

Former Marine Corps Air Station El Toro
Lease in Furtherance of Conveyance
Parcel 3

All correspondence in connection
with this contract should include reference to:
N4769205RP05P45

LEASE IN FURTHERANCE OF CONVEYANCE
BETWEEN
THE UNITED STATES OF AMERICA
AND
HERITAGE FIELDS LLC, A DELAWARE LIMITED LIABILITY COMPANY
FOR
MCAS EL TORO PARCEL 3

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LEASE IN FURTHERANCE OF CONVEYANCE
BETWEEN
THE UNITED STATES OF AMERICA
AND
HERITAGE FIELDS LLC, a Delaware Limited Liability Company
FOR
MCAS EL TORO PARCEL 3

THIS LEASE is made this 12th day of July, 2005, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (Government), and HERITAGE FIELDS LLC, a Delaware Limited Liability Company (Lessee), purchaser of certain real property at the former Marine Corps Air Station, El Toro, Irvine California (hereinafter referred to as MCAS El Toro or the Installation).

RECITALS

A. The Government has closed the former Marine Corps Air Station El Toro (MCAS El Toro) pursuant to the Defense Base Closure and Realignment Act of 1990, Pub.L. 101-510), as amended (10 U.S.C. § 2687 note) (hereinafter referred to as DBCRA) and is selling portions of that property through a public sale, said portions identified in Exhibit A hereto and hereinafter referred to as the "Sale Property".

B. Lessee has purchased a portion of the Sale Property, known as Parcel 3, pursuant to Invitation for Bids No. 9PR-2004-188 (IFB). Government is in the process of remediating environmental sites within Parcel 3. Pursuant to said IFB, title to each such site will not be conveyed until site closure is attained and the Government issues a Finding of Suitability to Transfer (FOST) addressing each such site.

C. As consideration for the purchase of Parcel 3, Government will allow Lessee limited access and use of the environmental sites, hereinafter referred to as the Leased Premises, and identified in Exhibit A, in accordance with the terms and conditions of this Lease until Government issues a FOST addressing the Leased Premises and title has transferred.

D. Pending final disposition, 10 U.S.C. § 2667(f) authorizes the Government to lease real property located at a military installation closed under DBCRA.

E. In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Government prepared a Final Environmental Impact Statement

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(EIS) for the disposal and reuse of the former MCAS El Toro. A NEPA Record of Decision regarding the disposal of MCAS El Toro was issued on 23 April 2002.

F. An Environmental Baseline Survey (EBS) has been prepared for MCAS El Toro as well as a Finding of Suitability to Lease (FOSL) in accordance with 10 U.S.C. § 2667(f)(3), and Department of Defense policy guidelines. The "Finding of Suitability to Lease for Carve-Out Areas Within Parcels I, II, and III, Former Marine Corps Air Station El Toro, dated August 3, 2004, concludes that activities allowed under this Lease, if conducted in accordance with the restrictions contained therein, are consistent with protection of human health and the environment. Cognizant state and federal regulatory agencies have concurred on the FOSL.

G. The Government has agreed to grant this Lease in furtherance of and pending conveyance by deed for Leased Premises to the Lessee and the Lessee has agreed to enter into this Lease.

MUTUAL UNDERSTANDINGS

NOW THEREFORE, in consideration of the terms, covenants, and conditions hereinafter set forth, Government and Lessee hereby agree as follows:

1. **LEASED PREMISES:**

Government does hereby lease, and demise to Lessee in furtherance of and pending conveyance, and Lessee does hereby hire from Government, the Leased Premises, identified in Exhibit A, together with all improvements and all personal property thereon together with right of ingress and egress to said Leased Premises.

2. **TERM:**

2.1. The term of this Lease shall be for or until, as applicable, the earlier of: (A) a period of fifty (50) years beginning on the date of execution of this Lease and ending on the 11th day of July, 2055; or (B) the effective date of conveyance by Quitclaim Deed of a portion of the Leased Premises, unless sooner terminated in accordance with the provisions of Article 14. The Lessee shall accept title to any portion of the Leased Premises within ten (10) calendar days following delivery by the Government of a Quitclaim Deed for such portion of the Leased Premises. The Government shall not deliver any such Quitclaim Deed for a portion of the Leased Premises prior to execution of a FOST for such portion of the Leased Premises.

2.2. This Lease shall automatically terminate upon conveyance by Quitclaim Deed with respect to any conveyed portion as if such date were the stated expiration date contained herein and neither party hereto shall have any further obligation under

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this Lease with respect to such conveyed portion (other than any obligations which otherwise would survive termination of this Lease). All references to the Leased Premises shall be deemed to exclude such conveyed portions and this Lease shall continue in full force and effect with respect to the remainder of the Leased Premises.

3. CONSIDERATION:

As consideration for this Lease, Lessee agrees to provide protection and maintenance to the extent described in Article 12.

4. USE OF LEASED PREMISES:

4.1 The sole purpose for which Leased Premises may be used, in the absence of prior written approval by Government for any other use, is in accordance with projected state and local zoning and land plans for the Leased Premises, and in accordance with the restrictions described in Section 5 of the Finding of Suitability to Lease (FOSL), attached as Exhibit C to this Lease. Government hereby reserves to itself the exclusive use of, and right to access, those portions of the Leased Premises identified in Exhibit F, until such time as Government determines, in its sole discretion, that it no longer requires such exclusive access and use.

4.2 No known historic or archeological sites or materials exist on the Leased Premises. Should such sites or materials be encountered, Lessee shall stop work immediately and notify Government.

5. SUBLETTING:

5.1 Lessee may sublease the Leased Premises without the prior approval of Government. Any sublease that involves the use of hazardous or toxic materials, including those of an explosive, flammable, or pyrotechnic nature, as provided in 10 U.S.C. 2692, shall require prior Government approval. Such consent shall not be unreasonably withheld or delayed. Under no circumstance shall Lessee assign this Lease without the prior written approval of the Government.

5.2 For the purposes of Article 5 and this Lease, "sublease" shall include licenses, use and occupancy agreements, concession agreements and other similar agreements.

5.3 Any sublease granted by Lessee shall contain a copy of this Lease as an attachment and be subject to all terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Lessee or any sub lessee. Under any sublease

made, with or without consent, the sub lessee shall be deemed to have assumed all of the obligations of Lessee under this Lease. No sublease shall relieve Lessee of any of its obligations hereunder.

5.4 Upon execution of any sublease, a copy of such sublease shall immediately be furnished to Government. Should conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Any sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties under this Lease.

6. CONDITION OF PROPERTY:

Leased Premises shall be delivered to Lessee "AS IS", "WHERE IS". Government makes no warranty as to Leased Premises' usability generally or as to its fitness for any particular purpose. Any safety and/or health hazards identified shall be corrected, at Lessee's expense, prior to use and occupancy.

7. ENVIRONMENTAL BASELINE SURVEY AND FINDING OF SUITABILITY TO LEASE:

The Executive Summary of the Environmental Baseline Survey (EBS) and a Finding of Suitability to Lease (FOSL) are attached as Exhibits B and C, respectively, and made part of this Lease. Copies of the EBS and FOSL have been provided to Lessee and all documents referenced therein have been made available to Lessee. The EBS describes the environmental conditions on the Installation. The FOSL sets forth the basis for the Government's determination that Leased Premises are suitable for leasing. Lessee is hereby made aware of the notifications contained in the FOSL attached hereto as an exhibit and shall comply with Lease restrictions set forth therein.

8. ALTERATIONS:

8.1 Lessee shall not construct or make or permit its sublessees to construct or make any substantial alterations, additions, excavations, improvements to, installations upon or otherwise modify or alter Leased Premises in any way (collectively "Work"), including those which may adversely affect the cleanup, human health or the environment, without the prior written consent of Government. No consent shall be required for Work described in Exhibit D.

8.2 Lessee shall provide Government with prior written notification and a full description of all proposed Work on Leased Premises (other than work described in Exhibit D), a projected schedule and cost thereof, and an analysis as to how and why such Work will or will not adversely affect the environmental clean up of Leased

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Premises, human health, or the environment. Lessee shall deliver such written notification to Government's representative as designated in Article 19 of this Lease.

8.3 In the event of termination of this lease pursuant to either subparagraph 14.1.2 or 14.1.3 of Article 14 of this Lease, Lessee shall abandon any Work in place, at which time title to such Work shall vest in the Government.

8.4 In the event of termination, revocation or surrender of this Lease, all personal property and trade fixtures of Lessee or any third person may be removed and Lessee shall repair any damages to Leased Premises resulting from such removal.

9. ACCESS BY GOVERNMENT:

In addition to access required under Article 13, at all reasonable times throughout the term of this Lease, Government shall be allowed access to Leased Premises for any purposes upon notice to Lessee. Government normally will give Lessee or any sublessee twenty-four (48) hour prior notice of its intention to enter Leased Premises, unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against Government or any officer, agent, employee, contractor or subcontractor of Government. All keys to the buildings and facilities occupied by Lessee or any sublessee shall be made available to Government upon request. Any access by Government will take into consideration its obligations under Article 33.

10. UTILITIES AND SERVICES:

10.1 Procurement of utilities, i.e., electricity, water, gas, steam, sewer, telephone and trash removal will be the responsibility of Lessee.

10.2 Lessee shall furnish the Government with any utilities maintained by Lessee that Government may require. In the event it does so, Government shall reimburse Lessee for the cost incurred in providing such utilities, which amount shall be agreed upon between the parties in advance.

11. NON-INTERFERENCE WITH GOVERNMENT OPERATIONS:

Lessee shall not conduct operations or make any alterations that would interfere with or otherwise restrict operations, environmental clean-up or restoration actions by Navy, Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Environmental clean-up, restoration or testing activities by these parties shall take priority over Lessee's use of Leased Premises in the event of any conflict. However, Government and Lessee agree to coordinate to minimize potential conflicts

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between necessary remediation of environmental contamination, including investigation and remedial actions, and Lessee's and sublessee's use of Leased Premises.

12. PROTECTION AND MAINTENANCE SERVICES:

12.1 Government shall not be required to furnish any services or facilities to Lessee or to make any repair or alteration in or to Leased Premises.

12.2 During the term of this Lease, debris, trash and other useless materials not generated by Government shall be promptly removed from Leased Premises.

12.3 Lessee shall provide or cause to be provided all security services necessary to assure security and safety within Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate authorities for their investigation and disposition and to Government as property owner.

12.4 Lessee shall take or cause to be taken, all reasonable fire protection precautions at Leased Premises consistent with the level of use on the property.

12.5 Lessee, at its own expense, is solely responsible for protection, maintenance, preservation and repair of Leased premises, with the exception of those areas reserved for Government use, as identified in Exhibit F. Government shall be solely responsible for protection, maintenance, preservation and repair of those portions of the Leased Premises identified in Exhibit F for the duration of any period of such exclusive use, as set forth in Article 4.

12.6 Lessee expressly agrees, at its own expense, to keep the Leased Premises in a safe, neat, clean, and orderly condition. Lessee shall provide a complete and proper arrangement for the adequate sanitary handling and disposal, acceptable to the Government of all trash, garbage, and other refuse caused as a result of Lessee's operations on the Premises. Lessee shall provide and use suitable, covered receptacles for all garbage, trash and other refuse on or in connection with the Premises. Piling of boxes, cartons, barrels, or other similar items in an unsightly or unsafe manner, on or about the Leased Premises, is prohibited. Government shall have the right to enter upon and inspect the Premises at anytime for cleanliness and safety activities.

