

TO: Thomas Frutchey, City Manager
FROM: Warren Frace, Community Development Director
SUBJECT: Public Open Space Easement Acquisition Agreement
Tentative Tract 3080 Alder Creek Apartments
DATE: July 19, 2016

Needs: For the City Council to authorize an Easement Acquisition Agreement to relinquish a portion of a public open space easement to facilitate the private development of 16 apartment units.

Facts:

1. New Heritage LP, represented by Joe Collins, owner of Alder Creek apartments, has applied for a General Plan Amendment, Rezone, Tentative Tract Map and Planned Development to expand the existing apartment development on Niblick Road.
2. The proposed infill expansion would add 16 units in four new buildings. The added density will require a General Plan Amendment, Rezone, Tentative Tract Map and Planned Development to permit the increased density from 10 units per acre to 20 units per acre.
3. The proposal aims to complement the existing apartment development by adding new units that are similarly spaced on the site, and provide the same architectural design and finishes.
4. Tract 2070, approved by the City Council in 1991, dedicated the open space easement on the New Heritage LP property south of the existing apartments.
5. Given the limitations of the existing developable area of the property, the applicant desires to develop the new units on a portion of the existing open space easement.
6. On October 20, 2015, at the request of New Heritage LP, the City Council indicated it was willing to relinquish a portion of the open space easement in exchange for funding bikeway construction.
7. New Heritage LP has obtained an appraisal for the open space easement they desire to acquire for development, consisting of approximately 8,410 square feet and constituting approximately one third of the entire open space easement. The appraised value is \$16,000.
8. The City Attorney has drafted an Easement Acquisition Agreement allowing the applicant to accept a quit claim deed from the City relinquishing the City's rights to use this portion of the Open Space Easement in exchange for the sum of \$16,000 to be directed towards the development of pedestrian trails and bike paths.

Analysis and Conclusion:

North Coast Engineering (NCE) has provided a summary on behalf of New Heritage LP indicating that the portion of the easement (8,410 square feet) requested to be relinquished does not provide significant benefit to the City since it is constrained by steep topography and is in an isolated location. However, the land is part of an open space easement available to the public and adjacent to an oak woodland. New Heritage LP has provided an appraisal of that portion of the easement requested to be relinquished and has determined the value to be \$16,000.

The City Attorney has prepared an Easement Acquisition Agreement to convey by quitclaim deed the City's rights to use the necessary portion of the easement in exchange for \$16,000 to be appropriated by the City for pedestrian paths and bikeways.

Policy

Reference: Paso Robles General Plan

Fiscal Impact:

Authorization of the Agreement, relinquishment of the public open space easement and subsequent compensation of \$16,000 will be used for pedestrian trails and bike paths.

Options: After consideration of any public testimony the City Council may consider the following options:

- a. Approve Resolution 16-xxx authorizing the City Manager to enter into an Agreement with New Heritage LP to relinquish a portion of the Open Space Easement over Tentative Tract 3080 for compensation in the amount of \$16,000.
- b. Amend, modify or reject the foregoing options.

Attachments:

- 1 – NCE Letter and Exhibits
- 2 – Resolution
- 3 - Agreement



Alder Creek Open Space Easement Adjustment

Alder Creek Apartments is requesting the adjustment of an Open Space Easement in order to construct workforce rental apartments. The Open Space adjustment is to an area that was granted as an easement to the City in 1992 as part of Tract 2070. It is an area of 1.8 acres. The request is to have the City abandon 0.3 acres in order to facilitate the construction of the apartments. The proposed apartments would extend approximately 42' into the Open Space. The additional area of open space adjustment is for the slope created by the grading. From a practical perspective, the amount of impact to the easement is much less than the 0.3 acres. The slope areas will be maintained by Alder Creek and will still from an appearance standpoint appear as open space.

In the past 23 years that this area has had the Open Space Easement there has been no public use of the easement with trails or any access. Essentially it has served no practical purpose.

