## SETTLEMENT AGREEMENT AND RELEASE

**THIS SETTLEMENT AGREEMENT AND RELEASE** ("Agreement") is made and entered into as of this 2nd day of March, 2012 by and between **MACPHERSON OIL COMPANY**, a California corporation and **WINDWARD ASSOCIATES**, a California limited partnership (collectively "Macpherson"), **E & B NATURAL RESOURCES MANAGEMENT CORPORATION**, a California corporation ("E & B") and the **CITY OF HERMOSA BEACH**, a California municipal corporation ("City"). The above parties will occasionally be individually referred to as "Party" and collectively referred to as the "Parties."

## RECITALS

A. Macpherson and City entered into an oil and gas lease in 1986, and subsequently entered into an amended and restated oil and gas lease in 1992 (the 'Lease") that, among other things, added the City-owned Tidelands to the leased lands, all in order to allow Macpherson to engage in a directional well oil drilling project that would be conducted from an urban drill site to be installed and located on the City's maintenance yard property (the "Oil Project"). The City certified an Environmental Impact Report for the Oil Project in 1990. The City secured the approval of the Lease from the California State Lands Commission in 1992, and the reapproval of the Lease from the California State Lands Commission in 1994. The City issued Conditional Use Permit No. 93-5632 to Macpherson for the Oil Project in 1993, and at the same time certified an addendum to the previously-certified Environmental Impact Report to accommodate several minor changes to the Oil Project. Macpherson also obtained all of the necessary Permits to Construct for the Oil Project from the South Coast Air Quality Management District. In November, 1995, the residents of the City passed City Measure E, an initiative measure that banned oil drilling in the City. In early 1998, and notwithstanding the passage of Measure E, the California Coastal Commission authorized issuance of Coastal Development Permit No. E-96-28 to Macpherson for the Oil Project, subject to conditions. Later in 1998, the City Council made a determination that the Oil Project as then constituted posed an unacceptable public safety risk.

B. Macpherson filed a cross-complaint for breach of the Lease seeking monetary damages against City in late 1998 in the case entitled *Hermosa Beach Stop Oil Coalition, et al. v. City of Hermosa Beach*, Los Angeles County Superior Court Case No. BC172546 (the "Action"). The California Court of Appeal ruled in the Action that Measure E both applied to the Oil Project and that its passage entitled Macpherson to sue the City for monetary damages. The Los Angeles County Superior Court in 2008 subsequently ruled that City's adoption of Measure E constituted a breach of the Lease and scheduled a trial to determine the amount of Macpherson's damages. The Court of Appeal thereafter ruled that the City's 1998 determination that the Oil Project as then constituted posed an unacceptable public safety risk may constitute a defense to Macpherson's damages claim if the evidence presented at trial satisfies the limitations upon the defense set forth by the Court of Appeal. The trial on Macpherson's cross-complaint is now scheduled to commence in early April, 2012. At trial, Macpherson will be seeking damages against City in excess of $700 Million.

C. E & B is an unrelated third-party oil company that has investigated the Oil Project and wishes to pursue it. E & B has approached the City and Macpherson with a plan to settle the Action between the City and Macpherson and provide E & B with a potential opportunity to

proceed with a state-of-the-art directional well oil drilling project conducted from an urban drill site located on City's maintenance yard property. E & B proposes a settlement payment to Macpherson to compensate Macpherson for an assignment to E & B of Macpherson's rights to the Oil Project and termination of the Action in return for (1) the opportunity to persuade City's electorate that a state-of-the-art directional well oil drilling project conducted from City's maintenance yard can be accomplished safely and with financial benefits to all of the Parties, and (2) for full or partial repayment to E & B by the City of a portion of the settlement payment E & B makes to Macpherson. Due to technology and operational advancements in the past 15 years made by the oil and gas industry related to safety and efficiency of oil and gas production, it is E & B's strong belief that both the residents of City and E & B can greatly benefit by allowing for the development of the oil and gas reserves under the lease(s) assigned to E & B.

D. City is willing to place on the ballot a measure that would afford its electorate the opportunity to consider whether to resurrect a directional well oil drilling project from City's maintenance yard, in exchange for termination of the Action and payment to E & B of certain amounts contingent on the outcome of the ballot measure, and establishing the ongoing potential for a very substantial revenue stream to be generated for City and the Hermosa Beach School District as a result of the payment to City and School District of royalties in association with the production of oil and gas reserves by E & B. Macpherson is willing to settle the Action and assign to E & B its rights to the Oil Project in return for the settlement payment, together with the royalty interest to be assigned by the City to Macpherson and the overriding royalty interest to be reserved to Macpherson from its assignment to E & B, all as set forth below in this Agreement.

E. Settlement of the Action would serve to eliminate the risks and costs associated with continued protracted litigation and would return to the electorate the question of whether the public interest would be best served by either approval of the oil drilling project <u>or</u> payment of a settlement.

F. The Parties by this Agreement wish to resolve and settle the Action, all disputes encompassed within and that could have been raised in the Action, and all attendant and potential litigation arising therefrom.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements described below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree:

I. **Parties.**

1.1 The City of Hermosa Beach, a California municipal corporation ("City").

1.2 Macpherson Oil Company, a California corporation and Windward Associates, a California limited partnership (collectively "Macpherson").

1.3 E & B Natural Resources Management Corporation, a California corporation ("E&B").

## II. Definitions.

2.1 "Action" means *Hermosa Beach Stop Oil Coalition, et al v. City of Hermosa Beach*, Los Angeles County Superior Court Case No. BC172546.

2.2 "Affiliate" or "Affiliates" means an entity designated by E & B and under common control with, controlled by or under the control of E & B.

2.3 "Ballot Measure" means the measure described in paragraph 4.6(a) herein.

2.4 "Closing" means the consummation of this Settlement Agreement and Release at which time the Parties shall concurrently deliver the instruments and payments described herein all as provided in paragraph III herein.

2.5 "Conditional Use Permit" or "CUP" means Conditional Use Permit No. 93-5632 dated August 12, 1993 issued by City to Macpherson.

2.6 "E & B Loan" means the payment advanced by E & B to Macpherson on behalf of City and to be repaid or forgiven as provided in paragraphs 4.4(b) and 4.6(b) and (c) herein.

2.7 "Grant Deed" means the Municipal Corporation Grant Deed attached hereto as Exhibit A and incorporated herein by reference.

2.8 "Lease" means the Oil and Gas Lease No. 2 dated January 14, 1992 between City and Macpherson, and all extant records, permits, studies and documents pertaining thereto.

2.9 "Project" or "Oil Project" means the directional well oil drilling project described in the Lease and the CUP from City's maintenance yard as it may from time to time be modified in the course of implementation of the terms of this Agreement.

2.10 "School Lease" means the lease between Macpherson and the Hermosa Beach School District.

2.11 "Settlement Payment" means the payment from E & B to Macpherson described in paragraph 4.3(b) herein.

## III. The Closing

3.1 The Closing shall occur on such day and at such time as may be mutually agreed upon by all of the Parties, but in no event later than Friday, March 2, 2012, at a time sufficient to accommodate a wire transfer of the Settlement Payment

from E & B to Macpherson. Unless otherwise mutually agreed, the Closing shall take place at the offices of Michael Jenkins, the City Attorney, Jenkins & Hogin, 1230 Rosecrans Avenue, Suite 110, Manhattan Beach, California.

3.2 If the Closing does not occur within the time provided in paragraph 3.1, or if any Party fails to deliver an executed original of this Agreement to each of the other Parties at the Closing, or if Macpherson fails to deliver a signed and notarized original assignment from Macpherson to E & B of Macpherson's rights, title and interest in and with respect to the Lease and the Project as provided in paragraph 4.1(a) below, or if Macpherson fails to deliver to the City at the Closing an executed dismissal with prejudice of the Action as provided in paragraph 4.1(c) below, or if E & B fails to make the Settlement Payment to Macpherson by wire transfer during the Closing, or if E & B fails to sign and return a fully executed and notarized counterpart original of the assignment from Macpherson to E & B of Macpherson's rights, title and interest in and to the Lease and the Project to Macpherson at the Closing (i.e. the assignment executed by both Macpherson and E & B, which assignment contains the reservation of the 1-1/2% overriding royalty in favor of Macpherson) as provided in paragraph 4.3(a) below, or if the City fails to deliver the fully executed and notarized Grant Deed to Macpherson at the Closing (which Grant Deed grants a 3-1/3% royalty to Macpherson under the terms contained therein) as provided in paragraph 4.5(b) below, or if the City fails to deliver to E & B and Macpherson the fully executed and acknowledged consent to assignment of the Lease and City-issued permits for the Project which is included in the assignment from Macpherson to E & B, as provided in paragraph 4.5(c) below, then in any of such event(s), the Action shall not be settled, and each of Macpherson and the City will be free to pursue all of their respective claims and defenses in further prosecution and/or defense of the Action. For avoidance of doubt, should the Action not be settled on account of the occurrence of any of the events specified in this Paragraph 3.2, then this Agreement and all of its provisions and any settlement discussions between or among any of the Parties remain fully subject to Evidence Code sections 1152 and 1154 and the Confidentiality Agreement previously signed on behalf of each of the Parties on February 17, 2012.

3.3 Should the Closing occur and each of the Parties fully complies with all of its obligations to be performed at the Closing as provided in this Agreement such that the Action is fully settled and claims are released, then in such event the Confidentiality Agreement previously signed on behalf of each of the Parties on February 17, 2012 shall remain applicable to communications prior to Closing, but shall otherwise automatically terminate and be of no further force and effect with respect to this Agreement and communications following the Closing, except as may be required by law. For avoidance of doubt, in the event any participant in the settlement communications prior to Closing is deposed, whether by subpoena or notice, individually or as a corporate representative, or appears to testify in any proceeding, whether doing so voluntarily or involuntarily, the Confidentiality Agreement shall not be construed to prevent, preclude or restrict such testimony and such testimony shall not constitute a breach of the Confidentiality Agreement.

## IV. **Obligations of the Parties.**

4.1 Macpherson's Obligations At Closing:

a. Execute and deliver to E & B, or to an Affiliate or Affiliates designated by E & B, including for the purposes of a 1031 exchange as provided in Article X hereof, all of Macpherson's right, title and interest in the Lease, all townlot leases, the School Lease, and any other leases, and all other rights it may have in or with respect to the Project, including, but not limited to, the Conditional Use Permit and all other permits for the Project (collectively the "Assets"), all without any warranty of title, and subject to the releases set forth in paragraph VI hereof. Said assignment shall be in the form attached to this Agreement as Exhibit B.

b. Deliver to the Closing this executed Agreement to each of the other Parties.

c. Deliver an executed dismissal with prejudice of the Action to the City.

d. Deliver an executed and acknowledged counterpart original of the Grant Deed.

4.2 Macpherson's Obligations Following Closing:

a. Comply with the provisions of paragraph X; provided, however, that Macpherson shall not be obligated to incur any material costs or expenses of any kind in providing such further cooperation.

b. Macpherson shall have no further obligations to the City or E&B, or its or their respective successors and assigns respecting the Lease, any other leases, any permits relating to the Project, or the Project itself, or otherwise under this Agreement following the Closing except as provided in paragraph 4.2(a) above and paragraph VII respecting cooperation in defense of litigation in which Macpherson is named as a party.

