fair and equitable basis as soon as such bills are available, and to make a final adjustment as soon as reasonably possible after the Closing. Payments in connection with the final adjustment shall be due within thirty (30) days of written notice. All such rights and obligations shall survive the Closing.

**9.4 Commissions.** Seller and Buyer each represent and warrant to the other that they have dealt with no broker in connection with the transactions contemplated by this Agreement, and that no real estate brokerage commission is payable to any person or entity in connection with the transaction contemplated hereby, and each agrees to and does hereby indemnify and hold the other harmless against the payment of any commission to any other person or entity claiming by, through or under Seller or Buyer, as applicable. This indemnification shall extend to any and all claims, liabilities, costs, and expenses (including reasonable attorneys' fees and litigation costs) arising as a result of such claims, and shall survive the Closing.

## **ARTICLE 10**

### **REPRESENTATIONS AND WARRANTIES**

**10.1 Seller's Representations and Warranties.** Seller hereby represents and warrants to Buyer that:

**10.1.1 Ownership.** To the best of Seller's knowledge and solely in reliance on the Title Report, Seller has fee simple ownership of the Property, subject to all matters of record and matters which may be disclosed by the Title Report and the Survey, and as otherwise disclosed by Seller.

**10.1.2 Authority.** The execution, delivery, and performance of this Agreement by Seller have been duly authorized by all necessary corporate action. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed by Seller and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms, subject, however, to all necessary consents as contemplated in Section 10.1.8 of this Agreement.

**10.1.3 Leases, Contracts, and Agreements.** To the best of Seller's knowledge, there are no leases, contracts, or agreements affecting the Property except as may be reflected in the Property Documents or as otherwise disclosed by Seller.

**10.1.4 Property Documents.** To the best of Seller's knowledge, the Property Documents delivered or made available to Buyer are true and complete copies of the Property Documents that are in Seller's actual possession.

**10.1.5 Notices of Breach.** To the best of Seller's knowledge, Seller has not received any notice that Seller is in current breach of any material agreements affecting the Property, except as may be reflected in the Property Documents or as otherwise disclosed by Seller.

**10.1.6 Notices from Governmental Authorities.** To the best of Seller's knowledge, Seller has not received any notice from any governmental authority of any material violation of any laws, including but not limited to, Environmental Laws, applicable (or alleged to be applicable) to the Property, or any part thereof, that has not been corrected, except as may be reflected in the Property Documents or as otherwise disclosed by Seller.

**10.1.7 Pending Actions.** To the best of Seller's knowledge, Seller has not received any notice of any lawsuits, claims, proceedings, actions, investigations, decrees, or orders affecting the Property, except as may be reflected in the Property Documents or as otherwise disclosed by Seller.

**10.1.8 Consents.** To the best of Seller's knowledge, except as expressly otherwise set forth herein or as otherwise disclosed by Seller, no third party consents are required to consummate the transaction contemplated in this Agreement except for the required consent of the successor trustee to deliver a partial reconveyance of the lien on the Property pursuant to that certain Mortgage and Deed of Trust dated July 1, 1940 between Seller and U.S. Bank National Association, as successor trustee, as amended and supplemented through the Closing Date; and the CPUC approval as described in Section 8.2.6.

**10.1.9 Legal Representation.** Seller is represented by legal counsel in connection with the transactions contemplated by this Agreement.

**10.2 Buyer's Representations and Warranties.** Buyer hereby represents and warrants to Seller that:

**10.2.1 Organization and Authority.** Buyer is a limited liability company duly formed, validly existing, and in good standing in the State of California. Buyer has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. Rick Caruso controls Buyer (as the term "control" is used in Section 13.1). This Agreement has been, and all of the documents to be delivered by Buyer at the Closing will be, authorized and properly executed by Buyer and constitute, or will constitute, as appropriate, the valid and binding obligation of Buyer, enforceable in accordance with their terms.

**10.2.2 Conflicts and Pending Action.** There is no agreement to which Buyer is a party or to Buyer's knowledge binding on Buyer that is in conflict with this Agreement. There is no action or proceeding pending or, to Buyer's knowledge, threatened against Buyer which challenges or impairs Buyer's ability to execute or perform its obligations under this Agreement.

**10.2.3 Prohibited Persons and Transactions.** Neither Buyer nor any of its affiliates, nor any of their respective partners, members, shareholders, or other equity owners, and none of their respective employees, officers, directors, representatives, or agents is, nor will they become, a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Assets Control ("**OFAC**") of the Department of the Treasury (including those named on OFAC's Specially Designated Nationals and Blocked Persons List) or



under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action, and is not and will not engage in any dealings or transactions or be otherwise associated with such persons or entities.

**10.2.4 No Reliance.** Buyer and/or Buyer's principals are knowledgeable, experienced, and sophisticated buyers of real estate, and they are relying solely on their own expertise and that of Buyer's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by Seller. Buyer is purchasing the Property for business, commercial, investment, or other similar purpose and not for use as Buyer's residence.

**10.2.5 Legal Representation.** Buyer is represented by legal counsel in connection with the transactions contemplated by this Agreement.

### **10.3 Survival of Representations and Warranties.**

**10.3.1 Limitations, Termination and Modifications.** The representations and warranties set forth in this Article 10 are made as of the Effective Date and remade as of the Closing Date; provided, however, any of the representations and warranties remade by Seller as of the Closing Date shall be limited to those material matters directly caused by Seller or those material matters of which Buyer does not have knowledge; and provided, further, that Buyer shall be deemed to have knowledge of any matters disclosed by Seller to Buyer. Such representations and warranties shall automatically terminate if prior to the Closing, Buyer assigns this Agreement in violation of Section 13.1. Notwithstanding anything to the contrary set forth herein, the representations and warranties set forth in this Agreement shall be deemed modified to the extent any information or Reports delivered to or received by Buyer prior to the Closing Date set forth contrary information and/or to the extent Buyer is aware that such representation or warranty was incorrect and, to such extent, Seller shall not be deemed to have breached this Agreement.

**10.3.2 Seller Disclosures and Buyer Covenant Not to Sue.** If Seller becomes aware of any fact or circumstance prior to the Closing Date that makes any representation or warranty of Seller set forth in Section 10.1 materially inaccurate (including any changed condition or breach by Seller of any such representations or warranties), it shall promptly disclose the same to Buyer and if Seller makes such disclosure to Buyer, or if Seller does not notify Buyer of such material inaccuracy or changed condition but Buyer otherwise becomes aware of same prior to the Closing Date, Buyer may either (i) terminate this Agreement, in which case the Earnest Money, less the Independent Consideration, shall be refunded to Buyer, and neither party shall have any further liability or obligation to the other hereunder, except for obligations which survive termination of this Agreement, or (ii) waive such breach and proceed to the Closing in accordance with the terms hereof. Notwithstanding anything to the contrary herein, Buyer covenants not to sue Seller for damages for any breach of any representation or warranty; provided, however, that such covenant shall not apply to Buyer's actual damages resulting from Seller's failure to notify Buyer of any material information described in the first sentence of this Section 10.3.2 (i.e., any fact or circumstance of which Seller becomes aware prior to the Closing Date that makes any representation or warranty of Seller set forth in Section 10.1 of this Agreement materially inaccurate (including any changed condition or breach by Seller of any such representations or warranties)). Except as otherwise provided in this Section 10.3, any breach of a representation, warranty, or covenant that occurs prior to Closing shall be governed by Article 11.




**10.3.4 Survival.** Subject to the foregoing and the provisions set forth in the final paragraph of Section 8.2, (i) the representations and warranties set forth in Section 10.1 shall not survive the Closing and such representations and warranties shall be merged into and waived by the instruments of Closing, (ii) the representations and warranties set forth in Section 10.2 shall survive the Closing for one (1) year following the Closing, and (iii) the provisions of this Section 10.3 shall survive the Closing.

**ARTICLE 11**  
**DEFAULT AND REMEDIES**

**11.1 Seller's Remedies.** IF BUYER DEFAULTS AND FAILS TO CONSUMMATE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT OR OTHERWISE DEFAULTS IN ITS OBLIGATIONS HEREUNDER AT OR PRIOR TO CLOSING FOR ANY REASON EXCEPT FAILURE BY SELLER TO PERFORM HEREUNDER, SELLER SHALL BE ENTITLED, AS ITS SOLE REMEDY (EXCEPT AS PROVIDED IN SECTIONS 5.8, 5.9, 5.13, 9.4, 11.4, AND 11.5), TO TERMINATE THIS AGREEMENT AND RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES AND NOT AS PENALTY, IN FULL SATISFACTION OF CLAIMS AGAINST BUYER HEREUNDER. SELLER AND BUYER AGREE THAT SELLER'S DAMAGES RESULTING FROM BUYER'S DEFAULT ARE DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE AND THE EARNEST MONEY IS A FAIR ESTIMATE OF THOSE DAMAGES WHICH HAS BEEN AGREED TO IN AN EFFORT TO CAUSE THE AMOUNT OF SUCH DAMAGES TO BE CERTAIN. SUCH RETENTION OF THE DEPOSIT BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676, AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS SECTION 11.1 SHALL LIMIT OR BE DEEMED OR CONSTRUED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 5.8, 5.9, 5.13, 9.4, 11.4, AND 11.5 OF THIS AGREEMENT. IF THE CLOSING OCCURS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE EARNEST MONEY SHALL BE APPLIED AS A CREDIT TOWARD THE PURCHASE PRICE.

SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

  
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SELLER'S INITIALS

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BUYER'S INITIALS



**10.3.4 Survival.** Subject to the foregoing and the provisions set forth in the final paragraph of Section 8.2, (i) the representations and warranties set forth in Section 10.1 shall not survive the Closing and such representations and warranties shall be merged into and waived by the instruments of Closing, (ii) the representations and warranties set forth in Section 10.2 shall survive the Closing for one (1) year following the Closing, and (iii) the provisions of this Section 10.3 shall survive the Closing.

**ARTICLE 11**  
**DEFAULT AND REMEDIES**

**11.1 Seller's Remedies.** IF BUYER DEFAULTS AND FAILS TO CONSUMMATE THE PURCHASE OF THE PROPERTY PURSUANT TO THIS AGREEMENT OR OTHERWISE DEFAULTS IN ITS OBLIGATIONS HEREUNDER AT OR PRIOR TO CLOSING FOR ANY REASON EXCEPT FAILURE BY SELLER TO PERFORM HEREUNDER, SELLER SHALL BE ENTITLED, AS ITS SOLE REMEDY (EXCEPT AS PROVIDED IN SECTIONS 5.8, 5.9, 5.13, 9.4, 11.4, AND 11.5), TO TERMINATE THIS AGREEMENT AND RETAIN THE EARNEST MONEY AS LIQUIDATED DAMAGES AND NOT AS PENALTY, IN FULL SATISFACTION OF CLAIMS AGAINST BUYER HEREUNDER. SELLER AND BUYER AGREE THAT SELLER'S DAMAGES RESULTING FROM BUYER'S DEFAULT ARE DIFFICULT, IF NOT IMPOSSIBLE, TO DETERMINE AND THE EARNEST MONEY IS A FAIR ESTIMATE OF THOSE DAMAGES WHICH HAS BEEN AGREED TO IN AN EFFORT TO CAUSE THE AMOUNT OF SUCH DAMAGES TO BE CERTAIN. SUCH RETENTION OF THE DEPOSIT BY SELLER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO SECTIONS 1671, 1676, AND 1677 OF THE CALIFORNIA CIVIL CODE, AND SHALL NOT BE DEEMED TO CONSTITUTE A FORFEITURE OR PENALTY WITHIN THE MEANING OF SECTION 3275 OR SECTION 3369 OF THE CALIFORNIA CIVIL CODE OR ANY SIMILAR PROVISION. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THIS SECTION 11.1 SHALL LIMIT OR BE DEEMED OR CONSTRUED TO LIMIT BUYER'S OBLIGATIONS UNDER SECTIONS 5.8, 5.9, 5.13, 9.4, 11.4, AND 11.5 OF THIS AGREEMENT. IF THE CLOSING OCCURS IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, THE EARNEST MONEY SHALL BE APPLIED AS A CREDIT TOWARD THE PURCHASE PRICE.

SELLER AND BUYER ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE PROVISIONS OF THIS SECTION AND BY THEIR INITIALS IMMEDIATELY BELOW AGREE TO BE BOUND BY ITS TERMS.

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SELLER'S INITIALS

  
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BUYER'S INITIALS

Notwithstanding anything in this Section 11.1 to the contrary, in the event of Buyer's default or a termination of this Agreement, Seller shall have all remedies available at law or in equity in the event Buyer or any party affiliated with Buyer is asserting any claims or right to the Property that would otherwise delay or prevent Seller from having clear, indefeasible, and marketable title to the Property. If Closing is consummated, Seller shall have all remedies available at law or in equity in the event Buyer fails to perform any obligation of Buyer under this Agreement that survive the Closing.

**11.2 Buyer's Remedies.** If Seller fails to consummate the sale of the Property pursuant to this Agreement after Seller is obligated to do so pursuant to the terms of this Agreement for any reason except failure by Buyer to perform hereunder,

[REDACTED]

In the event that between the Effective Date and the Closing Date Seller (a) records or permits to be recorded an encumbrance on the Property in violation of Section 7.1.2 of this Agreement or (b) creates a new violation of an Environmental Law (as defined in Section 12.4) and fails to cure such violation promptly following notice thereof from Buyer, and either of the matters described in clauses (a)

[REDACTED]

Notwithstanding anything herein to the contrary, Buyer shall be deemed to have elected to terminate this Agreement if Buyer fails to deliver to Seller written notice of its intent to file a claim or assert a cause of action for specific performance against Seller on or before thirty (30) Business Days following the scheduled Closing Date or, having given such notice, fails to file a lawsuit asserting such claim or cause of action in the county in which the Property is located within ninety (90) days following the scheduled Closing Date. Buyer's remedies shall be limited to those described in Sections 10.3.2, 11.2, 11.4, and 11.5 hereof.

**11.3 Limitation on Liability.**

**11.3.1 For the Benefit of Seller.** IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, OWNERS, OR AFFILIATES; ANY OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF THE FOREGOING; OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF, HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE REAL PROPERTY, WHETHER BASED IN CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE.

**11.3.2 For the Benefit of Buyer.**

[REDACTED]

IN NO EVENT SHALL BUYER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, MEMBERS, OWNERS, OR AFFILIATES; ANY OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF THE FOREGOING; OR ANY AFFILIATE OR CONTROLLING PERSON THEREOF, HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION, OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE REAL PROPERTY, WHETHER BASED IN CONTRACT, COMMON LAW, STATUTE, EQUITY, OR OTHERWISE.

[REDACTED]

11.4 **Attorneys' Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable attorneys' fees and disbursements incurred in connection with such claims. The provisions of this Section 11.4 shall survive any termination of this Agreement or the Closing.

11.5 **Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Escrow Agent for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Report. The provisions of this Section 11.5 shall survive any termination of this Agreement or the Closing.

11.6 **WAIVER.** TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AND SELLER EACH HEREBY EXPRESSLY, IRREVOCABLY, FULLY, AND FOREVER RELEASES, WAIVES, AND RELINQUISHES ANY AND ALL RIGHT TO TRIAL BY JURY AND ALL RIGHT TO RECEIVE PUNITIVE, EXEMPLARY, AND CONSEQUENTIAL DAMAGES FROM THE OTHER (OR ANY PAST, PRESENT, OR FUTURE BOARD MEMBER, TRUSTEE, DIRECTOR, OFFICER, EMPLOYEE, AGENT, REPRESENTATIVE, OR ADVISOR OF THE OTHER) IN ANY CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR CAUSE OF ACTION IN WHICH BUYER AND SELLER ARE PARTIES, WHICH IN ANY WAY (DIRECTLY OR INDIRECTLY) ARISES OUT OF, RESULTS FROM OR RELATES TO ANY OF THE FOLLOWING, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER BASED ON CONTRACT OR TORT OR ANY OTHER LEGAL BASIS: THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; THE PROPERTY; ANY PAST, PRESENT, OR FUTURE ACT, OMISSION, CONDUCT, OR ACTIVITY WITH RESPECT TO THIS AGREEMENT OR THE PROPERTY OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; ANY TRANSACTION, EVENT, OR OCCURRENCE CONTEMPLATED BY THIS AGREEMENT; THE PERFORMANCE OF ANY OBLIGATION OR THE EXERCISE OF ANY RIGHT UNDER THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; OR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT. BUYER AND SELLER EACH AGREES THAT THIS AGREEMENT CONSTITUTES WRITTEN CONSENT THAT TRIAL BY JURY SHALL BE WAIVED IN ANY SUCH CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR OTHER CAUSE OF ACTION PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631 AND AGREES THAT BUYER AND SELLER EACH SHALL HAVE THE RIGHT AT ANY TIME TO FILE THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT IN WHICH ANY SUCH CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR OTHER CAUSE OF ACTION MAY BE PENDING AS STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631. FROM TIME TO TIME UPON REQUEST OF EITHER PARTY HERETO, THE OTHER PARTY SHALL CONFIRM, RE-CONFIRM, AND RATIFY, IN WRITING, THE PROVISIONS OF THIS SECTION 11.6, INCLUDING IF ANY LEGISLATION IS PROMULGATED REGARDING WAIVERS OF THE RIGHT TO TRIAL BY JURY. THE PROVISIONS OF THIS SECTION 11.6 SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT OR THE CLOSING.

  
SELLER'S INITIALS:

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BUYER'S INITIALS:

**ARTICLE 12**  
**DISCLAIMERS, RELEASE, AND INDEMNITY**

12.1 **Disclaimers By Seller.** Except as expressly set forth in Section 10.1 of this Agreement, it is understood and agreed that Seller and the Seller Parties have not at any time made and are not now

**11.4 Attorneys' Fees.** In the event either party hereto employs an attorney in connection with claims by one party against the other arising from the operation of this Agreement, the non-prevailing party shall pay the prevailing party all reasonable attorneys' fees and disbursements incurred in connection with such claims. The provisions of this Section 11.4 shall survive any termination of this Agreement or the Closing.

**11.5 Other Expenses.** If this Agreement is terminated due to the default of a party, then the defaulting party shall pay any fees or charges due to Escrow Agent for holding the Earnest Money as well as any escrow cancellation fees or charges and any fees or charges due to the Title Company for preparation and/or cancellation of the Title Report. The provisions of this Section 11.5 shall survive any termination of this Agreement or the Closing.

**11.6 WAIVER.** TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER AND SELLER EACH HEREBY EXPRESSLY, IRREVOCABLY, FULLY, AND FOREVER RELEASES, WAIVES, AND RELINQUISHES ANY AND ALL RIGHT TO TRIAL BY JURY AND ALL RIGHT TO RECEIVE PUNITIVE, EXEMPLARY, AND CONSEQUENTIAL DAMAGES FROM THE OTHER (OR ANY PAST, PRESENT, OR FUTURE BOARD MEMBER, TRUSTEE, DIRECTOR, OFFICER, EMPLOYEE, AGENT, REPRESENTATIVE, OR ADVISOR OF THE OTHER) IN ANY CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR CAUSE OF ACTION IN WHICH BUYER AND SELLER ARE PARTIES, WHICH IN ANY WAY (DIRECTLY OR INDIRECTLY) ARISES OUT OF, RESULTS FROM OR RELATES TO ANY OF THE FOLLOWING, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER BASED ON CONTRACT OR TORT OR ANY OTHER LEGAL BASIS: THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; THE PROPERTY; ANY PAST, PRESENT, OR FUTURE ACT, OMISSION, CONDUCT, OR ACTIVITY WITH RESPECT TO THIS AGREEMENT OR THE PROPERTY OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; ANY TRANSACTION, EVENT, OR OCCURRENCE CONTEMPLATED BY THIS AGREEMENT; THE PERFORMANCE OF ANY OBLIGATION OR THE EXERCISE OF ANY RIGHT UNDER THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT; OR THE ENFORCEMENT OF THIS AGREEMENT OR ANY OF THE DOCUMENTS DELIVERED PURSUANT TO THIS AGREEMENT. BUYER AND SELLER EACH AGREES THAT THIS AGREEMENT CONSTITUTES WRITTEN CONSENT THAT TRIAL BY JURY SHALL BE WAIVED IN ANY SUCH CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR OTHER CAUSE OF ACTION PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631 AND AGREES THAT BUYER AND SELLER EACH SHALL HAVE THE RIGHT AT ANY TIME TO FILE THIS AGREEMENT WITH THE CLERK OR JUDGE OF ANY COURT IN WHICH ANY SUCH CLAIM, DEMAND, ACTION, SUIT, PROCEEDING, OR OTHER CAUSE OF ACTION MAY BE PENDING AS STATUTORY WRITTEN CONSENT TO WAIVER OF TRIAL BY JURY IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 631. FROM TIME TO TIME UPON REQUEST OF EITHER PARTY HERETO, THE OTHER PARTY SHALL CONFIRM, RE-CONFIRM, AND RATIFY, IN WRITING, THE PROVISIONS OF THIS SECTION 11.6, INCLUDING IF ANY LEGISLATION IS PROMULGATED REGARDING WAIVERS OF THE RIGHT TO TRIAL BY JURY. THE PROVISIONS OF THIS SECTION 11.6 SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT OR THE CLOSING.

