

ORDINANCE NUMBER O- 18259 (NEW SERIES)

ADOPTED ON FEB 12 1996

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO CANCELING THE "STONECREST" DEVELOPMENT AGREEMENT (DOCUMENT NO. OO-17212, ADOPTED ON JANUARY 9, 1989) AND THE FIRST AMENDMENT TO THE STONECREST DEVELOPMENT AGREEMENT (DOCUMENT NO. OO-18003, ADOPTED ON OCTOBER 25, 1993).

WHEREAS, that real property consisting of approximately 318 acres of land located within the Stonecrest Specific Plan, and identified on Exhibit A attached hereto is owned by the Daley Corporation and other legal owners (the "Owner"); and

WHEREAS, The City of San Diego (the "City"), a charter city, is authorized pursuant to Government Code sections 65864 through 65869.5 to enter into binding development agreements; and

WHEREAS, the parties identified herein have been subject to the provisions of the Stonecrest Development Agreement, on file in the office of the City Clerk as Document No. OO-17212, since its adoption on January 9, 1989; and

WHEREAS, the parties identified herein have also been subject to the provisions of the First Amendment to the Stonecrest Development Agreement, on file in the office of the City Clerk as Document No. OO-18003, adopted on October 25, 1993; and

WHEREAS, California Pacific Homes of San Diego ("CALPAC") and other affected owners holding property within the area shown on Exhibit A have requested the cancellation of the Stonecrest

Development Agreement and Development Agreement Amendment in conjunction with amendments to the Progress Guide and General Plan, the Kearny Mesa Community Plan, the Stonecrest Specific Plan, a Planned Residential Development application, and requests for other discretionary approvals to build-out the Stonecrest Specific Plan area; and

WHEREAS, all other parties bound by the Stonecrest Development Agreement and the First Amendment to the Stonecrest Development Agreement wish to cancel the Development Agreement and Development Agreement Amendment as set forth in the Cancellation of Stonecrest Development Agreement attached hereto as Exhibit B; and

WHEREAS, the Planning Commission of The City of San Diego, after providing public notice as required by law, held a duly noticed public hearing on the cancellation of the Stonecrest Development Agreement and the First Amendment to the Stonecrest Development Agreement; and

WHEREAS, the cancellation of the Stonecrest Development Agreement and First Amendment to the Development Agreement does not conflict with the objectives of the City's Progress Guide and General Plan, the Kearny Mesa Community Plan, or the Stonecrest Specific Plan as amended to incorporate the California Pacific Homes of San Diego development proposal; and

WHEREAS, the Council, after providing public notice as required by law, held a public hearing on the request to cancel the Stonecrest Development Agreement and Development Agreement Amendment, and has reviewed and considered the cancellation request; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That the Council finds and determines that the facts stated above are true.

Section 2. Subject to CALPAC closing escrow on or before April 1, 1996, in accordance with Section 3 of the attached Cancellation of Stonecrest Development Agreement, the Council further finds that with respect to the Development Agreement cancellation request:

A. It will not be detrimental to the public health, safety and general welfare.

B. The orderly development of the property will be ensured by the approval of discretionary permits sought in conjunction with the development agreement cancellation request.

C. The goals and objectives of the City's Progress Guide and General Plan, the Kearny Mesa Community Plan, and the Stonecrest Specific Plan will be achieved as part of the discretionary review process.

Section 3. That the Council authorizes the City Manager to execute on behalf of the City the Cancellation of Stonecrest Development Agreement in the form as set forth in Exhibit B.

Section 4. Subject to CALPAC closing escrow on or before April 1, 1996, in accordance with Section 3 of the attached Cancellation of Stonecrest Development Agreement, the Council hereby:

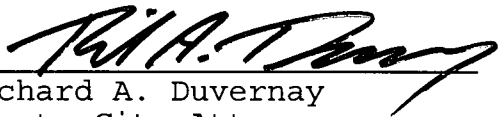
A. Approves the cancellation of the Stonecrest Development Agreement and the First Amendment to the Stonecrest Development Agreement; and