4.3 E & B's Obligations At Closing:

a. Accept the assignment from Macpherson identified in paragraph 4.1 (a) above subject to the releases set forth in paragraph VI hereof by signing the same in E & B's capacity as assignee and deliver a fully executed and notarized counterpart original of said assignment to Macpherson. Said assignment reserves to Macpherson from E & B and its successors and assigns an overriding royalty of one and one-half percent (1-½%) of one hundred percent (100%) of gross hydrocarbon production, but otherwise determined in the same manner as royalties are determined and/or calculated under the Lease, which overriding royalty shall remain in force and effect for so long as E & B

or its successors and assigns produce oil and/or gas from beneath the City under the Lease, or any continuation, extension, amendment, restatement or replacement of the Lease.

b. Deliver to the Closing (i) this executed Agreement to each of the other Parties, and (ii) deliver to Macpherson by wire transfer in accordance with wire transfer instructions provided by Macpherson at least one business day in advance of the Closing, in immediately available funds, the lump sum of Thirty Million Dollars ($30,000,000) as the Settlement Payment.

c. Included within the Settlement Payment is an advance by E & B on behalf of City in the sum of Seventeen Million Five Hundred Thousand Dollars ($17,500,000), which amount represents the City's contribution towards the Settlement Payment and constitutes the E & B Loan. The E & B Loan shall be repaid in full or partially forgiven by E & B or its successors and assigns as provided in paragraphs 4.4 (b) and 4.6(b) and (c) below.

4.4 E & B's Obligations Following Closing:

a. Reimburse City for the cost of preparation of an environmental impact report or supplemental environmental impact report ("EIR") pursuant to the California Environmental Quality Act ("CEQA") based on a Project description provided by E & B, should such an EIR be prepared and the cost of conducting a special election (not to exceed $50,000.00) as provided in paragraph 4.6(a).

b. Upon issuance by the City of the drilling permit for the Project, or in the event the City cannot issue the drilling permit as the sole result of action or inaction undertaken by and under the control of E&B (including without limitation the failure of the California Coastal Commission to issue a coastal development permit as a result of any refusal or failure by E&B to accept any condition or conditions that may be imposed by the California Coastal Commission in connection with the issuance of that permit), immediately thereafter forgive Fourteen Million Dollars ($14,000,000) of the E & B Loan.

c. Upon receipt of all required approvals and permits respecting the Project from State and regional regulatory agencies, deliver to City a complete application for a drilling permit for the Project that satisfies the requirements set forth in the CUP, the City's Municipal Code, conditions imposed by other regulatory agencies, and CEQA-related mitigation measures, and bear the cost of satisfying the CEQA-related mitigation measures and the cost of satisfying reasonably required conditions of the drilling permit and other regulatory agencies.

d. Comply with the provisions of paragraph X and the provisions of paragraph VII.

4.5 City's Obligations At Closing:

a. Deliver to the closing this executed Agreement to each of the other Parties.

b. Deliver to Macpherson at the Closing the fully executed and notarized Grant Deed in favor of Macpherson.

c. Deliver to the Closing the fully executed and acknowledged consent to the assignment by Macpherson to E & B of the Lease and any permits issued by the City respecting the Project, including, without limitation the CUP which is included in the assignment from Macpherson to E & B counterpart originals of which consent shall be delivered to E & B and to Macpherson.

4.6 City's Obligations Following Closing:

a. Place on the ballot at a special municipal election in a manner that comports with all applicable law within six (6) months of a request to do so by E & B or as soon thereafter as is permitted by the California Elections Code a ballot measure that asks the electorate whether to approve a single ordinance that: (i) amends the Hermosa Beach Municipal Code to allow the Project to proceed at the City maintenance yard located as described in Exhibit A to the Lease; and (ii) approves a development agreement that would afford E & B a vested right to proceed with the Project notwithstanding any future inconsistent change in the City's Municipal Code.

b. In the event of approval by the electorate of the Ballot Measure: (i) support E & B's applications for all relevant approvals for the Project from State and regional regulatory agencies, (ii) upon E & B's receipt of all required approvals and permits from State and regional regulatory agencies, process in good faith and with due diligence issue drilling and well permits for the Project upon satisfaction by E & B of the requirements set forth in the CUP, the City's Municipal Code and CEQA-related mitigation measures, (iii) vacate and make the City maintenance yard available for the construction of the Project as, when and in the manner and subject to the conditions provided for in the Lease and (iv) repay Three Million Five Hundred Thousand Dollars ($3,500,000) of the E & B Loan through a deduction from royalties otherwise due to the City equal to one and one half percent (1.5%) of the gross proceeds from the sale of hydrocarbons from the Lease until the $3.5 million has been paid; provided, however, in the event the Project does not otherwise result in royalties to City sufficient to repay $3.5 million of the E & B Loan, City shall

repay $3.5 million of the E & B Loan in a lump sum within ninety (90) days of written notice from E & B.

c. Notwithstanding anything to the contrary contained in this Agreement, in the event of (i) failure of the Ballot Measure, or (ii) following approval by the electorate of the Ballot Measure, failure of the City to issue a drilling permit for any reasons other than an action or inaction undertaken solely by and under the control of E&B (including without limitation the failure of the California Coastal Commission to issue a coastal development permit as a result of any refusal or failure by E&B to accept any condition or conditions that may be imposed by the California Coastal Commission in connection with the issuance of that permit), the City shall repay to E & B the full amount of the E & B Loan on commercially reasonable terms to be mutually agreed by the City and E & B.

d. Grant as reasonably required by E & B all necessary rights of way, easements, franchises and other rights as necessary for subsurface pipelines and other facilities and appurtenances in order for E & B to drill for, produce, market, transport and sell all oil and gas produced from the subject lease(s).

e. Comply with the provisions of paragraph X and the provisions of paragraph VII.

## V. Limitation of Remedies.

5.1 Should the Ballot Measure fail, Macpherson shall have no recourse against City, except for those obligations that arise from the Grant Deed.

5.2 Should the Ballot Measure fail, E & B shall have no recourse against City aside from enforcement of City's repayment of the E & B Loan.

5.3 Except for City's obligations under the Grant Deed and its obligation to repay or partially repay the E & B loan as provided in paragraph 4.6(c) or paragraph 4.6(b)(iv), as the case may be, in the event of failure of the City to perform its obligations under paragraphs 4.6(a) and (b) and 8.2 (but only to the extent resulting from a court order compelling the City conduct constituting such failure of performance) E & B and Macpherson's sole recourse against City shall be an action for specific performance of this Agreement, declaratory relief and/or mandamus, including, without limitation, any potential injunctive relief or other non-monetary orders as may be issued in such action. In return for this agreed limitation, the City acknowledges and agrees that specific performance and injunctive relief are appropriate remedies and the City hereby waives any and all claims it has or may have to assert that these remedies are unavailable remedies for breach of this Agreement for any reason or reasons, including without limitation that E&B and/or Macpherson have other adequate legal remedies. Except as provided above, in no event shall City be liable in monetary damages, and Macpherson and E & B hereby covenant not to sue City for monetary damages under any theory for failure to perform the City's obligations under paragraphs 4.6(a) and (b) and 8.2 (but only to the extent

resulting from an order of court compelling the City conduct constituting such failure of performance) of this Agreement. It is understood, acknowledged and agreed by the Parties that City would not have entered into this Agreement but for this covenant that it cannot be held liable to Macpherson or E & B in monetary damages for breach of the City's obligations under paragraphs 4.6(a) and (b) and 8.2 for any reason and under any theory, except as provided in the Grant Deed and except for City's obligations herein to repay the E & B Loan. Nothing in this paragraph 5.3 shall be construed to prevent Macpherson or E & B from asserting any defense or offset against the City in the event the City should assert any claim under this Agreement against Macpherson and/or E & B. For avoidance of doubt, the provisions of this paragraph 5.3 precluding recovery of monetary damages against the City are inapplicable to any claim for the recovery of attorneys fees in connection with an action for specific performance, declaratory relief or mandamus under the attorneys fees provision of paragraph XIII below.

5.4 The parties recognize that (i) Macpherson is materially changing its legal position and rights and property holdings in reliance upon the final and binding effect of this Agreement, and (ii) any rescission of this Agreement would be a wholly inadequate remedy for Macpherson because rescission cannot possibly return to Macpherson the legal position and rights it held prior to the consummation of this Agreement. Therefore as material inducement to Macpherson, and not withstanding any provision of this Agreement to the contrary, in no event shall Macpherson be obligated to rescind or return the Settlement Payment, the real property interest in the form of the royalty granted to Macpherson by the City as provided in paragraph 4.5(b) herein, or the overriding royalty in favor of Macpherson reserved in the assignment by Macpherson to E & B as provided in paragraphs 4.1(a) and 4.3(a) herein. Conversely, Macpherson's claims against the City that are settled and released by this Agreement shall not be revived in whole or in part in any respect whatsoever, and E & B shall retain all rights and interests conveyed by Macpherson to E & B in the assignment provided for in paragraphs 4.1(a) and 4.3(a) herein. Any and all other effects or consequences of a rescission or other determination of invalidity of this Agreement for any reason are matters that shall be resolved solely between the City and E & B. However, in such event, in no event shall City be liable in monetary damages under any theory whatsoever, and Macpherson and E & B hereby covenant not to sue City for monetary damages under any theory in the event of a final and nonappealable court judgment invalidating this Agreement. In such event, the Parties shall endeavor pursuant to the provisions of Paragraph X to cure any such invalidity and reform this Agreement so as to effectuate the intent of the Parties; should that effort fail for any reason, City shall repay the E & B loan as provided in paragraph 4.6(c).

## VI. Mutual Releases.

6.1 Effective upon the successful completion of the Closing in accordance with the conditions described in paragraph 3.3: (i) the Parties hereby fully and finally waive, release, and permanently discharge each other (and their respective partners, officers, employees, agents, representatives and attorneys) (the "Releasees"), from any and all past, present, or future matters, claims, demands, obligations, liens, actions or causes of action, suits in law or equity, or claims for damages or injuries, whether known or unknown, which they now own, hold or claim to have or at any time heretofore have owned, held or claimed to have held against each other by reason of any matter or thing alleged or referred to, or in any way connected with, arising out of or in any way relating to any of the matters, acts, events or occurrences alleged or referred to in any of

the pleadings filed in the Action, and (ii) the City hereby fully and finally waives, releases, and permanently discharges Macpherson (and its respective partners, officers, employees, agents, representatives and attorneys) (the "Releasees") from any claims arising under the Lease, any continuation, extension, amendment, restatement or replacement of the Lease, or any permits respecting the Project that may arise post-Closing and will look solely to E & B and its permitted successors and assigns for performance of the Lease, any continuation, extension, amendment, restatement or replacement of the Lease, or any permits respecting the Project (all of which are collectively the "Released Claims"). In connection with the release of the Released Claims, the Parties waive any and all rights that they may have under the provisions of section 1542 of the California Civil Code, which states as follows:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In the event that any waiver of the provisions of Section 1542 of the California Code provided for in this Agreement shall be judicially determined to be invalid, voidable or unenforceable, for any reason, such waiver to that extent shall be severable from the remaining provisions of this Agreement, and the invalidity, voidability or unenforceability of the waiver shall not affect the validity, effect, enforceability or interpretation of the remaining provisions of this Agreement.

6.2 The Parties understand and acknowledge that the foregoing release in paragraph 6.1(i) extends to any claims or damages, without limitation, arising out of the Released Claims that may exist on the date of the Closing, and the foregoing release in paragraph 6.1(ii) extends to any claims or damages, without limitation, arising out of the Released Claims that may arise on or following the Closing, but which the Parties do not know to exist, which, if known, would have materially affected their decision to execute this Agreement, regardless of whether their lack of knowledge is a result of ignorance, oversight, error, negligence or any other cause.

6.3. Each Party acknowledges and agrees that this Agreement is a compromise and settlement of their disputes and differences, and is not an admission of liability or wrongdoing by any Party.

6.4. Except as may be provided in this Agreement, each of the Parties waives any and all claims for the recovery of any costs, expenses, or fees, including attorney fees, associated with the matters and claims released in this Agreement.

6.5. Each Party understands and acknowledges that upon the successful completion of Closing in accordance with the conditions described in paragraph 3.3 this Agreement will terminate the Action and any and all claims arising thereunder or resulting therefrom, and this Agreement and the promises and actions provided for in this Agreement are in full accord, satisfaction, and discharge of any and all claims for compensation of any kind that Macpherson and E & B may have related to the Action.