13. ENVIRONMENTAL PROTECTION PROVISIONS:

13.1 Lessee, sublessees and contractors shall comply with all applicable Federal, state and local laws, regulations and standards that are or may become applicable to Lessee's activities on Leased Premises.

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13.2 The Lessee or any sublessee shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under the Lease, independent of any existing permits held by the Government. Any and all environmental permits required for any of Lessee's or sublessee's operations or activities would be subject to prior concurrence of Government. Lessee acknowledges that the Government will not consent to being named a secondary discharger or co-permittee for any operations or activities of the Lessee or any sublessee under the Lease. In the event the Government is named as a secondary discharger or co-permittee for any activity or operation of the Lessee or any sublessee, Government shall have the right to take reasonable actions necessary to prevent, suspend, or terminate such activity or operation, including terminating this Lease, without liability or penalty.

13.3 Government's rights under this Lease specifically include the right for Government officials to inspect upon reasonable notice Leased Premises for compliance with environmental, safety and occupational health laws and regulations, whether or not Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Government normally will give Lessee or sublessee twenty-four (24) hours prior notice of its intention to enter Leased Premises unless it determines the entry is required for safety, environmental, operations or security purposes. Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, contractor or subcontractor thereof.

13.4 Government has entered into a Federal Facility Agreement (FFA) for MCAS El Toro with the United States Environmental Protection Agency (USEPA) and the State of California (through the Department of Toxic Substances Control (DTSC) and Santa Ana Regional Water Quality Control Board) pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended. The Installation has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. Lessee acknowledges that Government has provided it with a copy of the installation Federal Facility Agreement (FFA) entered into by the United States Environmental Protection Agency (EPA) Region, the state equivalent and the Military Department, and Lessee agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended and the provisions of this Lease, the terms of the FFA will take precedence. Lessee further agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Lessee or its sublessees or licensees should implementation of the FFA interfere with Lessee's or any sublessee's and licensee's use of Leased Premises. Lessee shall have no claim on account of any such interference against the United States or officer, agent, employee, contractor or subcontractor thereof, other than for abatement of rent, where applicable.

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13.5 Government, EPA, DTSC, and the State and their officers, agents, employees, contractors and subcontractors, have the right, upon reasonable notice to Lessee and/or any sublessee, to enter upon Leased Premises for the purposes enumerated in this subparagraph and for such other purposes consistent with any provisions of the cleanup program (including but not limited to the BRAC Cleanup Plan, IRP, or FFA):

13.5.1 to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the cleanup program;

13.5.2 to inspect field activities of Government and its contractors and subcontractors in implementing the cleanup program;

13.5.3 to conduct any test or survey required by EPA or applicable state equivalent relating to the implementation of the cleanup program;

13.5.4 to construct, operate, maintain or undertake any other response or remedial action as required or necessary under the cleanup program, including but not limited to monitoring wells, pumping wells and treatment facilities.

13.6 Lessee shall comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Lessee and any sublessee. Lessee and sublessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor or subcontractor, thereof. In addition, Lessee shall comply with all applicable Federal, state and local occupational safety and health regulations.

13.7 Lessee further agrees that in the event of any sublease of Leased Premises, Lessee shall provide to U.S. EPA and California EPA, DTSC by certified mail a copy of the agreement or sublease of Leased Premises (as the case may be) within fourteen (14) calendar days after the effective date of such transaction. Lessee may delete the financial terms and any other proprietary information from the copy of any agreement of sublease furnished pursuant to this condition.

13.8 Lessee shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act or its applicable state equivalent and any other applicable laws, rules or regulations. Except as specifically authorized by Government in writing, Lessee must provide at its own expense such hazardous waste management facilities complying with all laws and regulations, as Lessee may need for such storage. Government hazardous waste management facilities will not be available

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to Lessee. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

13.9 DoD component accumulation points for hazardous and other waste will not be used by Lessee or any sublessee. Neither Lessee nor any sublessee will permit its hazardous wastes to be commingled with hazardous waste of DoD Component.

13.10 Lessee shall have a Government-approved plan for responding to hazardous waste, fuel and other chemical spills prior to commencement of operations on Leased Premises. The contingency plan shall be consistent with the provisions of California Code of Regulations, Title 22, Chapter 15, Article 4 beginning with Section 66265.50. Such plan shall be independent of Installation plan and, except for initial fire response and/or spill containment, shall not rely on use of Installation personnel or equipment. Should Government provide any personnel or equipment whether for initial fire response and/or spill containment, or otherwise on request of Lessee, or because Lessee was not, in the opinion of Government, conducting timely cleanup actions, Lessee agrees to reimburse Government for its costs in association with such response or cleanup.

13.11 The presence of known asbestos-containing material (ACM), lead-based paint (LBP), polychlorinated biphenyls (PCBs), Potential Release Locations (PRLs), and radiological materials investigation locations is identified in the FOSL, attached as Exhibit C.

13.11.1 Access and occupancy of buildings/structures/facilities and sites identified in Exhibit C, sections 5.1 and 5.10, and in Exhibit E are prohibited without the prior written approval of the Government, except for short-term tours and emergency maintenance.

13.11.2 Buildings identified in Exhibit E may be occupied only after the lessee conducts all necessary surveys and abatement in accordance with to all federal, state, and local laws, and regulatory requirements and has obtained the prior written approval of the Government.

13.11.3. The Lessee shall be responsible for the management of ACM, including, but not limited to, surveys, removal and/or demolition of structures containing ACM, in accordance with applicable regulatory requirements.

13.11.4 If Lessee intends to demolish any facilities containing ACM, or to make any improvements or repairs that require the removal of asbestos, an appropriate asbestos disposal plan must be incorporated into the plans and specifications required under Article 8 and submitted to Government. The asbestos disposal plan will identify the proposed disposal site for the asbestos, or in the event the site has not been identified, will provide for disposal at a licensed facility authorized to receive it.

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13.11.5 ACM which during the period of this lease becomes damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Lessee's activities under this Lease, including but not limited to any emergency, will be abated by Lessee at its sole cost and expense. In an emergency, Lessee will notify Government as soon as practicable of its emergency ACM responses. Lessee shall be responsible for monitoring the condition of existing ACM on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease.

13.12 LBP which during the period of this lease becomes damaged or deteriorated through the passage of time, as the result of a natural disaster or as a consequence of Lessee's activities under this Lease, including but not limited to any emergency, will be abated by Lessee at its sole cost and expense. In an emergency, Lessee will notify Government as soon as practicable of its emergency LBP responses. Lessee shall be responsible for monitoring the condition of existing LBP on Leased Premises for deterioration or damage and accomplishing repairs or abatement pursuant to the applicable conditions of this Lease.

13.12.1. Use of buildings/structures built prior to 1 January 1978 for residential purposes or any use involving children is prohibited without the prior written approval of the government.

13.12.2. Demolition of any facilities containing LBP, or any improvements or repairs that require the removal of LBP must have the prior written approval of the government. Lessee shall be responsible for the management of LBP, including surveys, removal, and/or demolition in accordance with federal, state and local laws and regulatory requirements.

13.12.3. Lessee shall be responsible for conducting post-demolition sampling for and any necessary abatement of soil-lead hazards at target housing or residential real property.

13.13 Lessee shall relieve, indemnify, protect, defend and hold harmless Government from any costs, expenses, liabilities, fines or penalties resulting from discharges, emissions, spills, storage or disposal arising from Lessee's occupancy, use or operations, or any other action by Lessee or any sublessee giving rise to Government liability, civil or criminal, or any other action by Lessee or any sublessee giving rise or responsibility under Federal, state or local environmental laws. Lessee's obligations hereunder shall apply whenever Government incurs costs or liabilities for Lessee's activities or activities of any sublessee as provided hereunder. This provision shall survive the expiration or termination of this Lease.

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13.14 Storage, treatment or disposal of toxic or hazardous materials on the Leased Premises is prohibited excepted as authorized by Government in accordance with 10 U.S.C. § 2692.

13.15 Lessee shall not conduct any subsurface excavation, digging, drilling or other disturbance of the ground surface without prior Government approval.

13.16 Lessee shall not install new groundwater wells of any type and shall not use contaminated groundwater without prior written Government approval.

13.17 Lessee shall not install any well that has the potential to affect plume migration.

13.18 Lessee shall not alter, disturb or remove groundwater monitoring wells, remedial action equipment (e.g. pumps), or associated utilities without prior written Government approval

13.19 Removal of or damage to security features (e.g. locks on monitoring wells, survey monuments, signs or monitoring equipment and associated pipelines and appurtenances is prohibited without prior written Government approval.

13.20 Use or occupancy of IRP Sites 8, 11, and 12 within Carve Out III-B is prohibited pending completion of associated remedial/removal actions.

13.21 The following additional conditions are specific to Carve Out III-B (Site 24), in accordance with The Navy's Final Record of Decision, Operable Unit 1, Site 18 Regional Volatile Organic Compound Groundwater Plume Operable Unit 21 Site 24 VOC Source Area, former Marine Corps Air Station El Toro, California, June 2002 (Site 24 ROD). A copy of the Record of Decision can be obtained by contacting the El Toro Public Administrative Record Manager at (949) 726-5398.

13.21.1 No new wells of any type shall be installed within the Site 24 Shallow Groundwater Plume or buffer zone without prior review and written approval from the DON, DTSC, U.S. EPA, and RWQCB. The Lessee shall also obtain permits for such wells as required by OCHA and IRWD

13.21.2 Extraction, injection, and monitoring wells and associated piping and equipment that are included in the remedial action shall not be altered, disturbed, or removed without the prior review and written approval from the DON, DTSC, U.S. EPA, RWQCB.

13.21.3 The DON, U.S. EPA, DTSC, RWQCB, and their authorized agents, employees, contractors and subcontractors shall have the right to enter upon the Site 24 portion of the Leased Premises to conduct investigations, tests, or surveys;

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inspect field activities; or construct, operate, and maintain the remedial action described in the ROD or undertake any other remedial response or remedial action as required or necessary under the cleanup program, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

13.21.4 The Lessee and any future lessees must comply with all terms and conditions relating to land use restrictions set forth in the Site 24 ROD.

13.21.5 The Lessee and any future lessees must notify subsequent lessees of all land use restrictions and access provisions set forth in this Section 13.21.

14. **TERMINATION:**

14.1 Government shall have the right to terminate this Lease, in whole or in part, without liability, upon thirty (30) calendar days notice:

14.1.1 In the event of a national emergency as declared by the President or the Congress of the United States; or

14.1.2 In the event of breach by Lessee of any terms and conditions hereof. In the event of a breach involving the performance of any obligation, Lessee shall be afforded thirty (30) calendar days from the receipt of Government's notice of intent to terminate within which to complete the performance of the obligation or to otherwise cure the breach and avoid termination of this Lease, unless Government determines that a shorter period is required for safety, environmental, operational, or security purposes. In the event that Government shall elect to terminate this Lease on account of the breach by Lessee of any of the terms and conditions, Government shall be entitled to recover and Lessee shall pay to Government:

14.1.2(a) the costs incurred in reacquiring possession of the Leased Premises.

