



El Toro Water District

"A District of Distinction"

Serving the Public - Respecting the Environment

Date

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Dennis P. Cafferty

Owner: [OWNER]
[ADDRESS]

Re: Conditional Will Serve Commitment

Dear [OWNER],

This letter constitutes a conditional will serve commitment ("Commitment") by El Toro Water District ("District") for improvements at [ADDRESS] ("Property"). The work consists of [IMPROVEMENTS] ("Project"). The terms and conditions of the Commitment are as follows:

- (1) The Commitment shall expire one (1) year from the date of this letter unless the Owner has executed a binding contract for the construction of the water and sanitation facilities required by the District. Upon expiration of the Commitment, the Owner must submit a new application for a new Commitment to the District for review and approval.
- (2) The Owner shall comply with all District rules, regulations, ordinances, procedures and any like kind directives ("Regulations") with respect to water service, sanitation service, including, but not limited to, construction of facilities and payment of applicable fees and charges in connection therewith. The provisions of the Regulations are incorporated herein by reference. Conversely, District will only provide service to the Property in accordance with the Regulations, as well as federal, state and local laws, rules, regulations, ordinances, and like directives, including restrictions related to the drought. In the event of a conflict between this letter and the Regulations, the Regulations shall control.
- (3) The initiation of water service to the Property shall be contingent upon "availability of water" pursuant to the prevailing Regulations in effect at the time that water service is scheduled to commence. In addition to the foregoing, the District shall not be responsible to provide water service to the Property in the event of Acts of God, casualties, such as fire, federal, state or county regulatory agency requirements or decisions, legal actions initiated by third parties or by conditions or causes beyond District's reasonable control.
- (4) The Owner shall construct, at no cost to the District, any and all on-site and/or off-site potable water and sewer facilities ("Facilities") needed to provide service to the Property, as determined by the District, in its sole and absolute discretion, so that District may establish and maintain its ability to meet the water and sewer demands of the Property.

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- (5) Prior to the construction of the Facilities or alteration to the District's existing facilities, the Owner shall prepare and submit to the District, detailed construction plans and specifications for the Facilities and extensions and modifications to the District's existing facilities in full and complete accordance with District's design criteria and standards. District shall approve or disapprove the construction plans and specifications within thirty (30) days after each submittal to District. In the event District disapproves the plans and specifications, the Owner shall modify the plans and specifications in accordance with the reasons given for disapproval and shall within thirty (30) days after disapproval by District submit the revised construction plans and specifications to District for approval or disapproval. The foregoing procedure shall be continued until the construction plans and specifications have been approved by District. District may approve or disapprove the Owner's planning and design work and/or plans and specifications, in District's sole discretion. The Owner's submission of the plans and specifications to District shall evidence (a) the Owner's representation and warranty to District that the plans and specifications are complete, accurate, workable and are in compliance with all governmental requirements with respect thereto, and (b) the Owner's representation that the plans and specifications will conform to all applicable federal, state and local governmental rules, ordinances and regulations and all applicable environmental protection laws. No alteration of the District's existing facilities shall take place until the District has approved the plans.
- (6) Prior to the approval of construction plans pursuant to Section (5) above, the Owner shall pay to the District Plan Check and Inspection Fees ("Plan Check Fees") as determined by the District. Plan Check Fees for residential, industrial, commercial and professional office development shall be Six and Six/Tenths percent (6.6%) of the estimated construction cost of the public portion of the Facilities constructed in conjunction with the Project. The estimate of the construction costs for purposes of the calculation of the Plan Check Fee shall be performed by the District using the District's current table of estimated construction costs for this purpose. The minimum Plan Check Fee of Three Hundred Dollars (\$300.00) will be paid at the commencement of plan check and the balance, as invoiced by the District, paid prior to the approval of construction plans pursuant to Section (5) above.
- (7) District shall have the right, in District's sole determination and at any time and at the Owner's cost and expense, to procure consulting engineering services to verify the ability of the existing water and sewer systems to meet the demands of the Project. The cost of such services shall be due and payable at the same time the Plan Check Fees are due pursuant to Section 6 above or such other time as the District shall reasonably determine.
- (8) (a) Prior to the approval of the construction plans pursuant to Section (5) above, the Owner shall, at its sole cost and expense, prepare the exhibits for and execute and deliver easements, rights of way, and any other instruments prepared by District, in its sole and absolute discretion, as to content, form, location and width, which have been duly executed by the

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property owner(s) and which assure District's unequivocal right to own, operate, maintain, replace, repair, enlarge, reconstruct, remove and improve the Facilities which the District shall own after they are constructed. The Owner shall ensure that all deeds of trust and mortgages are subordinated to the easements set forth in this Section.

- (b) Prior to the acceptance of any Facility that District shall own, the Owner shall execute a dedication of facility ("DOF") in such form and content as shall be acceptable to the District. The DOF shall convey title to each Facility to the District at no cost and expense. Each Facility shall be transferred to District free and clear of all liens and encumbrances.
- (9) Any insurance maintained by the Owner and/or any contractor of the Owner to construct the Facilities shall (a) name District, its officers and agents as additional insureds, (b) apply severally to the Owner and District, its officers, employees and agents; (c) cover the Owner and District as insureds in the same manner as if separate policies had been issued to each of them, (d) contain no provisions affecting the rights, which either of them would have as claimants if not so named as insureds; and (e) be primary insurance with any other valid and collectible insurance available to the aforesaid additional insureds constituting excess insurance.
- (10) (a) The Owner shall pay to the District Sewer Capital Facilities Fees as determined by the District in accordance with the District's prevailing Capital Facilities Fee in effect at the time sewer service is scheduled to commence to the Project. Charges for residential, industrial, commercial and professional office development shall be based on ultimate tenant improvements. Depending on the circumstances, the Regulations provide for a payment of certain fees by the Owner and said fees are subject to change. Receipt of all applicable fees are due and payable prior to occupancy of any portion of the Project and the initiation of sewer service pursuant to this Commitment.
- (b) The Owner shall pay to the District Water Capital Facilities Fees as determined by the District in accordance with the District's prevailing Water Capital Facilities Fee in effect at the time water service is scheduled to commence to the Project. Determination of these fees will require the submission to the District of such information as shall be required by the District including detailed plans identifying the installation of new and removal of any existing water meters to serve the Property. Depending on the circumstances, the Regulations provide for the payment of certain fees by the Owner and said fees are subject to change. Receipt of all applicable fees are due and payable prior to occupancy of any portion of the Project and the initiation of water service pursuant to this Commitment.
- (11) The Owner shall submit a Wastewater Discharge Application at least sixty (60) days prior to discharge of waste to the District's sewer system. All rights, privileges, and conditions of this

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Commitment are made to the Owner and are not assignable or transferable to another Project or Property. The District reserves the right to impose further requirements, which it deems appropriate. Should you have any questions or concerns, please contact Rory Harnisch of the District's office at (949) 837-7050, extension 251.

Sincerely,

EL TORO WATER DISTRICT

Dennis P. Cafferty

General Manager / District Engineer

AGREED AND ACCEPTED BY:

[OWNER]

By: _____

Name: _____

Its: _____

Date: _____