## VII. Defense of Litigation.

In the event that one or more lawsuits are filed challenging this Agreement and/or the actions implementing or contemplated by this Agreement, the Parties (to the extent named as parties defendant in the lawsuit) will cooperate in good faith in the defense of the litigation and shall initially bear their respective attorneys fees and costs. With the exception of a lawsuit challenging the approval of this Agreement itself, should the Ballot Measure described in paragraph 4.6(a) pass, E & B shall indemnify the City for all attorneys fees and costs incurred by City in the defense of litigation encompassed by this paragraph and also, for any attorney fees and costs awarded to a plaintiff against City, if any, in such litigation.

## VIII. Representations and Warranties.

8.1 Representations and Warranties Exclusive to Macpherson and E & B:

Macpherson and E & B hereby represent and warrant to the City as of the date of Closing, as follows:

a. They have not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim, or any part or portion thereof.

b. To Macpherson and E & B's knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against them that would adversely affect their ability to consummate the transactions contemplated in this Agreement. To the best of their knowledge, Macpherson and E & B are not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against the City pertaining to the Action, whether asserted or not, that have not been fully released and discharged by the release set forth in this Agreement.

c. They acknowledge that the Stinnett Well has been plugged and abandoned and agree that City's inability to convey the Stinnett Well to E & B shall not constitute a breach of this Agreement or the Lease.

8.2 Representations And Warranties Exclusive to the City:

City hereby represents and warrants to Macpherson and E & B as of the date of the Closing as follows:

a. It has not heretofore assigned or transferred, or purported to assign or transfer, to any party not named herein any Released Claim or any part or portion thereof.

b. To the City's knowledge, there are no legal actions, suits or similar proceedings pending and served, or threatened in writing against it that would adversely affect the City's ability to consummate the transactions contemplated in this Agreement. To the best of its knowledge, the City is not aware of any existing claims nor of any facts that might give rise to any claims of any type or nature against Macpherson pertaining to the Action, whether asserted

or not, that have not been fully released and discharged by the release set forth in this Agreement.

c. The drilling and well permits that are to be obtained by E & B for the Project under the City Municipal Code are and will be processed by the City in good faith as ministerial permits.

d. The force majeure provisions in paragraph 30 of the Lease apply and have applied during the pendency of the Action, and the CUP remains valid.

8.3 Representations and Warranties By All Parties:

Each of the Parties hereby represent and warrant to the other Parties as of the date of the Closing as follows:

a. The Parties have received all corporate and other approvals necessary to enter into this Agreement on their behalf and that the persons signing this Agreement on their behalf are fully authorized to commit and bind the Parties to each and all of the commitments, terms and conditions hereof, and to release the claims described herein, and that all documents and instruments relating thereto are, or, upon execution and delivery will be, valid and binding obligations, enforceable against them in accordance with their respective terms.

b. The Parties have freely entered into this Agreement and are not entering into this Agreement because of any duress, fear, or undue influence; this Agreement is being entered into in good faith.

c. The Parties have made such investigation of the facts pertaining to this Agreement as they deem necessary.

d. The Parties have, prior to the execution of this Agreement, obtained the advice of independent legal counsel of their own selection regarding the substance of this Agreement, and the claims released herein.

e. In executing this Agreement, the Parties acknowledge, represent, and warrant that they have not relied upon any statement or representation regarding any facts not expressly set forth within this Agreement. In entering into this Agreement, the Parties assume the risk of any misrepresentations, concealment or mistake, whether or not they should subsequently discover or assert for any reason that any fact relied upon by them in entering into this Agreement was untrue, or that any fact was concealed from them, or that their understanding of the facts or of the law was incorrect or incomplete.

8.4. The representations and warranties of each of the Parties set forth in this paragraph VIII and elsewhere in this Agreement will survive the execution and delivery of this Agreement and are a material part of the consideration to each of the Parties in entering into this Agreement.

## IX. Interpretation.

9.1. All Parties have cooperated in the drafting and preparation of this Agreement and in any construction or interpretation to be made of this Agreement, the same shall not be construed against any one Party. This Agreement is the product of bargained for and arms length negotiations between the Parties and their counsel. This Agreement is the joint product of the Parties.

9.2. This Agreement and the Confidentiality Agreement discussed in Paragraphs 3.2 and 3.3 are an integrated contract and sets forth the entire agreement between the Parties hereto with respect to the subject matter contained herein. All agreements, covenants, representations and warranties, express or implied, oral or written, of the Parties hereto with regard to such subject matter are contained in this Agreement. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made or relied on by any party hereto.

9.3 This Agreement may not be changed, modified or amended except by written instrument specifying that it amends this Agreement and signed by the Party against whom the enforcement of any waiver, change, modification, extension or discharge is sought. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision whether or not similar, nor shall any waiver be deemed a continuing waiver; and no waiver shall be implied from delay or be binding unless executed in writing by the Party making the waiver.

9.4. All of the covenants, releases and other provisions herein contained in favor of the persons and entities released are made for the express benefit of each and all of the said persons and entities, each of which has the right to enforce such provisions.

9.5. This Agreement shall be binding upon and inure to the benefit of each of the Parties, and their respective representatives, partners, officers, employees, agents, heirs, devisees, successors and assigns.

## X. Further Cooperation.

Each party shall perform any further acts and execute and deliver any further documents that may be reasonably necessary or appropriate to carry out the provisions and intent of this Agreement. Except as expressly stated otherwise in this Agreement, actions required of the Parties or any of them will not be unreasonably withheld or delayed, and approval or disapproval will be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time. Time will be of the essence of actions required of any of the Parties. To the extent that City is prevented in any manner from performing its obligations under this Agreement by causes beyond its control, City shall as soon as reasonably feasible take any and all action and related steps as are lawful and necessary to overcome such obstacles and accomplish the purposes of this Agreement as contemplated by the Parties; provided that nothing in this sentence shall be deemed to constrain the City Council's exercise of discretion in good faith, and further provided that such exercise of discretion and good faith of City Council does not materially affect or alter the rights and/or obligations of the Parties to this Agreement without their express

written consent. In the event any Party elects to structure the assignment and conveyance of the Assets as a like-kind exchange under Section 1031 of the Internal Revenue Code of 1986, as amended, the other Parties agree to cooperate with respect to the like-kind exchange and to execute all documents, conveyances, and other instruments necessary to effectuate an exchange, provided that such other Parties shall not be required to bear additional costs or expenses as a result of such cooperation. However, the cooperating Parties shall not be liable in any manner to the Party electing Section 1031 treatment if such electing Party is unable to sustain Section 1031 like-kind exchange treatment with respect to the assignment and conveyance of the Assets.

## XI. No Third Party Beneficiaries.

Nothing in this Agreement is intended to benefit any third party or create a third party beneficiary; provided, however, that the releases provided for in paragraph VI shall be enforceable by each and all of the Releasees. Except as provided in the immediately preceding sentence, this Agreement will not be enforceable by any person not a Party to this Agreement, or their respective representatives, heirs, devisees, successors and assigns.

## XII. Enforced Delay (Force Majeure).

12.1 With the exclusion of the obligations of each of the Parties on Closing as provided above in this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, acts of terrorism, epidemic, quarantine, casualties, acts of God, litigation, governmental restrictions imposed or mandated by governmental entities, enactment of conflicting state or federal laws or regulations (but only if the Party claiming delay complies at all times with the provisions of this Agreement pertaining to such conflicting laws), or other similar circumstances beyond the reasonable control of the Parties and which substantially interferes with the ability of a Party to perform its obligations under this Agreement. For avoidance of doubt, the City cannot impose its own restrictions respecting performance of this Agreement and thereby create a condition of force majeure excusing it from performance of its obligations under this Agreement.

12.2. An extension of time for any such cause (a "Force Majeure Delay") shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the City or E & B, as applicable, within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the Party claiming such delay and interference delivers the required written notice describing the event, its cause, when and how such Party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any Party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance will be extended for such period of time as the cause of such delay exists but in any event not longer than for such period of time.

12.3 The Parties acknowledge and agree that there have been a number of force majeure events that have occurred prior to the execution of this Agreement that have suspended the obligations of the Lessee under the Lease throughout the duration of such events pursuant to

the force majeure provision (i.e., Section 30) of the Lease. To resolve the Lawsuit, including disputes respecting the effects of those force majeure events on the rights and obligations set forth in the Lease, the Parties agree that (i) three hundred forty-five (345) days remain on the Primary Term set forth in Paragraph 1(c) of the Lease, the remainder of the elapsed time during the Primary Term having been suspended from running and continues to be suspended due to the occurrence of force majeure events as provided in Paragraph 1(c) and Section 30 of the Lease, and (ii) the running of the Primary Term will continue to be suspended under Section 30 of the Lease following the date of approval by the electorate of the Ballot Measure described in Paragraph 4.6(c) and for so long thereafter until the date on which all permits required for the commencement of drilling of the first well are issued provided that the Lessee diligently pursues but has not yet obtained all such permits (subject to the continuing right to claim additional force majeure related to any events occurring following approval by the electorate of the Ballot Measure constituting such an event under the Lease).

**XIII. Attorney's Fees.**

In the event of any litigation or arbitration claim concerning any controversy, claim or dispute between the Parties arising out of or relating to this Agreement or the interpretation or enforcement thereof, the prevailing Party shall be entitled to recover from the other Party its expenses and costs, including reasonable attorneys fees, incurred in conjunction therewith or in the enforcement or collection of any judgment or award rendered therein. The "prevailing party" means the party determined by the court to have prevailed, even if such Party did not prevail in all matters, not necessarily the one in whose favor a judgment or award is rendered. Each Party to this Agreement shall bear its own costs, attorneys' fees and other expenses incurred in association with negotiation and execution of this Agreement.

**XIV. Governing Law; Venue.**

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without regard to any otherwise applicable principles of conflicts of laws. Any action arising out of this Agreement must be commenced in the state courts of the State of California, County of Los Angeles, or in the United States District Court for the Central District of California and each Party hereby consents to the jurisdiction of the above courts in any such action and to the laying of venue in the State of California, County of Los Angeles, and agrees that such courts have personal jurisdiction over each of them.

**XV. Term.**

In the event that City issues a drilling permit to E & B within twenty (20) years of repayment by the City of the full amount of the E & B loan as referenced in paragraph 4.6(c), E & B shall reimburse City Fourteen Million Dollars ($14,000,000) (less any portion of which remains yet unpaid by City) of the E & B Loan.

**XVI. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, but such counterparts together shall constitute one and the same instrument.

**XVII. Notices.**

All notices, demands or other communications of any kind required or desired to be given by the Parties shall be in writing and shall be deemed delivered either (a) forty-eight (48) hours after depositing the notice, demand or other communication in the United States Mail, certified or registered, postage prepaid, addressed to the recipient at the addresses set forth below, or (b) immediately upon receipt during normal business hours or, if received outside of normal business hours, then at the commencement of normal business hours on the next business day following receipt, if sent by e-mail or facsimile to the e-mail address or facsimile number set forth for the intended recipient of the notice or demand below:

**To Macpherson:**
Macpherson Oil Company
2716 Ocean Park Boulevard
Suite 3080
Santa Monica, CA 90405
310-452-3880
310-452-0058 facsimile
Email: Don_Macpherson@macphersonoil.com

**To E & B:**
E&B Natural Resources Management Corporation
1600 Norris Road
Bakersfield, CA 93308
661-679-1797 facsimile
Email: slayton@ebresources.com

**To City:**
City of Hermosa Beach
City Manager
1315 Valley Drive
Hermosa Beach, CA 90254
310-318-0216
310-372-6186 facsimile

Notice of change of mailing address, e-mail address or facsimile number shall be given and effective in the same manner and time provided above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no specific notice was given (provided that a change is not otherwise actually known to the party attempting notice) shall be deemed to constitute receipt of the notice, demand or other communication sent.