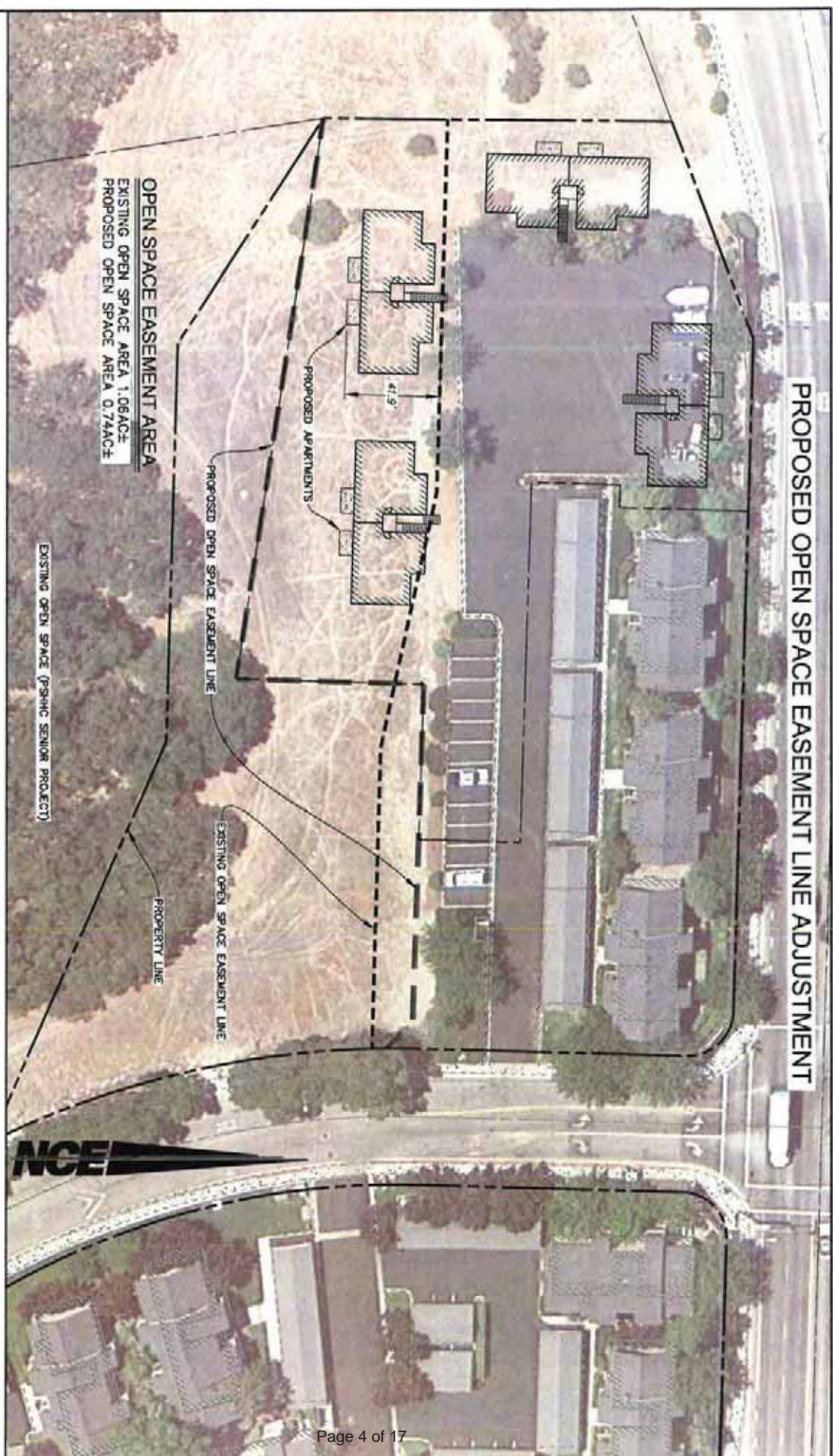
There is no practical connectivity due to topographical constraints to connect a trail through this property. For the past 17 years, the owner of Alder Creek Apartments has maintained the Open Space area. It has not been maintained by the City.