14.1.2(b) the costs incurred in performing any obligation on the part of Lessee to be performed hereunder.

14.1.2(c) An amount equal to the aggregate of any maintenance obligations and charges assumed hereunder and not paid or satisfied, which amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

14.1.3 In the event of failure by Lessee to take title to any portion of the Leased Premises within ten (10) calendar days following tender by the Government of a Quitclaim Deed for such portion of the Leased Premises

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14.2 Lessee shall have the right to terminate this Lease upon thirty (30)-calendar days written notice to Government in the event of breach by Government of any of the terms and conditions hereof. In the event of a breach involving the performance of any obligation, Government shall be afforded sixty (60) calendar days from the receipt of Lessee's notice of intent to terminate within which to complete performance of the obligation or otherwise cure the breach and avoid termination of this Lease. Lessee shall also have the right to terminate this Lease in the event of damage to or destruction of all of the improvements on Leased Premises or such a substantial portion thereof as to render Leased Premises incapable of use for the purposes for which it is leased hereunder, provided:

14.2.1 Government either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise; and

14.2.2 That such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, employees, sublessees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this Lease.

14.2.3 If Government requires Lessee to vacate all or a substantial portion of Leased Premises pursuant to Article 15 of this Lease for a period in excess of thirty (30) calendar days, Lessee may terminate this Lease by written notice to Government given at any time while Lessee shall continue to be denied use of all or a substantial portion of Leased Premises. Lessee shall thereafter surrender possession of Leased Premises within fifteen (15) calendar days of such notice.

14.3 In the event this lease is terminated due to a breach, for any reason, by either party, in no way will Lessee be entitled to a refund of a portion of the purchase price of the associated sale parcel or other compensation.

15. ENVIRONMENTAL CONTAMINATION:

In the event environmental contamination is discovered on Leased Premises which creates, in Government's determination, an imminent and substantial endangerment to human health or the environment which necessitates evacuation of Leased Premises, and notwithstanding any other termination rights and procedures contained in this Lease, Lessee shall vacate or require any sublessee to vacate Leased Premises immediately upon notice from Government of the existence of such condition. Exercise of this right by Government shall be without liability, except that Lessee shall not be responsible for the payment of consideration during the period Leased Premises is vacated. The amount of deduction shall be determined on a daily pro-rata basis. Government's exercise of this right herein to order the Leased Premises immediately

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vacated does not alone constitute a termination of the Lease, but such right may be exercised in conjunction with any other termination rights provided in this Lease or by law.

16. NON-ENVIRONMENTAL INDEMNIFICATION BY LESSÉE:

Lessee shall at all times relieve, indemnify, protect, defend and hold harmless the United States of America, and all of its officers, agents and employees from any and all claims and demands, actions, proceedings, losses, liens, costs and judgments of any kind and nature whatsoever, including expenses incurred in defending against legal actions, for death or injury to persons or damage to property and for civil fines and penalties arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Lessee and the employees, agents, servants, guests, invitees, contractors and sublessees of Lessee. These include, but are not limited to, any fines, claims, demands and causes of action of every nature whatsoever which may be made upon, sustained or incurred by Government by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of Lessee or the employees, agents, servants, guests, invitees and sublessees of Lessee. However, this indemnity shall not extend to damages due to the sole fault or negligence of Government or its contractors. This covenant shall survive the termination of this Lease for any injury or damage occurring after the commencement of term of the Lease.

17. INSURANCE:

17.1 Except to the extent of any obligation on the part of the Government to indemnify pursuant to Public law 102-484, Section 330, as amended, Lessee shall bear all risk of loss or damage to the Leased Premises, and for claims arising from any incident with respect to bodily injuries or death resulting there from, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of Lessee, sublessees, contractors and invitees under the terms of this Lease.

17.2 At the commencement of this Lease, Lessee shall obtain, from a reputable insurance company or companies, comprehensive general liability insurance. The insurance shall provide an amount not less than the minimum combined single limit of \$5,000,000.00 for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting there from, property damage or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of Lessee, sublessees, contractors and invitees under the terms of this Lease. Lessee shall require its insurance company to furnish Government a copy of the policy or policies, or if acceptable to Government, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is

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subject to revision by Government every three years or upon renewal or modification of this Lease.

17.3 As to those structures and improvements on Leased Premises constructed by or owned by Government, Lessee shall procure and maintain at Lessee's expense a standard fire and extended coverage insurance policy or policies on Leased Premises in the minimum amount of \$1,000,000.00, but not less than the amount required to demolish damaged or destroyed structures and improvements, remove debris, and clear the Leased Premises. Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of Government, shall be payable to Lessee to be used solely for the demolition of damaged or destroyed structures and improvements, removal of debris, and clearing of the Leased Premises or for repair, restoration, or replacement of the property damaged or destroyed. Any balance of the proceeds not required for such purposes shall be paid to Government. If Government does not elect, by notice in writing to the insurer within thirty (30) calendar days after the damage or destruction occurs, to have the proceeds paid to Lessee for the purposes herein above set forth, then such proceeds shall be paid to Government, provided however that the insurer, after payment of any proceeds to Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by Lessee. Nothing herein contained shall be construed as an obligation upon Government to repair, restore, or replace Leased Premises or any part thereof.

17.4 If and to the extent required by law, Lessee shall provide worker's compensation or similar insurance in form and amounts required by law.

17.5 During the entire period this Lease shall be in effect, Lessee shall require its contractors or sublessees or any contractor performing work at Lessee's or sublessee's request on Leased Premises to carry and maintain the insurance required below:

17.5.1 Comprehensive general liability insurance, in an amount not less than \$1,000,000.00.

17.5.2 Workmer's compensation or similar insurance in form and amounts required by law.

17.6 All insurance which this Lease requires Lessee or sublessee to carry and maintain or cause to be carried or maintained shall be in such form, for such periods of time, and with such insurers as Government may reasonably require or approve. All policies or certificates issued by the respective insurers for public liability and property insurance will name Government as an additional insured, provide that any losses shall be payable notwithstanding any act or failure to act or negligence of Lessee or Government or any other person, provide that no cancellation, reduction in amount or

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material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by Government of written notice thereof; provide that the insurer shall have no right of subrogation against Government; and be reasonably satisfactory to Government in all other respects. In no circumstances will Lessee be entitled to assign to any third party, rights of action that Lessee may have against Government.

17.7 Lessee and sublessees shall deliver or cause to be delivered promptly to Government a certificate of insurance evidencing the insurance required by this Lease and shall also deliver prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

18. LABOR PROVISION:

During the term of this Lease, Lessee agrees as follows:

18.1 Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Lessee shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation and selection for training, including apprenticeship. Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Government setting forth the provisions of this nondiscrimination clause.

18.1.1 Lessee shall, in all solicitations or advertisements for employees placed at Leased Premises by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

18.1.2 Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of Lessee's commitments under this equal opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

18.1.3 Lessee shall comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor.

18.1.4 Lessee shall furnish all information and reports required by Executive order 11246 of September 24, 1965, as amended by Executive Order 11375

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of October 13, 1967, and of the rules, regulations and relevant orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records and accounts by Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations and orders.

18.1.5 In the event of Lessee's noncompliance with the equal opportunity clause of this Lease or with any of said rules, regulations or orders, this lease may be canceled, terminated or suspended in whole or in part and Lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation or order of the Secretary of Labor, or otherwise provided by law.

18.1.6 Lessee will include the above provisions in every sublease unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee. Lessee will take such action with respect to any sublessee as Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Lessee becomes involved, or is threatened with litigation with sublessee as a result of such direction by Government, Lessee may request the United States to enter into such litigation to protect the interest of the United States.

18.2 This Lease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 3703) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and exceptions of said law.

18.2.1 Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this Lease to work in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 40 hours in such work week. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits or the basic hourly rate contained in the wage determination, whichever is greater.

18.2.2 In the event of any violation of the provision of Article 18.2.1, Lessee shall be liable to any affected employee for any amounts due, and to the United

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States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of Article 18.2.1 in the sum of ten \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard work week of 40 hours without payment of the overtime wages required by paragraph 18.2.1.

18.3 In connection with the performance of work required by this Lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

19. SUBMISSION OF NOTICES:

No notice, order, direction, determination, requirement, consent or approval under this Lease shall be of any effect unless made in writing and delivered to the addressees designated below. All correspondence, notices and claims concerning this Lease shall be directed to the addresses set out below or to such addresses as may from time to time be given by the parties. Such correspondence, notices and claims may be delivered by hand, express delivery, overnight courier or by prepaid registered or certified mail, return receipt requested. The individuals so designated shall be the representatives of the parties and the points of contact during the period of this Lease, unless otherwise indicated by written notice of an individual party to the Lease to each party to the Lease.

If to Government:

Real Estate Contracting Officer
Base Realignment and Closure Program Management Office
1230 Columbia Street, Suite 1100
San Diego, CA 92101-8571

If to Lessee:

Heritage Fields LLC
c/o Lennar Homes of California, Inc.
25 Enterprise
Aliso Viejo, California 92656
Attention: Robert Santos

20. AUDIT:

This Lease shall be subject to audit by any and all cognizant Government agencies. Lessee shall make available to such agencies for use in connection with such audits all records, which it maintains with respect to this Lease and copies of all reports, required to be filed hereunder. Government shall provide to Lessee reasonable

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documentation for all billings and assessments for costs incurred, and for any other Government demands for payment. In no event shall the provisions of this Article be construed to authorize or require the disclosure of documents protected from disclosure by the attorney-client privilege, or otherwise, the confidentiality of which is protected by state or federal law

21. AGREEMENT:

This Lease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, for or on behalf of either party shall be a part of this Lease. Should a conflict arise between the provisions of this Lease and any exhibit hereto, or any other agreement between Government and Lessee, the provisions of this Lease shall take precedence.

22. FAILURE TO INSIST ON COMPLIANCE:

The failure of Government to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any such terms, covenants or conditions and Lessee's obligations in respect to such future performance shall continue in full force and effect.

23. DISPUTES:

23.1 This lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act).

23.2 Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.

23.3 "Claim", as used in this clause, means a written demand or written assertion by Lessee or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Lessee seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph 23.4 below. A voucher, invoice or other routine request for payment that is not in dispute when submitted, is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

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23.4 A claim by Lessee shall be made in writing and submitted within six (6) years after accrual of the claim, to the Government for a written decision.

23.4.1 Lessee shall provide the certification specified in subparagraph 23.4.3 of this clause when submitting any claim:

- (a) Exceeding \$100,000; or
- (b) Regardless of the amount claimed, when using:
 - (1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or
 - (2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to use in accordance with the Administrative Dispute Resolution Act (ADRA).

23.4.2 the certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

23.4.3 The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Lessee believes Government is liable; and that I am duly authorized to certify the claim on behalf of Lessee."

23.4.4 The certification may be executed by any person duly authorized to bind Lessee with respect to the claim.

23.5 For Lessee claims of \$100,000 or less, the Government, must, if requested in writing by Lessee, render a decision within 60 calendar days of the request. For Lessee-certified claims over \$100,000, the Government, must, within 60 calendar days, decide the claim or notify Lessee of the date by which the decision will be made.

