

11.8-B SPECIMEN DOCK LEASE FOR WEST SHORE ROAD & CORINTHIAN ISLAND

The following lease is approved for docks on West Shore Road and Corinthian Island. The green highlighted areas are used only in the rare case in which a deeded dock easement on West Shore Road is being quitclaimed in exchange for a lease—these sections normally do not appear in the lease.

RECORDING REQUEST BY
AND WHEN RECORDED MAIL TO:

**City Clerk
City of Belvedere
450 San Rafael Ave
Belvedere, CA 94920-2336**

DOCK LEASE

(X West Shore Road)

THIS LEASE, made and entered into on April 1, 2009, by and between the **City of Belvedere**, hereinafter referred to as “Lessor,” and the **Smith Family Living Trust, as amended and complete restated on December 24, 2008**, hereinafter referred to as “Lessee.”

Lessor hereby leases to Lessee, and Lessee leases from Lessor, upon the terms, covenants, and conditions herein set forth, that certain property located at **X West Shore Road** in the City of Belvedere, County of Marin, State of California, more particularly described in Exhibits “A,” “B,” and “C” (hereinafter “Premises”) which are attached hereto and made a part hereof.

1. **Quitclaim of Easement.** This lease is predicated upon the receipt by the City of a quitclaim deed, executed by the Lessee in favor of the Lessor, for the dock easement granted by the Lessor in 1997. A copy of the quitclaim deed is attached hereto as Exhibit “D.”

2. **Term.** The term of the Lease shall be a period of twenty-nine (29) years and nine (10) months, beginning on **April 1, 2009**, and terminating on December 31, 2039.

3. **Rent.**

(a) **Base Rental.** The base rental during said term shall be **\$315.00**, which said sum shall be paid annually in advance, and shall be due and payable on the first day of July each year.

(b) **Cost of Living Increase.** Commencing July 1, **2009**, the base rental shall be adjusted and thereafter every five (5) years during the term of the Lease, by an amount, determined in advance at the beginning of such five-year-term, which bears the same relationship to the sum of **\$315.00** as the Consumer Price Index of the U.S. Bureau of Labor Statistics for All

Urban Consumers (1967=100) for the San Francisco-Oakland area for all items for the month next preceding the commencement of such five-year period bears to the aforesaid Consumer Price Index for the corresponding month in 2004, but in no event shall the annual rent during such five-year period be less than the annual rent during the preceding five-year period. For example only, the annual rental for a dock larger than Fifty (50) square feet for the year commencing July 1, 2009, and for each subsequent year of the period July 1, 2009, through June 30, 2014, will be an amount equal to that shown in the following formula, but not less than \$315.00:

$$\text{Rental} = \frac{\text{June 2009 Index}}{\text{June 2004 Index}} \times \$315.00$$

In the event the aforesaid Consumer Price Index shall be discontinued, then the most nearly comparable successor index shall be used.

4. **Use.** Lessee shall use any dock on the Premises solely for private recreational purposes. The dock may contain only facilities constructed for the docking and mooring of boats. Lessee may not use the dock for any commercial or residential purpose and may not rent storage space or mooring rights to others. The occupancy of any vessel anchored, moored, or berthed in connection with the recreational use of the dock for a period of more than forty-eight (48) hours shall be subject to such ordinances, rules, and regulations as may from time to time be adopted by the City of Belvedere and/or the Richardson Bay Regional Agency. Lessee shall not use or maintain the Premises in any way so as to impede the use of surrounding City property by the public for public park and recreation purposes.

5. **Boundaries.** This Lease is not intended to constitute the establishment of any boundary between the Premises and the adjacent property owned by Lessee, and is entered into without prejudice to any boundary claims which might be asserted in the future.

6. **Repairs, Restoration, and Maintenance.**

(a) **No Responsibility of Lessor.** Lessor shall not be required or obligated to make any changes, alterations, additions, improvements, or repairs of any type or nature in, on, or about the Premises, or any part thereof, during the term of this Lease.