B. Rescinds Ordinance Nos. O-17212 (New Series) and O-18003 (New Series).

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By

  
Richard A. Duvernay  
Deputy City Attorney

RAD:lc  
11/07/95  
Or.Dept:Plan.  
O-96-79  
Form=o+t

EXHIBIT A

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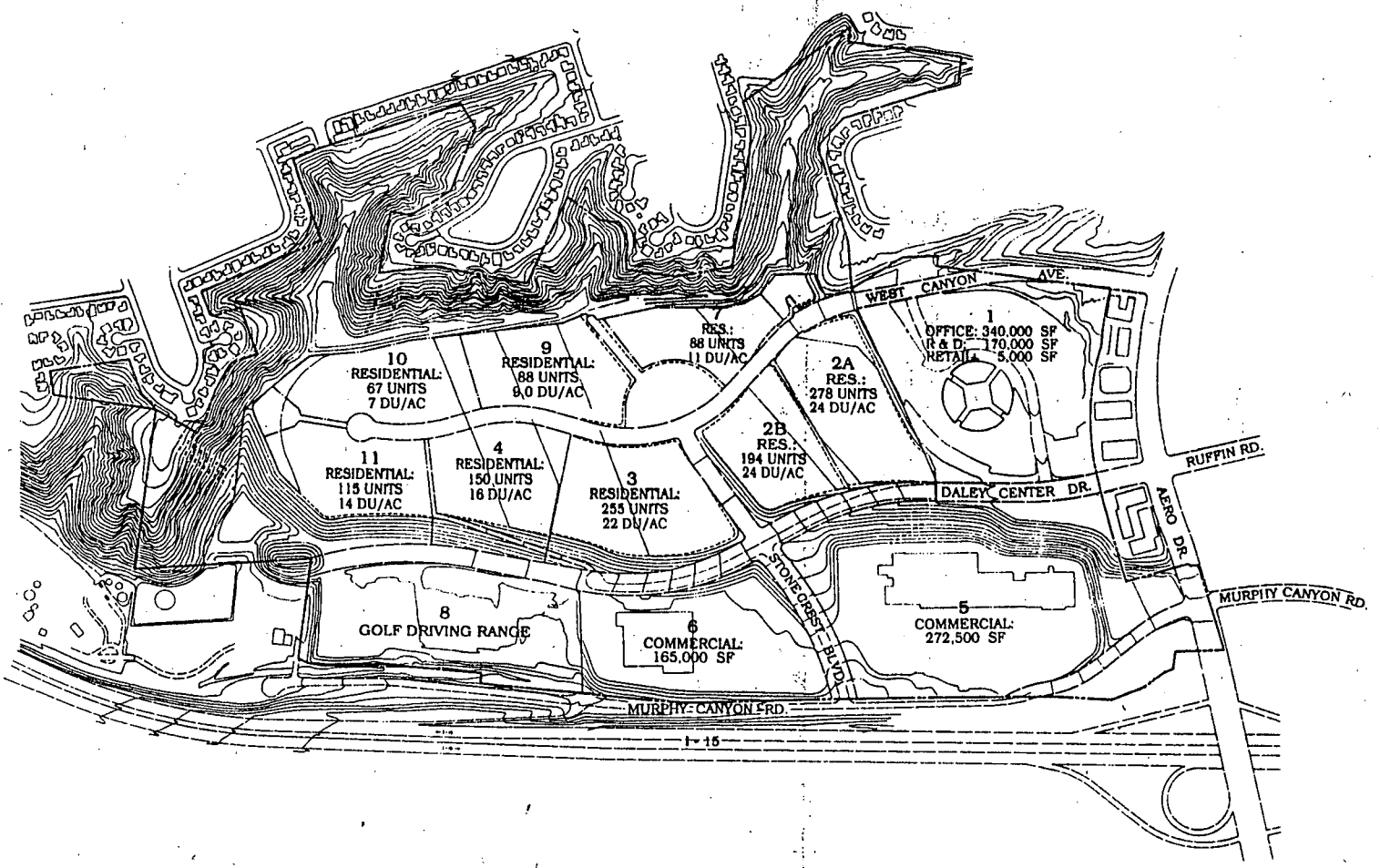
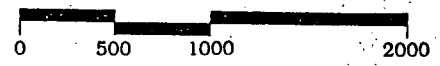


Figure 25

OVERALL LAND USE AND INITIAL ENTITLEMENT PLAN



**DRAFT**

TERMINATION OF STONECREST DEVELOPMENT AGREEMENT

This TERMINATION OF STONECREST DEVELOPMENT AGREEMENT ("Agreement") is dated for reference purposes as of November 11, 1995, by THE CITY OF SAN DIEGO, a Municipal corporation ("City"), and STONECREST ASSOCIATES, a California general partnership ("Stonecrest"), DALEY CORPORATION, a California corporation ("Daley Corporation"), and THE DALEY GROUP, a California limited partnership ("Daley Group"), and DONALD L. DALEY, AS TRUSTEE OF THE D.L. DALEY TRUST UNDER DECLARATION OF TRUST, DATED SEPTEMBER 26, 1991 ("Trust") and CALIFORNIA PACIFIC HOMES, INC., a California corporation ("Buyer"). Daley Corporation and Daley Group are sometimes referred to collectively as "Legal Owners."