23.6 The Government's decision shall be final unless Lessee appeals or files a suit as provided in the Act.

23.7 At the time a claim by the Lessee is submitted to the Government or a claim by Government is presented to Lessee, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to employ in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Article 23.4.3 of this clause, and executed in accordance with paragraph 23.4.4 of this clause.

23.8 Government shall pay interest on the amount found due and unpaid by Government from (1) the date the Government receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the

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date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Government initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Government receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

23.9 Lessee shall proceed diligently with the performance of Lease, pending final resolution of any request for relief, claim, appeal or action arising under Lease, and comply with any decision of the Government.

24. COVENANT AGAINST CONTINGENT FEES:

Lessee warrants that no person or agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion, to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

25. LIENS:

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of Government, which at any time may arise or exist with respect to the Leased Property or materials or equipment furnished therefore, or any part thereof, and if the same shall not be promptly discharged by Lessee, or should Lessee or sublessee be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Lessee or any sublessee. Lessee and any sublessee shall be responsible for any costs incurred by Government in securing clear title to its property.

26. TAXES:

Lessee shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments and similar charges which, at any time during the term of this Lease, may be imposed upon Lessee with respect to Leased Premises. Title 10 United States Code, Section 2667(e) contains the consent of Congress to the Taxation of Lessee's interest in Leased Premises, whether or not the Leased Premises are in an area of exclusive federal jurisdiction. Should Congress consent to taxation of Government's interest in the property, this Lease will be renegotiated.

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**27. SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY,
AND TO CERTAIN POTENTIAL AIR NAVIGATION-RELATED RESTRICTIONS:**

27.1 This Lease is subject to all outstanding easements and rights-of-way for location of any type of facility over, across, through, in and upon Leased Premises or any portion thereof and to the right of Government to grant such additional easements and rights-of-way over, across, through, in and upon Leased Premises as it shall determine to be in the public interest; provided that any such additional easement or right-of-way shall be conditioned on the assumption by the grantee thereof of liability to Lessee for such damages as Lessee shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights there under. Such easements and rights of way shall include but not be limited to those for water, gas, electricity, telephone, sewer, pipelines, conduits and for any type of facility, including but not limited to those for communications, heating, cooling and power. There is hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over Leased Premises as shall be necessary for the performance of their duties with regard to such facilities.

27.2 The Government has constructed and installed roads, structures, facilities, pipelines, and conduits on Leased Premises. For purposes of this Article, these roads, structures, facilities, pipelines, and conduits shall be treated as if they were within easements and rights of way, and Lessee shall not interfere with or otherwise disturb such government-owned improvements without the prior written consent of the Government. Lessee shall protect or relocate them in a manner satisfactory to Government should such protection or relocation be required as a result of Lessee's use of Leased Premises.

27.3 The outstanding easements and rights of way referenced in paragraph 27.1 of this Lease shall be deemed to include, but shall not be limited to, the following:

27.3.1 The rights of the Orange County Water District (OCWD) and Irvine Ranch Water District (IRWD), including their officers, employees, agents, contractors, and subcontractors, to exercise rights of ingress and egress over, across, in, and upon Leased Premises, and such other easements, and/or rights of way as set forth in such paragraph 27.1, for purposes of access and rights-of-way for the construction, operation, and maintenance of the CERCLA Component of the Modified Irvine Desalter Project (CCMI) set forth in Paragraph VI.A of the "Settlement Agreement Among the Settling Federal Agencies (SFA), OCWD, and IRWD in Regard to Former Marine Corps Air Station (MCAS) El Toro dated September 1, 2001 ("Settlement Agreement"). The

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OCWD and IRWD and their officers, employees, agents, contractors, and subcontractors may exercise rights of ingress and egress, and may conduct activities involving construction, operation, maintenance, repair, or replacement of the CCMI upon and beneath the Leased Premises without providing prior notice to Lessee.

27.3.2 The rights of OCWD and IRWD, including their officers, employees, agents, contractors, and subcontractors, to exercise rights of ingress and egress over, across, in and upon Leased Premises, and such other easements, and/or rights of way as set forth in such paragraph 27.1, upon reasonable notice, and so as not to unreasonably interfere with Lessee's operations or other use of the Leased Premises, to take soil samples for the purpose of confirming that no such current operations or use have resulted in the release of hazardous substances that could impact the CCMI treatment system.

28. ADMINISTRATION:

Except as otherwise provided for under this Lease, Government shall, under the direction of the Base Realignment and Closure Program Management Office, have complete charge of the administration of this Lease, and shall exercise full supervision and general direction thereof insofar as the interests of Government are affected.

29. SURRENDER:

In the event the lease is terminated, Lessee shall quietly and peacefully remove itself and its personal property and trade fixtures from Leased Premises and surrender the possession thereof to Government. Government may, in its discretion, declare any personal property and trade fixtures that have not been removed from Leased Premises upon termination provided for above, as abandoned property upon an additional 30 calendar days notice.

30. INTEREST:

30.1 Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Lessee to Government under this Lease (net any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds rate published by the Secretary of Treasury pursuant to 31 U.S.C. 3717 (Debt Collection Act of 1982).

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30.1.1 Amounts shall be due upon the earliest of:

30.1.1(a) the date fixed pursuant to this Lease,

30.1.1(b) the date of the first written demand for payment,
Consistent with this Lease, including demand consequent upon default termination,

30.1.1(c) the date of transmittal by Government to Lessee of a
proposed supplemental agreement to confirm completed negotiations fixing the amount,

30.1.1(d) if this Lease provides for revision of prices, the date of
written notice to Lessee stating the amount of refund payable in connection with a
pricing proposal or in connection with a negotiated pricing agreement not confirmed by
Lease supplement.

31. AVAILABILITY OF FUNDS:

The Government's obligations under this Lease are subject to the availability of
funds appropriated for such purposes. Nothing in this Lease shall be interpreted to
require obligations or payments by Government that would be in violation of the Anti-
Deficiency Act (31 USC 1341).

32. APPLICABLE RULES AND REGULATIONS:

Lessee and any Sublessees shall comply with all Federal, State, and local laws,
regulations, and standards that are applicable or may become applicable to Lessee's or
Sublessee's activities on the Leased Premises. These include, but are not limited to,
laws and regulations regarding the environment, construction of facilities, health, safety,
food service, water supply, sanitation, use of pesticides, and licenses or permits to do
business. Lessee and any Sublessee are responsible for obtaining and paying for
permits required for its operations under the Lease.

33. QUIET POSSESSION:

Government covenants and agrees that Lessee, upon paying any charges
hereunder provided for and observing and keeping all covenants, agreements, and
conditions of this Lease on its part to be observed and kept, shall quietly have and enjoy
Leased Premises during the term of this Lease without hindrance or molestation by
anyone claiming by or through Government, subject, however, to the exceptions,
reservations and conditions of this Lease.

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34. GOVERNMENT APPROVAL:

Whenever this Lease requires Government approval or consent, such approval or consent shall not be unreasonably withheld or delayed.

35. EXHIBITS:

The following exhibits are attached hereto and incorporated by reference herein:

- A. Description of the Leased Premises
- B. Executive Summary of Environmental Baseline Survey
- C. Finding of Suitability to Lease
- D. Work Exempt from Government Consent
- E. Facilities Containing FAD ACM or Requiring ACM Survey Prior to Use or Occupancy
- F. Portion of Leased Premises Reserved for Government Use

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IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth
below duly executed this Lease as of the day and year first above written.

THE UNITED STATES OF AMERICA
Acting by and through the Department of the Navy

By: 
CHRISTOPHER E. HASKETT
Real Estate Contracting Officer
Base Realignment & Closure Office

Date: July 11, 2005

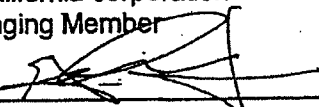
HERITAGE FIELDS LLC,
A DELAWARE LIMITED LIABILITY COMPANY

By: LENNAR-LNR HERITAGE FIELDS, LLC
A Delaware limited liability company

Its: Administrative Member

By: LENNAR HOMES OF CALIFORNIA, INC
A California corporation

Its: Managing Member

By: 
Name: GRAHAM JONES
Its: VICE PRES

Date: 7/11/05

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Exhibit "A"

**EXHIBIT "A"
Description of "Property"**

That certain real property situated in the County of Orange, State of California, including the following parcels, described attached hereto and made a part hereof; excluding however, all real property described as Home 1 and Home 5

Included: Parcel III-B
Parcel III-C
Parcel III-D

Excluded: Home 1
Home 5

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LEGAL DESCRIPTION

PARCEL III-B

In the unincorporated territory of the County of Orange, State of California, being a portion of Lots 279, 280, 285 and 286 of Block 140 and Lots 281 and 284 of Block 155 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Beginning at the southwesterly terminus of that certain course in the northwesterly boundary of said property described as "North 40°39'31" East 5230.34 feet" as shown on sheet 4 of said Record of Survey; thence North 40°39'31" East 3072.31 feet along said line; thence leaving said line South 49°20'29" East 799.19 feet; thence North 40°39'31" East 88.33 feet; thence South 49°20'29" East 1185.57 feet; thence North 40°39'31" East 64.14 feet; thence South 47°28'22" East 501.80 feet to the beginning of a non-tangent curve concave northeasterly having a radius of 1000.00 feet, a radial line to said beginning of curve bears North 88°02'31" West; thence southeasterly along said curve 904.32 feet through a central angle of 51°48'49"; thence South 49°51'20" East 281.26 feet; thence North 42°16'45" East 235.22 feet to the beginning of a curve concave southeasterly having a radius 2500.00 feet; thence northeasterly along said curve 101.88 feet through a central angle of 2°20'06"; thence South 47°28'22" East 2361.69 feet; thence South 68°59'53" East 342.12 feet; thence South 0°57'09" West 105.32 feet to the beginning of a curve concave easterly having a radius of 120.00 feet; thence southerly and southeasterly along said curve 89.47 feet through a central angle 42°43'00"; thence South 22°33'33" West 432.82 feet; thence South 17°00'09" East 565.15 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 1200.00 feet a radial line to said beginning of curve bears South 64°10'20" East; thence southwesterly along said curve 292.75 feet through a central curve of 13°58'40"; thence South 39°48'20" West 226.79 feet to the beginning of a curve concave southeasterly having a radius of 900.00 feet; thence southerly along said

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1 curve 605.19 feet through a central angle of 38°31'40"; thence South 1°16'40" West
2 129.84 feet to the beginning of a non-tangent curve concave southerly having a radius of
3 1600.00 feet, a radial line to said beginning of said curve bears North 1°09'46" East;
4 thence easterly along said curve 201.16 feet through a central angle of 7°12'12"; thence
5 South 38°25'50" West 251.55 feet; thence South 8°02'01" West 336.30 feet; thence
6 South 39°18'52" West 783.87 feet to the southwesterly boundary of said property; thence
7 North 49°20'21" West 7709.08 feet along said property to the **Point of Beginning**.

8
9 Containing 512.600 acres (22,328,821 square feet), more or less

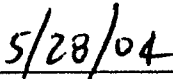
10
11 Subject to covenants, conditions and restrictions, rights-of-way and easements of record,
12 if any.

13
14 Refer to the exhibit attached hereto and made a part hereof.

15
16 This real property description has been prepared by me or under my direction, in
17 conformance with the Professional Land Surveyor's Act.