(b) **Lessee's Duty to Maintain Premises.** At all times during the term and renewal of this Lease, Lessee shall, at its cost and expense, keep and maintain the Premises and all improvements thereon and all facilities appurtenant thereto in good order and repair and safe

condition, and the whole of the Premises and improvements in a clean, sanitary, and orderly condition. Lessee shall comply with all public laws, ordinances, and regulations from time to time applicable to the Premises; and Lessee shall indemnify and save harmless Lessor against all actions, claims, and damages by reason of Lessee's failure to comply with and perform the provisions of this Section.

(c) **Restoration and Repair of Improvements.** Lessee may make repairs to or restore the improvements existing on the Premises, and any and all recreational pier facilities and other improvements shall be repaired or installed by Lessee in conformance with all applicable local, regional, state, and federal laws, ordinances, rules, and regulations. If at any time the improvements to the Premises should fall into a state of disrepair or otherwise become an environmental or aesthetic degradation, as reasonably determined by the Lessor, then upon written notice by Lessor, Lessee shall have ninety (90) days to repair and correct the conditions cited by Lessor.

In the case of a repair which cannot, with due diligence, be completed within a period of ninety (90) days, Lessee shall proceed promptly after the service of such notice and with all due diligence to repair the same and thereafter to proceed with said completion of such repair with all due diligence. In such case, and upon compliance by Lessee with the above conditions, the time of Lessee within which to cure the same shall be extended for such periods as may be necessary to complete the same with all due diligence. If, after the expiration of any such extension, Lessor in its sole discretion determines that Lessee is not proceeding with due diligence to complete such repairs or to correct the conditions cited by Lessor, Lessor may at its option cause such repairs to be made or may correct the aforementioned conditions itself, and all such costs shall be borne by Lessee. Lessee agrees that all cost incurred by Lessor shall be recoverable by Lessor within thirty days following presentation to Lessee of an invoice for the costs incurred, which costs shall include, but shall not be limited to, salaries and administrative overhead allocated to time spent by Lessor's employees. Failure by Lessee to reimburse Lessor for all such costs within thirty (30) days following receipt of the Lessor's invoice may result in Lessor placing a lien against Lessee's property for the amount of all such costs, which property is referred to in the legal description recorded with this Lease.

7. **Lessor's Access.** Lessor, through its authorized agents, shall have the right, upon reasonable notice, to enter upon the Premises and the lands of Lessee appurtenant thereto, for the

purpose of inspecting the Premises and the improvements thereon to insure that Lessee is complying with the terms of this Lease. Written notice deposited in the U.S. Mail at Belvedere, California, in a sealed envelope, postage prepaid and addressed to Lessee at the address provided below shall, for purposes of the notice required by this paragraph, be conclusively presumed to give notice to Lessee, whether or not such notice is actually received by Lessee.

8. **Taxes.** In addition to the rent specified hereunder, Lessee agrees to pay all taxes and assessments levied upon the Premises and the improvements thereon. Lessee recognizes, understands, and acknowledges that Lessee's interest in this Lease and/or in the Premises may be subject to a possible Possessory Interest Tax or other similar tax that may be imposed by a local, state, or federal taxing authority, and that such tax payment shall be the sole obligation and liability of and be paid by Lessee. In the event Lessee shall fail to pay before the delinquent date any assessment or tax payable by Lessee hereunder, Lessor may pay the same or any part thereof, and such amount, together with the amount of any taxes on the Premises for which Lessee has not reimbursed Lessor, shall be treated as additional rent due with interest at the then prevailing prime rate of interest charged by Wells Fargo Bank in San Francisco from the date of payment by Lessor until payment by Lessee. Upon request of Lessor, Lessee shall furnish satisfactory evidence of payment of taxes or assessments for which Lessee is liable hereunder. If Lessee fails promptly to pay any and all taxes or assessments, liens, or charges levied against the Premises or the improvements thereon, Lessor may give Lessee written notice to pay the same, and upon Lessee's failure to make such payment in full within ten (10) days of such notice, Lessor shall have the right to terminate this Lease.