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SELLER'S INITIALS:

  
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BUYER'S INITIALS:

**ARTICLE 12**  
**DISCLAIMERS, RELEASE, AND INDEMNITY**

**12.1 Disclaimers By Seller.** Except as expressly set forth in Section 10.1 of this Agreement, it is understood and agreed that Seller and the Seller Parties have not at any time made and are not now

making, and they specifically disclaim, any warranties, representations, or guaranties of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties, representations, or guaranties as to (i) matters of title, (ii) environmental matters relating to the Property or any portion thereof, including the presence of Hazardous Materials in, on, under, or in the vicinity of the Property, (iii) geological conditions, including subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of water, and geologic faults and the resulting damage of past and/or future faulting, (iv) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway, or special flood hazard, (v) drainage, (vi) soil conditions, including the existence of instability, past soil repairs, soil additions, or conditions of soil fill, or susceptibility to landslides, or the sufficiency of any undershoring, (vii) the presence of endangered species or any environmentally sensitive or protected areas, (viii) zoning or entitlements to which the Property or any portion thereof may be subject, or the extent to which building or other entitlements for the Property or any portion thereof may be obtained, or any conditions that may be imposed in connection therewith, (ix) the availability of any utilities to the Property or any portion thereof including water, sewage, gas, and electric, (x) usages of adjoining property, (xi) access to the Property or any portion thereof, (xii) the value, compliance with the plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title to, or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights, or claims on or affecting or pertaining to the Property or any part thereof, (xiii) the condition or use of the Property or compliance of the Property with any or all past, present, or future federal, state, or local ordinances, rules, regulations, or laws, building, fire, or zoning ordinances, codes, or other similar laws, (xiv) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (xv) any other matter affecting the stability and integrity of the Property, (xvi) the potential for development of the Property, (xvii) the merchantability of the Property or fitness of the Property for any particular purpose, (xviii) the truth, accuracy, or completeness of the Property Documents or any other information relating to the Property, (xix) tax consequences, (xx) requirements or conditions of approval applicable to the Property or any requirements or conditions for the development, use, sale, or occupancy of the Property, (xxi) the issuance of the CPUC approval as described in Section 8.2.6, or (xxii) any other matter or thing with respect to the Property.

## 12.2



**12.2.1 Buyer's Investigation.** Buyer will conduct such inspections and investigations of the Property as Buyer deems necessary, including, but not limited to, any requirements or conditions for the development, sale, use, or occupancy of the Property, and the physical and environmental conditions thereof, and shall rely upon same. By failing to terminate this Agreement prior to the expiration of the Inspection Period, Buyer acknowledges that Seller has afforded Buyer a full opportunity to conduct such investigations of the Property as Buyer deemed necessary to satisfy itself as to such requirements and conditions, the condition of the Property, and the existence or non-existence of curative action to be taken with respect to any Hazardous Materials on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of Seller or any other Seller Parties with respect thereto, other than such representations, warranties, and covenants of Seller as are expressly set forth in Section 10.1 of this Agreement. Upon Closing, Buyer shall assume the risk that adverse matters,

including, but not limited to, adverse physical or construction defects or adverse environmental, health, or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

**12.2.2 BUYER'S ACKNOWLEDGEMENT.** WITHOUT LIMITATION, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE PURCHASED BY BUYER AND SOLD AND DELIVERED BY SELLER IN AN AS IS CONDITION AND ON A WHERE-IS BASIS WITH ALL FAULTS INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 OF THIS AGREEMENT, NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER, HAVE BEEN, ARE, OR AT ANY TIME WILL BE MADE BY THE SELLER PARTIES OR ANY OTHER PERSON, AND BUYER WAIVES ALL SUCH WARRANTIES, OTHER THAN AS SET FORTH EXPRESSLY IN SECTION 10.1 OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO THE CONDITION (PHYSICAL OR OTHERWISE) AND USE OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, (i) WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES WITH RESPECT TO THE CONDITION OF THE PROPERTY, ITS COMPLIANCE WITH ANY ZONING OR OTHER RULES, REGULATIONS, LAWS, OR STATUTES APPLICABLE TO THE PROPERTY, (iii) WARRANTIES WITH RESPECT TO THE USES PERMITTED ON, THE DEVELOPMENT REQUIREMENTS OR CONDITIONS FOR, OR ANY OTHER MATTER OR THING RELATING TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING SOIL, COMPACTION, DRAINAGE, SEISMIC, HAZARDOUS MATERIALS, COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, UTILITIES, ACCESS, COMPLIANCE WITH RENT CONTROL ORDINANCES, AND THE ECONOMIC OR OTHER RETURN THAT MAY BE DERIVED FROM OWNERSHIP, DEVELOPMENT, IMPROVEMENT, OR USE OF THE PROPERTY. BUYER ALSO ACKNOWLEDGES THAT SOME DEFECTS MAY BECOME APPARENT ONLY AFTER THE CLOSING DATE AND HEREBY RELEASES THE SELLER PARTIES FROM BLAME AND ALL LIABILITY FOR SUCH LATENT DEFECTS AND BUYER HEREBY COVENANTS NOT TO BRING ANY ACTION AGAINST SELLER BASED ON ANY OF THESE CLAIMS. IF ANY FACTS, CONDITIONS, OR CIRCUMSTANCES CHANGE OR TURN OUT DIFFERENTLY FROM WHAT BUYER BELIEVED, BUYER'S OBLIGATIONS HEREUNDER SHALL REMAIN IN FULL FORCE AND EFFECT WITH NO RIGHT OR REMEDY AGAINST ANY OF THE SELLER PARTIES WITH RESPECT THERETO, NOR ANY RIGHT TO DELAY BUYER'S PERFORMANCE HEREUNDER OR TO TERMINATE THIS AGREEMENT.



BUYER'S INITIALS

**12.3 Seller Released from Liability.** Buyer acknowledges that it will have the opportunity to inspect the Property during the Inspection Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Buyer deems necessary, and, as of the Closing, Buyer hereby FOREVER RELEASES AND DISCHARGES the Seller Parties from all responsibility and liability (including civil liability) regarding the condition, valuation, salability, or utility of the Property, or its suitability for any purpose whatsoever, including liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act Of 1980 (42 U.S.C. Section 9601 et seq.), as amended ("CERCLA"), and from all other federal, state, and local laws, rules, regulations, or ordinances that might impose liability regarding the development, sale, use, occupancy, condition, valuation, salability, or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with



including, but not limited to, adverse physical or construction defects or adverse environmental, health, or safety conditions, may not have been revealed by Buyer's inspections and investigations. Buyer waives any and all rights or remedies it may have or be entitled to, deriving from disparity in size or from any significant disparate bargaining position in relation to Seller.

**12.2.2 BUYER'S ACKNOWLEDGEMENT.** WITHOUT LIMITATION, BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE PROPERTY WILL BE PURCHASED BY BUYER AND SOLD AND DELIVERED BY SELLER IN AN AS IS CONDITION AND ON A WHERE-IS BASIS WITH ALL FAULTS INCLUDING, BUT NOT LIMITED TO, BOTH LATENT AND PATENT DEFECTS. BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 OF THIS AGREEMENT, NO WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER, HAVE BEEN, ARE, OR AT ANY TIME WILL BE MADE BY THE SELLER PARTIES OR ANY OTHER PERSON, AND BUYER WAIVES ALL SUCH WARRANTIES, OTHER THAN AS SET FORTH EXPRESSLY IN SECTION 10.1 OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, WITH RESPECT TO THE CONDITION (PHYSICAL OR OTHERWISE) AND USE OF THE PROPERTY INCLUDING, BUT NOT LIMITED TO, (i) WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, (ii) WARRANTIES WITH RESPECT TO THE CONDITION OF THE PROPERTY, ITS COMPLIANCE WITH ANY ZONING OR OTHER RULES, REGULATIONS, LAWS, OR STATUTES APPLICABLE TO THE PROPERTY, (iii) WARRANTIES WITH RESPECT TO THE USES PERMITTED ON, THE DEVELOPMENT REQUIREMENTS OR CONDITIONS FOR, OR ANY OTHER MATTER OR THING RELATING TO THE PROPERTY OR ANY PORTION THEREOF, INCLUDING SOIL, COMPACTION, DRAINAGE, SEISMIC, HAZARDOUS MATERIALS, COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS, UTILITIES, ACCESS, COMPLIANCE WITH RENT CONTROL ORDINANCES, AND THE ECONOMIC OR OTHER RETURN THAT MAY BE DERIVED FROM OWNERSHIP, DEVELOPMENT, IMPROVEMENT, OR USE OF THE PROPERTY. BUYER ALSO ACKNOWLEDGES THAT SOME DEFECTS MAY BECOME APPARENT ONLY AFTER THE CLOSING DATE AND HEREBY RELEASES THE SELLER PARTIES FROM BLAME AND ALL LIABILITY FOR SUCH LATENT DEFECTS AND BUYER HEREBY COVENANTS NOT TO BRING ANY ACTION AGAINST SELLER BASED ON ANY OF THESE CLAIMS. IF ANY FACTS, CONDITIONS, OR CIRCUMSTANCES CHANGE OR TURN OUT DIFFERENTLY FROM WHAT BUYER BELIEVED, BUYER'S OBLIGATIONS HEREUNDER SHALL REMAIN IN FULL FORCE AND EFFECT WITH NO RIGHT OR REMEDY AGAINST ANY OF THE SELLER PARTIES WITH RESPECT THERETO, NOR ANY RIGHT TO DELAY BUYER'S PERFORMANCE HEREUNDER OR TO TERMINATE THIS AGREEMENT.

BUYER'S INITIALS

**12.3 Seller Released from Liability.** Buyer acknowledges that it will have the opportunity to inspect the Property during the Inspection Period, and during such period, observe its physical characteristics and existing conditions and the opportunity to conduct such investigation and study on and of the Property and adjacent areas as Buyer deems necessary, and, as of the Closing, Buyer hereby FOREVER RELEASES AND DISCHARGES the Seller Parties from all responsibility and liability (including civil liability) regarding the condition, valuation, salability, or utility of the Property, or its suitability for any purpose whatsoever, including liabilities under the Comprehensive Environmental Response, Compensation, and Liability Act Of 1980 (42 U.S.C. Section 9601 et seq.), as amended ("CERCLA"), and from all other federal, state, and local laws, rules, regulations, or ordinances that might impose liability regarding the development, sale, use, occupancy, condition, valuation, salability, or utility of the Property, or its suitability for any purpose whatsoever (including, but not limited to, with

respect to the presence in the soil, air, structures, and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled, and/or removed from the Property under current or future federal, state, and/or local laws, regulations, or guidelines, and any structural and geologic conditions, subsurface soil and water conditions, solid and hazardous waste, and Hazardous Materials on, under, adjacent to, or otherwise affecting the Property). Buyer further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state, and local statutory and common law based actions, and any private right of action under any federal, state, or local laws, regulations, or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the development, sale, use, occupancy, the physical characteristics, and any existing conditions of the Property, whether arising before or after the Effective Date. The foregoing waivers do not apply to Buyer's actual damages resulting from Seller's failure to notify Buyer of any material information described in the first sentence of Section 10.3.2 which would cause any of the representations and warranties set forth in Section 10.1 of this Agreement to become materially inaccurate. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present, and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

It is the Buyer's intention that, except as set forth in the penultimate sentence of the preceding paragraph, the foregoing release shall be effective as a bar to all actions, causes of action, suits, claims, or demands of every kind, nature, or character whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, arising out of or in connection with the Property or other properties in or about the Property. BUYER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BUYER EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS OR THE BENEFITS IT MAY HAVE UNDER, OR WHICH MAY BE CONFERRED UPON IT BY, THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE TO THE FULLEST EXTENT THAT IT MAY LAWFULLY WAIVE SUCH RIGHTS OR BENEFITS PERTAINING TO THE SUBJECT MATTER OF THIS RELEASE.



BUYER'S INITIALS

Buyer understands and agrees that by execution of this Agreement, the Seller Parties do not admit any liability of any nature whatsoever. Buyer hereby represents and warrants to Seller that it understands the effect of this waiver and said California Civil Code section, and that it is represented and has been advised in this regard by its own counsel. Buyer acknowledges that it may hereafter discover claims and/or facts now unknown or unsuspected, or in addition to, or different from, those which the Buyer now knows or believes to be true with respect to the release set forth in this Section 12.3 (this "General Release"). Nevertheless, Buyer intends by this General Release to release fully and forever all claims released hereby. Accordingly, this General Release shall remain in full force as a complete release of such claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Agreement.

respect to the presence in the soil, air, structures, and surface and subsurface waters, of Hazardous Materials or other materials or substances that have been or may in the future be determined to be toxic, hazardous, undesirable or subject to regulation and that may need to be specially treated, handled, and/or removed from the Property under current or future federal, state, and/or local laws, regulations, or guidelines, and any structural and geologic conditions, subsurface soil and water conditions, solid and hazardous waste, and Hazardous Materials on, under, adjacent to, or otherwise affecting the Property). Buyer further hereby WAIVES (and by Closing this transaction will be deemed to have WAIVED) any and all objections and complaints (including, but not limited to, federal, state, and local statutory and common law based actions, and any private right of action under any federal, state, or local laws, regulations, or guidelines to which the Property is or may be subject, including, but not limited to, CERCLA) concerning the development, sale, use, occupancy, the physical characteristics, and any existing conditions of the Property, whether arising before or after the Effective Date. The foregoing waivers do not apply to Buyer's actual damages resulting from Seller's failure to notify Buyer of any material information described in the first sentence of Section 10.3.2 which would cause any of the representations and warranties set forth in Section 10.1 of this Agreement to become materially inaccurate. Buyer further hereby assumes the risk of changes in applicable laws and regulations relating to past, present, and future environmental conditions on the Property and the risk that adverse physical characteristics and conditions, including the presence of Hazardous Materials or other contaminants, may not have been revealed by its investigation.

It is the Buyer's intention that, except as set forth in the penultimate sentence of the preceding paragraph, the foregoing release shall be effective as a bar to all actions, causes of action, suits, claims, or demands of every kind, nature, or character whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, arising out of or in connection with the Property or other properties in or about the Property. BUYER ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BUYER EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS OR THE BENEFITS IT MAY HAVE UNDER, OR WHICH MAY BE CONFERRED UPON IT BY, THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE TO THE FULLEST EXTENT THAT IT MAY LAWFULLY WAIVE SUCH RIGHTS OR BENEFITS PERTAINING TO THE SUBJECT MATTER OF THIS RELEASE.

BUYER'S INITIALS

Buyer understands and agrees that by execution of this Agreement, the Seller Parties do not admit any liability of any nature whatsoever. Buyer hereby represents and warrants to Seller that it understands the effect of this waiver and said California Civil Code section, and that it is represented and has been advised in this regard by its own counsel. Buyer acknowledges that it may hereafter discover claims and/or facts now unknown or unsuspected, or in addition to, or different from, those which the Buyer now knows or believes to be true with respect to the release set forth in this Section 12.3 (this "**General Release**"). Nevertheless, Buyer intends by this General Release to release fully and forever all claims released hereby. Accordingly, this General Release shall remain in full force as a complete release of such claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Agreement.

**12.4 "Hazardous Materials" and "Environmental Laws" Defined.**

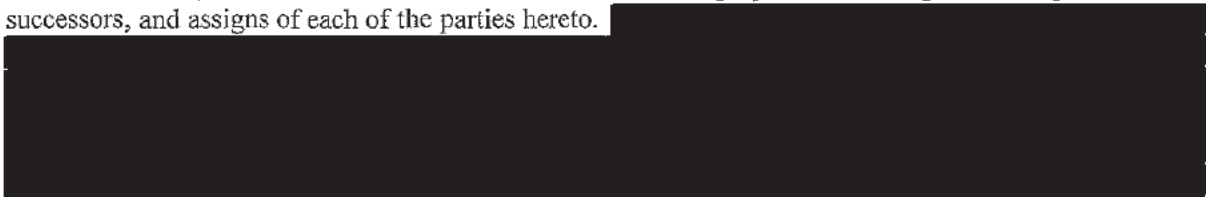
**12.4.1** For purposes hereof, "**Hazardous Materials**" means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," "Petroleum," and "Natural Gas Liquids," as those terms are defined or used in Sections 101 or 306 of CERCLA, and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials, including, but not limited to, all chemicals, materials, substances, and items in any form that, because of their physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any Environmental Law.


**12.4.2** For purposes hereof, "**Environmental Laws**" shall mean any and all present and future federal, state, and local law (whether under common law, statute, rule, ordinance, agreement, regulation, or otherwise), requirement under any permit issued with respect thereto, and other requirements of agencies having jurisdiction thereunder relating to the protection of human health or the environment, including (without limitation) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; federal Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2641 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the federal Clean Air Act, 42 U.S.C. § 7401 et seq.; the California Hazardous Waste Control Act, Cal. Health & Safety Code §§ 25100 et seq.; the California Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code § 25300 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code § 25249.5 et seq.; the California Hazardous Waste Treatment Reform Act of 1995, Cal. Health & Safety Code § 25179.1 et seq.; Cal. Health & Safety Code § 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 et seq.; Cal. Health & Safety Code § 25280 et seq. (Underground Storage of Hazardous Substances); Cal. Health & Safety Code § 25915 et seq. (Asbestos Notification); Cal. Health & Safety Code § 25359.7; Cal. Labor Code § 6501.5; and Title 27 of the California Code of Regulations; all as amended to the date hereof.

**12.5 Survival.** The terms and conditions of this Article 12 shall expressly survive the Closing, not merge with the provisions of any closing documents, and shall be incorporated into the Grant Deed. Buyer acknowledges and agrees that the disclaimers and other agreements set forth herein are an integral part of this Agreement and that Seller would not have agreed to sell the Property to Buyer for the Purchase Price without the disclaimers and other agreements set forth above.

**ARTICLE 13**  
**MISCELLANEOUS**

**13.1 Parties Bound; Assignment.** This Agreement, and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of each of the parties hereto.





**13.2 Headings.** The article, section, subsection, paragraph, and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

**13.3 Invalidity and Waiver.** If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

**13.4 Governing Law.** This Agreement shall, in all respects, be governed, construed, applied, and enforced in accordance with the law of the State of California.

**13.5 Survival.** The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing (other than any unfulfilled closing conditions which have been waived or deemed waived by the other party) shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing. Notwithstanding the foregoing to the contrary, any conflict between this Section 13.5 and Section 10.3 hereof, shall be governed by Section 10.3 hereof.

**13.6 Entirety and Amendments.** This Agreement, including all Exhibits hereto, embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property except the Nondisclosure Agreement. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. All Exhibits hereto are incorporated herein by this reference for all purposes.

**13.7 Time.** TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT.

**13.8 Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, include all other genders; the singular includes the plural, and vice versa, and refers solely to the parties' signatory thereto except where otherwise specifically provided. All references in this Agreement to Articles, Sections, or subdivisions thereof refer to the corresponding Articles, Sections, or subdivisions thereof of this Agreement unless specific reference is made to such Articles, Sections, or subdivisions of another document or instrument. Any use of the word "including" or "include" in this Agreement will, unless the context otherwise requires, be deemed to respectively mean "including without limitation" or "include without limitation." The words "herein," "hereof," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular provision.

**13.9 Notices.** All notices required or permitted hereunder shall be in writing and shall be served on the parties at the addresses set forth in Section 1.3. Any such notices shall, unless otherwise provided herein, be given or served (i) by overnight delivery using a nationally recognized overnight courier, (ii) by personal delivery, or (iii) by email, so long as all parties to be copied pursuant to Section 1.3 are in fact copied between the hours of 9:00 a.m. and 5:00 p.m. (California time), with a confirmation copy delivered by another method permitted under this Section 13.9. Notice given in accordance herewith shall be effective upon the earlier to occur of actual delivery to the address of the addressee or refusal of receipt by the addressee. Except for email notices as described above, no notice hereunder shall be effective if sent or delivered by electronic means. In no event shall this Agreement be altered, amended, or modified by email or electronic record. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

**13.10** [REDACTED]

**13.11 Calculation of Time Periods; Business Day.** Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is not a Business Day, in which event the period shall run until the end of the next day which is a Business Day. The last day of any period of time described herein shall be deemed to end at 5:00 p.m. (California time). As used herein, the term "**Business Day**" means any day that is not a Saturday, Sunday, or legal holiday for national banks in the State of California.

**13.12 Execution in Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange, by email, counterparts of the signature pages, provided that executed originals thereof are forwarded to the other party on the same day by any of the delivery methods set forth in Section 13.9 other than email.

**13.13** [REDACTED]

**13.14 Further Assurances.** In addition to the acts and deeds recited herein and contemplated to be performed, executed, and/or delivered by either party at Closing, each party agrees to perform, execute, and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing, any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer, and assignment of the Property to Buyer.

**13.15 ERISA.** Under no circumstances shall Buyer have the right to assign this Agreement to any person or entity owned or controlled by an employee benefit plan if Seller's sale of the Property to such person or entity would, in the reasonable opinion of Seller's ERISA advisors or consultants, create

or otherwise cause a "prohibited transaction" under ERISA. In the event Buyer assigns this Agreement or transfers any ownership interest in Buyer, and such assignment or transfer would make the consummation of the transaction hereunder a "prohibited transaction" under ERISA and necessitate the termination of this Agreement, then, notwithstanding any contrary provision which may be contained herein, Seller shall have the right to terminate this Agreement.

**13.16 No Third Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**13.17 Reporting Person.** Buyer and Seller hereby designate the Title Company as the "real estate reporting person" pursuant to the provisions of Section 6045(e) of the Internal Revenue Code.

**13.18 Force Majeure.** If satisfaction of any condition or performance of any action required under this Agreement by either party is delayed as a result of any act of God, governmental actions or inactions, strikes, riots, acts of insurrection, declaration of war, or other delay beyond the reasonable control of the party delayed, but in any event excluding events or circumstances which can be controlled by the reasonable expenditure of money in accordance with usual business practices, then the time allowed for satisfaction of such condition or performance of such action shall be extended by the amount of time that satisfaction of the condition or performance of the action is delayed by the aforementioned reasons;

Notwithstanding the foregoing provisions of this Section 13.18, in the event that the consummation of this Agreement is materially delayed by reason of initiative, referenda, lawsuits or injunctions regarding the Property, this Agreement or the transactions contemplated in this Agreement by or in connection with any third party, Seller and Buyer shall meet and confer regarding possible extensions of deadlines under this Agreement.