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20 John C. Hovland, P.L.S. 7365

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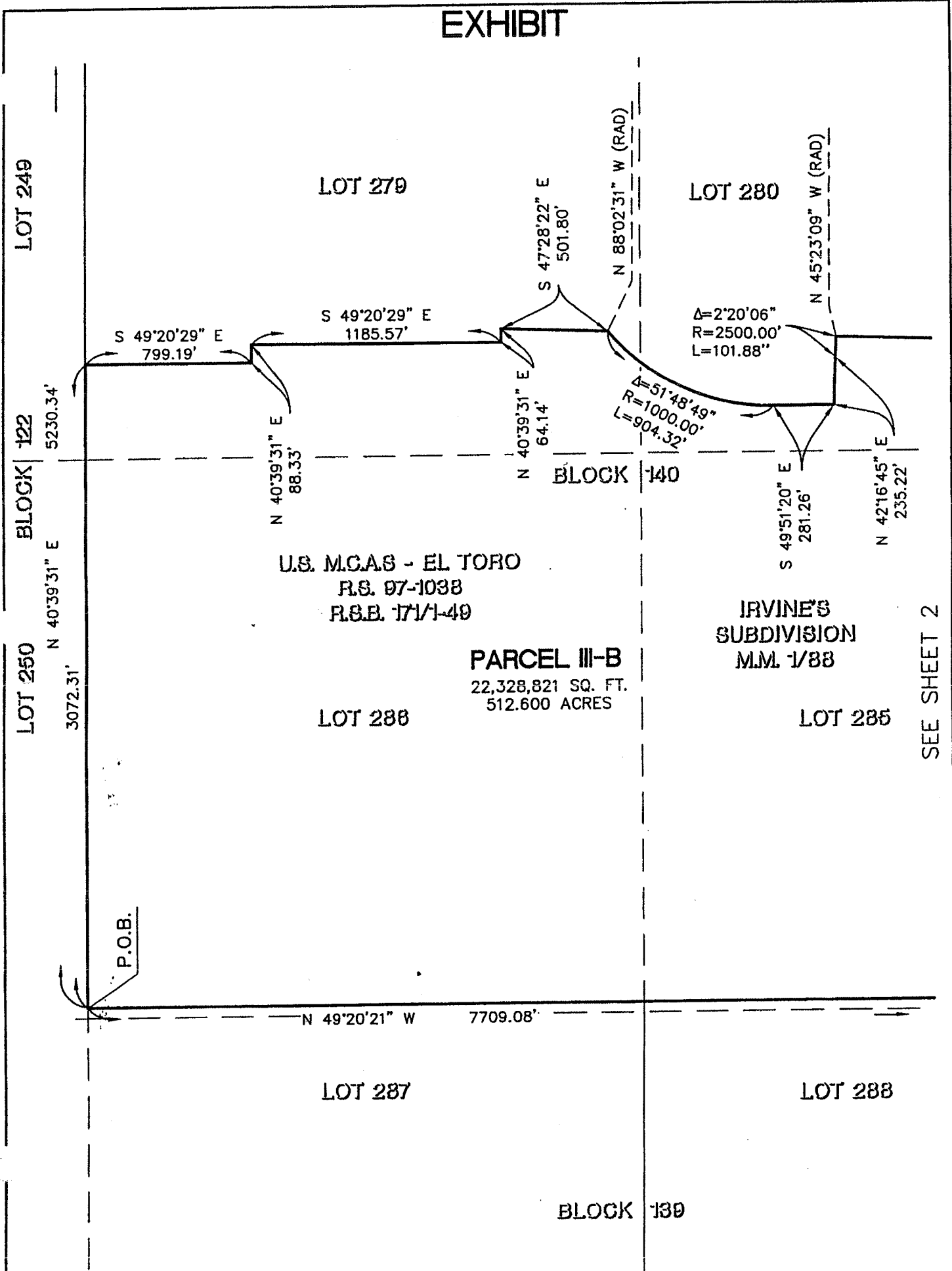
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23 Expires 12/13/05



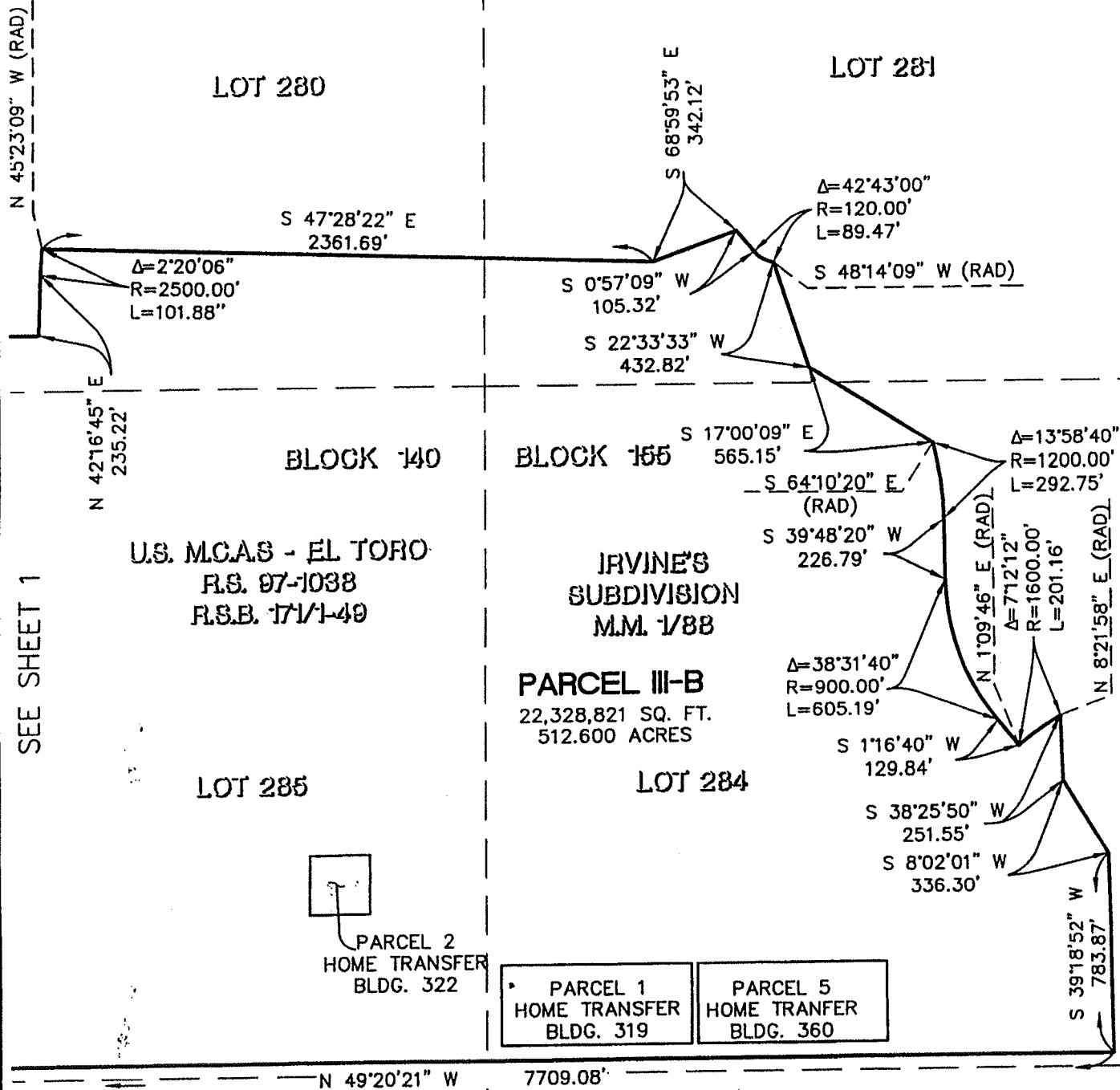
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30 REVIEWED BY CADASTRAL - RWS

EXHIBIT



SEE SHEET 2

EXHIBIT



SEE SHEET 1

PSOMAS

LEGAL DESCRIPTION

PARCEL III-C

In the City of Irvine, County of Orange, State of California, being a portion of Lot 279 of Block 140 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Commencing at the southeasterly terminus of that certain course in the northwesterly boundary of said property described as "North 49°19'46" West 400.00 feet" as shown on sheet 4 of said Record of Survey; thence along said northwesterly line the following two courses:

1. South 40°36'53" West 217.80 feet;
2. South 40°39'31" West 1414.81 feet;

thence leaving said northwesterly line South 49°20'29" East 1849.04 feet to the **True Point of Beginning**; thence South 49°14'49" East 240.39 feet; thence South 40°45'11" West 147.68 feet; thence North 49°14'49" West 240.39 feet; thence North 40°45'11" East 147.68 feet to the **True Point of Beginning**.

Containing 0.815 acres (35,500 square feet), more or less

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

As shown on the exhibit attached hereto and made a part hereof.

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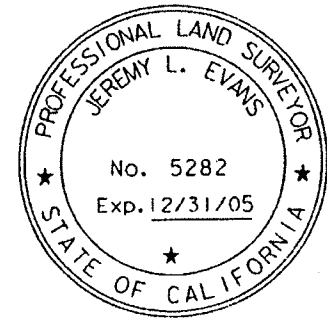
This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyor's Act.

Jeremy L Evans

2-5-2005

Jeremy L. Evans, P.L.S. 5282

Date



REVIEWED BY CADASTRAL — RWS

EXHIBIT

U.S. M.C.A.S - EL TORO
R.S. 97-1038
R.S.B. 171/1-49

N 40°35'49" E 5281.99'

LOT 242

BLOCK 121

BLOCK 141

LOT 278

P.O.C.

N 40°36'53" E
217.80'

S 40°36'53" W
217.80'

N 49°19'46" W
913.00'

TRABUCO ROAD

N 49°19'46" W
400.00'

IRVINE'S SUBDIVISION
M.M. 1/88

S 40°39'31" W 5230.34'
1414.84'

LOT 249

BLOCK 122

LOT 279

PARCEL III-C

35,500 SQ. FT.
0.815 ACRES

T.P.O.B.

S 49°20'29" E 1849.04'

N 40°45'11" E
147.68'

S 49°14'49" E
240.39'

N 49°14'49" W
240.39'

S 40°45'11" W
147.68'



PSOMAS

LEGAL DESCRIPTION

PARCEL III-D

In the City of Irvine, County of Orange, State of California, being a portion of Lot 279 of Block 140 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Commencing at the southeasterly terminus of that certain course in the northwesterly boundary of said property described as "North 49°19'46" West 400.00 feet" as shown on sheet 4 of said Record of Survey; thence along said northwesterly line the following two courses:

1. South 40°36'53" West 217.80 feet;
2. South 40°39'31" West 1732.63 feet;

thence leaving said northwesterly line South 49°20'29" East 1492.83 feet to the **True Point of Beginning**; thence South 49°14'49" East 238.45 feet; thence North 40°45'11" East 128.81 feet; thence South 49°14'49" East 278.65 feet; thence South 40°45'11" West 401.68 feet; thence North 47°28'22" West 24.73 feet; thence South 40°39'31" West 64.14 feet; thence North 49°20'29" West 492.48 feet; thence North 40°45'11" East 337.05 feet to the **True Point of Beginning**.