In 2004 People's Self Help Housing constructed Creekside Gardens, a senior housing project directly south of the Alder Creek Apartments. This project provided 5.6 acres of very practical Open Space with a trail, currently known as the Creekside Trail through it and an oak covered creek that passes through it. When the small shopping center was built to the south of the Creekside Garden Apartments a portion of the trail was paved up to the Creekside Gardens Apartment property line. This 5.6 acres is the usable Open Space for the area and the bike path through it has been recognized in the City Bicycle Master Plan as a Priority 1 improvement and has been included in the AB1600 list for funding.

Because the existing Open Space Easement serves very little practical purpose and there is a very practical Open Space immediately adjacent to the Alder Creek Apartments we respectfully request that the Planning Commission and City Council approve this easement adjustment.

Please see the attached exhibits:

- Proposed Open Space Easement Line Adjustment
- Neighborhood Open Space Exhibit





Proposed area of OS Easement adjustment.

Existing Open Space Area adjacent to

Existing Trail

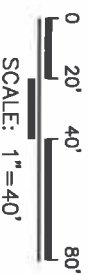
CITY OF PROSPERITY

NEIGHBORHOOD OPEN SPACE EXHIBIT

PROPOSED OPEN SPACE EASEMENT LINE ADJUSTMENT



JOB NUMBER: 14158
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NCE
 NORTH COAST ENGINEERING INC.
 725 Creston Rd Suite B, Paso Robles, 239-3127

RESOLUTION NO. 16-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF PASO ROBLES APPROVING AND AUTHORIZING THE
EXECUTION OF AN EASEMENT ACQUISITION AGREEMENT WITH
NEW HERITAGE LP FOR THE RELINQUISHMENT OF CERTAIN EASEMENT
RIGHTS ON PROPERTY LOCATED AT NIBLICK ROAD AND NICKLAUS DRIVE
(APN: 009-767-049)

WHEREAS, New Heritage LP is the owner of that certain real property located generally along Niblick Road, in the City of Paso Robles, California, APN 009-767-049 ("Property"), currently improved with the Alder Creek apartments, constructed in 1991 ("Apartment Complex"); and

WHEREAS, as a condition to construction of the Apartment Complex, a public open space easement was dedicated to and accepted by the City ("Easement"), burdening the Property; and

WHEREAS, New Heritage LP has applied for a General Plan Amendment, Rezone, Tentative Tract Map and Planned Development to permit the expansion of the existing Apartment Complex and construction of an additional 16 apartment units in four new buildings ("Apartment Complex Expansion") that would require an encroachment onto a portion of the Easement area; and

WHEREAS, in furtherance of the proposed Apartment Complex Expansion, New Heritage LP has requested the City relinquish a portion of the Easement ("Relinquished Easement Property") consisting of approximately 8,410 square feet, and constituting approximately one third of the entire Easement area; and

WHEREAS, Staff has determined that the Relinquished Easement Property does not provide significant benefit to the City since it is constrained by topography and is in an isolated location, since the City accepted the Easement in 1992, there has been no public use of the Easement area, and approximately 5.6 acres of open space area, including a trail, bike path and an oak covered creek, is located directly south of the Apartment Complex and the Easement area and provides more practical and usable open space for the surrounding area; and

WHEREAS, because the existing Easement serves very little practical purpose and the City is not using, and has no use for, the Relinquished Easement Property, the City desires to relinquish and quitclaim to New Heritage LP the City's right to use the Relinquished Easement Property pursuant to the terms and conditions of an Easement Acquisition Agreement ("Agreement") prepared by staff; and

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of El Paso de Robles to authorize the City Manager to execute an Easement Acquisition Agreement with New Heritage LP in substantially the form attached hereto as Exhibit A and subject to any non-substantive changes approved by the City Attorney, for the relinquishing of that portion of the Easement described in said Agreement as the Relinquished Easement Property, and authorizes the City Manager to execute any

other documents and take all other actions necessary to effectuate the conveyance of the City's rights to the Relinquished Easement Property to New Heritage LP, and to implement the City's obligations under the Agreement.

ADOPTED by the City Council of the City of El Paso de Robles at a regular meeting of said Council held on the 19th day of July, 2016 by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

Steven W. Martin, Mayor

ATTEST:

Kristen L. Buxkemper, Deputy City Clerk

EASEMENT ACQUISITION AGREEMENT

This Easement Acquisition Agreement (“**Agreement**”), dated as of _____, 2016, is entered into by and among the CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California (“**GRANTEE**” or “**CITY**”), and NEW HERITAGE LP, a _____ limited partnership (“**NEW HERITAGE LP**”).