**XVIII. Severability.**

Invalidation by judgment or court order or commencement of an action seeking to invalidate any of the provisions contained in this Agreement, or of the application thereof to any person, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance and the same shall remain in full force and effect; in particular, no

such invalidation or action seeking invalidation will impair the City's authority under California Elections Code Section 9222, its discretion and its contractual obligation to place the Ballot Measure on the ballot. For avoidance of doubt City's obligation to place the Ballot Measure on the ballot is otherwise severable from its remaining obligations under this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed and delivered effective as of the Closing.

**CITY OF HERMOSA BEACH**

By: Howard Fishman
Howard Fishman, Mayor

ATTEST:

By: Elaine Doerfling
Elaine Doerfling, City Clerk

**MACPHERSON OIL COMPANY, a California corporation**

By: _____

**WINDWARD ASSOCIATES, a California limited partnership**
by its General Partner, Macpherson Oil Company

By: _____

**E & B NATURAL RESOURCES MANAGEMENT CORPORATION, a California corporation**

By:_____

**APPROVED AS TO FORM:**

Michael Jenkins
Jenkins & Hogin, LLP
Attorneys for the City of Hermosa Beach

_____

James S. Bright
Bright & Brown
Attorneys for Macpherson Oil Company
And Windward Associates

_____

Bret L. Strong
The Strong Firm P.C.
Attorneys for E & B Natural Resources
Management Corporation

_____

RECORDING REQUESTED BY AND
WHEN RECORDED PLEASE RETURN TO:

Macpherson Oil Company
2716 Ocean Park Boulevard
Suite 3080
Santa Monica, CA 90405
ATTN: Mr. Donald Macpherson

SEND TAX STATEMENTS AND RELATED
INFORMATION AND INQUIRIES TO:

The same.

---

*Space above for Recorder's use only, please.*

**MUNICIPAL CORPORATION GRANT DEED**
**(Mineral Rights Only)**

The Undersigned Request(s) that Documentary Transfer Tax be separately stated (off-record) and not be made part of the permanent record of this instrument. Rev & Tax Code § 11932.

**Affects Assessors Parcel(s) No.:** 4187-031-900; 4188-001-901; 4187-001-902; 4183-001-901; 4182-001-900; 4181-037-900; 4181-036-900; 4181-035-900; 4181-034-900; 4169-038-901; 4184-026-900; 4185-001-902; 4187-023-900; 4187-023-901; 4187-023-902; 4187-023-903; 4188-024-901; 4188-017-902; 4187-018-900: 4187-017-900: 4188-019-907: 4187-024-902: 4183-004-903; 4181-005-900; 4181-005-901; 4182-029-903; 4181-004-901; 4181-004-900; 4182-030-900; 4182-030-901; 4182-030-902; 4192-030-903; 4181-011-900; 4188-024-900; 4188-026-900; 4188-026-901; 4188-026-902: 4186-018-900: 4186-027-900: 4160-025-902; 4160-025-903: 4160-026-900: 4185-023-904: 4187-005-902: 4183-002-902; 4183-002-903; 4183-002-901; 4183-002-900: 4183-003-900; 4183-003-901; 4183-003-902; 4183-003-903; 4183-003-904; 4183-013-900: 4187-020-904; 4187-020-907; 4188-026-901; 4187-020-904; 4187-020-904; 4187-020-903; 4187-020-907; 4187-024-902; 4187-020-905; 4187-020-906; 4186-003-900; 4185-016-900; 4187-014-900

This conveyance is made by and from the City of Hermosa Beach, a California municipal corporation (hereinafter referred to as "Grantor'), to Macpherson Oil Company, a California corporation (hereinafter referred to as "Grantee"), effective as of March 2, 2012 (hereinafter referred to as the "Effective Date").

Whereas, Grantor and Grantee are parties to that certain litigation styled *Hermosa Beach Stop Oil Coalition, etc., et al., v. City of Hermosa Beach, etc., et al.*, Los Angeles County Superior Court Case Number BC172546 (the "Litigation");

Whereas, Grantee filed a cross-complaint in the Litigation asserting claims for material breach of contract against Grantor arising out of a 1992 oil and gas lease between Grantor and Grantee, more specifically, that certain Oil and Gas Lease No. 2 (Royalty) by and between the City of Hermosa Beach, as Lessor, and Windward Associates and GLG Energy, L.P., as Lessee, dated January 14, 1992 (hereinafter "the Lease");

Whereas, Grantor and Grantee have reached a settlement of the Litigation, a material component of which is the granting of the perpetual royalty interest reflected herein;

Now, therefore, in consideration of the foregoing and other consideration, the receipt and adequacy of which are hereby mutually acknowledged, Grantor hereby grants to Grantee, in perpetuity, a royalty of Three and One-third Percent of One Hundred Percent (3-1/3% of 100%) (hereinafter referred to as the "Royalty Share") of all Royalty Substances (as defined and described immediately below) which may hereafter at any time be produced from any Burdened Well (as defined and described immediately below). As used in this conveyance:

(i) the phrase "Subject Property" refers to and includes any and all real property that both (a) is situated landward of the mean high tide line and within the incorporated area of the City of Hermosa Beach, California, both as existing and as may be hereafter from time to time extended, and (b) in which Grantor now has or at any time hereafter acquires an ownership interest (whether unqualified fee simple title or some lesser interest or estate), by virtue of which ownership interest Grantor may lawfully undertake, or authorize another person to undertake, operations for the drilling of a well on, within, into or through such real property, and, specifically, whether or not Grantor now owns or hereafter acquires any oil and gas rights interest in such property (and, specifically, but without limiting the generality of the foregoing, Grantee's ownership of and right to the Royalty Share of the Royalty Substances hereunder shall not be defeated by means of the substitution, by acquisition, exchange, trade or purchase, of another property in lieu of, exchange with or substitution for any Subject Property);

(ii) the phrase "Burdened Well' refers to and includes any well drilled on, within, from, into or through any Subject Property;

and (iii) the phrase "Royalty Substances" refers to and includes all oil, gas, other hydrocarbon substances, and of any and all commercially valuable substances (whether such value is now known or hereafter develops) that may be produced in association with any one or more of the above-enumerated substances (whether or not similar in any respect to any of the above-enumerated substances) which may be produced at any time on or after the Effective Date from any Burdened Well.

The foregoing grant is made upon and subject to the following terms and conditions:

1. Notwithstanding that a Burdened Well may be drilled on, within, from, into or through two or more tracts or parcels of real property, whether contiguous or not, each of which qualifies as Subject Property as defined in this conveyance, the interest of Grantee in production from such a well shall be limited to a single Royalty Share of Royalty Substances produced from that well. Conversely, if a well is drilled on, within, from, into or through any Subject Property but also on, within, from, into or through any other property in which Grantor has or hereafter acquires an ownership interest, or a further ownership interest beyond that now owned by Grantor, but which other property is not for whatever reason Subject Property hereunder, such a well shall nevertheless be a Burdened Well as used and referred to in this conveyance.

2. There is expressly recognized and reserved to Grantor, *in its governmental capacity*, the full and complete discretion to determine whether, when and where, and upon what conditions, the drilling of a well and other activities and improvements associated with oil and gas operations are to be undertaken, made or constructed within the incorporated area of the City of Hermosa Beach; provided, however, that if in the free exercise of that discretion Grantor determines to permit oil and gas operations that result in the drilling and operation of a Burdened Well and the production from such well of Royalty Substances, then Grantor shall not through the conditions imposed on such oil and gas operations materially limit, qualify or impair Grantee's right to and ownership of the Royalty Share of Royalty Substances produced from such Burdened Well. There are further hereby

excepted and reserved to Grantor, *in its proprietary capacity* (or to the third party owner thereof): (a) all right, title and interest in and to all of the Subject Property other than the Royalty Share of Royalty Substances, (b) the sole and exclusive right of exploring for Royalty Substances within the Subject Property, and of producing and removing Royalty Substances from the Subject Property, and of entry into and use and improvement of the Subject Property in connection with such exploration, production and removal, and (c) subject to the terms hereinafter provided, all executive rights, including without limitation the sole and exclusive right to negotiate, make and enter into, and modify with any person, and enforce against any person: (i) mineral rights leases or other agreements in whatever and under whatever title for conducting mineral rights operations on, within, from, into or through the Subject Property (any and all of which are hereinafter referred to as "Leases"), (ii) pooling, unitization or communitization agreements or arrangements concerning the exploration for Royalty Substances within, and the production and removal of Royalty Substances from, the Subject Property, and (iii) contracts for the sale of Royalty Substances produced from the Subject Property. Each and every person with whom Grantor enters into a Lease or other agreement included within the enumeration in parts (i), (ii) and (iii), above, of this paragraph shall be included in references hereinafter to an "Operator," no matter the specific character and extent of their specific rights and obligations in relation to Grantor.

3. The foregoing exception herefrom and reservation to Grantor, *in its proprietary capacity* (or the third party owner thereof) of all executive rights, including without limitation the sole and exclusive right to negotiate, make and enter into, and modify with any Operator, and enforce against any Operator: (a) Leases, (b) pooling, unitization or communitization agreements or arrangements affecting the Subject Property, and (c) contracts for the sale of Royalty Substances produced from the Subject Property, is made subject to: (i) the requirement and obligation of Grantor to act in regard to such matters fairly and in good faith; (ii) the limitation and requirement that all such Leases, arrangements, agreements and contracts shall apply in all respects equally to Grantor and Grantee (or, where their interests are numerically different, strictly in proportion to their respective interests); and (iii) the limitation and condition that any such Lease, arrangements, agreements and contracts shall not materially qualify or impair Grantee's

right to and ownership of the Royalty Share of Royalty Substances , or otherwise materially conflict with any of the provisions of this conveyance.

4. Notwithstanding any other provision of this conveyance, Grantee's ownership interest in Royalty Substances produced from each and every Burdened Well shall be Three and One-third Percent of One Hundred Percent (3-1/3% of 100%) whether the same are produced through operations conducted by Grantor or conducted by another person owning or acting by, through or under Grantor. Grantee shall not participate or have any right, title or interest in or to any signing bonus, rental, shut-in royalty, or other compensation or remuneration agreed to by Grantor in a Lease entered into by it in the exercise of the rights excepted from this conveyance and reserved to Grantor.

5. The interest of Grantee contemplated by this conveyance is an ownership interest in the Royalty Substances themselves at the time of their production and severance from the land through a Burdened Well, and not a mere contract right to a share of revenue from the sale of Royalty Substances. Nothing in the foregoing exception from this conveyance and reservation to Grantor shall prevent Grantee from prosecuting an action against any Operator or other third party for the recovery of payment or Royalty Substances due it under the terms and provisions of this conveyance. Grantor and any Operator may enter into such agreement as they may wish providing for primary responsibility between them for the performance of the obligations of Grantor and the satisfaction of the rights of Grantee under this conveyance.

6. Each Party agrees to make, execute and deliver such other instruments or documents, and to do or cause to be done such further or additional acts, as may reasonably be necessary in order to effectuate the purposes of this conveyance, including but not limited to for purposes of effectuating Grantee's ownership of the Royalty Share of Royalty Substances from any particular Burdened Well and/or adequately perfecting in the Los Angeles County Recorder Grantee's rights, title and interest as contemplated by this conveyance.