Containing 4.784 acres (208,389 square feet), more or less

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

As shown on the exhibit attached hereto and made a part hereof.

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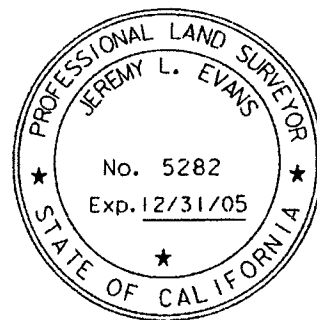
This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyor's Act.

Jeremy L. Evans

2-4-2005

Jeremy L. Evans P.L.S. 5282

Date



REVIEWED BY CADASTRAL - RWS

EXHIBIT

U.S. M.C.A.S - EL TORO
R.S. 97-1038
R.S.B. 171/1-49

N 40°35'49" E 5281.99'

LOT 242

BLOCK 121

BLOCK 141

LOT 278

P.O.C.

N 40°36'53" E
217.80'

S 40°36'53" W
217.80'

N 49°19'46" W
913.00'

TRABUCO ROAD

N 49°19'46" W
400.00'

IRVINE'S SUBDIVISION
M.M. 1/88

LOT 249

BLOCK 122

S 40°39'31" W 5230.34'
1732.63'

LOT 279

BLOCK 140

PARCEL III-D

208,389 SQ. FT.
4.784 ACRES

N 40°45'11" E
128.81'

S 49°14'49" E
278.65'

S 49°14'49" E
238.45'

S 49°20'29" E 1492.83'

T.P.O.B.

N 40°45'11" E
337.05'

N 47°28'22" W
24.73'

S 40°45'11" W
401.68'

PARCEL III-B

N 49°20'29" W
492.48'

S 40°39'31" W
64.14'

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LEGAL DESCRIPTION

EXHIBIT "A"

1
2
3 **HOME 1 (Transfer, Bldg 319)**

4 In the City of Irvine, County of Orange, State of California, being a portion of Lot 284 of
5 Block 155 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of
6 Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro
7 property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49,
8 inclusive, of Records of Survey, records of said County, described as follows:

9
10 Commencing at a point in that certain course in the U.S. M.C.A.S. El Toro boundary line
11 as shown on sheet 5 of said Record of Survey 97-1038, having a bearing and distance of
12 "North 49°20'21" West 10570.18 feet", said point lying distant thereon
13 North 49°20'21" West 4504.11 from the southeasterly terminus of said course, said point
14 being the **True Point of Beginning**; thence continuing along said course
15 North 49°20'21" West 730.00 feet; thence North 40°31'30" East 418.01 feet; thence
16 South 49°20'00" East 264.56 feet; thence South 40°40'00" West 50.07 feet; thence
17 South 49°20'00" East 465.56 feet; thence South 40°31'30" West 367.87 feet to the **True**
18 **Point of Beginning**.

19
20 Containing 6.469 acres, more or less.

21
22 Subject to covenants, conditions, restrictions, rights-of-way and easements of record, if
23 any.

24
25 Refer to Exhibit "B" attached hereto and made a part hereof.
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PSOMAS

1 This real property description has been prepared by me or under my direction, in
2 conformance with the Professional Land Surveyors' Act.

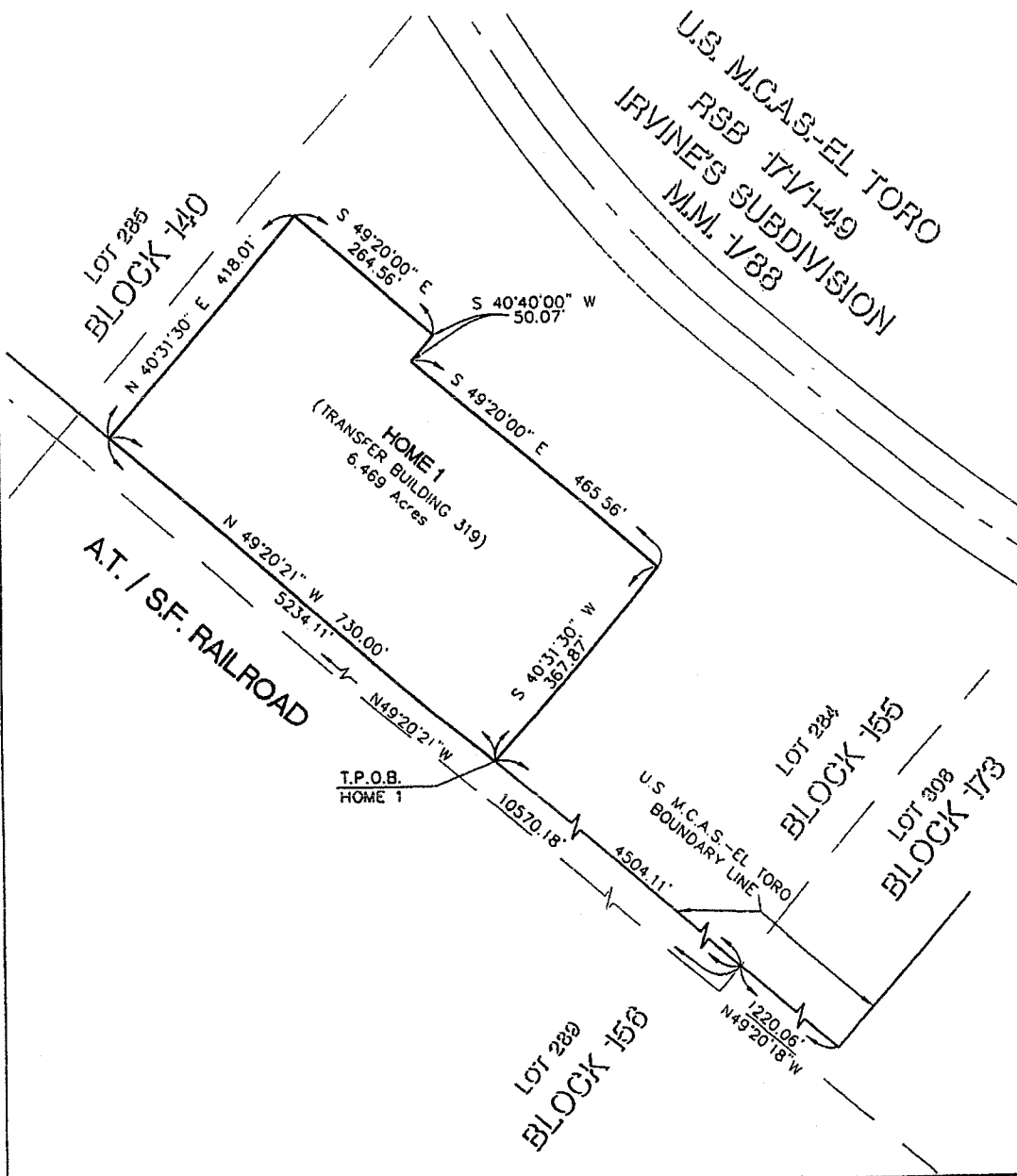
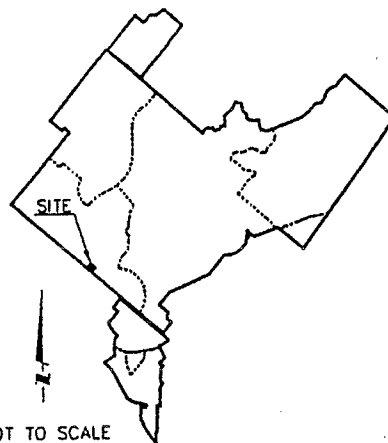
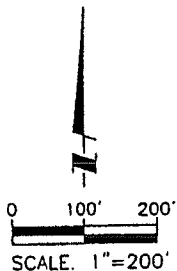
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4 Kari J. Launen
5 Kari J. Launen, PLS 5679
6 PSOMAS

MAY. 11. 2005
Date



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EXHIBIT "B"



DESCRIPTION: That portion of Lot 284 of Block 155, in the City of Irvine of the County of Orange, State of California, as shown on Irvine's Subdivision, filed in Book 1 Page 88, M.M.	SHEET 1 OF 1		SCALE 1" = 200'
	PSOMAS 3187 Red Hill Avenue Suite 708 Costa Mesa, CA 92626 (714) 751-7373 Fax (714) 545-8883		DRAFTED ROM CHECKED P.J.F. DATE 05/09/05 JOB NUMBER 2LEND504 TASK 3
MCAS-EL TORO	REV 1 04/28/05 REV 2 05/09/05		

PLANNING DEPARTMENT 18 25 21' 1/2" (1:250) (2005) 3187 RED HILL AVENUE, COSTA MESA, CA 92626

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LEGAL DESCRIPTION

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HOME 5 (Transfer, Bldg 360)

In the unincorporated territory of the County of Orange, State of California, being a portion of Lot 284 of Block 155 of Irvine's Subdivision, as shown on the map filed in Book 1, Page 88 of Miscellaneous Maps, records of said County, lying within the U.S. M.C.A.S. El Toro property, as shown on Record of Survey 97-1038, filed in Book 171, Pages 1 through 49, inclusive, of Records of Survey, records of said County, described as follows:

Commencing at a point in that certain course in the U.S. M.C.A.S. El Toro boundary line as shown on sheet 5 of said Record of Survey 97-1038, having a bearing and distance of "North 49°20'21" West 10570.18 feet", said point lying distant thereon North 49°20'21" West 3750.65 from the southeasterly terminus of said course; thence North 40°39'39" East 54.73 feet to the **True Point of Beginning**; thence North 49°14'50" West 730.01 feet; thence North 40°26'50" East 312.00 feet; thence South 49°14'50" East 730.01 feet; thence South 40°26'50" West 312.00 feet to the **True Point of Beginning**.

Containing 5.23 acres, more or less.

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

Refer to the exhibit attached hereto and made a part hereof.

This real property description has been prepared by me or under my direction, in conformance with the Professional Land Surveyors' Act.