**13.19 No Prescriptive Rights.** In no event shall Buyer, the Buyer Parties or any other party acquire any interest in the Property, including, but not limited to, any prescriptive rights, by virtue of this Agreement or any holding over on or failure to vacate or surrender the Property after the termination of this Agreement prior to Closing.

[REDACTED]

[REDACTED]



**ARTICLE 14**  
**OPTION TO PURCHASE PARCEL 10**

**14.1 Grant of Option.**

[REDACTED]

**14.2 Exercise of Purchase Option.** At Buyer's sole election (except as provided below) and provided Seller has not sent to Buyer a notice of default under this Agreement and the default remains uncured, Buyer may exercise the Purchase Option during the Option Period by delivering written notice to Seller of such election in form and substance satisfactory to Seller (the "**Election Notice**") on or before the expiration of the Option Period.

[REDACTED]

**14.3**

[REDACTED]

**14.4 Option Personal to Buyer.** The Purchase Option may not be assigned except to the extent set forth in Section 13.1 hereof. The parties hereto acknowledge and agree that they intend that the Purchase Option shall be "personal" to Buyer and that in no event will any assignee have any rights to exercise the Purchase Option except to the extent set forth in Section 13.1 hereof.

**14.5 Lot Line Adjustment.** Notwithstanding anything to the contrary in this Agreement, at any time prior to Seller's receipt of the Election Notice, Seller may elect, in its sole discretion, to apply for and process an adjustment of the lot line between the Option Parcel and the parcel comprising approximately 20.55 acres identified as APN 211-010-28 located south of Option Parcel and adjacent to Cannon Road, provided that no such election shall decrease the size or alter the configuration of Parcel 8.

**14.6 Incorporation of Terms of Agreement.** Where applicable, references in this Agreement to the Property shall mean the Option Parcel. Notwithstanding the foregoing, the following Articles of this Agreement shall not apply to the Option Parcel: Article 2, Article 3 and Article 4. If any provisions of this Article 14 conflict with any portions of this Agreement as incorporated herein, the terms of this Article 14 shall govern with respect to the Option Parcel, and the terms of all other portions of this Agreement shall govern with respect to the Property.

[SIGNATURE PAGES AND EXHIBITS TO FOLLOW]



**SIGNATURE PAGE TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY  
AND  
CARUSO ACQUISITION CO. II, LLC**


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**APPROVED AS TO LEGAL FORM**

**SELLER:**

**SAN DIEGO GAS & ELECTRIC COMPANY,**  
a California corporation

Date executed by Seller  
July \_\_, 2012

By:   
Name: Michael R. Niggli  
Title: President and COO

**BUYER:**

**CARUSO ACQUISITION CO. II, LLC,**  
a California limited liability company

Date executed by Buyer  
July \_\_, 2012

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SIGNATURE PAGE TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY  
AND  
CARUSO ACQUISITION CO. II, LLC**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**SELLER:**

**SAN DIEGO GAS & ELECTRIC COMPANY,**  
a California corporation

Date executed by Seller

July \_\_, 2012

By: \_\_\_\_\_

Name: Michael R. Niggli  
Title: President and COO

**BUYER:**

**CARUSO ACQUISITION CO. II, LLC,**  
a California limited liability company

Date executed by Buyer

July 31, 2012

By: \_\_\_\_\_

  
Name: Remy Caruso  
Title: \_\_\_\_\_

**SIGNATURE PAGE TO  
PURCHASE AND SALE AGREEMENT  
BETWEEN  
SAN DIEGO GAS & ELECTRIC COMPANY  
AND  
CARUSO ACQUISITION CO. II, LLC**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

**SELLER:**

**SAN DIEGO GAS & ELECTRIC COMPANY,**  
a California corporation

Date executed by Seller

July \_\_, 2012

By: \_\_\_\_\_

Name: Michael R. Niggli  
Title: President and COO

**BUYER:**

**CARUSO ACQUISITION CO. II, LLC,**  
a California limited liability company

Date executed by Buyer

July \_\_, 2012

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

***JOINDER BY ESCROW AGENT***

Escrow Agent has executed this Agreement in order to confirm that Escrow Agent has received and shall hold the Earnest Money required to be deposited under this Agreement, in escrow, and shall disburse the Earnest Money and adhere to the escrow instructions pursuant to the provisions of this Agreement.



Date executed by Escrow Agent

\_\_\_\_\_, 2012

By: \_\_\_\_\_

Name:

Title:

EXHIBIT A

*LEGAL DESCRIPTION OF LAND AND RESERVED UTILITY EASEMENTS*

LAND

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND DESCRIBED AS FOLLOWS:

PARCEL 8 OF CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001 AS FILE NO. 2001-0789071, BEING A PORTION OF LOT H OF RANCHO AGUA HEDIONDA, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 16, 1896, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803, FILED IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY AUGUST 25, 1924, THE BEARING OF WHICH PARALLEL LINE AND ITS WESTERLY PROLONGATION THEREOF IS RECORDED AS NORTH 72° 25' 00" EAST ON SAID MAP OF SAID PALISADES NO. 2, WITH THE WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS SAID RIGHT OF WAY WAS ESTABLISHED ON SEPTEMBER 22, 1948; THENCE SOUTHERLY ALONG SAID WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DISTANCE OF 2755.18 FEET; THENCE PARALLEL WITH A PORTION OF THE SOUTHERLY BOUNDARY OF THE JACOBSON LAND HEREIN AFTER DESCRIBED NORTH 66° 34' 10" EAST, 50.00 FEET TO THE CENTER LINE OF SAID RAILWAY RIGHT OF WAY; THENCE ALONG SAID CENTER LINE SOUTH 23° 06' 00" EAST, 60.00 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF THE LAND DESCRIBED IN QUITCLAIM DEED FROM PAUL ECKE, ET UX, TO GROVER C. JACOBSON, ET AL, RECORDED APRIL 29, 1948 IN BOOK 2778, PAGE 341 OF OFFICIAL RECORDS; SAID POINT BEING HEREIN DESIGNATED AS POINT "T", THENCE ALONG SAID SOUTHERLY BOUNDARY OF SAID LAND AS DESCRIBED NORTH 66° 54' 10" EAST 1770.00 FEET TO A SECOND ANGLE POINT IN SAID BOUNDARY, THENCE LEAVING SAID BOUNDARY, CONTINUING NORTH 66° 54' 10" EAST 17.00 FEET; THENCE NORTH 23° 05' 05" WEST TO THE SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF THE SWAMP OR OVERFLOW LAND KNOWN AS THE LAGOON BED; AS SAID BOUNDARY WAS LOCATED ON SEPTEMBER 28, 1948, THENCE NORTHWESTERLY AND WESTERLY ALONG SAID SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF SAID SAVANGE LAND TO THE EASTERLY LINE OF SAID ATCHISON, TOPEKA AND SANTA FE RAILWAY RIGHT OF WAY, THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF RIGHT OF WAY TO SAID LINE WHICH IS A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803; THENCE ALONG SAID PARALLEL LINE SOUTH 72° 25' 00" WEST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THE EASTERLY LINE OF THAT LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED MARCH 20, 1969, AS FILE NO. 48604 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THAT COURSE DESCRIBED AS SOUTH 16° 04' 40" EAST, 362.38 FEET IN THE FINAL ORDER OF CONDEMNATION RECORDED MAY 2, 1952 IN BOOK 4456, PAGE 192 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. 618408 OF OFFICIAL RECORDS.

APN: 211-010-24-00

**EXHIBIT A**

***LEGAL DESCRIPTION OF LAND AND RESERVED UTILITY EASEMENTS (CONTINUED)***

**UTILITY CORRIDOR EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

BEGINNING at a point which bears South 38°25'04" East, 251.12 feet from the Northwestern terminus of that certain line designated as "North 38°25'04" West, 530.35 feet" on the Westerly line of said Parcel 8; thence along said Westerly line North 38°25'04" West, 251.12 feet to the beginning of a non-tangent 1440.07 foot radius curve concave Northeasterly, to which a radial bears, South 51°35'32" West; thence Northwesterly along said curve and said Westerly line through a central angle of 11°34'50" a distance of 291.07 feet to the beginning of a compound 2940.14 foot radius curve concave Northeasterly, to which a radial bears South 63°10'22" West; thence Northwesterly along said curve and continuing along said Westerly line through a central angle of 03°10'39" a distance of 163.05 feet; thence continuing along said Westerly line non-tangent to said curve North 24°08'41" West, 8.48 feet; thence leaving said Westerly line of said Parcel 8 South 84°54'00" East, 992.14 feet to the Easterly line of said Parcel 8; thence along said Easterly line South 22°27'28" East, 576.55 feet to the Northerly Right-of-way of Cannon Road, said point being on a non-tangent 1051.00 foot radius curve concave Southeasterly to which a radial line bears North 07°46'16" West; thence Southwesterly along said curve and said Northerly Right-of-way through a central angle of 08°56'43" a distance of 164.09 feet; thence leaving said Northerly Right-of-way North 84°54'00" West, 665.15 feet to the POINT OF BEGINNING.

Containing 12.02 acres more or less.

Prepared By:

Nolte Associates, Inc.

*Jeffrey J. Safford* 6/28/12  
Jeffrey J. Safford Date  
L.S. 6703



EXHIBIT A

**LEGAL DESCRIPTION OF LAND AND RESERVED UTILITY EASEMENTS (CONTINUED)**

**ELECTRIC EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being a 12.00 foot wide easement the centerline of which is described as follows:

COMMENCING at the Southeasterly corner of Parcel 8 of said Record of Survey No. 17350; thence along the Easterly line of said Parcel 8 North 22°27'28" West, 656.17 feet to the TRUE POINT OF BEGINNING; thence leaving said Easterly line North 84°54'05" West, 994.82 feet to the Westlerly line of said Parcel 8.

The sidelines of said strip shall be lengthened or shortened so as to terminate Westerly on said Westerly line of Parcel 8 and Easterly on said Easterly line of said Parcel 8.

Containing 0.27 acres more or less.

Prepared By:

Nolte Associates Inc.

Jeffrey J. Safford 6/28/12  
Jeffrey J. Safford Date  
L.S. 6703

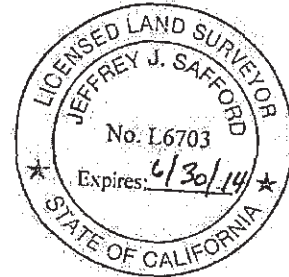
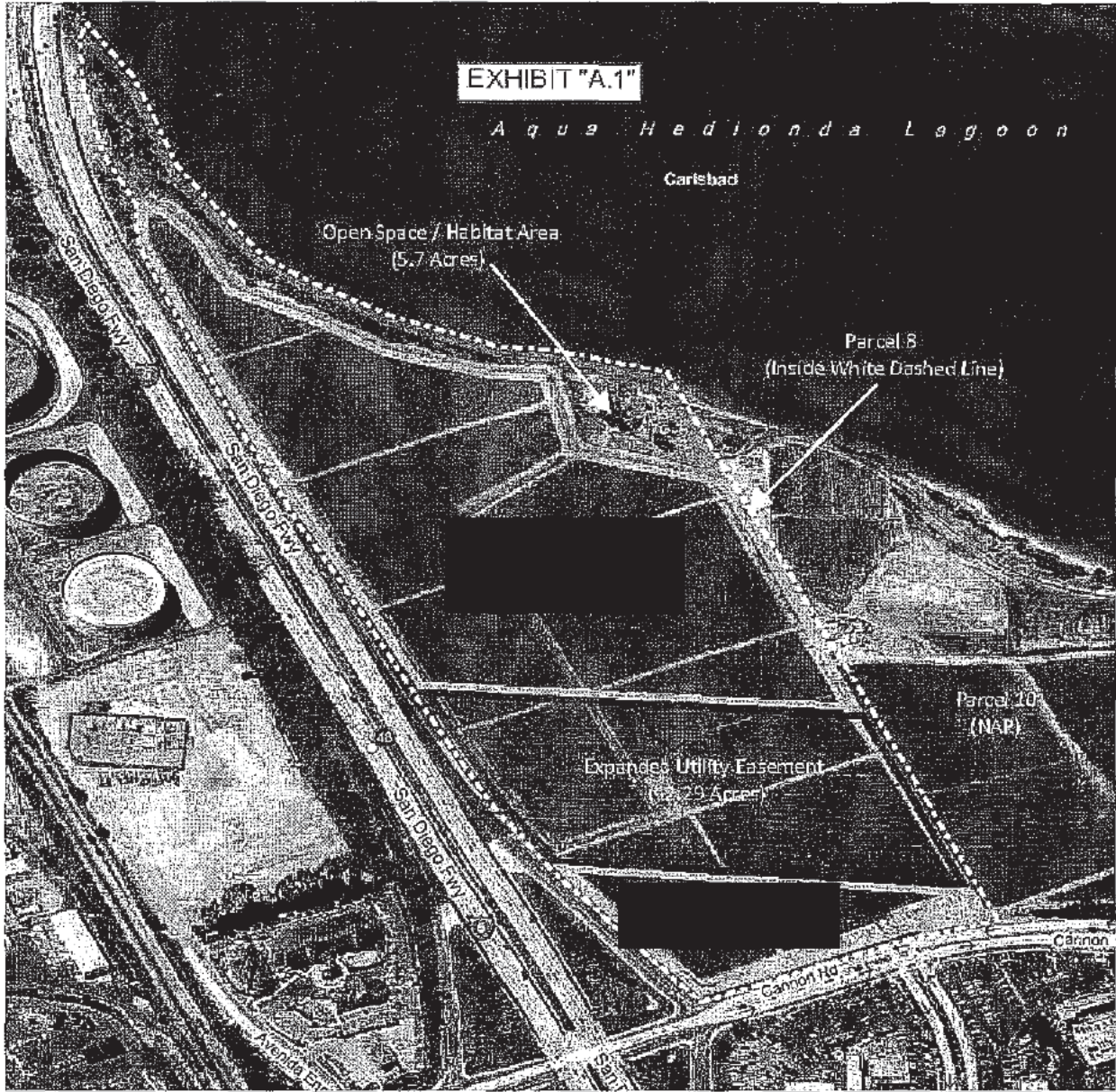




EXHIBIT A-1

DEPICTION OF THE LAND AND THE RESERVED UTILITY EASEMENTS LAND

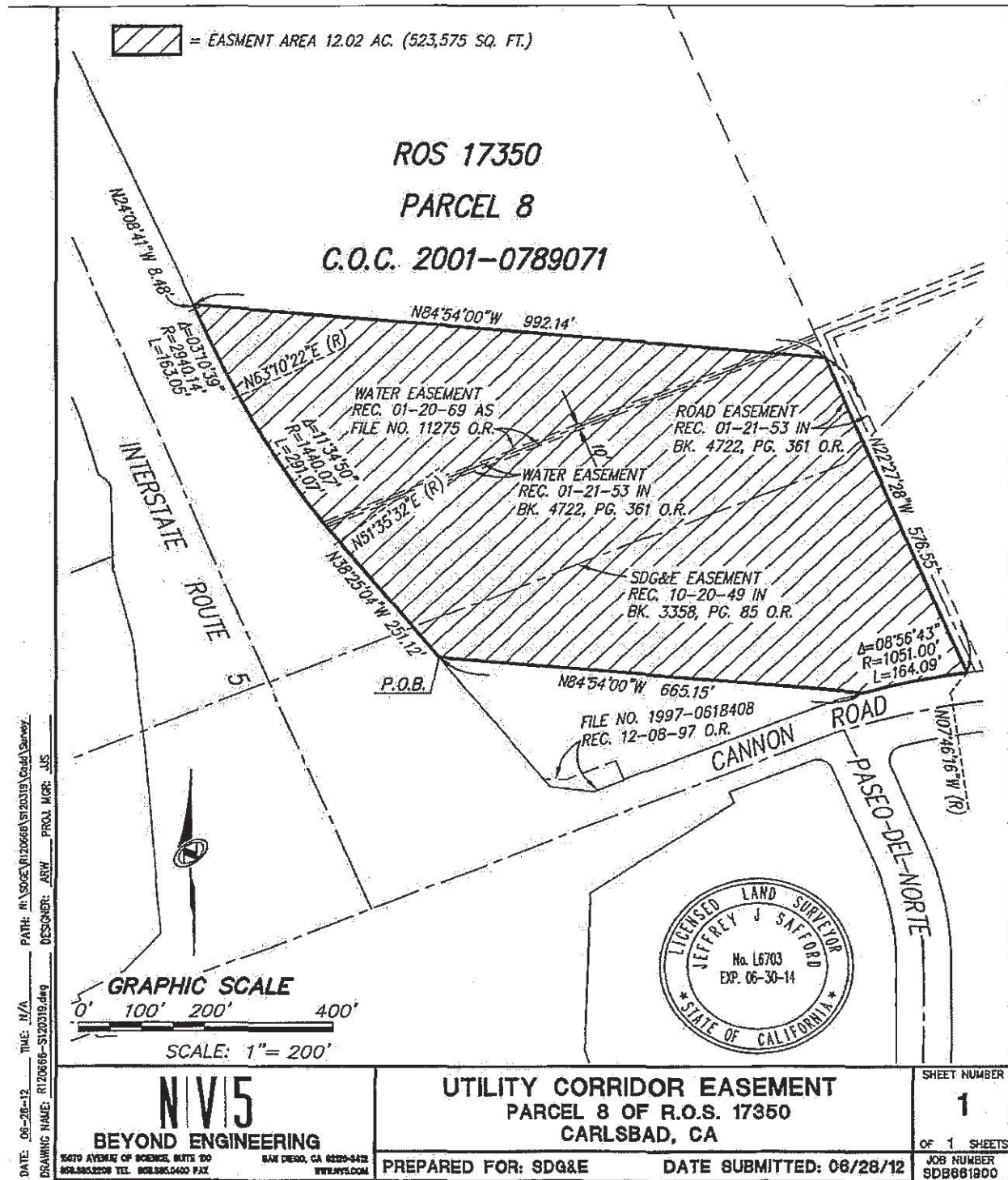
THE LAND



**EXHIBIT A-1**

**DEPICTION OF THE LAND AND THE RESERVED UTILITY EASEMENTS (CONTINUED)**

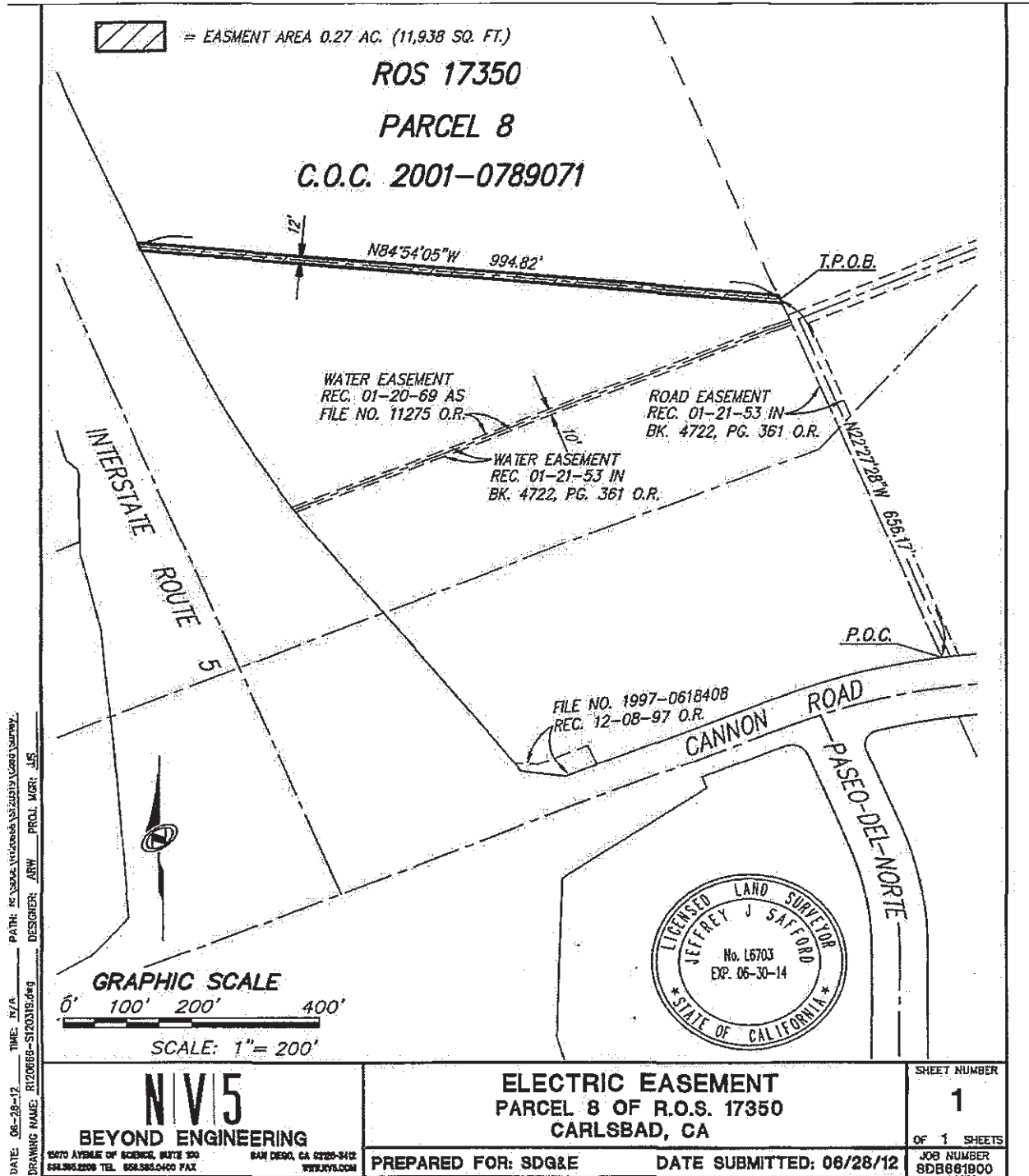
**THE UTILITY CORRIDOR EASEMENT**



**EXHIBIT A-1**

**DEPICTION OF THE LAND AND THE RESERVED UTILITY EASEMENTS (CONTINUED)**

**THE ELECTRICAL EASEMENT**



**EXHIBIT B**

**ACCESS, MAINTENANCE AND RIGHT OF WAY USE AGREEMENT**

[Attached]

Recording requested by:  
San Diego Gas & Electric Company

And when recorded, mail to:

San Diego Gas & Electric Company  
8335 Century Park Court, CP11D  
San Diego, CA 92123-1569  
Attn: Corporate Real Estate

APN: Portion of 211-010-24

SPACE ABOVE FOR RECORDER'S USE

Transfer Tax: \$0.00

### ACCESS, MAINTENANCE AND RIGHT OF WAY USE AGREEMENT

This Access, Maintenance and Right of Way Use Agreement (this "**Agreement**"), dated as of the day of \_\_\_\_\_, 20\_\_\_\_, is entered into by and between San Diego Gas & Electric Company, a California corporation, with offices and principal place of business located at 8335 Century Park Court, CP11D, San Diego, California 92123 ("**Grantor**"), and \_\_\_\_\_, a \_\_\_\_\_, with offices and principal place of business located at 101 The Grove Drive, Los Angeles, California 90036 ("**Grantee**"). Grantor and Grantee shall sometimes be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

### RECITALS

A. Pursuant to that certain Grant Deed ("**Grant Deed**") made by Grantor to Grantee recorded on \_\_\_\_\_, 20\_\_\_\_, as Instrument No. \_\_\_\_\_ in the official records of the County Recorder of San Diego County, California, Grantor granted to Grantee approximately 48 acres of land located in the City of Carlsbad, San Diego County, California, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"), and Grantor reserved exclusive easements, servitudes and rights-of-way (referred to herein individually as a "**Utility Easement**" and collectively as the "**Utility Easements**") in, on, over, under, across and through portions of the Property as more particularly described in Exhibit B attached hereto and incorporated herein by this reference, and depicted in Exhibit B-1 attached hereto and incorporated herein by this reference (referred to herein individually as a "**Utility Easement Area**" and collectively as the "**Utility Easement Areas**") for the purpose of erecting, constructing, building, installing, modifying, altering, changing the size of, adding to, improving, reconstructing, reconfiguring, relocating, replacing, repairing, inspecting, testing, patrolling, maintaining, using, operating, and removing (1) aboveground and underground electricity transmission and/or distribution facilities, including but not limited to towers, poles, wires, cables, foundations, guys, anchorages, crossarms, braces, insulators, grounding wires, conduits, pads, manholes, handholes, junction boxes, and a substation, (2) aboveground and underground telephone, signal, communications, cable, and fiber optics facilities, (3) underground natural gas and water transmission and/or distribution pipelines, and (4) all other appliances, equipment, fixtures, appurtenances, and facilities that Grantor deems necessary or convenient in connection therewith (collectively, the "**Utility Facilities**"), all in such numbers and at such locations and

elevations within the Utility Easement Areas as Grantor deems necessary or convenient from time to time.