9. **Indemnity.** Lessee covenants to indemnify and hold Lessor, its officers, agents, representatives and/or employees harmless against any and all claims, demand, damages, or injuries arising from the conduct or management of, or from any work or thing whatsoever done in or about the Premises or any building or structure appurtenant thereto or equipment thereof during the term of this Lease, or any extension thereof, or arising from any act or negligence of Lessee, his agents, contractors, or employees, or arising from any accident, injury or damage whatsoever, however caused, to any person or persons, or to the property of any person, persons, corporation or corporations, occurring during such term on, in or about the Premises or any structure appurtenant thereto and from and against all costs, attorneys' fees, expenses, and liabilities incurred in connection with any such claim, or any action or proceeding brought

thereon.

This provision shall not apply to any claim, demand, damages, or injuries occasioned solely by the negligent acts of Lessor, its officers, agents, representatives and/or employees. Lessee shall, at Lessee's expense, maintain a policy of public liability and property insurance with minimum coverage of One Million Dollars, combined single limit of bodily injury and property damage. Lessee shall provide Lessor with a certificate of insurance or other proof acceptable to Lessor (for example, photocopy of face page of policy) that such insurance has been obtained. To the maximum extent permitted by insurance policies which may be owned by the Lessee, Lessee, for the benefit of the City only, waives any and all rights of subrogation which might otherwise exist.

Nothing in this paragraph is intended to or shall be construed to create in any third party, not a party to this Lease, any right of action or remedy against Lessee, Lessor, or Lessor's officers, agents, representatives, and employees, other than those, if any, which would, under applicable laws, be available to said third party in the absence of this paragraph.

10. **Default.** If Lessee shall fail to perform or comply with any of the terms of this Lease, then Lessor may, at its option, terminate this Lease and all rights of the Lessee hereunder if such default is not remedied by Lessee within sixty (60) days after written notice to Lessee. Lessor may, at its option, record such written notice. In the event of a termination of this Lease, Lessee shall quietly and peaceably surrender possession of the Premises and shall at the request of Lessor, execute such instruments, in writing, as may be prepared by Lessor, evidencing the termination of Lessee's right hereunder. Upon termination, Lessee shall, at the option of and demand by the Lessor, remove all facilities and restore the Premises to their natural condition. The foregoing remedy of Lessor to terminate this Lease shall not be exclusive, but shall be cumulative and in addition to all legal and equitable remedies now or hereafter allowed by law.

11. **Public Trust.** No representations or warranties of any kind whatsoever, express or implied, have been made by Lessor warranting Lessee's interest in the Premises pursuant to this Lease, as against any public trust rights which may in the future be asserted by the State of California and/or agencies thereof.

12. **Attorney's Fees.** If either party hereto brings any action or proceeding to enforce, protect, or establish any right or remedy hereunder, the prevailing party shall be entitled to recover reasonable attorney's fees.

13. **Assignment.** Lessee may, without the prior written consent of Lessor, assign its interest under this Lease, but only to the successor(s) in interest of fee title to Lessee's real property adjacent to the Premises. Lessee shall have no right to otherwise assign this Lease or to sublet all or any portion of the Premises, without the prior written consent of the Lessor, and any assignment or sublease made in violation of this section is void and without force and effect.

14. **Captions.** The captions or headings of paragraphs in this Lease are inserted for convenience only and shall not be considered in construing the provision thereof, if any questions of intent should arise.

15. **Severability.** The various paragraphs and provisions of this Lease are expressly declared to be severable from all others. Should a certain paragraph or provision be declared to be void or unenforceable, it shall not affect the enforceability of any remaining paragraph or provision and the remaining portions of this Lease shall continue in full force and effect as if the void or unenforceable portions were not a part of this Lease.

16. **Choice of Law.** This Lease and any amendments thereto shall be governed by the laws of the State of California.

17. **Counterpart Originals.** This Lease has been executed in two (2) counterparts, each of which is a counterpart original.

18. **Integration.** This Lease and any amendments thereto represents the entire agreement of the parties and cannot be modified, extended, canceled or amended without a writing signed by all parties.

19. **Binding Effect.** This Lease shall be binding on the parties hereto and their respective heirs, executors, administrators, successors and assigns.

19. **Notices.** All notices to be given under the terms and provisions of this Lease must be in writing.