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Jeremy L Evans

9-9-03

Jeremy Evans, P.L.S. 5282

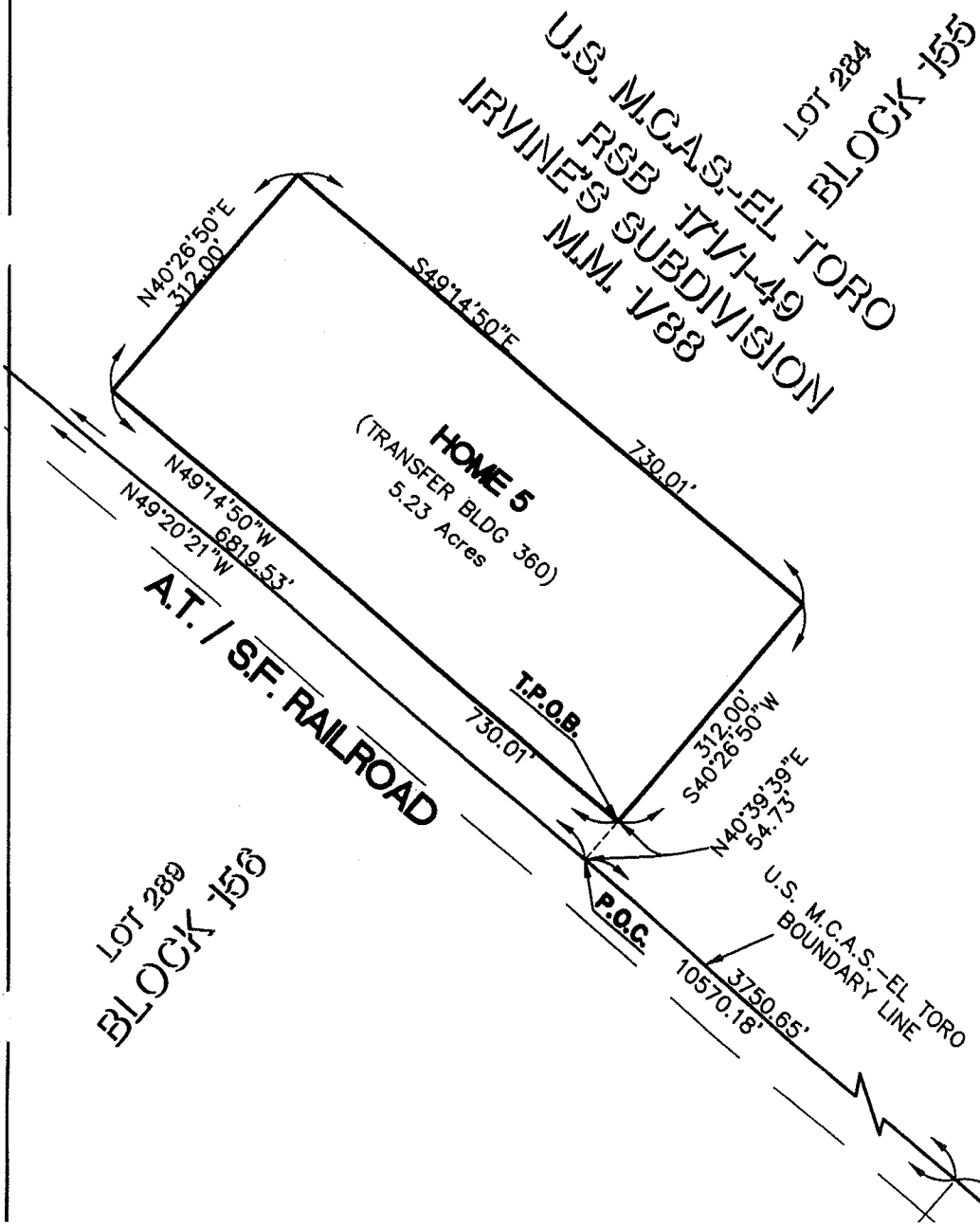
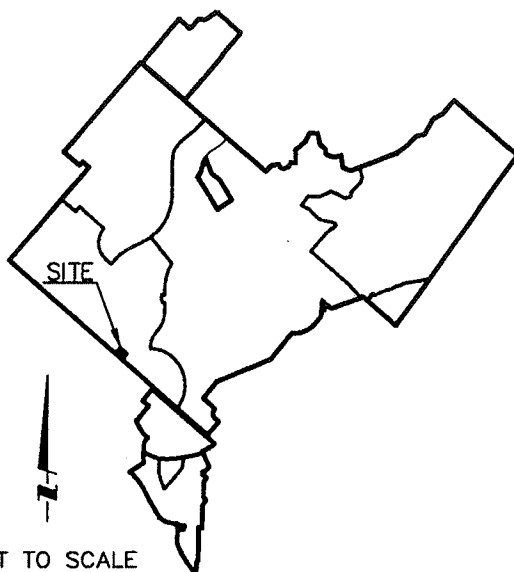
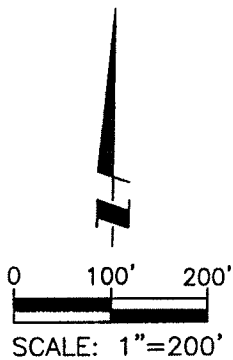
Date

License Expires 12/31/03



REVIEWED BY CADASTRAL - RWS

EXHIBIT



EXECUTIVE SUMMARY

Background

This environmental baseline survey (EBS) for former Marine Corps Air Station (MCAS) El Toro, California, has been prepared for the Department of the Navy (DON), Southwest Division, Naval Facilities Engineering Command (SWDIV), as authorized by the Pacific Division, Naval Facilities Engineering Command (PACNAVFACENGCOM), under the Comprehensive Long-Term Environmental Action Navy (CLEAN II) Program, Contract Number N62742-94-D-0048, Contract Task Order (CTO) 104.

The EBS has been prepared to document the environmental condition of property at former MCAS El Toro and adjacent property resulting from the storage, release, treatment, and disposal of hazardous substances and petroleum products and their derivatives over the station's history. The EBS will establish a baseline for use by the DON in making decisions concerning property transactions. The intended reuse of Former MCAS El Toro is primarily recreational (Great Park) with some educational and commercial/light industrial development. Future use of the installation for aviation-related purposes is not anticipated. The preparation of an EBS is required by Department of Defense (DoD) policy before any property can be sold, leased, transferred, or acquired. The EBS can be used by the DON to assist in determining what remedial-type obligations, if any, the DON would retain under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S. Code (U.S.C.), Section 120(h) subsequent to transfer of the property. DON will utilize the EBS to determine, e.g., whether a given parcel can be or has been properly identified as "uncontaminated" in accordance with 42 U.S.C. Section 120(h)(4), or whether the Government can issue a covenant that all necessary remedial action has been taken with respect to a given parcel in accordance with 42 U.S.C. Section 120(h)(3). Guidance is also provided in the 1997 Base Reuse and Implementation Manual (BRIM) Sections F23 to F26 and F29 to F37.

The Community Environmental Response Facilitation Act (CERFA) amends Section 120(h) of CERCLA, and was enacted to facilitate the rapid return of uncontaminated properties to local communities during the Base Realignment and Closure (BRAC) process. CERFA provides a mechanism for identifying and documenting uncontaminated real property, or parcels thereof, that are suitable for transfer and reuse. Uncontaminated property refers to real property on which no hazardous substances and no petroleum products or their derivatives are known to have been released or disposed, including no migration of these substances from adjacent areas. In order to identify uncontaminated properties on military installations undergoing closure or realignment, an EBS is conducted and the results are documented in a report. DON received regulator concurrence on uncontaminated property identified and documented in the 1995 EBS and the Final Community Environmental Response Facilitation Act Report dated April 1, 1995, as required and defined under CERCLA 120(h)(4) (SWDIV 1995). The property now considered Parcel IV in its entirety was found to be uncontaminated in 1995, as well as other portions of Parcels I, II, III and V. This EBS incorporates the CERFA findings from the 1995 EBS and Final CERFA Report.

The findings of this EBS are based on existing environmental information related to past and present release or disposal of hazardous substances and petroleum products on the station. Furthermore, this EBS addresses cleanup-related comments received on the Draft Final and Final Environmental Impact Statement (EIS) for Disposal and Reuse of MCAS El Toro. These comments related to the cleanup program were responded to in the Final EIS (March 2002, Vol. 2), and were forwarded to the Base Environmental Coordinator (BEC) for coordination. Comments that are further addressed by this EBS include L12-13, L12-18, L12-21, L12-23, O1-8, O7-1, O7-2, O7-4, O11-10, O11-130, O11-283, O11-292, C2-2, C25-1, C41-2, C58-16 through -20, C58-24, C104-4, C105-5, C110-8, T2-2, T7-7, and T46-5 (see Appendix D).

This EBS is being prepared as an update to the April 1995 EBS prepared for former MCAS El Toro in support of upcoming property transfer actions. The report updates the status of environmental factors and locations of concern (LOCs) identified in the 1995 EBS and presents information regarding new potential release locations (PRLs) identified since the 1995 EBS was submitted. Additionally, all buildings situated on former MCAS El Toro were visually inspected as part of this EBS, since the station was operational and could not facilitate the visual inspection of buildings and associated operations during the 1995 EBS. The findings of this EBS have been used to determine the Environmental Condition of Property (ECP) and assign Area Type categories to property to determine whether it is suitable for transfer. This report is intended to serve as a reference document for the DON to determine the existing and future environmental suitability of the property for transfer.

This EBS is based on existing environmental information related to the past and present storage, release, treatment, or disposal of hazardous substances or petroleum products on the installation. This EBS includes new information and data from studies, surveys, and investigations conducted since the publication of the 1995 EBS. Information contained within the 1995 EBS was verified, expanded, and/or updated, as necessary, within this document. The information presented in this EBS is complete and accurate as of March 2003. However, as investigation and remediation efforts under the Installation Restoration Program (IRP) and other environmental programs continue, the status of facilities and sites at former MCAS El Toro can be expected to change.

Boundaries of the Survey Area

Former MCAS El Toro is situated in south-central Orange County, California. The majority of the station is within an unincorporated area of Orange County; however, property within the south portion of the station is within the city of Irvine. The station, which currently comprises approximately 3,717 acres, is bordered on the east and southeast by the city of Lake Forest, to the southeast, south, and southwest by the city of Irvine, and to the west, north, and northeast by unincorporated portions of Orange County. Approximately 1,000 acres of the former station's maximum acreage (4,710 acres) have been transferred or are pending transfer and are not addressed within this EBS. In 1998, the Bake Parkway/Interstate 5 public highway expansion project resulted in the transfer of approximately 23 acres of property at the southeast corner of the station to the California Department of Transportation (Caltrans). In 2001, 896.7 acres of property in the northeast portion of the station were transferred to the Federal Aviation Administration (FAA). As these properties are no longer Navy property, they are not included within the survey area addressed by this EBS. In addition, 73.7 acres in the northeast portion of the station are pending transfer to the Federal Bureau of Investigation (FBI). All necessary environmental and property transfer documentation for the FBI transfer has been completed. This acreage is not included within the total station acreage and is not included within the study area addressed by this EBS. Based upon property transfers that have occurred and are pending, the amount of property addressed within this EBS is 3,717 acres.

Content of the Environmental Baseline Survey Report

This EBS is based on information obtained from the 1995 EBS and through a records search, interviews, and visual site inspections (VSIs) conducted in April-May 2002. The records search included a review of available Navy and other agency records within the station files, including environmental restoration and compliance reports, audits, surveys, and inspection reports; an analysis of aerial photographs; and a review of recorded chain-of-title documents for the property. Interviews with caretaker employees and visual and physical inspections of the station property and facilities were also conducted. Former employees were interviewed in support of previous

investigations; information from those reports has been incorporated into this EBS update, as appropriate.

A recorded chain-of-title search was conducted for the 1995 EBS for on-base parcels to determine prior ownership or uses that could reasonably have contributed to an environmental concern. The title search reviewed DoD acquisition of on-station parcels covering a period of at least 60 years (i.e., 1934 to 1994). Prior to government acquisition of the property, the area was primarily used for agricultural purposes. A review of the data obtained from the title search did not identify any areas of environmental concern related to property use prior to government acquisition.

This EBS also includes an assessment of the environmental condition of off-station properties immediately adjacent (contiguous) to or relatively near the station that could pose environmental concern and/or affect the subject property. Visual inspections of adjacent off-station properties were conducted from station property or public roads. Environmental databases maintained by federal and state agencies were also searched to identify sites of concern on adjacent properties.