- B. Grantor has agreed to grant to Grantee its consent to use the Utility Easement Areas upon the terms and conditions set forth in this Agreement, and subject and subordinate in all respects to the Utility Easements, for the construction, reconstruction, use (for parking only, provided such parking is not being used by Grantee to comply with any parking requirements pursuant to any Applicable Laws (as defined below) including, without limitation, zoning laws), and maintenance of an asphalt paved parking lot and associated improvements including landscaping, lighting, signage and pedestrian walkways as more particularly depicted in Exhibit C attached hereto and incorporated herein by this reference (collectively, the “**Permitted Improvements**”), [REDACTED] for no other purpose (the “**Permitted Use**”).

NOW, THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals set forth above are hereby incorporated into the body of this Agreement as if originally set forth in the body of this Agreement.
2. Consent to Use. Subject and subordinate in all respects to the Utility Easements and otherwise upon the terms and conditions set forth in this Agreement, Grantor hereby grants its consent to Grantee and its affiliates, directors, officers, shareholders, members, employees, contractors, subcontractors, consultants, authorized agents, representatives, invitees, tenants and their customers, and each of their respective successors and assigns (collectively, the “**Grantee Parties**”) to enter into the Utility Easement Areas for the Permitted Use.
3. Applicable Laws, Rules and Permits.
  - (a) Grantee shall use the Utility Easement Areas solely for the Permitted Use and, in the performance of the Permitted Use, Grantee shall (i) comply with all federal, state, county, municipal, and other local laws, statutes, codes, ordinances, rules, regulations, directives, policies, decisions, guidelines, and orders now or hereafter applicable to the Permitted Use and Grantee’s activities on the Utility Easement Areas, including, without limitation, all Environmental Laws (as defined in Paragraph 8 below) (collectively, as the same may be amended from time to time, “**Applicable Laws**”) and (ii) obtain, maintain and comply with all permits, consents and approvals required under any Applicable Law (collectively, the “**Required Permits**”), including, without limitation, improvement permits, consents and approvals from the City of Carlsbad and any governmental agency having jurisdiction over Grantee or the Property, including the Utility Easement Areas. Grantee shall be identified as the “permittee” for all such Required Permits.
  - (b) With respect to any entry by Grantee onto the Utility Easement Areas, Grantee acknowledges that it has received and shall comply with the “Guideline for Encroachments On Transmission Rights-of-Way,” including any amendments thereto (the “**Guidelines**”). A copy of the current Guidelines is available upon request to Grantor.
  - (c) Grantee shall promptly deliver to Grantor a copy of any written claims or complaints which refer to Grantor, in any manner, filed in state or federal courts, or governmental

notices or inquiries related to any purported violation of any Applicable Law or Required Permit in connection with Grantee's activities on the Utility Easement Areas.

4. Removal or Relocation.

- (a) If Grantee desires the removal or relocation of any Utility Facilities, Grantor shall not be obligated to so remove or relocate such Utility Facilities, but if Grantor does agree, in its sole discretion, to remove or relocate such Utility Facilities, then such removal or relocation shall be at Grantee's sole cost and expense, and if such requested relocation is to any location outside of the Utility Easement Areas, then Grantee shall provide Grantor with an easement in a location similar in quality and character to the Utility Easement and otherwise on terms and conditions satisfactory to Grantor in its sole discretion.
- (b) If Grantor requires a temporary cessation of Grantee's use of the Utility Easement Areas in order for Grantor to exercise its rights pursuant to the Utility Easements, upon written notice thereof from Grantor to Grantee, Grantee will promptly cease its use of the Utility Easement Areas, provided, however, that Grantor shall not require cessation of or obstruct or prevent Grantee's rights of ingress or egress along the Access Road, except in the event of an emergency, in which case, Grantor shall use commercially reasonable efforts to reopen the Access Road as soon as reasonably practicable under the circumstances. Upon completion of Grantor's use of the Utility Easement Areas which required such temporary cessation, Grantor will restore the Permitted Improvements on the Utility Easement Areas to a condition which is as close as is commercially reasonable to the condition of the Permitted Improvements prior to Grantee's cessation of use, if reasonably possible in Grantor's sole discretion, at Grantee's sole cost and expense.

5. Maintenance of Permitted Improvements. Grantee, at its sole cost and expense, shall maintain the Permitted Improvements including, without limitation, any landscaping installed, constructed or located within the Utility Easement Areas. Grantor shall not be responsible for the maintenance or repair of the Permitted Improvements or any landscaping.

6.



7. No Physically Intrusive Activities. Other than the Permitted Use, Grantee shall not conduct any physically intrusive activities, including but not limited to any excavation, demolition, grading, soil borings or Phase II environmental testing, within the Utility Easement Areas without Grantor's prior written consent, which may be granted or withheld in Grantor's sole discretion. Grantor shall have the right to have a representative present during the performance of any physically intrusive activities within the Utility Easement Areas.

8. Hazardous Materials. Neither Grantee nor any Grantee Party shall place, use, release, store, generate, or dispose of any fuel, explosive or flammable materials or other Hazardous Materials within the Utility Easement Areas, except that Grantee may use, in compliance with all Applicable Laws, common pesticides for maintenance of landscaping planted material. For the purposes of this Agreement, the term "**Hazardous Materials**" shall mean means "Hazardous Material," "Hazardous Substance," "Pollutant or Contaminant," "Petroleum," and "Natural Gas Liquids," as those terms are defined or used in Sections 101 or 306 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 et seq.) ("**CERCLA**"), and any other substances regulated because of their effect or potential effect on public health and the environment, including PCBs, lead paint, asbestos, urea formaldehyde, radioactive materials, putrescible materials, and infectious materials, including, but not limited to, all chemicals, materials, substances, and items in any form that, because of their physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any Environmental Law. For the purposes of this Agreement, the term "**Environmental Law**" shall mean any and all present and future federal, state, and local law (whether under common law, statute, rule, ordinance, agreement, regulation, or otherwise), requirement under any permit issued with respect thereto, and other requirements of agencies having jurisdiction thereunder relating to the protection of human health or the environment, including (without limitation) the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; federal Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2641 et seq.; CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; the Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq.; the federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the federal Clean Air Act, 42 U.S.C. § 7401 et seq.; the California Hazardous Waste Control Act, Cal. Health & Safety Code §§ 25100 et seq.; the California Carpenter-Presley-Tanner Hazardous Substance Account Act, Cal. Health & Safety Code § 25300 et seq.; the California Safe Drinking Water and Toxic Enforcement Act, Cal. Health & Safety Code § 25249.5 et seq.; the California Hazardous Waste Treatment Reform Act of 1995, Cal. Health & Safety Code § 25179.1 et seq.; Cal. Health & Safety Code § 25501 et seq. (Hazardous Materials Release Response Plans and Inventory); the Porter-Cologne Water Quality Control Act, Cal. Water Code § 13000 et seq.; Cal. Health & Safety Code § 25280 et seq. (Underground Storage of Hazardous Substances); Cal. Health & Safety Code § 25915 et seq. (Asbestos Notification); Cal. Health & Safety Code § 25359.7; Cal. Labor Code §§ 6501.5; and Title 27 of the California Code of Regulations; all as amended to the date hereof.
9. Insurance. At all times while this Agreement is in effect, Grantee shall, at its sole expense, maintain in effect the following minimum insurance coverages to protect Grantor and Grantee from Claims (as defined below) arising out of Grantee's or the Grantee Parties' presence within the Utility Easement Areas: (a) comprehensive general liability or commercial general liability insurance, with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and not less than Four Million Dollars (\$4,000,000) in the aggregate, for bodily injury, death and property damage; (b) workers' compensation insurance and employer's liability insurance in accordance with statutory requirements; and (c) automobile liability insurance on all vehicles owned or operated by Grantee with a combined single limit per occurrence of not less than Five Million Dollars (\$5,000,000). Grantor may require adjustments in the amounts and types of insurance coverage at periodic future intervals, subject to a reasonableness standard. Concurrently with Grantee's execution and delivery of this Agreement to Grantor, Grantee shall deliver to Grantor policies or certificates evidencing such insurance coverages, naming Grantor as an additional insured, containing a waiver of subrogation and cross-liability clauses and providing that such insurance coverages may not be modified or terminated except upon not less than thirty (30)



calendar days prior written notice to Grantor. Not less than thirty (30) days prior to the renewal date of any such insurance policies, Grantee shall deliver to Grantor renewal certificates for such insurance policies. For the purposes of this Agreement, the term "Claims" shall mean all losses, liabilities, claims, demands, damages, causes of action, liens, obligations, fines, penalties, costs and expenses (including but not limited to all investigation costs and reasonable consulting, engineering, outside attorney's fees or other professional fees).

10. Grantor Released from Liability. Grantee acknowledges that it has had the opportunity to inspect the Utility Easement Areas and observe their physical characteristics and existing conditions and the opportunity to conduct such investigations and studies on and of the Utility Easement Areas and adjacent areas as Grantee deemed necessary. Grantee, on behalf of itself and the Grantee Parties, hereby FOREVER RELEASES AND DISCHARGES Grantor and its affiliates, directors, officers, shareholders, members, employees, agents, representatives, contractors, subcontractors, consultants, authorized agents and authorized representatives and each of their respective successors and assigns (collectively, the "Grantor Parties") from any and all past, present and future Claims, known or unknown, that Grantee and/or the Grantee Parties now have, may have or ever had against Grantor and/or the Grantor Parties arising or resulting from or in any way related to (a) the physical condition of the Utility Easement Areas, (b) the failure of the Utility Easement Areas to comply with any Applicable Law, (c) the presence of Grantee or any of the Grantee Parties within the Utility Easement Areas, (d) the generation or presence of EMF within the Utility Easement Areas, (e) the presence, storage, release, disposal, migration, transportation, mitigation, remediation, investigation, testing and/or removal of Hazardous Materials within the Utility Easement Areas, (f) the temporary cessation of Grantee's use pursuant to Paragraph 4(b) hereof, or (g) any default by Grantee or any of the Grantee Parties under this Agreement; provided, however, that the foregoing release shall expressly exclude any Claims by third parties arising from bodily injury, death, or property damage resulting from Grantor's negligence, but only to the extent that such Claims are covered by Grantor's insurance policies (excluding any self-insured retention) and, if such Claims are covered by Grantor's insurance policies (excluding any self-insured retention), then only to the extent of the proceeds payable from such insurance policies for such Claims. Grantee further hereby assumes the risk of changes in Applicable Laws relating to past, present, and future environmental conditions on the Utility Easement Areas and the risk that adverse physical characteristics and conditions, including the presence of Hazardous Materials or other contaminants, may not have been revealed by Grantee's investigation. The release set forth in this Paragraph 10 shall survive the expiration or earlier termination of this Agreement.

It is the Grantee's intention that the foregoing release shall be effective as a bar to all actions, causes of action, suits, claims, or demands of every kind, nature, or character whatsoever, known or unknown, suspected or unsuspected, fixed or contingent, arising out of or in connection with the Property or other properties in or about the Property. GRANTEE ACKNOWLEDGES THAT IT HAS BEEN ADVISED BY LEGAL COUNSEL AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

GRANTEE EXPRESSLY WAIVES AND RELINQUISHES ANY AND ALL RIGHTS OR THE BENEFITS IT MAY HAVE UNDER, OR WHICH MAY BE CONFERRED UPON IT BY, THE PROVISIONS OF SECTION 1542 OF THE CALIFORNIA CIVIL CODE TO THE FULLEST

EXTENT THAT IT MAY LAWFULLY WAIVE SUCH RIGHTS OR BENEFITS PERTAINING TO THE SUBJECT MATTER OF THIS RELEASE.

GRANTEE'S INITIALS

Grantee understands and agrees that by execution of this Agreement, the Grantor Parties do not admit any liability of any nature whatsoever. Grantee hereby represents and warrants to Grantor that it understands the effect of this waiver and said California Civil Code section, and that it is represented and has been advised in this regard by its own counsel. Grantee acknowledges that it may hereafter discover claims and/or facts now unknown or unsuspected, or in addition to, or different from, those which the Grantee now knows or believes to be true with respect to the release set forth in this Paragraph 10 (this "**General Release**"). Nevertheless, Grantee intends by this General Release to release fully and forever all Claims released hereby. Accordingly, this General Release shall remain in full force as a complete release of such Claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Agreement.

11. Exculpation and Indemnification. Grantee expressly assumes all risks and obligations arising out of or in any way connected with the entry into the Utility Easement Areas of Grantee and the Grantee Parties. Grantee hereby agrees to indemnify, defend and hold harmless Grantor and the Grantor Parties from any and all Claims arising from (a) physical injury or death of persons or damage to property to the extent caused by (i) Grantee or the Grantee Parties during any entry into the Utility Easement Areas or (ii) the acts or omissions of any third parties arising out of or in any way connected with the entry into the Utility Easement Areas of Grantee or the Grantee Parties, (b) the presence or generation of EMF within the Utility Easement Areas, (c) the presence, storage, release, disposal, migration, transportation, mitigation, remediation, investigation, testing and/or removal of Hazardous Materials within the Utility Easement Areas, (d) the physical condition of the Utility Easement Areas, (e) the failure of the Utility Easement Areas to comply with any Applicable Law, (f) the temporary cessation of Grantee's use pursuant to Paragraph 4(b) hereof, or (g) any default by Grantee or any Grantee Party under this Agreement; provided, however, that Grantee's foregoing indemnity obligations shall expressly exclude any Claims resulting from Grantor's active negligence or willful misconduct, but shall expressly not exclude any Claims resulting from Grantor's ordinary passive negligence. Upon demand by Grantee, Grantee shall defend, at Grantee's sole expense, any Claims brought against Grantee and/or any Grantee Party for which Grantee is obligated to defend Grantee and/or the Grantee Parties under this Paragraph 11. In the event of any settlement by Grantee of any such Claim, such settlement shall include a dismissal with prejudice of the Claim and an explicit and unconditional release (including a waiver of California Civil Code Section 1542) from the party bringing such Claim.

The indemnity obligations set forth in this Paragraph 11 shall survive the termination of this Agreement.

12. Grantor Access and Maintenance. Grantee shall provide Grantor with at least ten (10) days advance notice of any special events or holiday period that would require maximum parking space within the Utility Easement Areas. If Grantor receives any such notice, Grantor shall use

good faith efforts, to the extent practicable, to schedule any work in the Utility Easement Areas to minimize interference with Grantee's use of the Utility Easement Areas during the period of such special events or holiday; provided, however, Grantor shall have no obligation to reschedule any such work in the Utility Easement Areas.

13. Defaults/Enforcement/Remedies.

- (a) Any Party which commits a breach of any covenant, restriction, term or provision of this Agreement shall be considered to be in default under this Agreement if such Party shall fail to cure such breach within thirty (30) days following written notice from the other Party specifying such breach; provided, however, that if the nature of the particular breach reasonably requires more than thirty (30) days to cure, then such Party shall not be considered to be in default of this Agreement if such Party commences to cure the breach within the foregoing thirty (30) day period and thereafter diligently pursues the same to completion.
- (b) The failure of any Party to enforce any covenant, condition, restriction or provision herein contained shall in no event be deemed to be a waiver of the right thereafter to do so, nor of the right to enforce any other covenant, condition, restriction or provision set forth in this Agreement. A Party shall be considered to have waived its rights only if such waiver is in writing.
- (c) Upon a default under this Agreement by Grantee or any successive owner of the Property beyond the applicable notice and cure periods set forth in Paragraph 13(a) hereof, in addition to all other rights and remedies available to Grantor under this Agreement, at law, or in equity, Grantor shall have the immediate option to terminate this Agreement by giving Grantee written notice of termination, but so long as the Access Road is being used solely for ingress and egress as described in this Agreement, then in no event shall such termination of this Agreement terminate: (i) Grantee Parties' rights to the use of the Access Road, or (ii) Grantor's obligations under Section 4(b) above.

14. Notices.

- (a) All notices to be given under this Agreement shall be in writing and either (i) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) business day after deposit with this courier, or (ii) personally delivered, in which case notice shall be deemed delivered upon delivery.
- (b) The address for notices to the Parties shall be as follows:

Notice to Grantor:

San Diego Gas & Electric Company  
8335 Century Park Court, CP11D  
San Diego, California 92123  
Attention: Corporate Real Estate Department  
Telephone: (858) 637-3738

With a copy to:

San Diego Gas & Electric Company  
101 Ash Street, HQ11  
San Diego, California 92101  
Attention: Assistant General Counsel, Commercial  
Telephone: (619) 699-5054

Notice to Grantee:

---

c/o Caruso Affiliated  
101 The Grove Drive  
Los Angeles, California 90036  
Attention: Real Estate Department  
Telephone: (323) 900-8100  
Facsimile: (323) 900-8101

With a copy to:

Caruso Affiliated  
101 The Grove Drive  
Los Angeles, California 90036  
Attention: General Counsel  
Telephone: (323) 900-8100  
Facsimile: (323) 900-8101

- (c) The foregoing addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice. Copies of notices, if any are so indicated, are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.
15. Attorneys' Fees. If either Party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing Party shall be entitled to recover from the other party as an element of its costs of suit and not as damages, reasonable attorneys' fees, costs and expenses incurred in the action or proceeding, including any appeal thereof. The "prevailing Party" within the meaning of this section shall be the party to the action or proceeding who is entitled to recover its costs of suit for the proceeding, whether or not the same proceeds to final judgment. A Party not entitled to recover its costs shall not recover attorney fees.
16. Covenants Running With the Land; Successor and Assigns. This Agreement, and the covenants contained in this Agreement, are for the benefit of the Property and shall run with the Property, and shall be binding upon the successive owners thereof during the periods of their respective ownership of the Property. The rights and privileges hereunder shall be transferable only in connection with a transfer of the Property; provided, however, in the event of any such transfer by Grantee, (a) without Grantor's written consent, in Grantor's sole discretion, Grantee shall not be released from any liability under this Agreement whether past, present or future if the transferee is an affiliate of Grantee (i.e., controlling, controlled by or under common control with Grantee)

or if the transfer is of less than one hundred percent (100%) of Grantee's right, title and interest in and to the Property, (b) without Grantor's written consent, in Grantor's sole discretion, Grantee shall remain fully liable under this Agreement without notice being required from Grantor concerning any breach under this Agreement, and (c) in connection with such continuing liability of Grantee, Grantee hereby waives any and all rights and defenses that are or may become available to Grantee by reason of Sections 2787 through 2855, inclusive, of the California Civil Code. Subject to the foregoing, all of the terms, conditions and obligations contained in this Agreement shall be binding upon and inure to the benefit of Grantor and Grantee and their respective successors and assigns. No successor or assign of Grantee's interest under this Agreement shall have any right, by virtue of such assignment, to (i) grant or convey to any other third party any lease, permit, license, profit or any other right to use or possess the Utility Easement Areas, except in connection with any leases to retail tenants on the Property in the ordinary course of business, provided that such tenants covenant and agree in such leases not to violate the terms and conditions, and confirm having received a copy, of this Agreement, or (ii) grant, dedicate or convey any other easement, servitude, right-of-way in, on, over, under, across or through the Utility Easement Areas.