**RECITALS**

A. City and Stonecrest previously entered into that certain Development Agreement dated January 9, 1989 ("Development Agreement") regarding that certain development of real property (referred to herein as the "Stonecrest Project"). The Development Agreement was duly authorized by City Ordinance No. O-17212 and duly recorded in the Office of the County Recorder of San Diego County, California, on March 21, 1989, as Document No. 1989-142420 and each of the foregoing became effective on February 8, 1989.

B. The Development Agreement was amended in accordance with that certain First Amendment to Stonecrest Development Agreement dated as of October 12, 1993 ("First Amendment"). The First Amendment was duly authorized by City Ordinance No. O-18003 (New Series) and became effective on November 24, 1993. The Development Agreement and First Amendment shall be referred to herein collectively as the Development Agreement.

C. Stonecrest and/or Legal Owners sold a portion of the Stonecrest Project known and generally described in the Specific Plan as Planning Areas 5 and 6, and the northerly portion of Planning Area 8 ("Aero Property") to Aero Drive Associates, a California limited partnership ("Aero"). Aero is developing this portion of the Stonecrest Project as a retail center (the "Retail Center"). In order to effectuate the development of the Retail Center, City released portions of the Specific Plan Planning Areas from the Development Agreement.

D. On or about October 1989, as set forth in a document recorded October 11, 1989, the City of San Diego approved the release from the Development Agreement dated October 9, 1989 of property described as Lots 15 and 20 of Stonecrest Unit No. 1 in the City of San Diego, County of San Diego, State of California according to Map thereof No. 12453, filed in the Office of the County Recorder of San Diego County on September 15, 1989.

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**EXHIBIT B**

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E. On or about October 1989 in a document recorded October 16, 1989, the City of San Diego released from the Development Agreement described hereinabove in Recital A in conjunction with a lot line adjustment along a portion of the north boundary of the Property contiguous with the south boundaries of Lot No. 2 and Lot No. 3 of the Daley Industrial Park (Unit No. 1) in the City of San Diego, County of San Diego, State of California according to Map thereof 6439, filed in the Office of the County Recorder of San Diego County described as Parcel No. 1 of Parcel Map No. 15802 filed in the Office of the County Recorder of San Diego County, California on September 21, 1989 as Document No. 89-509394 and Parcel No. 2 of Parcel Map No. 15802 filed in the Office of the County Recorder of San Diego County, California on September 21, 1989 as Document No. 89-509394.

F. On or about February 7, 1990, the City of San Diego approved the release from the Development Agreement described hereinabove in Recital A or as specifically described pursuant to Exhibit \_\_\_ hereinbelow in a document recorded February 28, 1990.

G. On or about November 19, 1993, the City of San Diego approved the release of certain property described as Lot Nos. 1 through 16, inclusive, of Stonecrest Plaza, in the City of San Diego, County of San Diego, State of California, according to Map No. thereof 13072, filed in the Office of the County Recorder of San Diego County on November 23, 1993.

H. Legal Owners are selling to Buyer, or its assignee, a portion of the Stonecrest Project, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Property"). Buyer intends to develop the Property as a planned residential development ("Residential Development").

I. Stonecrest, Legal Owners and Buyer have obtained certain approvals from City ("Approvals") relating to certain entitlements including, but not limited to:

1. A Planned Residential Development Permit covering the Property ("PRD");
2. An amendment to the Specific Plan (the "Specific Plan Amendment");
3. A re-zone of the Property ("Re-zone"); and
4. Community Plan Amendment.

J. On October 19, 1995, the City of San Diego Planning Commission, after providing notice as required by law, held a public hearing to consider Legal Owners' application for this Agreement. On November 21, 1995 (also referred to herein as the "Release Date"), the City Council, after providing notice as

required by law, held a public hearing to consider the Legal Owners' application for this Agreement.