Notice is considered given either (a) when delivered in person to the recipient named as below; or (b) when deposited in the U.S. Mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name and address to the party or person intended as follows:

NOTICE TO LESSOR: City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920

NOTICE TO LESSEE:

John Smith, Trustee
Smith Family Living Trust
X West Shore Road
Belvedere CA 94920

IN WITNESS WHEREOF, the parties hereto have caused the within instrument to be executed by their duly authorized representatives the day and year first above written.

"LESSOR"
CITY OF BELVEDERE
A Municipal Corporation

By: _____
Craig Middleton, City Manager

"LESSEE"
SMITH FAMILY TRUST, AS
AMENDED AND COMPLETELY
RESTATED ON DECEMBER 24, 2008

By: _____
John Smith, Trustee

EXHIBIT “A”

LEGAL DESCRIPTION

A portion of Marin County Assessor’s Parcel No. 060-25-251 lying directly beneath the dock, boat lift, and gangway appurtenant to Parcel No. 060-271-03, commonly known as 5 West Shore Road, as said dock, boat lift and gangway appear on Exhibit “C” attached hereto. The dock, boat lift, and gangway lie within Lot 385, which is shown upon tide Land Commissioner’s Map No. One of the Salt Marsh, State of California, copies of which are on file in the office of the Surveyor General of said State of California, and in the office of the Recorder of the City and County of San Francisco.