17. Entire Agreement. This Agreement, the Grant Deed, and that certain Purchase and Sale Agreement and Joint Escrow Instructions between Grantor and Grantee (as assignee of Caruso Acquisition Co., II, LLC) dated as of July 31, 2012, together with all documents executed in connection therewith (collectively, the "**Purchase Agreement Documents**"), collectively constitute the entire agreement between the Parties relating to the Utility Easement Areas, and this Agreement supersedes any and all oral or written agreements between the Parties regarding the Utility Easement Areas, which are prior in time to this Agreement, other than the Grant Deed and the Purchase Agreement Documents. Neither Party shall be bound by any prior understanding, agreement, promise, representation or stipulation, express or implied, not specified in this Agreement, the Grant Deed or Purchase Agreement Documents.
18. Time of the Essence. Time is of the essence for each condition, term and provision of this Agreement.
19. Severability. If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain in full force and effect.
20. Waivers and Amendments. A waiver of a breach of a covenant or provision in this Agreement shall not be deemed a waiver of any other covenant or provision in this Agreement, and no waiver shall be valid unless in writing and executed by the waiving Party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act. Any amendment to this Agreement shall be of no force and effect unless it is in writing and signed by both Parties.
21. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. All references to "days" in this Agreement shall mean calendar days unless otherwise expressly stated.
22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to the principles of conflicts of law thereof. THE PARTIES IRREVOCABLY AGREE THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF THIS CONSENT SHALL BE BROUGHT IN A STATE COURT OF

COMPETENT JURISDICTION FOR THE CITY OF SAN DIEGO, STATE OF CALIFORNIA. BY EXECUTION AND DELIVERY OF THIS CONSENT, EACH OF THE PARTIES HEREBY IRREVOCABLY ACCEPTS AND SUBMITS TO THE JURISDICTION OF SAID COURT, GENERALLY AND UNCONDITIONALLY IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING.

23. Drafting Party. The provisions of this Agreement, and the documents and instruments referred to herein, have been prepared, examined, negotiated and revised by each Party hereto and their respective lawyers, and no implication shall be drawn and no provision shall be construed against any Party hereto by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.
24. No Subordination of Rights. Grantor does not by this Agreement, and shall not be deemed by this Agreement to, subordinate its rights in the Utility Easement Areas to any use which Grantee may make of the Utility Easement Areas.

[Signatures and acknowledgements appear on following pages.]

IN WITNESS WHEREOF, the Parties have read this Agreement, understand it and desire to be bound by its terms as of the date first written above.

“GRANTOR”

SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name: Jim Seifert  
Title: Manager of Real Estate, Land Services & Facilities

“GRANTEE”

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOTARY ACKNOWLEDGEMENT**

State of California            )  
County of \_\_\_\_\_        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



**NOTARY ACKNOWLEDGEMENT**

State of California            )  
County of \_\_\_\_\_        )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DESCRIPTION OF PROPERTY**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND DESCRIBED AS FOLLOWS:

PARCEL 8 OF CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001 AS FILE NO. 2001-0789071, BEING A PORTION OF LOT H OF RANCHO AGUA HEDIONDA, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 16, 1896, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803, FILED IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY AUGUST 25, 1924, THE BEARING OF WHICH PARALLEL LINE AND ITS WESTERLY PROLONGATION THEREOF IS RECORDED AS NORTH 72° 25' 00" EAST ON SAID MAP OF SAID PALISADES NO. 2, WITH THE WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS SAID RIGHT OF WAY WAS ESTABLISHED ON SEPTEMBER 22, 1948; THENCE SOUTHERLY ALONG SAID WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DISTANCE OF 2755.18 FEET; THENCE PARALLEL WITH A PORTION OF THE SOUTHERLY BOUNDARY OF THE JACOBSON LAND HEREIN AFTER DESCRIBED NORTH 66° 34' 10" EAST, 50.00 FEET TO THE CENTER LINE OF SAID RAILWAY RIGHT OF WAY; THENCE ALONG SAID CENTER LINE SOUTH 23° 06' 00" EAST, 60.00 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF THE LAND DESCRIBED IN QUITCLAIM DEED FROM PAUL ECKE, ET UX, TO GROVER C. JACOBSON, ET AL, RECORDED APRIL 29, 1948 IN BOOK 2778, PAGE 341 OF OFFICIAL RECORDS; SAID POINT BEING HEREIN DESIGNATED AS POINT "T", THENCE ALONG SAID SOUTHERLY BOUNDARY OF SAID LAND AS DESCRIBED NORTH 66° 54' 10" EAST 1770.00 FEET TO A SECOND ANGLE POINT IN SAID BOUNDARY, THENCE LEAVING SAID BOUNDARY, CONTINUING NORTH 66° 54' 10" EAST 17.00 FEET; THENCE NORTH 23° 05' 05" WEST TO THE SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF THE SWAMP OR OVERFLOW LAND KNOWN AS THE LAGOON BED; AS SAID BOUNDARY WAS LOCATED ON SEPTEMBER 28, 1948, THENCE NORTHWESTERLY AND WESTERLY ALONG SAID SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF SAID SAVANGE LAND TO THE EASTERLY LINE OF SAID ATCHISON, TOPEKA AND SANTA FE RAILWAY RIGHT OF WAY, THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF RIGHT OF WAY TO SAID LINE WHICH IS A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803; THENCE ALONG SAID PARALLEL LINE SOUTH 72° 25' 00" WEST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THE EASTERLY LINE OF THAT LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED MARCH 20, 1969, AS FILE NO. 48604 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THAT COURSE DESCRIBED AS SOUTH 16° 04' 40" EAST, 362.38 FEET IN THE FINAL ORDER OF CONDEMNATION RECORDED MAY 2, 1952 IN BOOK 4456, PAGE 192 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. 618408 OF OFFICIAL RECORDS.

APN: 211-010-24-00

**EXHIBIT B  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DESCRIPTION OF THE UTILITY EASEMENT AREAS**

**UTILITY CORRIDOR EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

BEGINNING at a point which bears South 38°25'04" East, 251.12 feet from the Northwesterly terminus of that certain line designated as "North 38°25'04" West, 530.35 feet" on the Westerly line of said Parcel 8; thence along said Westerly line North 38°25'04" West, 251.12 feet to the beginning of a non-tangent 1440.07 foot radius curve concave Northeasterly, to which a radial bears, South 51°35'32" West; thence Northwesterly along said curve and said Westerly line through a central angle of 11°34'50" a distance of 291.07 feet to the beginning of a compound 2940.14 foot radius curve concave Northeasterly, to which a radial bears South 63°10' 22" West; thence Northwesterly along said curve and continuing along said Westerly line through a central angle of 03°10'39" a distance of 163.05 feet; thence continuing along said Westerly line non-tangent to said curve North 24°08'41" West, 8.48 feet; thence leaving said Westerly line of said Parcel 8 South 84°54'00" East, 992.14 feet to the Easterly line of said Parcel 8; thence along said Easterly line South 22°27'28" East, 576.55 feet to the Northerly Right-of-way of Cannon Road, said point being on a non-tangent 1051.00 foot radius curve concave Southeasterly to which a radial line bears North 07°46'16" West; thence Southwesterly along said curve and said Northerly Right-of-way through a central angle of 08°56'43" a distance of 164.09 feet; thence leaving said Northerly Right-of-way North 84°54'00" West, 665.15 feet to the POINT OF BEGINNING.

Containing 12.02 acres more or less.

Prepared By:

Nolte Associates, Inc.

*Jeffrey J. Safford* 6/28/12

Jeffrey J. Safford  
L.S. 6703

Date



**EXHIBIT B  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DESCRIPTION OF THE UTILITY EASEMENT AREAS (CONTINUED)**

**ELECTRIC EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being a 12.00 foot wide easement the centerline of which is described as follows:

COMMENCING at the Southeasterly corner of Parcel 8 of said Record of Survey No. 17350; thence along the Easterly line of said Parcel 8 North 22°27'28" West, 656.17 feet to the TRUE POINT OF BEGINNING; thence leaving said Easterly line North 84°54'05" West, 994.82 feet to the Westerly line of said Parcel 8.

The sidelines of said strip shall be lengthened or shortened so as to terminate Westerly on said Westerly line of Parcel 8 and Easterly on said Easterly line of said Parcel 8.

Containing 0.27 acres more or less.

Prepared By:

Nolte Associates Inc.

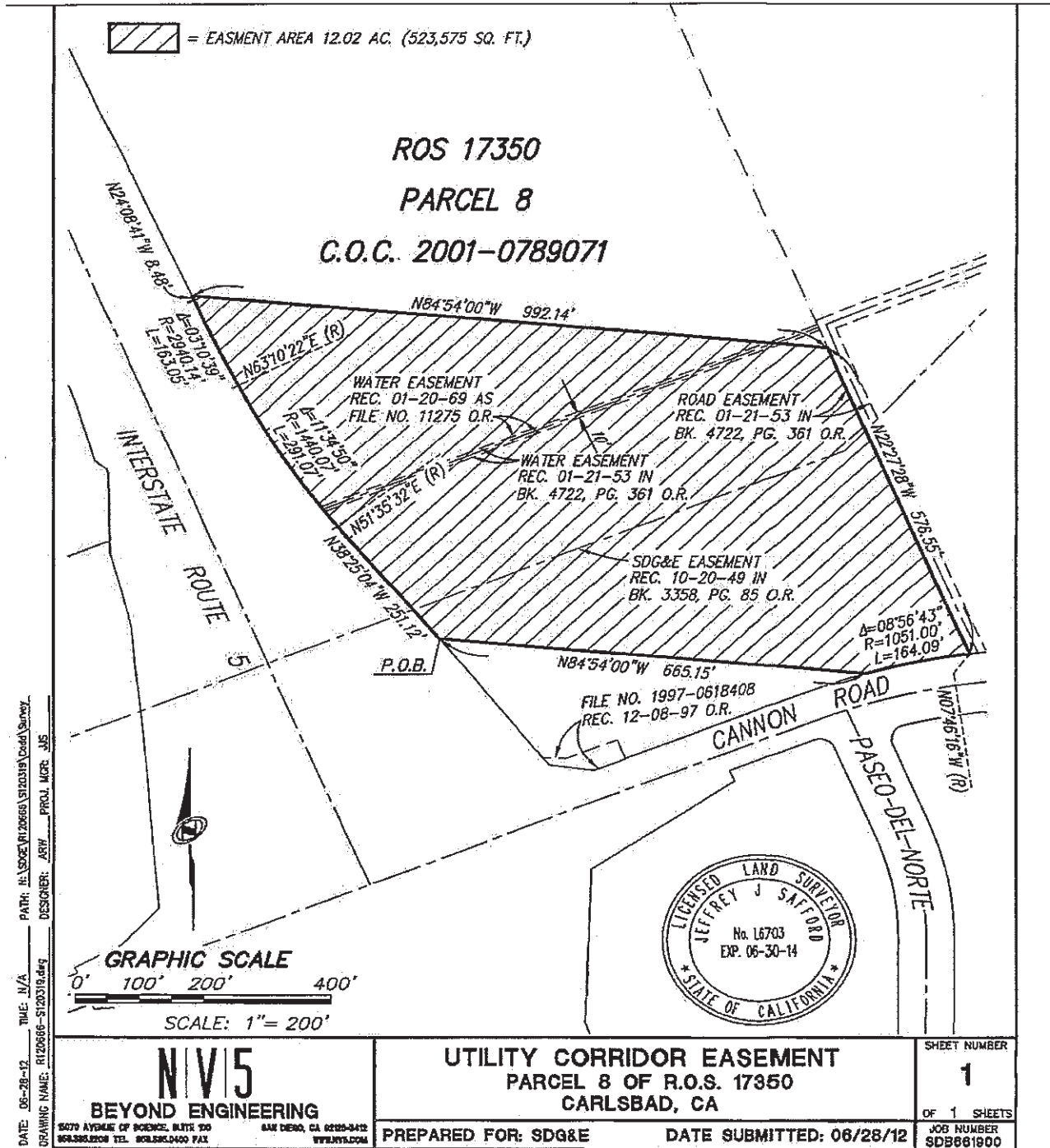
Jeffrey J. Safford 6/28/12  
Jeffrey J. Safford                      Date  
L.S. 6703



**EXHIBIT B-1  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DEPICTION OF THE UTILITY EASEMENT AREAS**

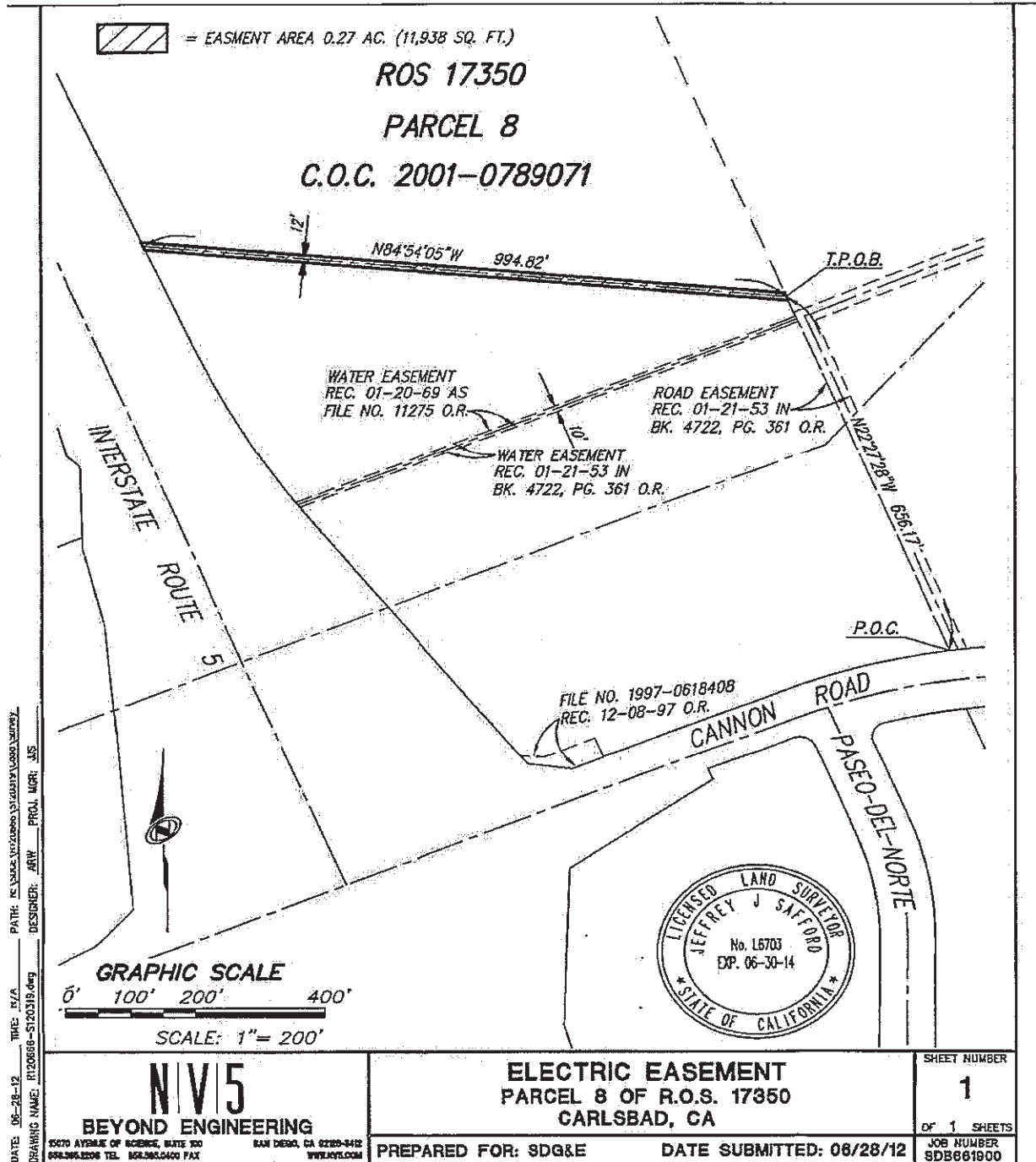
**UTILITY CORRIDOR EASEMENT**



**EXHIBIT B-1  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DEPICTION OF THE UTILITY EASEMENT AREAS (CONTINUED)**

**ELECTRICAL EASEMENT**



**EXHIBIT C  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT**

**DEPICTION OF THE PERMITTED IMPROVEMENTS**



**EXHIBIT C-1  
TO  
ACCESS, MAINTENANCE AND  
RIGHT OF WAY USE AGREEMENT  
DEPICTION OF ACCESS ROAD**

EXHIBIT C

PROPERTY DOCUMENTS

■ [REDACTED]

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EXHIBIT D



[Attached]

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**EXHIBIT E**  
**GRANT DEED**

[Attached]

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

MAIL TAX STATEMENTS TO:

SAME AS ABOVE

---

(Above space for Recorder's use only)

APN: 211-010-24-00

**GRANT DEED**

In accordance with Section 11932 of the California Revenue and Taxation Code, Grantor (as defined below) has declared the amount of transfer tax due in a separate statement that is not being recorded with this Grant Deed.

FOR GOOD AND VALUABLE CONSIDERATION, RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, San Diego Gas & Electric Company, a California corporation, with offices and principal place of business located at 8335 Century Park Court, CP11D, San Diego, California 92123 (“Grantor”), hereby grants to \_\_\_\_\_, a \_\_\_\_\_, with offices and principal place of business located at \_\_\_\_\_ (“Grantee”), the real property located in the City of Carlsbad, County of San Diego, State of California, described in Exhibit A attached hereto and incorporated by this reference, together with all rights, privileges and appurtenances thereto (the “Property”), on the terms and conditions set forth below.

The conveyance of the Property is hereby expressly made subject to the matters set forth in Exhibit B attached hereto and incorporated by this reference (the “Permitted Exceptions”).

The following easements, servitudes and rights-of-way are hereby reserved from the conveyance of the Property:

An exclusive easement, servitude and right-of-way (the “First Easement”) in, on, over, under, across, and through the Property, in the location more particularly described in Exhibit C-1 attached hereto and incorporated by this reference and depicted in Exhibit C-2 attached hereto and incorporated by this reference (the “First Easement Area”), and an exclusive easement, servitude and right-of-way (the “Second Easement”) in, on, over, under, across, and through the Property, in the location more particularly described in Exhibit D-1 attached hereto and incorporated by this reference and depicted in Exhibit D-2 attached hereto and incorporated by this reference (the “Second Easement Area”). The First Easement and the Second Easement shall sometimes be referred to herein individually as an “Easement” and collectively as the “Easements.” The First Easement Area and the Second Easement Area shall sometimes be referred to herein individually as the “Easement Area” and collectively as the “Easement Areas.”

Each Easement shall be for the purpose of erecting, constructing, building, installing, modifying, altering, changing the size of, adding to, improving, reconstructing, reconfiguring, relocating, replacing, repairing, inspecting, testing, patrolling, maintaining, using, operating, and removing (1) aboveground and underground electricity transmission and/or distribution facilities, including but not limited to towers, poles, wires, cables, foundations, guys, anchorages, crossarms, braces, insulators, grounding wires, conduits, pads, manholes, handholes, junction boxes, and substations, (2) aboveground and underground telephone, signal, communications, cable, and fiber optics facilities, (3) underground natural gas and water transmission and/or distribution pipelines, and (4) all other appliances, equipment, fixtures, appurtenances, and facilities that Grantor deems necessary or convenient in connection therewith

(collectively, the "Facilities"), all in such numbers and at such locations and elevations within the Easement Areas as Grantor deems necessary or convenient from time to time. Each Easement shall include the unrestrained right of ingress and egress to, from, along, and with the applicable Easement Area by a practical route or routes, in, upon, over, and across the Property.

Each Easement shall be subject to the following terms and conditions:

- (a) The Facilities shall remain the property of Grantor regardless of how such Facilities are affixed to the Property. Grantor shall have the right (but not the obligation) to add or remove Facilities at any time. At no time shall Grantor have any obligation to add or remove all or any portion of the Facilities.
- (b) Grantor shall have the right (but shall not be obligated) to (i) keep the Easement Area clear of explosive, combustible, hazardous, and/or toxic materials, (ii) keep the Easement Area clear of buildings, structures, fences, or any other objects that obstruct access to the Facilities, endanger or harm the Facilities or interfere with the rights reserved to Grantor with respect to the Easements in this Grant Deed (or threaten to do the same), (iii) trim, prune, cut, maintain, and/or remove trees, foliage, brush, and roots within the Easement Areas or on the Property adjacent to the Easement Areas that endanger or harm the Facilities (or threaten to do the same), provided that Grantor shall not be obligated to pay any compensation to Grantee as a result of such trimming, pruning, cutting, maintenance, and/or removal, and provided, further, that Grantee shall not be relieved of the obligation as the owner of the Property to trim, prune, cut, maintain, and/or remove trees, foliage, brush, and roots to prevent damage to persons and/or property, and/or (iv) construct, build, install, improve, maintain, use, and remove a road or roads for ingress and egress purposes.
- (c) Grantee shall have the right to access the Property over the access road located on that portion of the Utility Easement Areas depicted in Exhibit E attached hereto and incorporated by this reference.
- (d) Grantee shall not, without Grantor's prior written consent, (i) place, impound, or store explosive, combustible, hazardous, and/or toxic materials within the Easement Areas, (ii) erect, construct, build, install, or place buildings, structures, fences, or any other objects that shall obstruct access to the Facilities, endanger or harm the Facilities, or interfere with the rights reserved to Grantor with respect to the Easements in this Grant Deed (or threaten to do the same) within the Easement Areas, (iii) plant trees or other deep-rooted plants within the Easement Areas, (iv) operate heavy machinery or equipment within the Easement Areas, and/or (v) excavate, drill, dig, or penetrate the ground in any manner to a depth of more than eighteen (18) inches, (vi) increase or decrease the ground surface elevations within the Easement Areas, and/or (vii) grant, dedicate, or convey any other easement, servitude, or right-of-way in, on, over, under, across, or through the Easement Areas.