K. The parties hereto have obtained the consent of The Bank of California, N.A., a National Association ("Bank of California"), and certain additional parties, with respect to the terms and conditions set forth herein in accordance with the "Consent of Interested Party" form attached hereto. In the event the consent of any additional owners of record with respect to the Stonecrest Project subject to the Development Agreement ("Additional Owners") or mortgagees or lenders ("Mortgagees") having any interest in the Stonecrest Project are required to execute this Agreement in order to effectuate the terms herein, such parties shall sign the form titled Consent of Interested Party attached hereto. All Additional Owners executing the form of Consent of Interested Party attached hereto shall be referred to herein collectively as the "Interested Parties."

L. Various terms used in this Agreement were defined in the Development Agreement. If not otherwise defined in this Agreement, such defined terms shall have the respective meanings ascribed to them in the Development Agreement when used in this Agreement.

M. By this Agreement, Stonecrest, Legal Owners, City and Buyer desire to set forth the terms and conditions for termination of the Development Agreement.



## AGREEMENT

1. City Ordinance; Effective Date. On November 21, 1995, the City Council for the City adopted Ordinance No. \_\_\_\_\_ (New Series) approving this Agreement ("Ordinance"). This Agreement shall become effective upon and the term "Effective Date" as used in this Agreement shall refer to the date the Ordinance becomes effective in the manner prescribed by law.

2. Termination and Releases. City, Stonecrest, Legal Owners and Buyer hereby agree, and the Interested Parties consenting hereto hereby approve, that upon the Effective Date, (a) City hereby fully and forever releases from the encumbrance of the Development Agreement the Release Property more particularly described on Exhibit "B" attached hereto and incorporated herein by this Reference; and (b) City hereby discharges, releases and holds harmless Stonecrest, Legal Owners, Buyer and all Interested Parties and future owners of the Release Property as of the Release Date (defined above) from any obligation arising out of or relating to the Development Agreement, whether arising out of ownership of the Release Property, status as a successor-in-interest under the Development Agreement or otherwise. City shall evidence said release by recording the Release of Development Agreement in the form of Exhibit "C" attached hereto and incorporated herein by this reference ("Release of Development Agreement"), subject to such modifications as a title insurance company may reasonably require to insure title free and clear of the cloud of the lien and encumbrance of the Development Agreement, as amended from time-to-time. City shall execute and record the Release of Development Agreement, within five (5) days after the Effective Date of this Agreement, with the official records of San Diego County.

3. Buyer's Purchase of the Property. City, Stonecrest, Legal Owners and Buyer hereby agree this Agreement is conditioned upon the Buyer's close of escrow (for the purchase of the Property) on or before April 1, 1995 ("Contingent Date"). In the event Buyer fails to close escrow on or before the Contingency Date, this Agreement shall terminate and be of no further force or effect and, in such event, the parties hereto agree to cooperate to evidence such termination as may be required by any title company to release the Property from this Agreement and the terms and conditions herein.

4. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original and all of which taken together will be deemed to be one and the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by City Stonecrest, Legal Owners, Buyer and consented to by all Interested Parties as of the date first set forth above.

**"City"**

THE CITY OF SAN DIEGO

By: \_\_\_\_\_  
City Manager

I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_ day of \_\_\_\_\_, 1995.

By: \_\_\_\_\_  
Name: JOHN W. WITT  
Title: City Attorney,  
By: Richard A. Duvernay  
Deputy City Attorney

**"Stonecrest"**

STONECREST ASSOCIATES, a California general partnership

By: DALEY ASSOCIATES, a California Limited Partnership, General Partner

By: D.L. DALEY CORPORATION, a California corporation, Sole General Partner

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

By: THE DALEY GROUP, a California Limited Partnership, General Partner

By: D.L. DALEY CORPORATION, a California corporation, Sole General Partner

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

[SIGNATURES CONTINUED ON NEXT PAGE]

**"Buyer"**

CALIFORNIA PACIFIC HOMES, INC., a  
California corporation

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

**"Legal Owners"**

DALEY CORPORATION, a California  
corporation

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

THE DALEY GROUP, a California  
limited partnership

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

**"Trust"**

DONALD L. DALEY, AS TRUSTEE OF THE  
D.L. DALEY TRUST UNDER DECLARATION  
OF TRUST, DATED SEPTEMBER 26, 1991

By: \_\_\_\_\_  
Name: Donald L. Daley  
Title: Trustee

I:\DMS\CKB\1026413

CONSENT OF BURDENED OR BENEFITTED PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

DONALD L. DALEY, AS TRUSTEE OF THE D.L. DALEY TRUST UNDER DECLARATION OF TRUST, DATED SEPTEMBER 26, 1991

By: \_\_\_\_\_  
Name: Donald L. Daley  
Title: Trustee

550 South Hope Street, 5th Floor  
Los Angeles, CA 90017

CONSENT OF BURDENED OR BENEFITTED PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