7. Grantor or any Operator, whichever has control and possession of Royalty Substances produced from any Burdened Well, shall either purchase or sell for the benefit and account of Grantee the Royalty Share of Royalty Substances over which the Grantor or

such Operator has control and possession and which Grantee has not elected to take in kind (as provided in Paragraph 8 below) in accordance with the following terms:

a. Grantee's Royalty Share of oil shall be purchased or paid for (i) at the price received from a first purchaser in an arm's-length transaction or (ii) if no such transaction is involved, at the fair market value of the Royalty Share, as determined by the highest price offered and paid in the field in which production is obtained, or, if none, then the highest price offered and paid in the adjacent or other nearby field nearest to the point of production from the Burdened Well, under a contract for the purchase of crude oil terminable on thirty (30) days' notice, after making the customary adjustments for temperature, water and basic sediment for oil of like gravity and quality on the day the oil is produced.

b. Grantee's Royalty Share of natural gas shall be purchased or paid for at a value which shall be the sum of the following: (i) the net proceeds received by Grantor or an Operator from the arm's-length sale of the natural gas (whether sold in its natural state or as residual dry gas after extracting gasoline and other content) or, if no such transaction is involved, the fair market value of such natural gas; and (ii) the net proceeds derived from the arm's-length sale at the extraction plant of all gasoline and other liquid hydrocarbons extracted and saved from natural gas as a result of processing such gas at a plant owned or operated by Grantor or any Operator (i.e., after deducting from the gross proceeds received by Grantor or such Operator the cost of such processing, which cost for the purposes hereof will be deemed to be forty percent (40%) such gross proceeds of sale) or, if no such arm's-length transaction is involved, the fair market value thereof, less the cost of such processing, which cost for the purposes hereof will be deemed to be forty percent (40%) of said last-mentioned market value.

c. The value of Royalty Substances used or consumed in the operation of a Burdened Well or of production facilities for such well shall not be included in amounts due Grantee. Nothing herein contained shall be construed as obligating Grantor or any Operator to treat oil prior to sale, but if Grantor's or an Operator's own oil shall be treated before such sale, then Grantee's oil will also be treated therewith and, in such event, a proportionate part of the actual and reasonable direct cost of such treatment and of

transportation of the oil to the point of sale, and a proportionate part of the actual and reasonable direct cost of processing, treating, compressing, handling and transporting gas in connection with the sale thereof, in each case excluding any charge for overhead or administration, may be deducted in determining amounts due Grantee. Nothing herein contained shall obligate Grantor or any Operator to treat or process natural gas nor shall Grantor or any Operator be obligated to save, sell or otherwise dispose of natural gas or residual dry gas, as the case may be, unless there is a market therefore at the well or processing plant at a price and under conditions which Grantor or the Operator, whichever is applicable, acting as a prudent operator, believes to be for the best interest of all persons having an ownership interest in such natural gas or residual dry gas, as the case may be, or to compensate Grantee for any natural gas which is neither sold nor used. No compensation shall be due Grantee for or on account of oil or gas unavoidably lost through evaporation, leakage, fire or other casualty prior to the sale and delivery of the same, through no negligence or fault of Grantor or an Operator, and for which no payment is made by such first purchaser.

d. Grantee's Royalty Share of any Royalty Substances, other than oil and gas and the products thereof, which Grantor or an Operator may elect to produce and save or market or utilize, shall be based upon the market value at the point of production, in the condition as produced, of such Royalty Substances. Except as otherwise provided herein, any of the Royalty Substances used or consumed by Grantor or an Operator, or lost prior to the sale and delivery of the same, shall be deemed sold for the market value thereof.

e. Settlement, payment and accounting for the Royalty Share of Royalty Substances shall be made to Grantee on or before the last day of each calendar month for and with respect to Royalty Substances produced, saved and sold during the preceding calendar month, and shall include monthly statements showing the computation of payments along with payment of amounts accruing to Grantee hereunder. Grantee's Royalty Share of Royalty Substances shall be paid for, or when taken in kind delivered to Grantee, without any charge, deduction or offset except as expressly provided herein. *[Note: deduction for treatment and transportation are addressed in Paragraph 7(c).]*

f. Grantee shall pay, and (except as otherwise permitted by law and requested or agreed to by Grantee) Grantor or an Operator may withhold from payments to Grantee (and reflect in the accounting and monthly statements provided for in subparagraph (e), above) any and all taxes or other assessments made or imposed directly, specifically and unambiguously on the volume or value of the Royalty Share of Royalty Substances if, as and when produced from a Burdened Well, including any severance tax, so-called "Windfall Profits" tax, and any federal or state income tax. Other than as provided in the foregoing provisions of this subparagraph (f), Grantee shall have no liability or responsibility for taxes levied upon or assessed against any improvements, fixtures or personal property, or for taxes levied upon or assessed against any real property or any right, title or interest in or to any real property.

g. Grantor and any Operator, at its own cost and expense, shall pay for all labor performed and materials furnished in the exercise of the rights excepted herefrom and reserved hereunder, and Grantee shall not be chargeable with, or liable for, any part thereof. The provisions of this conveyance shall not, either expressly or by implication, be deemed to impose any obligation upon Grantee, or persons acting by, through or under Grantee, as to the time and nature of operations to be conducted, nor any obligation to maintain any such operations after commencement thereof, and all operations, if any, and the extent and duration thereof, shall be solely at the will and discretion of Grantor, and those (other than Grantee) acting by, through or under Grantor.

h. Grantor and any Operator shall indemnify and defend Grantee, and hold it and the Royalty Share of Royalty Substances harmless and free, from and against every lien, claim, demand, loss and liability which shall arise out of or be asserted to have arisen out of or in connection with (i) the exercise of the rights excepted herefrom and reserved hereunder to any person; (ii) any activities or operations of Grantor or any such Operator; and (iii) the doing of any labor or the furnishing of any materials or supplies to any of them, or to persons acting for the benefit or at the direction of any of them.

8. Grantee may elect from time to time to take and receive from Grantor or any Operator, whichever has control and possession of Royalty Substances produced from any Burdened Well, the Royalty Share of Royalty Substances, or any of them, in kind, in lieu of

the purchase or sale thereof by Grantor or an Operator, in which event the Royalty Share of such Royalty Substances shall be delivered to Grantee. Provided, however, that a change from payment in cash to delivery in kind, or vice versa, may not be made more often than once in any calendar year and then only on 60 days' prior written notice to Grantor or an Operator. The Royalty Share of Royalty Substances delivered to Grantee in kind shall be of the same quality as the Royalty Substances sold and delivered for Grantor's and any Operator's own account, and if the Royalty Substances of Grantor and any Operator shall be treated before such sale and delivery, then Grantee's Royalty Share of Royalty Substances will be treated therewith before delivery to Grantee, and Grantee, in such event, shall pay a proportionate part of the cost of treatment. The actual and reasonable direct costs incurred by Grantor or any Operator to deliver the Royalty Share of the Royalty Substances to Grantee (i.e., excluding any charge for overhead or administration) shall be paid for by Grantee. In the event Grantor or any Operator shall have or construct or at any time use any pipeline or other facility for the transportation of any Royalty Substance produced from a Burdened Well to any transporting pipeline or a point of sale, Grantee shall have the right, at Grantee's election, to require the transportation through such pipeline or other facility of any or all of Grantee's Royalty Share of such Royalty Substance. Should Grantee so elect, Grantee shall pay a transportation charge to Grantor or any Operator, as the case may be, equal to the actual incremental added cost incurred over and above the cost of transporting Grantor's or any Operator's production when using facilities of others, or the actual incremental added operating cost of the transportation of Grantee's production over and above the cost of transporting Grantor's or Operator's production when using its own facilities, excluding all capital outlays, overhead or administrative costs, interest on capital investment and charges for depreciation.

9. The prevailing party in any legal action between the parties to this conveyance (and their respective successors and assigns) concerning the interpretation, application or enforcement of this conveyance shall be entitled to recover, in addition to any and all relief to which it is otherwise entitled, its attorney, consultant and expert witness fees actually and reasonably incurred therein, both in trial court and appellate proceedings.

10. This conveyance constitutes the entire agreement and understanding between the parties concerning the royalty granted herein, and any and all prior oral and

written statements, representations and commitments between the parties with respect to that subject are merged into and superseded by this written conveyance. This conveyance may not be modified other than by a writing signed by both of the parties.

11. This instrument and all its terms, conditions and stipulations shall extend to the benefit of and be binding upon all the successors and assigns of Grantor and Grantee, and other persons claiming by, through and under them. More specifically, and without limiting the generality of the foregoing, Grantee's ownership of the Royalty Share of Royalty Substances shall extend to all of the Subject Property in which Grantor now owns or hereafter acquires an interest notwithstanding that Grantor may at any time hereafter transfer all or any part of its interest therein to any other person.

12. This conveyance may be executed in any number of counterparts, all of which shall be deemed to constitute a single instrument, and which may be collected together into a single instrument for recording.

IN WITNESS OF WHICH, Grantor and Grantee have caused this conveyance to be executed on the date set forth in the respective attached acknowledgment of execution on their behalf, but effective as of the Effective Date set forth above.

**GRANTOR:**
**City of Hermosa Beach**,
a California municipal corporation

*By:* Howard Fishman
Howard Fishman, Mayor

**ATTEST:**

*By:* Elaine Doerfling
Elaine Doerfling, City Clerk

**Approved as to form:**

Michael Jenkins
Jenkins & Hogin LLP
Attorneys for the City of Hermosa Beach

**GRANTEE:**
**Macpherson Oil Company**,
a California corporation

*By:* Donald R. Macpherson
Donald R. Macpherson,
President and Chief Executive Officer

**RECORDING REQUESTED BY AND WHEN RECORDED PLEASE RETURN TO:**

**Macpherson Oil Company**
**2716 Ocean Park Boulevard**
**Suite 3080**
**Santa Monica, CA 90405**
**ATTN: Mr. Donald Macpherson**

**PLEASE MAIL TAX STATEMENTS AND RELATED MATERIALS TO THE ABOVE.**

**Same as above.**

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*Space above for Recorder's use only, please.*

*Special Indexing Request: Recorder*
*Please Index as "Grantor" both:*
***Macpherson Oil Company***
*and* ***Windward Associates***

# ASSIGNMENT AND BILL OF SALE
## [With Reservation of Overriding Royalty]
## {Mineral Rights}

The undersigned requests that the amount of documentary transfer tax due in connection with the recording of this instrument "be shown on a separate piece of paper to be affixed to the document by the recorder after the permanent record is made and before the original is returned as specified in Section 27321 of the Government Code." Rev. & Tax Code § 11932.

**Affects Assessor's Parcel(s) No.** 4187-031-900; 4188-001-901; 4187-001-902; 4183-001-901; 4182-001-900; 4181-037-900; 4181-036-900; 4181-035-900; 4181-034-900; 4169-038-901; 4184-026-900; 4185-001-902; 4187-023-900; 4187-023-901; 4187-023-902; 4187-023-903; 4188-024-901; 4188-017-902; 4187-018-900: 4187-017-900: 4188-019-907: 4187-024-902: 4183-004-903; 4181-005-900; 4181-005-901; 4182-029-903; 4181-004-901; 4181-004-900; 4182-030-900; 4182-030-901; 4182-030-902; 4192-030-903; 4181-011-900; 4188-024-900; 4188-026-900; 4188-026-901; 4188-026-902: 4186-018-900: 4186-027-900: 4160-025-902; 4160-025-903: 4160-026-900: 4185-023-904: 4187-005-902: 4183-002-902; 4183-002-903; 4183-002-901; 4183-002-900: 4183-003-900; 4183-003-901; 4183-003-902; 4183-003-903; 4183-003-904; 4183-013-900: 4187-020-904; 4187-020-907; 4188-026-901; 4187-020-904; 4187-020-904; 4187-020-903; 4187-020-907; 4187-024-902; 4187-020-905; 4187-020-906; 4186-003-900; 4185-016-900; 4187-014-900

This Assignment and Bill of Sale is made by and from **Macpherson Oil Company**, a California corporation, for itself and Windward Associates, a California limited partnership of which it is the general partner (as "***Grantor***") to, and accepted by, **Hermosa Acquisition, LLC,** a Delaware limited liability company (as "***Grantee***"), effective as of March 2, 2012 (the "***Effective Date***").