EXHIBIT "B"
VICINITY MAP

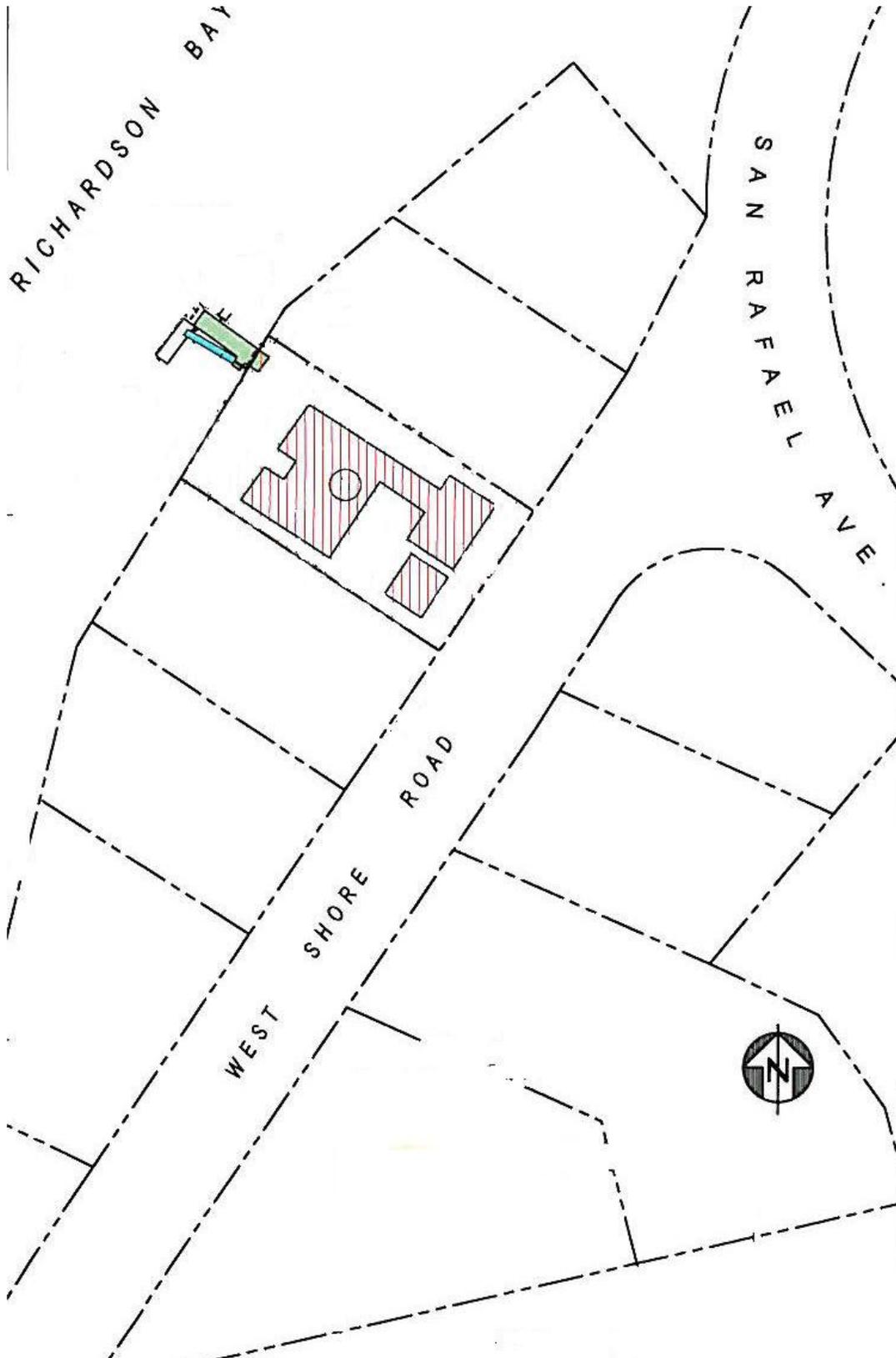


EXHIBIT "C" SITE PLAN

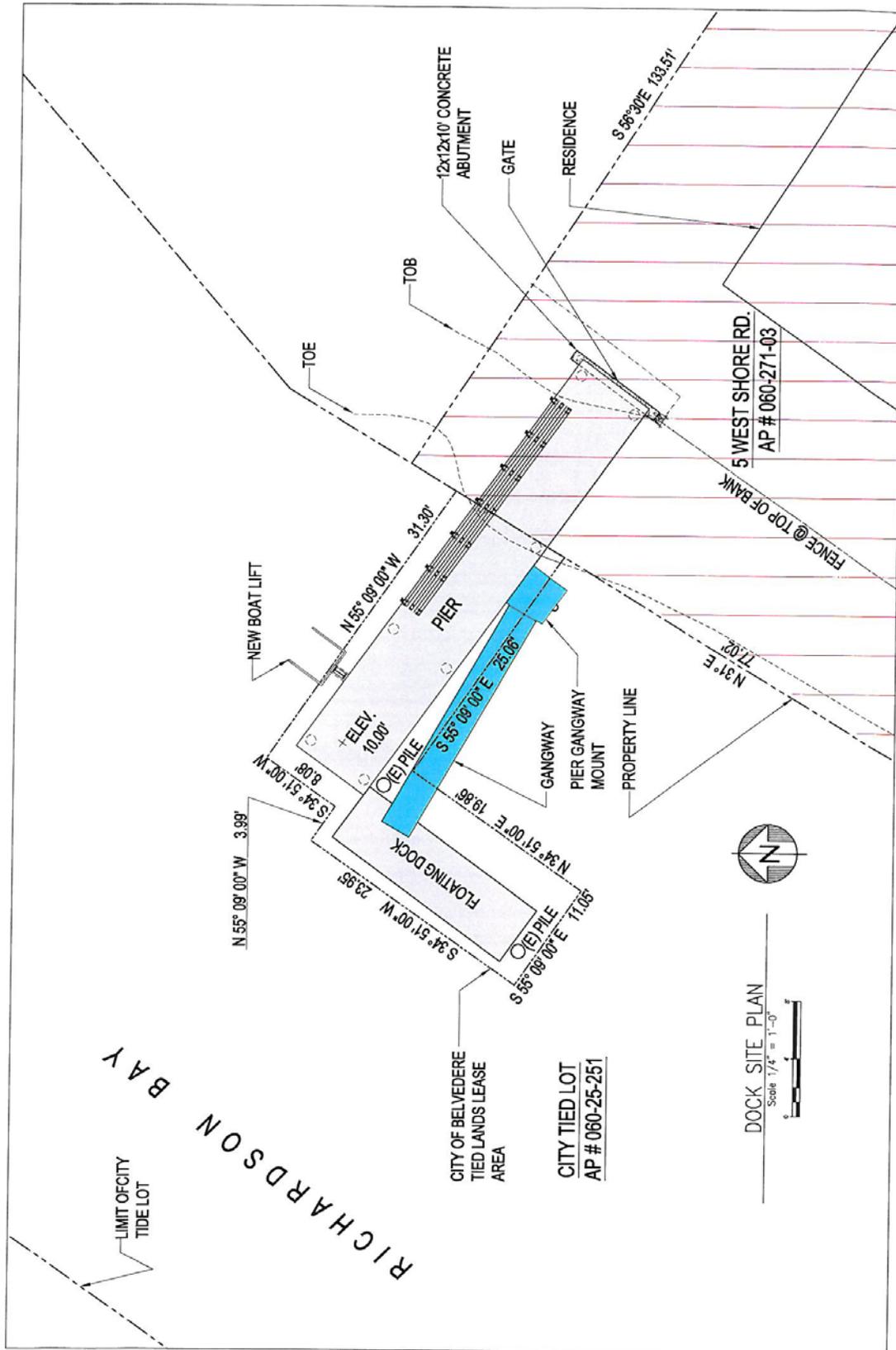


EXHIBIT "D"
QUITCLAIM DEED

Recording requested by and
when recorded mail to:

**City Clerk
City of Belvedere
450 San Rafael Avenue
Belvedere, CA 94920-2336**

Mail tax statements to return address above.

**DOCUMENTARY TRANSFER TAX = \$0.00
Computed on the consideration conveyed.**

By: _____
Trustee of Smith Family Living Trust
Signature of Declarant determining tax

Quitclaim Deed

I, **John Smith, Trustee of the Smith Family Living Trust, as amended and completely restated on December 24, 2008**, quitclaim to City of Belvedere, a municipal corporation, all my right, title, and interest in the real property situated in the City of Belvedere, County of Marin, State of California, described as follows:

Beginning at a point on the northwesterly line of Lot 7, as shown on the Official Plat of "Map of Westshore Subdivision No. 1, Belvedere, Marin County, California," filed for record August 16, 1961, in Volume 10 of Maps, at Page 118, Marin County Records, said point being distant thereon South 31° 00'00" West 5.04 feet from the most northerly corner thereof; thence leaving said northwesterly line North 55° 09'00" West 31.30 feet; thence South 34° 51'00" West 8.08 feet; thence North 55° 09'00" West 3.99 feet; thence South 34° 51'00" West 23.95 feet; thence South 55° 09'00" East 11.05 feet; thence North 34° 51'00" East 19.86 feet; thence South 55° 09'00" East 25.06 feet to said northwesterly line; thence along said northwesterly line North 31° 00'00" East 12.20 feet to the Point of Beginning.