Based on an analysis of the available data, LOCs were assigned ECP Area Type categories. Depending on the Area Types of the LOCs, property within former MCAS El Toro was classified into one of seven ECP Area Type categories:

- *ECP Area Type 1* - Areas where no release or disposal of hazardous substances or petroleum products has occurred (including no migration of these substances from adjacent areas).
- *ECP Area Type 2* - Areas where only release or disposal of petroleum products has occurred.
- *ECP Area Type 3* - Areas where release, disposal, and/or migration of hazardous substances have occurred, but at concentrations that do not require a removal or remedial action.
- *ECP Area Type 4* - Areas where release, disposal, and/or migration of hazardous substances have occurred, and all remedial actions necessary to protect human health and the environment have been taken.
- *ECP Area Type 5* - Areas where release, disposal, and/or migration of hazardous substances have occurred, removal and/or remedial actions are under way, but all required remedial actions have not yet been taken.
- *ECP Area Type 6* - Areas where release, disposal, and/or migration of hazardous substances have occurred, but required response actions have not yet been implemented.
- *ECP Area Type 7* - Areas that are unevaluated or require additional evaluation.

Category 2 addresses release or disposal of petroleum products only. A release of petroleum products would not prohibit the affected property's transfer under CERCLA Section 120(h). ECP Area Type 2 property has been divided into five subcategories in order to further define petroleum product releases. Area Types 2a through 2e correspond to Area Types 3 through 7, except the Area Type 2 definitions refer to petroleum products rather than hazardous substances. All Area Type 2 property is suitable for transfer regardless of subcategories. Category 2 definitions are as follows:

- *ECP Area Type 2a* - Facilities where release, disposal, and/or migration of petroleum products have occurred, but at concentrations that do not require a response action.
- *ECP Area Type 2b* - Facilities where release, disposal, and/or migration of petroleum products have occurred, and all response actions to protect human health and the environment have been taken.

- *ECP Area Type 2c* - Facilities where release, disposal, and/or migration of petroleum products have occurred, and response actions are underway, but all required response actions have not been completed.
- *ECP Area Type 2d* - Facilities where release, disposal, and/or migration of petroleum products have occurred, but required response actions have not yet been implemented.
- *ECP Area Type 2e* - Facilities that have never been evaluated or require additional investigation. Category 2e facilities include areas that may have had a release of petroleum products, but have had no sampling or field screening and require such investigations to confirm that a release has or has not occurred.

Areas where no past or present release or disposal of hazardous substances or petroleum products and their derivatives were identified are considered to be Category 1. Category 2 designations were assigned based on evidence of releases of petroleum products. Category 3 designations were based upon existing information (e.g., personnel interviews, VSIs, written records, reports) to document that contaminant levels, if present, are below action levels. Areas where known or suspected contamination has occurred were classified as Category 4 through 7 properties based upon existing documentation or VSIs.

Pursuant to U.S. Environmental Protection Agency (EPA) and DoD guidance, this EBS identifies property as uncontaminated, even if some limited quantity of hazardous substances or petroleum products were released or disposed in cases where the available information indicates that such release or disposal poses no threat to human health or the environment. Examples, as provided in the EPA guidance include usage of common household chemicals and storage of heating fuel in base housing areas, incidental releases of petroleum products on roadways and parking lots, and the routine licensed application of pesticides.

Property designated as Area Types 1 through 4 is suitable for property transfer. In general, a parcel that contains land that is deemed "unsuitable for transfer" (i.e., Area Types 5 and 6) may still be eligible for early transfer or lease (would require deferral of CERCLA covenant), provided that the intended future use is protective of human health and the environment, and with specified recommended restrictions on use of the property to protect human health and the environment or the environmental restoration process. Area Type 7 sites require further evaluation prior to determining suitability to transfer. Area types for property presented in this EBS may have changed since the designation in the 1995 EBS based upon the identification of new LOCs or based upon ongoing or completed response actions that have occurred since the 1995 EBS was published. All sites with hazardous substance or potential hazardous substance releases, disposal, and/or migration should be considered Area Types 5 through 7 until concurrence with a no further action finding is received.

Findings of the Environmental Baseline Survey Report

The following types of LOCs (with the exception of PRLs which are not considered LOCs) have been identified and have been assigned an ECP Area Type in order to determine the overall property categorization and suitability to transfer at former MCAS El Toro. The number of LOCs requiring no further action and the number of LOCs requiring further evaluation, implementation of response actions, or completion of ongoing response action are presented below:

- A total of 76 new PRLs were identified as a result of this 2003 EBS. Of these 76 sites, 15 sites require no further action and 61 sites require further evaluation for potential releases of waste to the environment. The one remaining site (the Airfield Operations Area/Runways) has been identified with a discrete "carve-out" area requiring further evaluation and the remaining portions of this site require no further action.

- A total of 92 Resource Conservation and Recovery Act (RCRA) Facility Assessment (RFA) sites are addressed within this EBS. Of these 92 RFA sites, 76 sites require no further action and 16 sites require further evaluation, implementation of response actions, or completion of ongoing response actions.
- A total of 64 temporary accumulation area (TAA) sites are addressed within this EBS. Of these 64 TAA sites, 19 of the sites require no further action and 45 sites require further evaluation, implementation of response actions, or completion of ongoing response actions.
- A total of 123 aerial photograph features/anomalies (APHO) sites are addressed within this EBS. Of these 123 APHO sites, 90 of the sites require no further action and 33 sites require further evaluation, implementation of response actions, or completion of ongoing response actions.
- A total of 21 IRP sites are addressed within this EBS. Of these 21 sites, 13 sites require no further action and 7 sites require implementation and completion of response actions. The remaining one site, IRP 24 requires no further action for the vadose zone portion and further action for the shallow groundwater unit.
- A total of 39 aboveground storage tank (AST) sites are addressed within this EBS. Of these 39 AST sites, 36 are suitable for transfer and 3 sites require further evaluation for releases of petroleum products and/or hazardous substances.
- A total of 401 underground storage tank (UST) sites are addressed within this EBS. Of these 401 UST sites, 356 are suitable for transfer and 45 sites require further evaluation or completion of response actions for releases of petroleum products or hazardous substances.
- A total of 55 oil/water separator (OWS) sites are addressed within this EBS. Of these 55 OWS sites, 44 of the sites require no further action and 11 sites require further evaluation for releases of hazardous substances or completion of ongoing response actions.
- A total of 29 wash rack sites are addressed within this EBS. Of these 29 wash rack sites, 26 sites require no further action and 3 sites require further evaluation, implementation of response actions, or completion of ongoing response actions.
- Eight silver recovery units (SRU) sites are addressed within this EBS. These eight sites are considered PRLs; of these eight sites, one requires no further action and seven require further evaluation to determine whether releases of hazardous substances have occurred.
- A total of 130 polychlorinated biphenyl (PCB) transformer locations are addressed within this EBS. These 130 transformer locations require no further action. In addition, six areas have been identified as PCB transformer/equipment storage areas or areas where PCBs have been detected. Of these six areas, two areas require no further action and four require further actions.
- A total of 18 miscellaneous LOCs are addressed within this EBS. Of these 18 miscellaneous LOCs, 12 require no further action and 6 require further evaluation for releases of hazardous substances or petroleum products.

Table ES-1 summarizes the types, number, and status of LOCs identified at former MCAS El Toro.

Based on the findings of this EBS, it has been determined that approximately 78 percent of the 3,717 acres of base property is environmentally suitable for transfer at this time. Figure ES-2 depicts the transferable and non-transferable property within former MCAS El Toro. Ongoing and future environmental investigations and response actions will cause the amount of property suitable for transfer to increase in the future.

Table ES-1: Location of Concern Status Table^(a)

STATUS	USTs	ASTs	OWSs	APHOs	SWMU (93)/ TAAs (64)	Other MSC	PCB XFRMRs	IRP SITES	PRLs
TOTAL (1,022)	404	39	56	124	157	18	124	24	76
NFA (787)	356	36	45	90	96 ^(b)	12	124	13	15
% Complete (78)	88	92	79	73	61	67	100	54	20
In Review (36)	13	2	2	0	17	2	0	0	0
In Progress (199)	35	1	9	34	44	4	0	11	61

Notes: ^a The total number of LOCs listed include the following number of LOCs within parcels that have already been transferred: USTs -3; OWS-1; APHO-1; SWMU-1; IRP Sites -3. Therefore, the total number of LOCs addressed in this EBS is lower. SRUs are listed under MSC (3) and PRLs (8), and are counted in both categories due to PRLs addressing the entire facility.

^b Includes 3 SWMUs (104, 105, & 106) with NFA determinations pending results of radiological survey.

APHO = aerial photograph features/anomalies

AST = aboveground storage tank

IRP = Installation Restoration Program

MSC = miscellaneous

NFA = no further action

OWS = oil/water separator

PCB = polychlorinated biphenyl

PRL = Potential Release Location

SWMU = solid waste management unit

TAA = temporary accumulation area

UST = underground storage tank

XFRMR = transformer

Source: United States Marine Corps (USMC) 2003.

**Former Marine Corps Air Station El Toro
Lease in Furtherance of Conveyance**

Exhibit "C"

MCAS EL TORO LIFO – Finding of Suitability to Lease

EXHIBIT D

WORK EXEMPT FROM GOVERNMENT CONSENT

All work must be in accordance with Paragraph 13 of this Lease and the Finding of Suitability to Lease (FOSL). In the event of any conflict between this Exhibit D and Paragraph 13 of this Lease or the FOSL, the language of Paragraph 13 and/or the FOSL shall take precedence over the language of Exhibit D. If any such work involves any asbestos containing materials or lead based paint, prior Government approval of the work will be required. All work within the portion of the Leased Premises identified in Exhibit F (the VORTAC area) is subject to prior review, as provided in Paragraph 8.1 of this Lease.

For the leased premises, the following work may be accomplished without requesting prior Government approval:

Interior building improvements including:

- Wall & ceiling finishes/painting
- Carpeting/Flooring repair/replacement
- Lighting changes
- Plumbing changes
- HVAC repair/improvements
- Removal of partition walls.
- Construction of partition walls.

Exterior building improvements including:

- Exterior painting
- Building signage
- Roofing repair and replacement
- Window repair and replacement

Utilities: All maintenance, repair, and improvements required to provide utilities to the Leased Premises except activities that require digging or other disturbance of the ground surface

Roads and Grounds: All maintenance, repair and improvements required to maintain the roads and grounds of the Leased Premises, to include existing landscaping and existing irrigation systems, except those activities that require digging or other disturbance of the ground surface.

Former Marine Corps Air Station El Toro
Lease in Furtherance of Conveyance
Parcel 3

Exhibit "E"

**Facilities Containing FAD ACM or Requiring ACM Survey Prior to Use or
Occupancy**

28, 155, 244, 245, 296, 297, 306, 309, 311, 312, 314, 321, 322, 324, 325, 326,
335, 360, 369, 375, 379, 383, 388, 445, 496, 529, 599, 616, 671, 700, 725, 742,
758, 759, 760, 765, 769, 770, 771, 778, 789, 801, 825, 862, 865, 866, 867, 889,
926, 1595, 1601, 1703,

**Former Marine Corps Air Station El Toro
Lease in Furtherance of Conveyance**

Exhibit "F"

Portion of Leased Premises Reserved for Government Use