## RECITALS

1. In 1984, the voters of the City of Hermosa Beach, County of Los Angeles, State of California (the "***City***") approved two ballot measures excepting contemplated oil

and gas operations on and from the surface of a **City**-owned maintenance yard site (the "***City Yard***") and a school site owned by the Hermosa Beach City School District (the "***School Site***") from a then-existing general ban on oil and gas operations within the incorporated area of the **City**. Thereafter, the **City** and the Hermosa Beach City School District (the "***School District***"), in their proprietary capacities, as lessors, made and entered into separate oil and gas leases with **Grantor**, as lessee, those leases being more specifically described as:

(a) an oil and gas lease between the **City** and **Grantor**, with respect to certain **City**-owned lands located landward of the mean high tide line of the Pacific Ocean within the incorporated area of the **City** (the "***City-owned Uplands***") commonly known and hereinafter referred to as "Oil and Gas Lease No. 1," dated October 14, 1986, and recorded March 26, 1987, as document no. 87 452659, official records of the Los Angeles County Recorder, amended by instruments dated December 16, 1986, September 27, 1988 and July 23, 1991, and superseded in its entirety by a subsequent oil and gas lease between the **City** and **Grantor**, with respect to both the **City-owned Uplands** and the **City**-owned tidal and submerged lands located seaward of, and within one-nautical mile of, the mean high tide line of the Pacific Ocean within the incorporated area of the **City** (collectively, the "***City-owned Tidelands***") commonly known and hereinafter referred to as "Oil and Gas Lease No. 2," dated January 14, 1992, a memorandum of which was recorded April 9, 1998, as document no. 98 581404, in the official records of the Los Angeles County Recorder (the "***City Lease***"); and

(b) a subsurface oil and gas lease between the **School District** and **Grantor**, dated October 2, 1989, and recorded March 25, 1991, as document no. 91 419501, in the official records of the Los Angeles County Recorder, as amended by instrument dated August 10, 1991 (the "***School Lease***").

2. The **City**, in its governmental capacity by City Council Resolution, certified a final project EIR in 1990, but thereafter by further City Council Resolution, approved its Conditional Use Permit No. 93-5632, dated August 12, 1993 (the "***CUP***") for a consolidated oil and gas project, confining oil and gas project surface use and improvement to the **City Yard** area from which subsurface oil and gas operations were contemplated to locations throughout the incorporated area of the **City**, including the **City-owned Uplands** and the **City-owned Tidelands** (the "***Project Area***"), and an addenda to the previously certified environmental impact report addressing the consolidation of surface use and improvement to the **City Yard** (the certified environmental impact report and approved addenda are hereinafter referred to in aggregate as the "***EIR***"). The term "***Project***" is used hereinafter to refer to and include activities, improvements and operations involved in the exploration for, production and removal of oil, gas and other hydrocarbon substances (and substances produced in association with them) on and from a surface location within the incorporated area of the **City** to subsurface locations anywhere within the incorporated area of the **City**, including the **City-owned Uplands** and the **City-owned Tidelands**.

3. The California State Lands Commission approved the making of the **City Lease**, including by its formal action of March 8, 1994, after an earlier June 30, 1992 approval had been set aside by the Superior Court (the "***State Lands Approval***").

4. **Grantor**, as lessee, also made and entered into various subsurface oil and gas leases, of varying dates, with private party lessors, with respect to lands within the incorporated area of the **City** (all such leases, existing and hereafter acquired, are hereinafter collectively referred to as the "***Townlot Leases***," the existing **Townlot Leases** being more fully described in the attached Exhibit "A;" provided, however, that the assignment hereinafter of the existing **Townlot Leases** includes each and all existing oil and gas lease now held by **Grantor** from private party lessors with respect to lands within the incorporated area of the **City** whether or not described, or correctly described, in Exhibit "A").

5. The California Coastal Commission, in its formal hearing of February 4, 1998 approved the **Project**, and conditionally approved Coastal Development Permit No. E-96-28 for the ***Project*** (the "***Coastal Approval***").

6. **Grantor** has also obtained from the South Coast Air Quality Management District all "Permits to Construct" necessary for the **Project** (the "***SCAQMD Permits***").

7. In November 1995, the voters of the **City** enacted "***Measure E***," an initiative measure that banned oil drilling in the **City**. On December 8, 1998, the **City**, by formal action of its City Council, withdrew its support and approval of the **Project** based on its determination that the **Project**, as then constituted, presented an unacceptable public safety risk. Thereupon, **Grantor** filed a cross-complaint for monetary damages against the **City** in an already pending action initiated by opponents of the **Project** (i.e., *Hermosa Beach Stop Oil Coalition, et al. v. City of Hermosa Beach*, Los Angeles County Superior Court Case No. BC172546, hereinafter referred to as the "**Action**"). The California Court of Appeal ruled in the **Action** both that **Measure E** applied to the **Project** and that its passage entitled **Grantor** to sue the **City** for monetary damages, and thereafter also ruled that the **City**'s December 1998 determination that the **Project**, as then constituted, presented an unacceptable public safety risk might constitute a defense to **Grantor**'s damages claim if the evidence presented at trial satisfied the limitations upon such a defense set forth by the Court of Appeal.

8. **Grantor** and **E&B Natural Resources Management Corporation, a California corporation and an affiliate of the Grantee ("E&B")**, along with the **City**, have made and entered into that certain "*Settlement Agreement and Release*" dated as of March 2, 2011 (the "***Settlement Agreement***"), which is incorporated fully herein, reference being made to a separate complete and fully executed duplicate original of the **Settlement Agreement** in the hands of each of **Grantor** and **E&B** (and of the **City**) for further particulars. Among other specific provisions, the **Settlement Agreement** provides for: (a) the settlement and dismissal of the **Action**, and (b) the assignment by **Grantor** to **Grantee** of all of the right, title and interest of **Grantor** in, to and under the **Lease**, the **School Lease**, any and all **Townlot Leases**, the **CUP** and **EIR**, the **State Lands Approval**, the **Coastal Approval**, and any and all other rights it may have in or associated with the **Project**, without any warranty of title, subject to the reservation or grant to **Grantor** of an overriding royalty interest of One and One-half Percent of One Hundred Percent (1-1/2% of 100%) of all oil, gas and other hydrocarbon substances (and substances produced in association with them) which may be produced in the course of the **Project** from the **Project Area** under the **Project Leases** (as hereinafter

defined), or allocated to any of the **Project Leases** or any part of the **Project Area** pursuant to a pooling arrangement, line well agreement, or unitization or communitization agreement which may be entered into by **Grantee**. As used herein, the "***Project Leases***" means and includes the **City Lease**, the **School Lease** and/or any of the **Townlot Leases**, as currently framed or hereafter from time to time modified in any respect, as well as any continuation, extension, renewal, restatement, ratification or replacement of any of them as may be made, taken or acquired by **Grantee**, any successor or assign of **Grantee**, or any entity in which **Grantee** or its successor or assign has an ownership interest or is under common ownership or control with, or otherwise from the **Project Area** (i.e., whether or not a specific subsurface point of "production" at which such substances enter a well bore is located within or outside the area that is subject to any one or more of such leases, and whether or not a specific subsurface point of "production" at which such substances enter a well bore is located within an area subject to any further **Townlot Leases**, provided only that such subsurface point of production is located within the **Project Area**), or allocated to any of the **Project Leases** or any part of the **Project Area** pursuant to a pooling arrangement, line well agreement, or unitization or communitization agreement which may be entered into by **Grantee**, all upon and subject to the terms, provisions and conditions hereinafter set forth.

Now, therefore, in consideration of the foregoing and of other consideration, the receipt and adequacy of which are hereby mutually acknowledged by **Grantor** and **Grantee**, upon and subject to the terms and provisions set forth and/or incorporated herein, and effective as of the **Effective Date**:

**1. <u>Conveyance; Grantee's Assumption and Agreement to Perform; Exceptions and Reservations</u>.**

**1.1 <u>Conveyance</u>:** Subject to the exceptions and reservations set forth in Section 1.3 below, **Grantor** does hereby sell, assign, transfer and convey to **Grantee** all of **Grantor**'s existing right, title and interest in, to and under the following described and defined **Property**, **Hydrocarbons**, **Permits**, **Project Contracts**, and **Files and Records**, ***excluding, however,*** those which are hereinafter described or included by reference in Section 1.3, below, as **Excepted & Reserved Assets** (all of which [i.e., (a) through (e), immediately below, but subject to the exception and reservation referenced in the foregoing], are herein collectively referred to as the "***Project Assets***"); as well as any and all other rights and interests of **Grantor** in, to, or under, or specifically and exclusively associated with, the **Project Assets**, although the same may be improperly described in or omitted from the body of this instrument, it being the express mutual intent of **Grantor** and **Grantee** that, except as provided in Section 1.3, below, all of **Grantor**'s right, title, and interest in the **Project Assets**, be hereby conveyed to **Grantee** hereunder; the **Project Assets** (subject to the exception and reservation referenced in the foregoing) being defined and described as follows:

(a) The **City Lease**, the **School Lease**, each of the existing **Townlot Leases**, and any and all other oil, gas, or mineral leases, and interests in rights to explore for and produce oil, gas, or other minerals, including but not limited to working interests, carried working interests, net revenue interests, rights of assignment and reassignment, reversionary interests,

back-in interests, production payments, and royalty interests of any kind or description (each and all of which are hereinafter collectively referred to as the "***Property***");

(b) All of **Grantor's** right, title, and interest in and to any and all oil, gas and other hydrocarbon substances (and substances produced in association with them) within or which may be produced from the **Project Area** (each and all of which are hereinafter collectively referred to as the "***Hydrocarbons***");

(c) The **EIR**, **CUP**, **State Lands Approval**, **Coastal Approval**, **SCAQMD Permits** and any and all other franchises, licenses, permits, approvals, consents, orders, and decisions of regulatory agents or authorities, and certificates and other authorizations and other rights granted by governmental agents or authorities, that relate specifically and exclusively to the **Project**, the **Property**, or the **Hydrocarbons**, or to the ownership or operation of any thereof (collectively the "***Permits***");

(d) All contracts, permits, road use agreements, rights-of-way, easements, licenses, servitudes, operating agreements, and any other agreements which relate specifically and exclusively to any of the **Property**, the **Hydrocarbons** and the **Permits**, or the ownership or operation of any thereof, or the production, treatment, sale, storage or disposal of the **Hydrocarbons**, together with all rights, obligations, privileges, and benefits of **Grantor** thereunder arising on or after the Effective Date (collectively the "***Project Contracts***"); and

(e) Originals, insofar as in the possession or under the control of **Grantor** or its affiliates, and, if not the file copies in the possession or under the control of **Grantor**, of all of the files, records, information and materials relating specifically and exclusively to the **Property**, **Hydrocarbons**, **Permits**, and **Project Contracts**, insofar as **Grantor** is not prohibited from transferring the same to **Grantee** by law or agreement with any third party including, without limitation, (i) lease, land and title records (including abstracts of title, title opinions, certificates of title, title curative documents, division orders, and division order files), the **Project Contracts**, geophysical, geological, engineering and other technical data, if any, relating to specifically and exclusively to the **Project**, the **Property** or the **Hydrocarbons**, and environmental files and records (collectively the "***Files and Records***"), provided, however, that a set of copies of any or all such **Files and Records** may be made and maintained by **Grantor** at its sole option and cost), subject to ongoing confidentiality requirements under the Settlement Agreement to the extent such requirements apply to such information.