THE BANK OF CALIFORNIA, N.A., a National association

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

550 South Hope Street, 5th Floor  
Los Angeles, CA 90017

11/06/95

Draft 11/06/95

CONSENT OF BURDENED OR BENEFITTED PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

SPV II, LLC, a California limited liability company

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

CONSENT OF BURDENED OR BENEFITTED PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

THE RESOLUTION TRUST CORPORATION in its capacity as conservator of Old Stone Federal Savings Bank, successor in interest to Old Stone Bank, FSB

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

CONSENT OF ambiguous PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

JB-OS INC., a California corporation

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



CONSENT OF BURDENED OR BENEFITTED PARTY

We, the undersigned consent to the terms and conditions of the Termination of Development Agreement ("Agreement") dated for reference purposes as of \_\_\_\_\_, 199\_\_, and executed by City, Stonecrest, Legal Owners and Buyer (all as defined in the Agreement).

TOKAI BANK OF CALIFORNIA, as Agent for Tokai Bank, Ltd., Los Angeles Agency

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

Exhibit A  
Description of the Property  
(Legal Description)

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Exhibit B  
Description of the Release Property  
(Legal Description)

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Exhibit C

RECORDING REQUESTED BY )  
WHEN RECORDED MAIL TO: )  
 )  
Luce, Forward, Hamilton & Scripps )  
600 West Broadway, Suite 2600 )  
San Diego, California 92101 )  
Attn: Craig K. Beam, Esq. )  
 )

Above Space for Recorder's Use

RELEASE OF DEVELOPMENT AGREEMENT

THIS RELEASE OF DEVELOPMENT AGREEMENT ("Release") is executed and effective as of the Release Date, \_\_\_\_\_, 1995 by and between California Pacific Homes, Inc., a California corporation ("Owner"), THE CITY OF SAN DIEGO, a municipal corporation ("City"), with respect to the following facts:

A. City and Owner's predecessor in title entered into that certain Development Agreement recorded in the Office of the County Recorder of San Diego County, California, on March 21, 1989, at File/Page No. 89-142420 (City Document No. 00-17212, filed January 9, 1989), as amended (collectively "Development Agreement"). The Development Agreement initially encumbered the real property described on Exhibit A to the Development Agreement ("Stonecrest Project"), which includes the real property described on Exhibit "A" attached hereto and incorporated herein by this references ("Release Property").

B. In accordance with that certain Termination of Development Agreement dated for references purposes as of \_\_\_\_\_, 199\_\_ ("Termination Agreement"), which was executed by and among Owner, Stonecrest Associates, a California general partnership ("Stonecrest"), Daley Corporation, a California corporation ("Daley Corporation") and The Daley Group, a California limited partnership, ("Daley Group"), and approved by certain "Burdened or Benefitted Parties" (defined in the Termination Agreement), the City agreed to release the Release Property from the Development Agreement and this Release is delivered and recorded in order to clear the Release Property from the lien and encumbrance of the Development Agreement and release the parties described herein from any obligations relating thereto.

NOW THEREFORE, in consideration of the preceding recited facts, (a) City hereby fully and forever releases the encumbrance of the Development Agreement from the Release Property more particularly described on Exhibit "A" attached hereto; and (b) City hereby discharges, releases and holds harmless Stonecrest, Daley Corporation, Daley Group, Owner and all Interested Parties (defined

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in the Termination Agreement) and all present and future owners of the Release Property from any obligations arising out of or relating to the Development Agreement, whether arising out of ownership of the Release Property, status as a successor-in-interest under the Development Agreement or otherwise, effective as of the Release Date (as defined in the Termination Agreement).

IN WITNESS WHEREOF, this Release has been duly executed on behalf of Owner and City as of the date first set forth above.

"City"

THE CITY OF SAN DIEGO, a municipal corporation

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

I HEREBY APPROVE the form and legality of the foregoing this \_\_\_\_\_ day of \_\_\_\_\_.

JOHN WITT, City Attorney

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

"Owner"

CALIFORNIA PACIFIC HOMES, INC., a California corporation

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

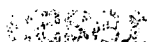


Exhibit A to Release Agreement  
Description of the Release Property  
(Legal Description)

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

ss:

On \_\_\_\_\_, 19\_\_\_\_, before me,  
-----, personally appeared

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

ss:

On \_\_\_\_\_, 19\_\_\_\_, before me,  
-----, personally appeared

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public