(e)





- (f) Grantee shall not oppose in any manner any application by Grantor to or with any state or federal government or regulatory entity for land use, zoning, building permits, environmental permits, or any other entitlement necessary in connection with the Facilities, and Grantee, at no cost to Grantee, shall provide Grantor with such assistance as Grantor may reasonably request in connection with such applications.
- (g) In the event that any improvements erected, constructed, built, installed, or placed within the Easement Areas by Grantee impair, impede, interfere, or conflict with the Facilities, Grantee shall pay, and Grantor shall not be responsible or liable for, any costs arising or resulting from any modification, alteration, change, reconstruction, reconfiguration, relocation, replacement, repair, or removal of the Facilities required or necessitated as a result of such impairment, impediment, interference, or conflict.
- (h) In the event that Grantee desires the modification, alteration, change, reconstruction, reconfiguration, relocation, or removal of any Facilities at any time, Grantee shall pay, and Grantor shall not be responsible or liable for, any costs arising or resulting from the requested modification, alteration, change, reconstruction, reconfiguration, relocation, or removal. In the event that Grantee desires that any of the Facilities be located in a public right-of-way, the location of the Facilities in the public right-of-way shall be subject to the agreement of the City of Carlsbad that if the City of Carlsbad desires the modification, alteration, change, reconstruction, reconfiguration, relocation, or removal of any Facilities at any time, the City of Carlsbad shall pay, and Grantor shall not be responsible or liable for, any costs arising or resulting from the requested modification, alteration, change, reconstruction, reconfiguration, relocation, or removal.

(i)



- (j) The Easements shall be binding upon and inure to the benefit of successors, executors, heirs, administrators and assigns of Grantor and Grantee.

- (k) Time is of the essence with respect to each of the terms and conditions of the Easement.
- (l) Any failure by Grantor or Grantee to enforce any term or condition of the Easements shall not be deemed to be a waiver of that right or of any other right.
- (m) The terms and conditions of the Easements may be amended or modified only by an instrument duly executed by the Grantor and consented to in writing by Grantee.
- (n) All notices required or given in connection with the Easements shall be in writing and shall be served personally, delivered by first class United States mail, postage prepaid, or delivered by nationally recognized overnight carrier. Notice shall be deemed received at the earliest of (i) actual receipt, (ii) for notice delivered by first class United States mail, three (3) days following deposit in United States mail, postage prepaid, and (iii) for notice delivered by nationally recognized overnight carrier, one (1) day following actual shipment. The notice addresses of the parties hereto are as follows, provided that either Grantor or Grantee may change its address by delivery of written notice to the other in accordance with this paragraph:

If to Grantor: San Diego Gas & Electric Company  
 8335 Century Park Court, CP11D  
 San Diego, California 92123  
 Attention: Corporate Real Estate Department  
 Telephone: (858) 637-3738

With a copy to: Sempra Energy  
 101 Ash Street, HQ11  
 San Diego, California 92101  
 Attention: Commercial Law Department  
 Telephone: (619) 699-5049

If to Grantee: [ \_\_\_\_\_ ]  
 101 The Grove Drive  
 Los Angeles, California 90036  
 Attention: \_\_\_\_\_  
 Telephone: (323) 900-8198

With a copy to: Caruso Affiliated  
 101 The Grove Drive  
 Los Angeles, California 90036  
 Attention: General Counsel  
 Telephone: (323) 900-8100

This Grant Deed shall be governed by and construed in accordance with the laws of the State of California without giving effect to its choice of law provisions.

If either Grantor or Grantee brings any lawsuit, proceeding or action to enforce the rights and obligations set forth in this Grant Deed, then the prevailing party shall be entitled to recover from the non-prevailing party all costs and expenses, including but not limited to reasonable attorney's fees and costs, incurred in connection with such lawsuit, proceeding or action.

[Signature appears on following page.]



WHEREFORE, Grantor has executed this Grant Deed as of *[insert date]*.

SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

STATE OF CALIFORNIA )  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_  
(here insert name and title of the officer), personally appeared \_\_\_\_\_  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**EXHIBIT A TO GRANT DEED**

**LEGAL DESCRIPTION OF THE PROPERTY**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND DESCRIBED AS FOLLOWS:

PARCEL 8 OF CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001 AS FILE NO. 2001-0789071, BEING A PORTION OF LOT H OF RANCHO AGUA HEDIONDA, IN THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO PARTITION MAP THEREOF NO. 823, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 16, 1896, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803, FILED IN THE OFFICE OF THE COUNTY OF SAN DIEGO COUNTY AUGUST 25, 1924, THE BEARING OF WHICH PARALLEL LINE AND ITS WESTERLY PROLONGATION THEREOF IS RECORDED AS NORTH 72° 25' 00" EAST ON SAID MAP OF SAID PALISADES NO. 2, WITH THE WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, AS SAID RIGHT OF WAY WAS ESTABLISHED ON SEPTEMBER 22, 1948; THENCE SOUTHERLY ALONG SAID WESTERLY LINE OF THE RIGHT OF WAY OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, A DISTANCE OF 2755.18 FEET; THENCE PARALLEL WITH A PORTION OF THE SOUTHERLY BOUNDARY OF THE JACOBSON LAND HEREIN AFTER DESCRIBED NORTH 66° 34' 10" EAST, 50.00 FEET TO THE CENTER LINE OF SAID RAILWAY RIGHT OF WAY; THENCE ALONG SAID CENTER LINE SOUTH 23° 06' 00" EAST, 60.00 FEET TO AN ANGLE POINT IN THE SOUTHERLY BOUNDARY OF THE LAND DESCRIBED IN QUITCLAIM DEED FROM PAUL ECKE, ET UX, TO GROVER C. JACOBSON, ET AL, RECORDED APRIL 29, 1948 IN BOOK 2778, PAGE 341 OF OFFICIAL RECORDS; SAID POINT BEING HEREIN DESIGNATED AS POINT "T", THENCE ALONG SAID SOUTHERLY BOUNDARY OF SAID LAND AS DESCRIBED NORTH 66° 54' 10" EAST 1770.00 FEET TO A SECOND ANGLE POINT IN SAID BOUNDARY, THENCE LEAVING SAID BOUNDARY, CONTINUING NORTH 66° 54' 10" EAST 17.00 FEET; THENCE NORTH 23° 05' 05" WEST TO THE SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF THE SWAMP OR OVERFLOW LAND KNOWN AS THE LAGOON BED; AS SAID BOUNDARY WAS LOCATED ON SEPTEMBER 28, 1948, THENCE NORTHWESTERLY AND WESTERLY ALONG SAID SOUTHWESTERLY AND SOUTHERLY BOUNDARY OF SAID SAVANGE LAND TO THE EASTERLY LINE OF SAID ATCHISON, TOPEKA AND SANTA FE RAILWAY RIGHT OF WAY, THENCE SOUTHERLY ALONG SAID EASTERLY LINE OF RIGHT OF WAY TO SAID LINE WHICH IS A LINE WHICH IS PARALLEL WITH AND DISTANT 2000 FEET AT RIGHT ANGLES SOUTHERLY FROM THE SOUTHERLY LINE OF BLOCK "V" OF PALISADES NO. 2, ACCORDING TO THE MAP THEREOF NO. 1803; THENCE ALONG SAID PARALLEL LINE SOUTH 72° 25' 00" WEST TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THE EASTERLY LINE OF THAT LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA, RECORDED MARCH 20, 1969, AS FILE NO. 48604 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM ALL THAT PORTION LYING WESTERLY OF THAT COURSE DESCRIBED AS SOUTH 16° 04' 40" EAST, 362.38 FEET IN THE FINAL ORDER OF CONDEMNATION RECORDED MAY 2, 1952 IN BOOK 4456, PAGE 192 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND CONVEYED TO THE STATE OF CALIFORNIA IN DEED RECORDED DECEMBER 8, 1997 AS INSTRUMENT NO. 618408 OF OFFICIAL RECORDS.

APN: 211-010-24-00

**EXHIBIT B TO GRANT DEED**

**PERMITTED EXCEPTIONS**

**EXHIBIT C-1 TO GRANT DEED**

**LEGAL DESCRIPTION OF THE FIRST EASEMENT**

**UTILITY CORRIDOR EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being more particularly described as follows:

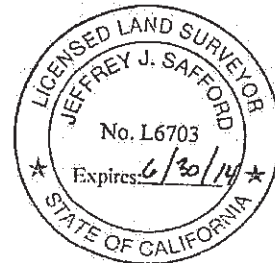
BEGINNING at a point which bears South 38°25'04" East, 251.12 feet from the Northwesterly terminus of that certain line designated as "North 38°25'04" West, 530.35 feet" on the Westerly line of said Parcel 8; thence along said Westerly line North 38°25'04" West, 251.12 feet to the beginning of a non-tangent 1440.07 foot radius curve concave Northeasterly, to which a radial bears, South 51°35'32" West; thence Northwesterly along said curve and said Westerly line through a central angle of 11°34'50" a distance of 291.07 feet to the beginning of a compound 2940.14 foot radius curve concave Northeasterly, to which a radial bears South 63°10' 22" West; thence Northwesterly along said curve and continuing along said Westerly line through a central angle of 03°10'39" a distance of 163.05 feet; thence continuing along said Westerly line non-tangent to said curve North 24°08'41" West, 8.48 feet; thence leaving said Westerly line of said Parcel 8 South 84°54'00" East, 992.14 feet to the Easterly line of said Parcel 8; thence along said Easterly line South 22°27'28" East, 576.55 feet to the Northerly Right-of-way of Cannon Road, said point being on a non-tangent 1051.00 foot radius curve concave Southeasterly to which a radial line bears North 07°46'16" West; thence Southwesterly along said curve and said Northerly Right-of-way through a central angle of 08°56'43" a distance of 164.09 feet; thence leaving said Northerly Right-of-way North 84°54'00" West, 665.15 feet to the POINT OF BEGINNING.

Containing 12.02 acres more or less.

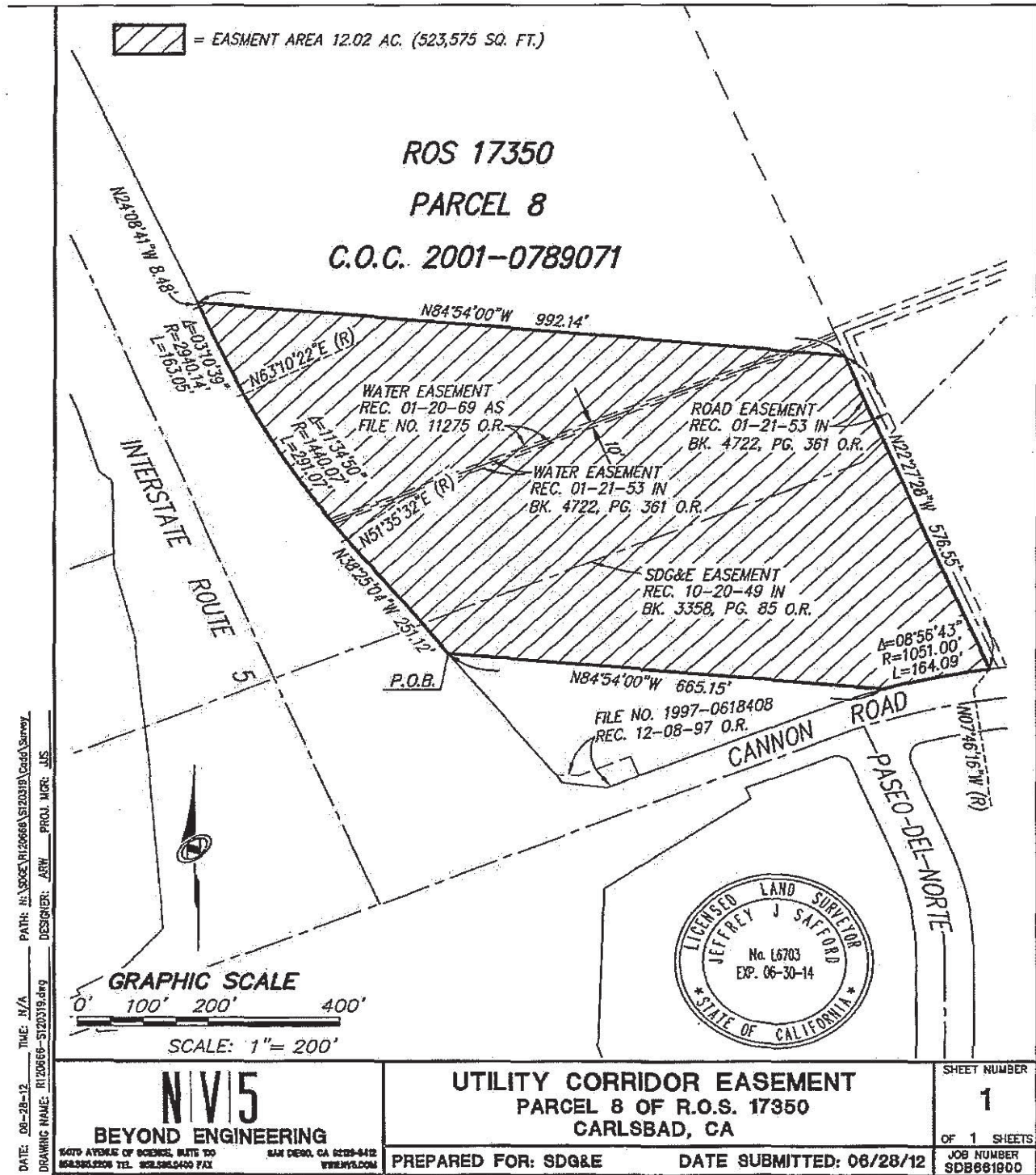
Prepared By:

Nolte Associates, Inc.

*Jeffrey J. Safford* 6/28/12  
Jeffrey J. Safford Date  
L.S. 6703



**EXHIBIT C-2 TO GRANT DEED**  
**DEPICTION OF THE FIRST EASEMENT**



DATE: 06-28-12  
 DRAWING NAME: R120666-S120319.dwg  
 TIME: N/A  
 PATH: H:\3005\120666\120319\Cadd\Survey  
 DESIGNER: ARW  
 PROJ. MGR: JUS

**N|V|5**  
**BEYOND ENGINEERING**  
 1670 AVENUE OF SCIENCE, SUITE 100  
 CARLSBAD, CA 92008-4422  
 TEL: 760.439.4400 FAX: 760.439.4400  
 WWW.NV5.COM

**UTILITY CORRIDOR EASEMENT**  
**PARCEL 8 OF R.O.S. 17350**  
**CARLSBAD, CA**

PREPARED FOR: SD&E      DATE SUBMITTED: 06/28/12

SHEET NUMBER  
**1**  
 OF 1 SHEETS  
 JOB NUMBER  
**SDB861800**

**EXHIBIT D-1 TO GRANT DEED**

**LEGAL DESCRIPTION OF THE SECOND EASEMENT**

**ELECTRIC EASEMENT**

That portion of Parcel 8 described in Certificate of Compliance Recorded October 30, 2001 as File No. 2001-0789071, and as shown on Record of Survey No. 17350 Filed in the Office of the County Recorder of San Diego County April 12, 2002 as File No. 2002-0308512, in the City of Carlsbad, County of San Diego, State of California, being a 12.00 foot wide easement the centerline of which is described as follows:

COMMENCING at the Southeasterly corner of Parcel 8 of said Record of Survey No. 17350; thence along the Easterly line of said Parcel 8 North 22°27'28" West, 656.17 feet to the TRUE POINT OF BEGINNING; thence leaving said Easterly line North 84°54'05" West, 994.82 feet to the Westerly line of said Parcel 8.

The sidelines of said strip shall be lengthened or shortened so as to terminate Westerly on said Westerly line of Parcel 8 and Easterly on said Easterly line of said Parcel 8.

Containing 0.27 acres more or less.

Prepared By:

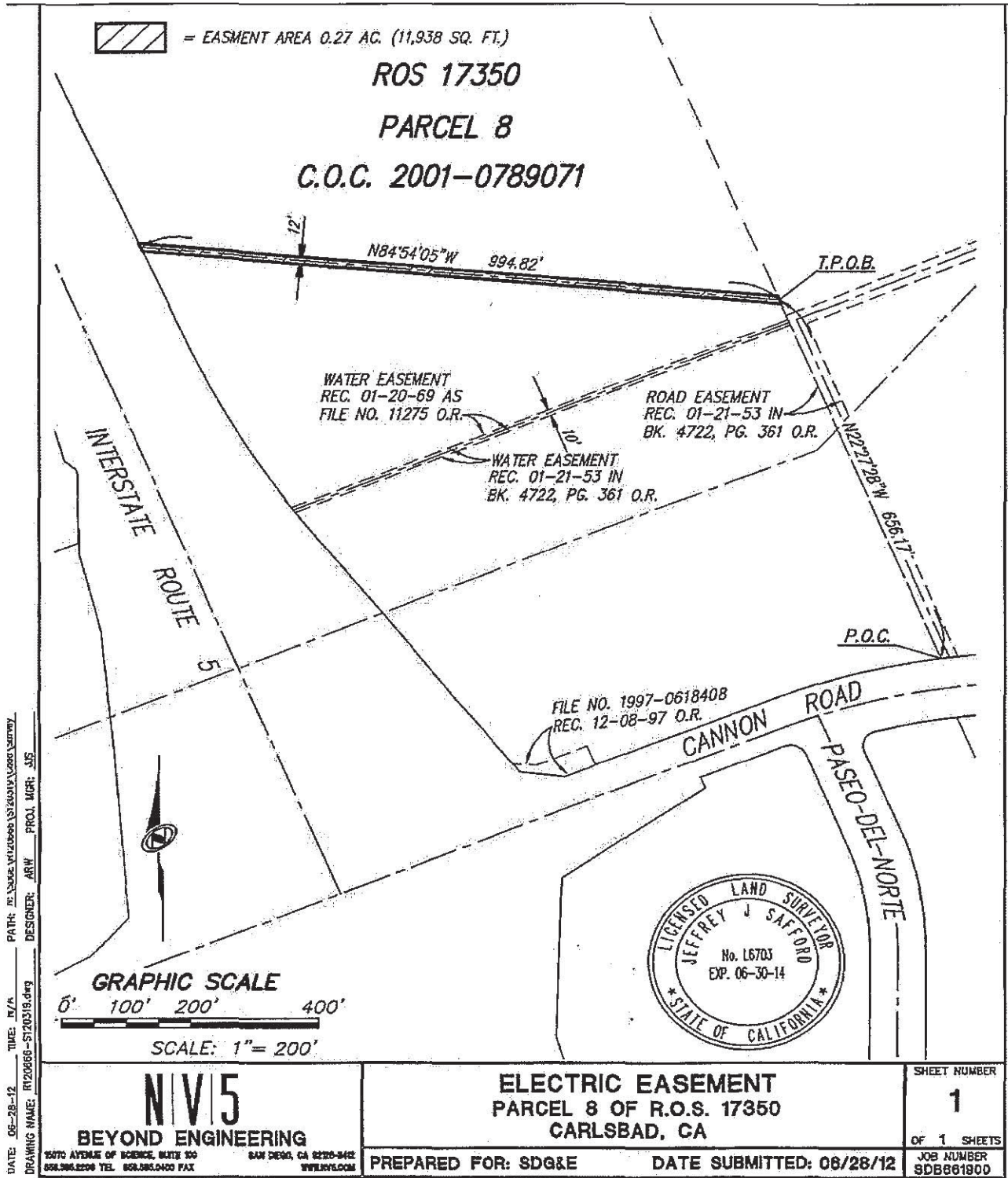
Nolte Associates Inc.

Jeffrey J. Safford 6/28/12  
Jeffrey J. Safford Date  
L.S. 6703



**EXHIBIT D-2 TO GRANT DEED**

**DEPICTION OF THE SECOND EASEMENT**





**EXHIBIT E TO GRANT DEED**  
**DEPICTION OF THE ACCESS ROAD**

EXHIBIT F

ASSIGNMENT OF INTANGIBLE PERSONAL PROPERTY

THIS ASSIGNMENT OF INTANGIBLE PERSONAL PROPERTY ("**Assignment**") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

WITNESSETH:

WHEREAS, Assignor and Assignee have entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated July 31, 2012 ("**Agreement**"), for the purchase and sale of that certain real property described in Exhibit A hereto (the "**Property**").

WHEREAS, this Assignment is being made pursuant to the terms of the Agreement for the purpose of assigning to Assignee all of Assignor's rights, title, and interest in any "Intangible Personal Property" (as defined below).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Assignment of Intangible Personal Property. Assignor hereby grants, assigns, transfers and conveys to Assignee all of Assignor's right, title, and interest in the intangible personal property related to the Property, including: all governmental entitlements, permits, approvals and licenses, if any (to the extent assignable without cost to Seller unless Buyer pays such cost) (all of the items described in this Section 1 collectively referred to as the "**Intangible Personal Property**"); provided, however, that Intangible Personal Property shall not include (i) any appraisals or other economic evaluations of, or projections with respect to, all or any portion of the Property, including budgets prepared by or on behalf of Assignor or any affiliate of Assignor, (ii) any documents, materials, or information which are subject to attorney/client, work product, or similar privilege, which constitute confidential attorney/client communications with respect to the Property and/or Assignor, or which are subject to a confidentiality agreement that prohibits disclosure of such documents, materials, or information by Assignor, (iii) any trade name, mark, or other identifying material that includes the name "San Diego Gas & Electric Company," "Sempra Energy," or any derivative thereof, (iv) any intangible personal property related to the utility easement reserved by Assignor in the Grant Deed dated of even date herewith by Assignor, as seller, to Assignee, as buyer, for the Property ("**Reserved Utility Easements**") or Seller's operations in, on, or in any way connected with the Reserved Utility Easements, or Assignor's other utility operations, or (v) any intellectual property of any kind, whether patents, trademarks, copyrights, trade secrets or otherwise.