**1.2.** **Grantee's Assumption and Agreement to Perform; Indemnity.** For the benefit of the **City**, with respect to the **City Lease**, and for the benefit of the **School District**, with respect to the **School Lease**, and for the benefit of each and all of the several respective lessors under each of the existing **Townlot Leases**, and for the benefit of **Grantor**, as to each and all of the **City Lease**, the **School Lease**, and the

existing **Townlot Leases**, **Grantee** hereby assumes and agrees fully and timely to perform each and all of the obligations provided to be performed on the part of the lessee under each and all of the **City Lease**, the **School Lease**, and the existing **Townlot Leases** with the same force and effect as if **Grantee** had been the original signatory lessee named in each of them. Grantee agrees to promptly satisfy all of the requirements of each and all of the **City Lease**, the **School Lease**, and the existing **Townlot Leases**, for making the within assignment to **Grantee** effective, including without limitation the provisions of Section 24.a of the **City Lease**. **Grantee** agrees to indemnify **Grantor** and to hold **Grantor, Grantor's City Royalty** and **Grantor's Share** of **Royalty Substances**, harmless from and against any and all claims, demands, liens, damages, loss or liability that may arise out of, or be asserted by a third party to arise out of (a) any failure on the part of **Grantee** to perform the obligations which it has assumed and agreed to perform in this Section 1.2, or out of any act, (b) any negligent or otherwise wrongful omission, on the part of **Grantee** or any person acting by, through or under **Grantee**, or at its direction or on its behalf, either in the exercise of its rights and the discharge of its obligations under any of the **City Lease**, the **School Lease** or any **Townlot Lease** or otherwise in the course of its carrying out the **Project**, or (c) the doing of any labor or the furnishing of any materials or supplies to any of **Grantee**, or to persons acting for the benefit or at the direction of **Grantee**.

**1.3. Excepted & Reserved Assets (including Grantor's City Royalty and Grantor's Reserved ORRI).** Provided, however, that there are specifically excepted from this conveyance and reserved to **Grantor**, the following (i.e., (a) through (j), inclusive), which are herein referred to as the "***Excepted & Reserved Assets***:"

(a) **Grantor**'s legal opinions or analyses, and information protected by attorney-client privilege;

(b) All corporate, financial, and tax records of **Grantor**; however, **Grantee** shall be entitled to receive copies only of any financial and tax records owned by or under the control of **Grantor** and which specifically and exclusively relate to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(b)), or which are beneficial and/or necessary for **Grantee**'s effective ownership, administration, or operation of the **Project Assets**;

(c) All rights, titles, claims and interests of **Grantor** related to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(c)), for any time prior to the **Effective Date** under any policy or agreement for insurance, under any bond, or to any insurance or condemnation proceeds or awards;

(d) Claims of **Grantor** for refund of or loss carry forwards with respect to, and any liability for, (i) any taxes or other assessments against or attributable to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(d)), for any time prior to the **Effective Date**, and (ii) income or franchise taxes attributable to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(d)), for any time prior to the **Effective Date**;

(e) All amounts due or payable to **Grantor** as adjustments or refunds under any contracts or agreements affecting the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(e)), for all times prior to the **Effective Date**;

(f) All amounts due or payable to **Grantor** as adjustments to insurance premiums related to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(f)), for all times prior to the **Effective Date**;

(g) All monies, proceeds, benefits, receipts, credits, income or revenues (and any security or other deposits made) attributable to the **Project Assets** (i.e., as defined and determined without reference to this Section 1.3(g)), prior to the **Effective Date**;

(h) All of **Grantor**'s patents, trade secrets, copyrights, names, marks and logos;

(i) That separate Three and One-Third Percent of One Hundred Percent (3-1/3% of 100%) royalty granted by the **City** to **Grantor** under the terms of the **Settlement Agreement** and contained in the Municipal Corporation Grant Deed attached as Exhibit A thereto ("**Grantor's City Royalty**"); and

(j) An overriding royalty interest, excepted herefrom and reserved to **Grantor**, of One and One-half Percent of One Hundred Percent (1-1/2% of 100%), hereinafter referred to as "***Grantor's Share***," of all oil, gas and other hydrocarbon substances, and substances produced in association with any of them (the "***Royalty Substances***") which may be produced and in the course of the **Project** under any of the **Project Leases** or otherwise from the **Project Area** (i.e., whether or not a specific subsurface point of production is located within or outside the area that is subject to any one or more of the **Project Leases**, provided only that such subsurface point of production is located within the **Project Area**), or allocated thereto pursuant to a pooling arrangement, line well agreement, or unitization or communitization agreement which may be entered into by **Grantee**, all upon and subject to the terms, provisions and conditions of Section 1.4, below ("***Grantor's Reserved ORRI***"). If **Grantee**, its successor or assign, shall hereafter in the course of the **Project** at any time or from time to time acquire any further oil and gas rights interest, whether fee or lease or otherwise, or any other right, title or interest in or to any land then remaining subject to any of the **Project Leases**, or otherwise within the **Project Area** (and as often as the same shall occur), and if in the exercise of such right, title or interest **Grantee**, its successor or assign, shall produce any of the **Royalty Substances** from the subsurface of the **Project Area** (i.e., whether or not such right, title and interest and/or such production also extends beyond the **Project Area**), then insofar as concerns the rights and obligations of **Grantee** and **Grantor** hereunder **Grantor's Reserved ORRI** hereunder shall nevertheless continue to apply fully to all of the production of **Royalty Substances** thus obtained by **Grantee**, its successor or assign, to the end that **Grantor** shall in any

and all such events own and receive the full ORRI share of all **Royalty Substances** produced from or allocated to the land now or hereafter subject to any of the **Project Leases** or otherwise to any part of the **Project Area.** **Grantee** agrees to either purchase **Grantor's Share** of **Royalty Substances** or to sell **Grantor's Share** of **Royalty Substances** for the benefit and account of **Grantor**, all of **Grantor's Share** of **Royalty Substances** which **Grantor** has not elected to take in-kind (as provided below in this subparagraph). Payment by **Grantee** to **Grantor** for **Grantor's Royalty Share** of **Royalty Substances** shall be made in the amount and time determined in accordance with the provisions of the **City Lease** for the royalty payable to the **City** thereunder (except as to the difference in royalty percentage between **Grantor**'s 1-1/2% of 100% **Royalty Share** and the royalty percentage of the **City** determined pursuant to the **City Lease**). **Grantor**'s rights with respect to the information to be included by **Grantee** along with payment to **Grantor** of amounts due it hereunder, and with respect to contracts for the sale of **Royalty Substances**, shall be as provided with respect to the **City**, as lessor, in the **City Lease**. **Grantor** may elect from time to time, in the manner and subject to the terms and conditions provided in the **City Lease** for the right of the **City** to take its royalty share thereunder in-kind, to take and receive **Grantor's Share** of **Royalty Substances**, or any of them, in kind, in lieu of the purchase or sale thereof by **Grantee**.

**1.4** **Grantor's Reserved ORRI.** Grantor's Reserved ORRI is subject to the following terms.

(a) There is excepted herefrom and reserved to **Grantee**, its successors and assigns: (i) all other right, title and interest in, to and under each of the **Project Leases**; and (ii) the sole and exclusive right of exploring for **Royalty Substances** under each of the **Project Leases**, and of producing and removing **Royalty Substances** from the land subject to each of the **Project Leases**, or otherwise within the **Project Area,** and of entry into and use and improvement of real property within the **Project Area** in connection with such exploration, production and removal, such that, without limiting the foregoing, operations in connection with the exploration or, production and removal of **Royalty Substances**, if any, under any of the **Project Leases**, or otherwise within the **Project Area**, and the nature, frequency, extent and duration thereof, shall be determined by **Grantee** in its sole discretion; and (iii) subject to the terms hereinafter provided, the sole and exclusive right to negotiate, make and enter into, modify and enforce pooling arrangements and unitization or communitization agreements concerning the exploration for and the production and removal of **Royalty Substances** under each of the **Project Leases** or otherwise within the **Project Area**; and (iv) the sole and exclusive right, and the obligation, to negotiate, make and enter into, modify and enforce contracts for the sale of **Royalty Substances** produced under or allocated to each of the **Project Leases**, or otherwise within the **Project Area,** including alike **Grantor's Share** of **Royalty Substances** (reserved to it hereunder) and the remaining production share of **Grantee** (subject,

however, to **Grantor**'s right as provided in this Assignment and Bill of Sale to take in kind and to all other terms hereinafter provided).

(b) The foregoing reservation to **Grantee** of the sole and exclusive right to negotiate, make and enter into, modify and enforce pooling arrangements, line well agreements, and unitization or communitization agreements concerning the exploration for and the production and removal of **Royalty Substances** under each of the **Project Leases** or otherwise within the **Project Area**, and of the sole and exclusive right, and the obligation, to negotiate, make and enter into, modify and enforce contracts for the sale of **Royalty Substances** produced under or allocated to each of the **Project Leases**, or otherwise within the **Project Area,** is made subject to: (i) the requirement and obligation of **Grantee** to act in regard to such matters fairly and in good faith, and (ii) the limitation and requirement that all such arrangements, agreements and contracts shall apply in all respects equally to **Grantee** and **Grantor** (or, insofar as their respective interests differ, strictly in proportion to their respective interests), and (iii) the limitation and requirement that **Grantee** shall not include in any such arrangement, agreement or contract provisions which conflict with or deviate from the provisions of this instrument. In exercising the rights enumerated above in this subparagraph, insofar as affecting the right, title and interest of **Grantor**, **Grantee** shall act as the agent and fiduciary of **Grantor** and shall exercise the utmost good faith in all matters pertaining to **Grantor's Share** of **Royalty Substances**.

(c) **Grantor's Reserved ORRI** and **Grantor's City Royalty** are ownership interests in the **Royalty Substances** themselves (whether produced under or allocated to any of the **Project Leases** or otherwise from or allocated to any part of the **Project Area**) at the time of their production and severance from the land, and not a mere right to a share of revenue from the sale of **Royalty Substances**.

**2. <u>Subject to Settlement Agreement</u>.** This instrument is made and accepted upon and subject to all of the terms and provisions of the Settlement Agreement, provided, however, that if there is any irreconcilable conflict between the provisions of this instrument and of the Settlement Agreement, then the provisions of this instrument shall control over the provisions of the Settlement Agreement to the extent of such irreconcilable conflict but no further.

**3. <u>Further Assurances</u>.** Each of the parties agrees to take, without unreasonable delay upon request by the other party, such further commercially reasonable action as may be requested by the other party in order to fully, effectively and unambiguously vest in the requesting party the right, title and interest assigned and/or reserved to it hereunder, or otherwise to fully implement and give effect to the intention of the parties concerning the scope and effect of this instrument, including, without limitation, the execution and delivery (and participation in the preparation) of such further conveyances, division orders, transfer orders, and all other documents appropriate to provide the requesting party the rights, obligations, and benefits mutually contemplated to be acquired pursuant to this instrument and the **Settlement**

**Agreement**. Without limiting the generality of the foregoing, whenever either: (a) **Grantee** shall be reasonably concerned either that the provisions of this instrument may be ineffective for any reason to effectively and unambiguously vest in **Grantee** the ownership of the **Project Assets** or that **Grantee**'s right, title and interest as contemplated hereunder may be in any respect not adequately perfected in the official records of the Los Angeles County Recorder, or (b) **Grantor** shall be reasonably concerned either that the provisions of this conveyance may be ineffective for any reason to create in **Grantor** the ownership of **Grantor's Share** of **Royalty Substances** or that **Grantor**'s right, title and interest as contemplated hereunder may be in any respect not adequately perfected in the official records of the Los Angeles County Recorder, and (c) in any such event, whether or not any express claim or formal judicial determination shall have been made on any of those subjects, then, in any such event, (i) **Grantee** covenants and agrees at the request of **Grantor** to execute and deliver to **Grantor** in recordable form such further conveyance or other instrument, drawn and provided by **Grantor**, as may be necessary to vest in **Grantor** marketable title to **Grantor's Share** of **Royalty Substances**, upon and subject to all of the terms and provisions of this instrument, and (ii) **Grantor** covenants and agrees at the request of **Grantee** to execute and deliver to **Grantee** in recordable form such further conveyance or other instrument, drawn and provided by **Grantee**, as may be necessary to vest in **Grantee** marketable title to the **Project Assets**, upon and subject to all of the terms and provisions of this instrument.