This description contains 622 square feet more or less.

Executed on April 20, 2009, at Belvedere, California.

By: _____

John Smith
AKA John Michael Smith

Trustee of Smith Family Living Trust

Acknowledgment

State of California }
County of Marin } ss.
City of Belvedere }

On _____, before me, _____, City Clerk of the City of Belvedere, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that, by her signature on the instrument, the entity upon behalf of which the person acted executed the instrument

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

WITNESS my hand and the city seal of the City of Belvedere.

ACKNOWLEDGMENT

State of California }
County of Marin } ss.
City of Belvedere }

On _____, before me, _____, City Clerk of the City of Belvedere, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person who executed this instrument as City Manager of the City of Belvedere, and acknowledged to me that the City of Belvedere executed it.

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

WITNESS my hand and the city seal of the City of Belvedere.

ACKNOWLEDGMENT

State of California }
 } ss.
County of _____ }

On _____, before me, _____,
Name and Title of Officer (e.g. "Jane Smith, Notary Public")

personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

DESCRIPTION OF ATTACHED DOCUMENT

- INDIVIDUAL**
- CORPORATE OFFICER**

TITLE OR TYPE OF DOCUMENT

Titles(s)

NUMBER OF PAGES

- PARTNER(S)** **LIMITED**
- GENERAL**

DATE OF DOCUMENT

- ATTORNEY-IN-FACT**
- TRUSTEE(S)**
- GUARDIAN/CONSERVATOR**
- OTHER:** _____

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

Name of persons(s) or entity(ies)