SAID INTANGIBLE PERSONAL PROPERTY IS BEING TRANSFERRED ON AN "AS IS" BASIS, WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, OF ANY KIND WHATSOEVER BY ASSIGNOR. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ASSIGNEE ACKNOWLEDGES THAT ASSIGNOR EXPRESSLY DISCLAIMS AND NEGATES, AS TO ALL INTANGIBLE PERSONAL PROPERTY TRANSFERRED HEREBY: (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; AND (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

2. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives, heirs, and legatees of the respective parties hereto.

3. Attorneys' Fees. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements, or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

4. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable with, the laws of the State of California.

5. Counterparts. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as of the date first written above.

**ASSIGNOR:**

SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT G

FIRPTA CERTIFICATE

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform \_\_\_\_\_, a \_\_\_\_\_ ("Transferee") that withholding of tax is not required upon the disposition of a U.S. real property interest by SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation ("Transferor"), the undersigned, in [his/her] capacity as [ \_\_\_\_\_ ] of Transferor, but not individually, hereby certifies to Transferee the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);
2. Transferor's U.S. employer identification number is \_\_\_\_\_; and
3. Transferor's office address is 18330 Century Park Court, San Diego, California 92123-1530.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated as of \_\_\_\_\_, 20\_\_.

SAN DIEGO GAS & ELECTRIC COMPANY,  
a California corporation

By: \_\_\_\_\_  
Name:  
Title:

EXHIBIT H

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

**EXHIBIT I**

**LEGAL DESCRIPTION OF OPTION PARCEL**

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, AND DESCRIBED AS FOLLOWS:

PARCEL 10 OF CERTIFICATE OF COMPLIANCE RECORDED OCTOBER 30, 2001 AS FILE NO. 2001-0789074, BEING A PORTION OF LOT H OF RANCHO AGUA HEDIONDA, IN THE CITY OF CARLSBAD COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 823, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, NOVEMBER 16, 1896, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST NORTHERLY COMER OF PARCEL A OF A CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 22, 1995 AS FILE NO. 1995-0532900; THENCE ALONG THE NORTHEASTERLY LINE THEREOF SOUTH 33° 44' 36" EAST 1,290.81 FEET; THENCE SOUTH 71° 40' 52" EAST, 1,586.90 FEET; THENCE SOUTH 53° 19' 03" EAST 893.14 FEET; THENCE SOUTH 64° 01' 56" EAST, 2,257.42 FEET TO THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID NORTHEASTERLY LINE SOUTH 08° 21' 57" EAST, 182.60 FEET; THENCE SOUTH 83° 25' 06" WEST, 313.69 FEET; THENCE SOUTH 62° 01' 07" WEST, 160.23 FEET; THENCE NORTH 76° 53' 47" WEST, 269.28 FEET; THENCE SOUTH 55° 39' 38" WEST, 381.01 FEET; THENCE SOUTH 66° 59' 23" WEST, 594.40 FEET; THENCE SOUTH 87° 02' 46" WEST, 210.53 FEET; THENCE NORTH 64° 43' 30" WEST 244.66 FEET; THENCE NORTH 74° 31' 19" WEST, 186.69 FEET; THENCE NORTH 17° 29' 43" WEST, 220.16 FEET; THENCE NORTH 83° 34' 03" WEST, 514.52 FEET; THENCE NORTH 80° 57' 43" WEST, 209.62 FEET; THENCE NORTH 72° 35' 04" WEST, 308.66 FEET; THENCE NORTH 45° 17' 25" WEST, 291.62 FEET; THENCE NORTH 53° 58' 34" WEST, 226.98 FEET; THENCE NORTH 64° 17' 22" WEST, 177.48 FEET; THENCE NORTH 70° 53' 29" WEST 346.91 FEET; THENCE NORTH 48° 58' 53" WEST 87.04 FEET TO THE NORTHEASTERLY CORNER OF CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 1, 1985 AS FILE NO. 85-411922; THENCE ALONG THE EASTERLY LINE THEREOF SOUTH 22° 27' 28" EAST, 1,994.40 FEET TO A POINT ON A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1,051.00 FEET; SAID POINT BEING ON THE NORTHERLY LINE OF CANNON ROAD TO WHICH A RADIAL BEARS NORTH 07° 46' 16" WEST; THENCE EASTERLY 353.93 FEET ALONG SAID CURVE AND SAID NORTHERLY LINE OF CANNON ROAD THROUGH A CENTRAL ANGLE OF 19° 17' 41"; THENCE SOUTH 78° 28' 35" EAST 767.23 FEET; THENCE LEAVING SAID NORTHERLY LINE SOUTH 11° 31' 25" WEST, 51.00 FEET TO THE CENTERLINE OF SAID CANNON ROAD; THENCE ALONG SAID CENTERLINE SOUTH 78° 28' 35" EAST, 835.93 FEET TO THE WESTERLY LINE OF PARCEL B OF CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 22, 1995 ON FILE NO. 1995-0532901; THENCE ALONG THE BOUNDARY THEREOF NORTH 11° 31' 25" EAST, 51.00 FEET TO THE NORTHERLY RIGHT-OF-WAY OF CANNON ROAD; THENCE NORTH 06° 29' 19" EAST, 323.42 FEET TO THE SOUTHWEST CORNER OF THE ENCINA HUB PARK LEASE AS SHOWN ON RECORD OF SURVEY MAP NO. 12462; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF SAID ENCINA HUB PARK SOUTH 84° 52' 07" EAST, 2,075.76 FEET; THENCE LEAVING SAID LINE SOUTH 39° 27' 15" EAST, 241.06 FEET; THENCE SOUTH 85° 03' 35" EAST, 84.61 FEET; THENCE SOUTH 38° 58' 33" EAST, 274.45 FEET; THENCE NORTH 62° 59' 30" EAST, 158.03 FEET; THENCE NORTH 83° 53' 25" EAST, 164.59 FEET; THENCE SOUTH 18° 51' 24" EAST, 200.23 FEET TO A POINT ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 2,000 FEET TO WHICH A RADIAL BEARS SOUTH 03° 09' 01" WEST; THENCE EASTERLY 412.95 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11° 49' 49"; THENCE NORTH 81° 19' 12" EAST 321.89 FEET TO A POINT ON THE WESTERLY LINE OF LOT F OF SAID MAP NO. 823; THENCE ALONG SAID WESTERLY LINE NORTH 00° 04' 42" EAST, 592.04 FEET TO A POINT 8 OF SAID

LOT F; THENCE NORTH 07° 20' 13" EAST, 1,219.61 FEET TO THE NORTH LINE OF SAID LOT F; THENCE ALONG SAID NORTH LINE NORTH 86° 51' 28" WEST, 2,025.21 FEET TO POINT 6 OF LOT F; THENCE NORTH 64° 01' 56" WEST, 275.00 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION OF LOT H OF RANCHO AGUA HEDIONDA AS DESCRIBED AS THE EXCEPTION PARCEL IN SAID CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 22, 1995 AS FILE NO. 1995-0532900, DESCRIBED AS FOLLOWS:

BEGINNING AT THE TRUE POINT OF BEGINNING OF SAID EXCEPTION PARCEL; THENCE NORTH 21° 56' 23" WEST, 234.00 FEET (NORTH 21° 57' 46" WEST RECORD); THENCE NORTH 68° 03' 37" EAST, 260.32 FEET; THENCE SOUTH 21° 56' 23" EAST, 234.00 FEET; THENCE SOUTH 68° 03' 37" WEST, 260.32 FEET TO THE POINT OF BEGINNING.

APN: 211-010-31-00

# **EXHIBIT B**

SDG&E Financial Statements

**SAN DIEGO GAS & ELECTRIC COMPANY  
BALANCE SHEET  
ASSETS AND OTHER DEBITS  
SEPTEMBER 30, 2012**

		2012
<b>1. UTILITY PLANT</b>		
101	UTILITY PLANT IN SERVICE	\$13,487,237,954
102	UTILITY PLANT PURCHASED OR SOLD	13,548,294
104	UTILITY PLANT LEASED TO OTHERS	85,194,000
105	PLANT HELD FOR FUTURE USE	8,151,201
106	COMPLETED CONSTRUCTION NOT CLASSIFIED	-
107	CONSTRUCTION WORK IN PROGRESS	644,811,836
108	ACCUMULATED PROVISION FOR DEPRECIATION OF UTILITY PLANT	(4,891,310,393)
111	ACCUMULATED PROVISION FOR AMORTIZATION OF UTILITY PLANT	(256,001,359)
118	OTHER UTILITY PLANT	696,958,732
119	ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF OTHER UTILITY PLANT	(194,217,472)
120	NUCLEAR FUEL - NET	114,909,686
	TOTAL NET UTILITY PLANT	9,709,282,479
<b>2. OTHER PROPERTY AND INVESTMENTS</b>		
121	NONUTILITY PROPERTY	6,313,633
122	ACCUMULATED PROVISION FOR DEPRECIATION AND AMORTIZATION OF NONUTILITY PROPERTY	(546,049)
123	INVESTMENTS IN SUBSIDIARY COMPANIES	-
124	OTHER INVESTMENTS	-
125	SINKING FUNDS	-
128	OTHER SPECIAL FUNDS	891,855,963
	TOTAL OTHER PROPERTY AND INVESTMENTS	897,623,547

Data from SPL as of November 29, 2012

**SAN DIEGO GAS & ELECTRIC COMPANY  
BALANCE SHEET  
ASSETS AND OTHER DEBITS  
SEPTEMBER 30, 2012**

<b>3. CURRENT AND ACCRUED ASSETS</b>		2011
131	CASH	217,557
132	INTEREST SPECIAL DEPOSITS	-
134	OTHER SPECIAL DEPOSITS	-
135	WORKING FUNDS	500
136	TEMPORARY CASH INVESTMENTS	-
141	NOTES RECEIVABLE	-
142	CUSTOMER ACCOUNTS RECEIVABLE	233,612,683
143	OTHER ACCOUNTS RECEIVABLE	20,081,947
144	ACCUMULATED PROVISION FOR UNCOLLECTIBLE ACCOUNTS	(2,863,738)
145	NOTES RECEIVABLE FROM ASSOCIATED COMPANIES	-
146	ACCOUNTS RECEIVABLE FROM ASSOCIATED COMPANIES	16,778,226
151	FUEL STOCK	2,305,557
152	FUEL STOCK EXPENSE UNDISTRIBUTED	-
154	PLANT MATERIALS AND OPERATING SUPPLIES	78,537,372
156	OTHER MATERIALS AND SUPPLIES	-
163	STORES EXPENSE UNDISTRIBUTED	(1,162)
164	GAS STORED	124,296
165	PREPAYMENTS	225,125,013
171	INTEREST AND DIVIDENDS RECEIVABLE	4,010,076
173	ACCRUED UTILITY REVENUES	62,753,000
174	MISCELLANEOUS CURRENT AND ACCRUED ASSETS	187,504,106
175	DERIVATIVE INSTRUMENT ASSETS	44,776,045
<b>TOTAL CURRENT AND ACCRUED ASSETS</b>		<b>872,961,478</b>
<b>4. DEFERRED DEBITS</b>		
181	UNAMORTIZED DEBT EXPENSE	35,714,172
182	UNRECOVERED PLANT AND OTHER REGULATORY ASSETS	2,571,278,815
183	PRELIMINARY SURVEY & INVESTIGATION CHARGES	5,106,648
184	CLEARING ACCOUNTS	976,020
185	TEMPORARY FACILITIES	-
186	MISCELLANEOUS DEFERRED DEBITS	23,303,759
188	RESEARCH AND DEVELOPMENT	-
189	UNAMORTIZED LOSS ON REACQUIRED DEBT	17,089,535
190	ACCUMULATED DEFERRED INCOME TAXES	557,872,815
<b>TOTAL DEFERRED DEBITS</b>		<b>3,211,341,764</b>
<b>TOTAL ASSETS AND OTHER DEBITS</b>		<b>14,691,209,268</b>

Data from SPL as of November 29, 2012



**SAN DIEGO GAS & ELECTRIC COMPANY**  
**BALANCE SHEET**  
**LIABILITIES AND OTHER CREDITS**  
**SEPTEMBER 30, 2012**

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**5. PROPRIETARY CAPITAL**

	<u>2011</u>
201 COMMON STOCK ISSUED	(\$291,458,395)
204 PREFERRED STOCK ISSUED	(78,475,400)
207 PREMIUM ON CAPITAL STOCK	(592,222,753)
210 GAIN ON RETIRED CAPITAL STOCK	-
211 MISCELLANEOUS PAID-IN CAPITAL	(479,665,368)
214 CAPITAL STOCK EXPENSE	25,688,571
216 UNAPPROPRIATED RETAINED EARNINGS	(2,786,794,413)
219 ACCUMULATED OTHER COMPREHENSIVE INCOME	<u>9,755,579</u>
TOTAL PROPRIETARY CAPITAL	<u>(4,193,172,179)</u>

**6. LONG-TERM DEBT**

221 BONDS	(3,536,905,000)
223 ADVANCES FROM ASSOCIATED COMPANIES	-
224 OTHER LONG-TERM DEBT	(253,720,000)
225 UNAMORTIZED PREMIUM ON LONG-TERM DEBT	-
226 UNAMORTIZED DISCOUNT ON LONG-TERM DEBT	<u>11,834,550</u>
TOTAL LONG-TERM DEBT	<u>(3,778,790,450)</u>

**7. OTHER NONCURRENT LIABILITIES**

227 OBLIGATIONS UNDER CAPITAL LEASES - NONCURRENT	(674,680,029)
228.2 ACCUMULATED PROVISION FOR INJURIES AND DAMAGES	(31,028,287)
228.3 ACCUMULATED PROVISION FOR PENSIONS AND BENEFITS	(330,278,239)
228.4 ACCUMULATED MISCELLANEOUS OPERATING PROVISIONS	0
230 ASSET RETIREMENT OBLIGATIONS	<u>(727,777,372)</u>
TOTAL OTHER NONCURRENT LIABILITIES	<u>(1,763,763,927)</u>

Data from SPL as of November 29, 2012

**SAN DIEGO GAS & ELECTRIC COMPANY  
BALANCE SHEET  
LIABILITIES AND OTHER CREDITS  
SEPTEMBER 30, 2012**

**8. CURRENT AND ACCRUED LIABILITES**

	2011
231 NOTES PAYABLE	(1,700,000)
232 ACCOUNTS PAYABLE	(355,445,678)
233 NOTES PAYABLE TO ASSOCIATED COMPANIES	-
234 ACCOUNTS PAYABLE TO ASSOCIATED COMPANIES	(19,711,480)
235 CUSTOMER DEPOSITS	(62,850,929)
236 TAXES ACCRUED	(23,942,687)
237 INTEREST ACCRUED	(62,692,511)
238 DIVIDENDS DECLARED	(1,204,917)
241 TAX COLLECTIONS PAYABLE	(5,403,831)
242 MISCELLANEOUS CURRENT AND ACCRUED LIABILITIES	(393,906,897)
243 OBLIGATIONS UNDER CAPITAL LEASES - CURRENT	(36,831,314)
244 DERIVATIVE INSTRUMENT LIABILITIES	(190,728,539)
245 DERIVATIVE INSTRUMENT LIABILITIES - HEDGES	0
<b>TOTAL CURRENT AND ACCRUED LIABILITIES</b>	<b>(1,154,418,783)</b>

**9. DEFERRED CREDITS**

252 CUSTOMER ADVANCES FOR CONSTRUCTION	(13,656,727)
253 OTHER DEFERRED CREDITS	(496,869,300)
254 OTHER REGULATORY LIABILITIES	(1,133,746,949)
255 ACCUMULATED DEFERRED INVESTMENT TAX CREDITS	(26,152,469)
257 UNAMORTIZED GAIN ON REACQUIRED DEBT	-
281 ACCUMULATED DEFERRED INCOME TAXES - ACCELERATED	(5,201,256)
282 ACCUMULATED DEFERRED INCOME TAXES - PROPERTY	(1,723,457,126)
283 ACCUMULATED DEFERRED INCOME TAXES - OTHER	(401,980,102)
<b>TOTAL DEFERRED CREDITS</b>	<b>(3,801,063,929)</b>

**TOTAL LIABILITIES AND OTHER CREDITS** **(\$14,691,209,268)**

Data from SPL as of November 29, 2012

**SAN DIEGO GAS & ELECTRIC COMPANY**  
**FINANCIAL STATEMENT**  
**SEPTEMBER 30, 2012**

(a) Amounts and Kinds of Stock Authorized:

Preferred Stock	1,375,000 shares	Par Value \$27,500,000
Preferred Stock	10,000,000 shares	Without Par Value
Preferred Stock	Amount of shares not specified	\$80,000,000
Common Stock	255,000,000 shares	Without Par Value

Amounts and Kinds of Stock Outstanding:

**PREFERRED STOCK**

5.0%	375,000 shares	\$7,500,000
4.50%	300,000 shares	6,000,000
4.40%	325,000 shares	6,500,000
4.60%	373,770 shares	7,475,400
\$1.70	1,400,000 shares	35,000,000
\$1.82	640,000 shares	16,000,000

**COMMON STOCK**

116,583,358 shares 291,458,395

(b) Terms of Preferred Stock:

Full information as to this item is given in connection with Application Nos. 93-09-069, 04-01-009, 06-05-015 and 10-10-023 to which references are hereby made.

(c) Brief Description of Mortgage:

Full information as to this item is given in Application Nos. 08-07-029, 10-10-023 and 12-03-005 to which references are hereby made.

(d) Number and Amount of Bonds Authorized and Issued:

	Nominal Date of Issue	Par Value Authorized and Issued	Outstanding	Interest Paid in 2011
<u>First Mortgage Bonds:</u>				
6.8% Series KK, due 2015	12-01-91	14,400,000	14,400,000	979,200
Var% Series OO, due 2027	12-01-92	250,000,000	150,000,000	7,612,500
5.85% Series RR, due 2021	06-29-93	60,000,000	60,000,000	3,510,000
2.539% Series VV, due 2034	06-17-04	43,615,000	43,615,000	2,562,373
2.539% Series WW, due 2034	06-17-04	40,000,000	40,000,000	2,349,999
2.516% Series XX, due 2034	06-17-04	35,000,000	35,000,000	2,056,249
2.832% Series YY, due 2034	06-17-04	24,000,000	24,000,000	1,409,999
2.832% Series ZZ, due 2034	06-17-04	33,650,000	33,650,000	1,976,936
2.8275% Series AAA, due 2039	06-17-04	75,000,000	75,000,000	134,561
5.35% Series BBB, due 2035	05-19-05	250,000,000	250,000,000	13,375,000
5.30% Series CCC, due 2015	11-17-05	250,000,000	250,000,000	13,250,000
6.00% Series DDD, due 2026	06-08-06	250,000,000	250,000,000	15,000,000
Var Series EEE, due 2018	09-21-06	161,240,000	161,240,000	324,863
6.125% Series FFF, due 2037	09-20-07	250,000,000	250,000,000	15,312,500
6.00% Series GGG, due 2039	05-14-09	300,000,000	300,000,000	18,000,000
5.35% Series HHH, due 2040	05-13-10	250,000,000	250,000,000	13,375,000
4.50% Series III, due 2040	08-15-10	500,000,000	500,000,000	21,812,500
3.00% Series JJJ, due 2021	08-18-11	350,000,000	350,000,000	0
3.95% Series LLL, due 2041	11-17-11	250,000,000	250,000,000	0
4.30% Series MMM, due 2042	03-22-12	250,000,000	250,000,000	0
<u>Unsecured Bonds:</u>				
5.9% CPCFA96A, due 2014	06-01-96	129,820,000	129,820,000	7,659,380
5.3% CV96A, due 2021	08-02-96	38,900,000	38,900,000	2,061,700
5.5% CV96B, due 2021	11-21-96	60,000,000	60,000,000	3,300,000
4.9% CV97A, due 2023	10-31-97	25,000,000	25,000,000	1,225,000

**SAN DIEGO GAS & ELECTRIC COMPANY  
FINANCIAL STATEMENT  
SEPTEMBER 30, 2012**

<u>Other Indebtedness:</u>	<u>Date of Issue</u>	<u>Date of Maturity</u>	<u>Interest Rate</u>	<u>Outstanding</u>	<u>Interest Paid 2011</u>
Commercial Paper & ST Bank Loans	Various	Various	Various	0	\$0

Amounts and Rates of Dividends Declared:

The amounts and rates of dividends during the past five fiscal years are as follows:

<u>Preferred Stock</u>	<u>Shares Outstanding</u>	<u>Dividends Declared</u>				
	<u>12-31-11</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
5.0%	375,000	\$375,000	\$375,000	\$375,000	\$375,000	\$375,000
4.50%	300,000	270,000	270,000	270,000	270,000	270,000
4.40%	325,000	286,000	286,000	286,000	286,000	286,000
4.60%	373,770	343,868	343,868	343,868	343,868	343,868
\$ 1.7625	0	969,375	242,344	0	0	0
\$ 1.70	1,400,000	2,380,000	2,380,000	2,380,000	2,380,000	2,380,000
\$ 1.82	640,000	1,164,800	1,164,800	1,164,800	1,164,800	1,164,800
	<u>3,413,770</u>	<u>\$5,789,043</u>	<u>\$5,062,012 [1]</u>	<u>\$4,819,668</u>	<u>\$4,819,668</u>	<u>\$4,819,668</u>

Common Stock

Dividend to Parent   \$0                         \$0                         \$150,000,000 [2]

A balance sheet and a statement of income and retained earnings of Applicant for the nine months ended September 30, 2012 are attached hereto.