**4. Project Assets Conveyed "As Is" and "Where Is."**

THE **PROJECT ASSETS** ARE CONVEYED BY **GRANTOR** TO **GRANTEE** "*AS-IS*" AND "*WHERE-IS*" AND **GRANTEE** ASSUMES THE RISK OF DESCRIPTION, TITLE AND CONDITION OF THE **PROJECT ASSETS** AND SHALL SATISFY ITSELF WITH RESPECT THERETO. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE **FILES AND RECORDS** ARE TRANSFERRED WITHOUT WARRANTY OR REPRESENTATION AS TO ACCURACY OR COMPLETENESS, OR AS TO ANY OTHER SUBJECT, AND IN NO EVENT SHALL **GRANTOR** HAVE ANY LIABILITY WHATSOEVER WITH RESPECT TO THE USE OF OR RELIANCE UPON ANY OF THE **FILES AND RECORDS** BY **GRANTEE** OR BY ANY PERSON ACTING BY, THROUGH OR UNDER **GRANTEE**.

**5. Notices.** All notices, demands or other communications of any kind required or desired to be given by **Grantor** or **Grantee**, respectively, hereunder shall be in writing and shall be deemed delivered either (a) forty-eight (48) hours after depositing the notice, demand or other communication in the United States Mail, certified or registered, postage prepaid, addressed to **Grantee** or **Grantor**, respectively, at the addresses set forth below, or (b) immediately upon receipt during normal business hours or, if received outside of normal business hours, then at the commencement of normal business hours on the next business day following receipt, if sent by e-mail or facsimile to the e-mail address or facsimile number set forth for the intended recipient of the notice or demand below:

**To Grantor:** Macpherson Oil Company
2716 Ocean Park Boulevard
Suite 3080
Santa Monica, CA 90405
310-452-3880
310-452-0058 [facsimile no.]
Email: Don_Macpherson@macphersonoil.com

**To Grantee:** Hermosa Acquisition, LLC
In Care of:
E&B Natural Resources Management Corporation
1600 Norris Road
Bakersfield, CA 93
661-679-1797 facsimile
Email: slayton@ebresources.com

Notice of change of mailing address, e-mail address or facsimile number shall be given and effective in the same manner and time provided above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no specific notice was given (provided that a change is not otherwise actually known to the party attempting notice) shall be deemed to constitute receipt of the notice, demand or other communication sent.

**6. Entire Agreement; Amendment; Severability**. The terms and provisions expressly set forth and expressly incorporated into this instrument constitute the entire agreement and understanding between the parties concerning its subject matter, and any and all prior oral and written statements, representations and commitments between the parties with respect to that subject are merged into and superseded by this written instrument. This instrument shall not be amended except by a writing signed by the parties hereto, or their respective interested successors and assigns. If any term or provision of this instrument shall, to any extent, be determined by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this instrument shall not be affected thereby, and each term and provision of this instrument shall be valid and be enforceable to the fullest extent permitted by law.

**7. Successors and Assigns; Third Parties**. The rights and obligations provided in this instrument shall extend to the benefit of and burden the original parties and their respective successors and assigns. Other than with respect to the successors and assigns of the parties, and except the contemplated benefit to the **City**, **School District**, and other lessors under the provisions of Section 1.2, above, the provisions of this conveyance are not intended to confer any rights or create any obligations in favor of or against any third party.

**8. Attorney Fees.** The prevailing party in any legal action concerning the interpretation, application or enforcement of this instrument shall be entitled to recover its attorney fees and costs actually and reasonably incurred in connection with that legal action, including those incurred in connection with any appellate proceedings involved in such legal action, in addition to all such other relief to which it is otherwise entitled.

**9. Governing Law**. This instrument shall be governed by and construed in accordance with the laws of the State of California without giving effect to principles of conflicts of law.

**10. Counterpart Execution.** This instrument may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

**IN WITNESS OF WHICH**, this instrument is executed and delivered by the parties on the (respective) date set forth in the acknowledgement of the signature on their behalf, attached hereto, and as of the Effective Date.

**GRANTOR:**

**MACPHERSON OIL COMPANY**, a California corporation

By: _____

Name: DONALD MACPHERSON

Title: PRESIDENT AND CEO

**GRANTEE:**

**HERMOSA ACQUISITION, LLC**, a Delaware limited liability company

By: _____

Name: Stephen D. Laydon

Title: Authorized Rep.

**CITY CONSENT TO ASSIGNMENT AND RELEASE**

(terms appearing below in bold text are used with the same meaning as provided in the foregoing provisions of this instrument)

The City of Hermosa Beach, a California municipal corporation (herein and hereinabove referred to as the "**City**"), and the lessor under the hereinabove described and defined **City Lease**, does hereby consent to the foregoing assignment by Macpherson Oil Company, a California corporation (for itself and Windward Associates, a California limited partnership of which it is the general partner), the "**Grantor**" hereinabove named, of all right, title and interest **Grantor** in, to and under both (i) the **City Lease** and (ii) any and all **City**-issued **Permits** to Hermosa Acquisition, LLC, a

Delaware limited liability company, the "**Grantee**" hereinabove named, except only as hereinabove expressly excepted and reserved to **Grantor**, and, in consideration of the foregoing assumption by **Grantee** and of **Grantee**'s agreement to perform, for the benefit of the **City** all of the obligations provided to be performed on the part of the lessee under the **City Lease**, with the same force and effect as if **Grantee** had been the original signatory lessee named therein, the **City** hereby discharges and releases **Grantor** from any and all obligations which may have accrued or may hereafter accrue under the **City** Lease and/or any and all **City**-issued **Permits**.

**CITY:**

**CITY OF HERMOSA BEACH**, a California municipal corporation

***By:*** _____

Howard Fishman, Mayor

**ATTEST:**

By: _____
Elaine Doerfling, City Clerk

**Approved as to form**:

Michael Jenkins
Jenkins & Hogin LLP
Attorneys for the City of Hermosa Beach

_____

EXHIBIT "A"
to

Assignment and Bill of Sale by and from **Macpherson Oil Company**, a California corporation, for itself and Windward Associates, a California limited partnership, to **Hermosa Acquisition, LLC**, a _Delaware limited liability company, effective as of March 2 , 2012

***Schedule of Townlot Leases***

*This page intentionally blank below this line. The substance of this exhibit follows.*

## EXHIBIT "A"

## SCHEDULE OF TOWNLOT LEASES

| Lessor | Lessee | Recording Date | Recording Information |
|---|---|---|---|
| Dennis A. Sowers, et al. | Macpherson Oil Company | 11/13/1984 | 84-1350148 |
| Adela M. Gay, Trustee of the Adela M. Gay Trust, et al. | Macpherson Oil Company | 11/27/1984 | 84-1397014 |
| Richard P. Haskins, et al. | Macpherson Oil Company | 12/04/1984 | 84-1425790 |
| Mortgage Mart, Inc., et al. | Macpherson Oil Company | 01/22/1985 | 85-73730 |
| Richard L. Ruffell, et al. | Macpherson Oil Company | 02/04/1985 | 85-135687 |
| Junior A. Judd, et al. | Macpherson Oil Company | 02/15/1985 | 85-184576 |
| Kenneth R. Brown, et al. | Macpherson Oil Company | 03/01/1985 | 85-235388 |
| James R. Klatt, et al. | Macpherson Oil Company | 03/20/1985 | 85-307284 |
| Roy M. Knox, et al. | Macpherson Oil Company | 04/01/1985 | 85-354663 |
| Bernard Subkoski, et al. | Macpherson Oil Company | 04/16/1985 | 85-426373 |
| Russell C. Salinger, et al. | Macpherson Oil Company | 07/29/1985 | 85-869425 |
| Steve S. Triantis, et al. | Macpherson Oil Company | 07/29/1985 | 85-869426 |
| David G. Nickel, et al. | Macpherson Oil Company | 08/19/1985 | 85-956365 |
| Charles F. Brown, et al. | Macpherson Oil Company | 01/10/1986 | 86-038437 |
| Kathleen G. Briggs, et al. | Macpherson Oil Company | 01/21/1988 | 88-88027 |
| Margaret V. Woolley | Macpherson Oil Company | 05/27/1988 | 88-845692 |
| Helena C. Scanlon, etc., et al. | Macpherson Oil Company | 08/10/1989 | 89-1289800 |
| Mary E. Keeler, et al. | Macpherson Oil Company | 09/15/1989 | 89-1492729 |

| Lessor | Lessee | Recording Date | Recording Information |
|---|---|---|---|
| David T. Schumacher, et al. | Macpherson Oil Company | 11/13/1989 | 89-1825535 |
| Russell C. Salinger, et al. | Macpherson Oil Company | 06/18/1985 | 85-703612 |
| Frances C. Lupo, et al. | Macpherson Oil Company | 12/07/1989 | 89-1965800 |
| John Charles Reid Pursell, et al. | Macpherson Oil Company | 12/13/1989 | 89-2001665 |
| Danny V. Ritter, et al. | Macpherson Oil Company | 01/22/1990 | 90-113819 |
| David T. Schumacher | Macpherson Oil Company | 01/22/1990 | 90-113820 |
| Warren H. Wright, et al. | Macpherson Oil Company | 03/01/1990 | 90-336024 |
| James P. Lyons, et al. | Macpherson Oil Company | 04/20/1990 | 90-739888 |
| Irene Cox, et al. | Macpherson Oil Company | 08/15/1990 | 90-1419787 |
| Morton N. Weindling, et al. | Macpherson Oil Company | 08/20/1990 | 90-1440120 |
| Hermosa Beach City School District of Los Angeles County, California | Macpherson Oil Company | 03/25/1991 | 91-419501 |
| Louis W. Bourgeois, et ux. | Macpherson Oil Company | 01/21/1993 | 93-129530 |
| Darlene D. Sowers, et al. | GLG Energy, L.P. and Stocker Resources, Inc. | 10/27/1994 | 94-1950611 |
| Christopher P. Smith | Macpherson Oil Company | 11/07/1994 | 94-2015307 |
| Adela Miller Gay, as Trustee, et al. | Macpherson Oil Company | 05/23/1994 | 94-990364 |
| Betty Medlicott, as Trustee, et al. | Macpherson Oil Company | 06/06/1995 | 95-901164 |
| Richard P. Haskins, et al. | Macpherson Oil Company | 06/06/1995 | 95-901165 |
| Betty Medlicott, as Trustee | Macpherson Oil Company | 06/15/1995 | 95-957257 |

| Lessor | Lessee | Recording Date | Recording Information |
|---|---|---|---|
| Patrick R. Haskins, as Trustee | Macpherson Oil Company | 06/15/1995 | 95-957258 |
| Shirley B. Cassell, et al. | Macpherson Oil Company | 07/24/1996 | 96-1189907 |
| Charles F. Brown | Macpherson Oil Company | 10/07/1996 | 96-1638341 |
| Barbara Bek Payne, as Trustee, et al. | Macpherson Oil Company | 03/01/1996 | 96-336523 |
| Darlene D. Sowers, et al. | Macpherson Oil Company and Stocker Resources, LP. | 03/01/1996 | 96-336524 |
| William Howard Sadler | Macpherson Oil Company | 04/04/1996 | 96-543902 |
| William F. Meistrell, et al. | Macpherson Oil Company | 05/15/1996 | 96-762654 |
| Wayne S. McNeill, et al. | Macpherson Oil Company | 04/22/1996 | 96-630184 |
| Quentin L. Thelen, et al. | Macpherson Oil Company | 04/04/1997 | 97-518724 |
| Alfred Salido, et al. | Macpherson Oil Company | 06/09/1997 | 97-857963 |
| Jean E. Carrey, et al. | Macpherson Oil Company | 04/28/1998 | 98-704103 |