[1] Includes \$242,344 of interest expense related to redeemable preferred stock.

[2] San Diego Gas & Electric Company dividend to parent.

**SAN DIEGO GAS & ELECTRIC COMPANY**  
**STATEMENT OF INCOME AND RETAINED EARNINGS**  
**NINE MONTHS ENDED SEPTEMBER 30, 2012**

**1. UTILITY OPERATING INCOME**

400	OPERATING REVENUES		\$3,128,104,838
401	OPERATING EXPENSES	\$1,985,711,620	
402	MAINTENANCE EXPENSES	150,491,317	
403-7	DEPRECIATION AND AMORTIZATION EXPENSES	340,416,565	
408.1	TAXES OTHER THAN INCOME TAXES	66,916,393	
409.1	INCOME TAXES	(60,648,307)	
410.1	PROVISION FOR DEFERRED INCOME TAXES	692,026,077	
411.1	PROVISION FOR DEFERRED INCOME TAXES - CREDIT	(439,860,104)	
411.4	INVESTMENT TAX CREDIT ADJUSTMENTS	349,575	
411.6	GAIN FROM DISPOSITION OF UTILITY PLANT	-	
	TOTAL OPERATING REVENUE DEDUCTIONS		<u>2,735,403,136</u>
	NET OPERATING INCOME		392,701,702

**2. OTHER INCOME AND DEDUCTIONS**

415	REVENUE FROM MERCHANDISING, JOBBING AND CONTRACT WORK	-	
417.1	EXPENSES OF NONUTILITY OPERATIONS	(2,338)	
418	NONOPERATING RENTAL INCOME	279,720	
418.1	EQUITY IN EARNINGS OF SUBSIDIARIES	-	
419	INTEREST AND DIVIDEND INCOME	3,433,840	
419.1	ALLOWANCE FOR OTHER FUNDS USED DURING CONSTRUCTION	61,143,049	
421	MISCELLANEOUS NONOPERATING INCOME	441,574	
421.1	GAIN ON DISPOSITION OF PROPERTY	-	
	TOTAL OTHER INCOME	<u>65,295,845</u>	
421.2	LOSS ON DISPOSITION OF PROPERTY	-	
426	MISCELLANEOUS OTHER INCOME DEDUCTIONS	<u>2,269,819</u>	
	TOTAL OTHER INCOME DEDUCTIONS	<u>2,269,819</u>	
408.2	TAXES OTHER THAN INCOME TAXES	385,776	
409.2	INCOME TAXES	(50,028,891)	
410.2	PROVISION FOR DEFERRED INCOME TAXES	0	
411.2	PROVISION FOR DEFERRED INCOME TAXES - CREDIT	<u>9,150,462</u>	
	TOTAL TAXES ON OTHER INCOME AND DEDUCTIONS	<u>(40,492,653)</u>	
	TOTAL OTHER INCOME AND DEDUCTIONS		<u>103,518,679</u>
	INCOME BEFORE INTEREST CHARGES		496,220,381
	NET INTEREST CHARGES*		<u>118,248,320</u>
	NET INCOME		<u><u>\$377,972,061</u></u>

\*NET OF ALLOWANCE FOR BORROWED FUNDS USED DURING CONSTRUCTION, (25,593,864)

Data from SPL as of November 29, 2012

**SAN DIEGO GAS & ELECTRIC COMPANY  
STATEMENT OF INCOME AND RETAINED EARNINGS  
NINE MONTHS ENDED SEPTEMBER 30, 2012**

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**3. RETAINED EARNINGS**

RETAINED EARNINGS AT BEGINNING OF PERIOD, AS PREVIOUSLY REPORTED	\$2,412,437,103
NET INCOME (FROM PRECEDING PAGE)	377,972,061
DIVIDEND TO PARENT COMPANY	-
DIVIDENDS DECLARED - PREFERRED STOCK	(3,614,751)
OTHER RETAINED EARNINGS ADJUSTMENTS	
RETAINED EARNINGS AT END OF PERIOD	<u>\$2,786,794,413</u>

**SAN DIEGO GAS & ELECTRIC COMPANY**

**COST OF PROPERTY AND  
DEPRECIATION RESERVE APPLICABLE THERETO  
AS OF SEPTEMBER 30, 2012**

<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
<b>ELECTRIC DEPARTMENT</b>			
302	Franchises and Consents	\$ 222,841	\$ 202,900
303	Misc. Intangible Plant	77,353,474	5,956,882
	<b>TOTAL INTANGIBLE PLANT</b>	<u>77,576,315</u>	<u>6,159,782</u>
310.1	Land		46,518
310.2	Land Rights	14,526,518	0
311	Structures and Improvements	0	28,099,799
312	Boiler Plant Equipment	83,488,783	48,112,447
314	Turbogenerator Units	163,231,924	31,835,664
315	Accessory Electric Equipment	112,838,130	24,629,097
316	Miscellaneous Power Plant Equipment	81,935,410	5,570,451
	Steam Production Decommissioning	<u>25,801,345</u>	<u>0</u>
	<b>TOTAL STEAM PRODUCTION</b>	<u>481,822,111</u>	<u>138,293,977</u>
320.1	Land	0	0
320.2	Land Rights	283,677	283,677
321	Structures and Improvements	275,650,545	270,613,381
322	Boiler Plant Equipment	556,559,852	419,749,061
323	Turbogenerator Units	142,381,272	137,165,063
324	Accessory Electric Equipment	173,236,427	167,695,922
325	Miscellaneous Power Plant Equipment	314,945,328	238,404,313
107	ICIP CWIP	<u>0</u>	<u>0</u>
	<b>TOTAL NUCLEAR PRODUCTION</b>	<u>1,463,057,102</u>	<u>1,233,911,417</u>
340.1	Land	143,476	0
340.2	Land Rights	2,428	2,428
341	Structures and Improvements	19,292,858	3,354,334
342	Fuel Holders, Producers & Accessories	20,348,101	4,219,943
343	Prime Movers	84,174,818	18,425,712
344	Generators	327,819,991	79,806,403
345	Accessory Electric Equipment	31,708,394	6,932,035
346	Miscellaneous Power Plant Equipment	<u>23,517,224</u>	<u>9,161,900</u>
	<b>TOTAL OTHER PRODUCTION</b>	<u>507,007,290</u>	<u>121,902,754</u>
	<b>TOTAL ELECTRIC PRODUCTION</b>	<u>2,451,886,502</u>	<u>1,494,108,147</u>

<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
350.1	Land	\$ 40,792,766	\$ 0
350.2	Land Rights	136,915,589	12,620,732
352	Structures and Improvements	285,526,462	37,969,416
353	Station Equipment	963,037,139	160,020,003
354	Towers and Fixtures	657,533,430	90,481,482
355	Poles and Fixtures	264,238,315	52,963,522
356	Overhead Conductors and Devices	405,736,207	173,636,915
357	Underground Conduit	296,317,703	26,013,364
358	Underground Conductors and Devices	322,821,442	27,238,624
359	Roads and Trails	189,171,960	7,688,134
	<b>TOTAL TRANSMISSION</b>	<b>3,562,091,012</b>	<b>588,632,193</b>
360.1	Land	16,176,228	0
360.2	Land Rights	75,238,482	33,153,382
361	Structures and Improvements	3,496,653	1,430,921
362	Station Equipment	400,242,232	83,103,282
364	Poles, Towers and Fixtures	514,829,210	227,985,908
365	Overhead Conductors and Devices	406,981,539	161,271,509
366	Underground Conduit	961,943,312	372,398,607
367	Underground Conductors and Devices	1,275,571,386	750,853,056
368.1	Line Transformers	493,734,055	83,730,898
368.2	Protective Devices and Capacitors	15,811,184	(8,073,411)
369.1	Services Overhead	120,817,092	123,018,731
369.2	Services Underground	307,165,451	216,444,427
370.1	Meters	202,595,561	(10,090,946)
370.2	Meter Installations	48,973,286	(25,352,981)
371	Installations on Customers' Premises	6,513,419	11,287,058
373.1	St. Lighting & Signal Sys.-Transformers	0	0
373.2	Street Lighting & Signal Systems	24,682,390	17,871,226
	<b>TOTAL DISTRIBUTION PLANT</b>	<b>4,874,771,482</b>	<b>2,039,031,669</b>
389.1	Land	7,523,627	0
389.2	Land Rights	0	0
390	Structures and Improvements	31,037,336	18,531,828
392.1	Transportation Equipment - Autos	0	49,884
392.2	Transportation Equipment - Trailers	58,146	2,554
393	Stores Equipment	17,466	16,139
394.1	Portable Tools	19,375,183	6,089,238
394.2	Shop Equipment	328,720	192,373
395	Laboratory Equipment	302,226	43,595
396	Power Operated Equipment	92,162	149,134
397	Communication Equipment	167,869,475	68,724,500
398	Miscellaneous Equipment	1,367,470	198,274
	<b>TOTAL GENERAL PLANT</b>	<b>227,971,811</b>	<b>93,997,520</b>
101	<b>TOTAL ELECTRIC PLANT</b>	<b>11,194,297,122</b>	<b>4,221,929,310</b>



<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
<b>GAS PLANT</b>			
302	Franchises and Consents	\$ 86,104	\$ 86,104
303	Miscellaneous Intangible Plant	0	0
	<b>TOTAL INTANGIBLE PLANT</b>	<b>86,104</b>	<b>86,104</b>
360.1	Land	0	0
361	Structures and Improvements	43,992	43,992
362.1	Gas Holders	0	0
362.2	Liquefied Natural Gas Holders	0	0
363	Purification Equipment	0	0
363.1	Liquefaction Equipment	0	0
363.2	Vaporizing Equipment	0	0
363.3	Compressor Equipment	0	0
363.4	Measuring and Regulating Equipment	0	0
363.5	Other Equipment	0	0
363.6	LNG Distribution Storage Equipment	2,052,614	695,087
	<b>TOTAL STORAGE PLANT</b>	<b>2,096,606</b>	<b>739,079</b>
365.1	Land	4,649,144	0
365.2	Land Rights	2,218,045	1,216,581
366	Structures and Improvements	11,541,403	9,549,587
367	Mains	133,850,631	60,133,947
368	Compressor Station Equipment	80,292,125	58,124,223
369	Measuring and Regulating Equipment	18,728,435	14,690,619
371	Other Equipment	0	0
	<b>TOTAL TRANSMISSION PLANT</b>	<b>251,279,782</b>	<b>143,714,957</b>
374.1	Land	102,187	0
374.2	Land Rights	8,118,693	6,032,451
375	Structures and Improvements	43,447	61,253
376	Mains	559,330,462	320,306,907
378	Measuring & Regulating Station Equipment	15,057,081	6,731,152
380	Distribution Services	242,910,503	280,997,186
381	Meters and Regulators	138,989,796	37,776,302
382	Meter and Regulator Installations	86,311,288	25,839,727
385	Ind. Measuring & Regulating Station Equipme	1,516,811	1,015,741
386	Other Property On Customers' Premises	0	0
387	Other Equipment	5,223,272	4,676,902
	<b>TOTAL DISTRIBUTION PLANT</b>	<b>1,057,603,539</b>	<b>683,437,621</b>

<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
392.1	Transportation Equipment - Autos	\$ 0	\$ 25,503
392.2	Transportation Equipment - Trailers	74,501	74,501
394.1	Portable Tools	7,177,745	3,059,517
394.2	Shop Equipment	76,864	29,005
395	Laboratory Equipment	283,094	235,131
396	Power Operated Equipment	162,284	92,500
397	Communication Equipment	1,541,611	945,501
398	Miscellaneous Equipment	198,325	54,067
	TOTAL GENERAL PLANT	<u>9,514,423</u>	<u>4,515,725</u>
101	TOTAL GAS PLANT	<u>1,320,580,454</u>	<u>832,493,487</u>
<b>COMMON PLANT</b>			
303	Miscellaneous Intangible Plant	191,146,549	103,690,346
350.1	Land	0	0
360.1	Land	0	0
389.1	Land	5,612,511	0
389.2	Land Rights	1,080,961	27,275
390	Structures and Improvements	238,943,754	102,545,650
391.1	Office Furniture and Equipment - Other	18,852,648	9,705,372
391.2	Office Furniture and Equipment - Computer E	69,378,197	33,175,342
392.1	Transportation Equipment - Autos	33,942	(338,930)
392.2	Transportation Equipment - Trailers	33,369	1,801
393	Stores Equipment	144,926	84,549
394.1	Portable Tools	1,193,702	133,992
394.2	Shop Equipment	248,289	139,109
394.3	Garage Equipment	969,973	(70,516)
395	Laboratory Equipment	2,236,234	866,738
396	Power Operated Equipment	0	(192,979)
397	Communication Equipment	103,048,288	46,815,016
398	Miscellaneous Equipment	2,440,895	870,667
118.1	TOTAL COMMON PLANT	<u>635,364,239</u>	<u>297,453,433</u>
	TOTAL ELECTRIC PLANT	11,194,297,122	4,221,929,310
	TOTAL GAS PLANT	1,320,580,454	832,493,487
	TOTAL COMMON PLANT	<u>635,364,239</u>	<u>297,453,433</u>
101 & 118.1	TOTAL	<u>13,150,241,816</u>	<u>5,351,876,230</u>
101	PLANT IN SERV-SONGS FULLY RECOVER	<u>\$ (1,164,131,236)</u>	<u>\$ (1,164,131,236)</u>
101	PLANT IN SERV-ELECTRIC NON-RECON Electric	<u>\$ (5,884,704)</u>	<u>\$ 0</u>

<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
101	PLANT IN SERV-ASSETS HELD FOR SALE		
	Electric	\$ (23,714,257)	\$ (600,716)
	Common	(8,861,299)	\$ 0
		<u>(32,575,555)</u>	<u>(600,716)</u>
101	PLANT IN SERV-LEGACY METER RECLASS		
	Electric	<u>\$ (23,070,475)</u>	<u>\$ 66,831,561</u>
101	PLANT IN SERV-SUNRISE FIRE MITIGATION		
	Electric	<u>\$ 0</u>	<u>\$ 0</u>
118	PLANT IN SERV-COMMON NON-RECON		
	Common - Transferred Asset Adjustment	<u>\$ (2,894,035)</u>	<u>\$ (2,894,035)</u>
101	Accrual for Retirements		
	Electric	\$ (1,625,051)	\$ (1,625,051)
	Gas	(1,166,032)	(1,166,032)
	TOTAL PLANT IN SERV-ACCRUAL FOR RE	<u>(2,791,083)</u>	<u>(2,791,083)</u>
102	Electric	0	0
	Gas	0	0
	TOTAL PLANT PURCHASED OR SOLD	<u>0</u>	<u>0</u>
104	Electric	85,194,000	738,033
	Gas	0	0
	TOTAL PLANT LEASED TO OTHERS	<u>85,194,000</u>	<u>738,033</u>
105	Plant Held for Future Use		
	Electric	8,151,201	0
	Gas	0	0
	TOTAL PLANT HELD FOR FUTURE USE	<u>8,151,201</u>	<u>0</u>
107	Construction Work in Progress		
	Electric	691,573,134	
	Gas	46,045,820	
	Common	60,506,228	
	TOTAL CONSTRUCTION WORK IN PROGRESS	<u>798,125,183</u>	<u>0</u>
108	Accum. Depr SONGS Mitigation/Spent Fuel Disallowance		
	Electric	0	221,468

<u>No.</u>	<u>Account</u>	<u>Original Cost</u>	<u>Reserve for Depreciation and Amortization</u>
108.5	Accumulated Nuclear Decommissioning Electric	0	800,593,254
	TOTAL ACCUMULATED NUCLEAR DECOMMISSIONING	0	800,593,254
101.1	ELECTRIC CAPITAL LEASES	778,390,265	74,999,690
118.1	COMMON CAPITAL LEASE	25,803,159	17,682,391
		804,193,424	92,682,081
120	NUCLEAR FUEL FABRICATION	62,963,775	40,861,208
143	FAS 143 ASSETS - Legal Obligation	116,218,782	(688,610,630)
	FIN 47 ASSETS - Non-Legal Obligation	72,842,470	30,051,014
143	FAS 143 ASSETS - Legal Obligation	0	(1,335,631,302)
	TOTAL FAS 143	189,061,252	(1,994,190,918)
	UTILITY PLANT TOTAL	<u>\$ 13,866,583,564</u>	<u>\$ 3,189,195,847</u>

**SAN DIEGO GAS & ELECTRIC COMPANY  
SUMMARY OF EARNINGS  
NINE MONTHS ENDED SEPTEMBER 30, 2012  
(DOLLARS IN MILLIONS)**

<u>Line No.</u>	<u>Item</u>	<u>Amount</u>
1	Operating Revenue	\$3,128
2	Operating Expenses	<u>2,735</u>
3	Net Operating Income	<u><u>\$393</u></u>
4	Weighted Average Rate Base	\$5,738
5	Rate of Return*	8.40%

\*Authorized Cost of Capital

## **EXHIBIT C**

Illustrative Gain on Sale Calculation

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EXHIBIT HAS BEEN SUBMITTED UNDER CONFIDENTIAL COVER

**EXHIBIT D**

Caruso Organizational Documents

201121010043

LLC-1

File #



State of California Secretary of State

Limited Liability Company Articles of Organization

ENDORSED - FILED in the Office of the Secretary of State of the State of California

JUL 28 2011

A \$70.00 filing fee must accompany this form.

Important - Read instructions before completing this form.

This Space For Filing Use Only

Entity Name (End the name with the words "Limited Liability Company," or the abbreviations "LLC" or "L.L.C." The words "Limited" and "Company" may be abbreviated to "Ltd." and "Co.," respectively.)

1. NAME OF LIMITED LIABILITY COMPANY

Carusq Acquisition Co. II, LLC

Purpose (The following statement is required by statute and should not be altered.)

2. THE PURPOSE OF THE LIMITED LIABILITY COMPANY IS TO ENGAGE IN ANY LAWFUL ACT OR ACTIVITY FOR WHICH A LIMITED LIABILITY COMPANY MAY BE ORGANIZED UNDER THE BEVERLY-KILLEA LIMITED LIABILITY COMPANY ACT.

Initial Agent for Service of Process (If the agent is an individual, the agent must reside in California and both Items 3 and 4 must be completed. If the agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to California Corporations Code section 1505 and Item 3 must be completed (leave Item 4 blank).)

3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

Rick J. Caruso

4. IF AN INDIVIDUAL, ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY STATE ZIP CODE

101 The Grove Dr.

Los Angeles CA 90036

Management (Check only one)

5. THE LIMITED LIABILITY COMPANY WILL BE MANAGED BY:



ONE MANAGER



MORE THAN ONE MANAGER



ALL LIMITED LIABILITY COMPANY MEMBER(S)

Additional Information

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE.

Execution

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

July 28, 2011

DATE

SIGNATURE OF ORGANIZER

Ethan Rogers, Esq.

TYPE OR PRINT NAME OF ORGANIZER



State of California  
Secretary of State

CERTIFICATE OF STATUS

ENTITY NAME: CARUSO ACQUISITION CO. II, LLC

FILE NUMBER: 201121010043  
FORMATION DATE: 07/28/2011  
TYPE: DOMESTIC LIMITED LIABILITY COMPANY  
JURISDICTION: CALIFORNIA  
STATUS: ACTIVE (GOOD STANDING)

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify:

The records of this office indicate the entity is authorized to exercise all of its powers, rights and privileges in the State of California.

No information is available from this office regarding the financial condition, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of February 26, 2013.

*Debra Bowen*

DEBRA BOWEN  
Secretary of State

MMS

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U902E) and Caruso Acquisition Co. II, LLC for an Order Authorizing the Sale of Property Pursuant to Public Utilities Code § 851.

A.13-02-\_\_\_\_\_

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) AND CARUSO ACQUISITION  
CO. II, LLC NOTICE OF AVAILABILITY FOR AN ORDER AUTHORIZING THE  
SALE OF PROPERTY PURSUANT TO PUBLIC UTILITIES CODE § 851**

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Attorney for  
SAN DIEGO GAS & ELECTRIC  
COMPANY

Attorneys for CARUSO ACQUISITION CO. II, LLC

February 27, 2013

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of San Diego Gas & Electric Company (U902E) and Caruso Acquisition Co. II, LLC for an Order Authorizing the Sale of Property Pursuant to Public Utilities Code § 851.

A.13-02-\_\_\_\_\_

**SAN DIEGO GAS & ELECTRIC COMPANY (U 902 E) AND CARUSO ACQUISITION CO. II, LLC NOTICE OF AVAILABILITY FOR AN ORDER AUTHORIZING THE SALE OF PROPERTY PURSUANT TO PUBLIC UTILITIES CODE § 851**

Pursuant to Rule 1.9 (c) of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), San Diego Gas & Electric Company and Caruso Acquisition Co. II, LLC hereby provides notice that it has electronically filed with the Commission’s Docket Office its **APPLICATION OF SAN DIEGO GAS & ELECTRIC COMPANY AND CARUSO ACQUISITION CO II, LLC FOR AN ORDER AUTHORIZING THE SALE OF PROPERTY PURSUANT TO PUBLIC UTILITIES CODE § 851 (PUBLIC VERSION)**.

The public Utilities Code § 851 Application filing is available on SDG&E’s website at the following link: <http://www.sdge.com/proceedings>

Respectfully submitted this 27<sup>h</sup> day of February, 2013, on behalf of both Applicants,

By /s/ Allen K. Trial  
ALLEN K. TRIAL  
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San Diego, California 92101  
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Attorney for  
SAN DIEGO GAS & ELECTRIC COMPANY