Recitals

1. NEW HERITAGE LP is the owner of that certain real property located generally along Niblick Road, in the City of Paso Robles, California, APN _____ (the “**Property**”). The Property is improved with the Alder Creek apartments, constructed in 1991 (“**Apartment Complex**”). As a condition to construction of the Apartment Complex, a public open space easement was dedicated to and accepted by the City, as more fully described below.
2. CITY is the owner of that certain open space easement described in _____ recorded _____, 1992, as Instrument No. _____, in the Official Records of San Luis Obispo County, California (hereinafter referred to as the “**Easement**”), burdening the Property.
3. NEW HERITAGE LP has applied for a General Plan Amendment, Rezone, Tentative Tract Map and Development Plan to permit the expansion of the existing Apartment Complex and construction of an additional 16 apartment units in four new buildings (“**Apartment Complex Expansion**”). Construction of the Apartment Complex Expansion as proposed would require an encroachment onto a portion of the Easement area. In furtherance of the proposed Apartment Complex Expansion, NEW HERITAGE LP has requested the CITY relinquish a portion of the Easement (the “**Relinquished Easement Property**”) as more particularly described on **Exhibit A** attached hereto. The Relinquished Easement Property consists of approximately 8,410 square feet, and constitutes approximately one third of the entire Easement area.
4. CITY has determined that the Relinquished Easement Property does not provide significant benefit to the City since it is constrained by topography and is in an isolated location. In addition, since the City accepted the Easement in 1992, there has been no public use of the Easement area. Approximately 5.6 acres of open space area, including a trail, bike path and an oak covered creek, is located directly south of the Apartment Complex and the Easement area and provides more practical and usable open space for the surrounding area.
5. Because the existing Easement serves very little practical purpose and the CITY is not using, and has no use for, the Relinquished Easement Property, the CITY desires to relinquish and quitclaim to NEW HERITAGE LP the CITY’s right to use the Relinquished Easement Property pursuant to the terms and conditions hereof.

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. NEW HERITAGE LP's Obligations:

a. As consideration for the CITY's relinquishing of its rights to the Relinquished Easement Property, NEW HERITAGE LP shall pay the CITY the total sum of Sixteen Thousand Dollars (\$16,000.00) ("Acquisition Price"), which amount has been determined to be the fair market value of the CITY's interest in the Relinquished Easement Property to be conveyed to NEW HERITAGE LP hereunder. NEW HERITAGE LP shall fund Escrow (as defined below) one (1) business day before scheduled Closing (as defined below).

b. NEW HERITAGE LP shall not be deemed to have accepted delivery of the CITY's relinquishment of the CITY's right to use the Relinquished Easement Property until such time as the Easement Quitclaim Deed (defined below) is recorded in the Official Records of the County of San Luis Obispo, State of California, which recordation shall be referenced herein as the "Closing." NEW HERITAGE LP shall pay all the costs associated with the Closing, including escrow fees, documentation preparation fees, delivery charges, and recording fees, as may be incurred in this transaction.

2. CITY's Obligations. Attached hereto as **Exhibit B** is a Quitclaim Deed pursuant to which the CITY will relinquish and quitclaim to NEW HERITAGE LP the CITY's right to use the Relinquished Easement Property ("**Easement Quitclaim Deed**"). CITY shall deliver the executed Easement Quitclaim Deed in recordable form to Escrow no less than one (1) business day before the scheduled Closing.

3. Escrow. This transaction shall be consummated through an escrow at _____ Title Company ("**Escrow Agent**") under Escrow Agent's Escrow Number _____ ("**Escrow**") located at _____, Attn: _____. Closing shall occur within thirty (30) days after this Agreement has been approved by CITY and is fully executed by the parties.

4. Representations and Warranties. To CITY's actual knowledge, CITY represents and warrants the following:

a. During CITY's use of the Relinquished Easement Property as an easement, there has been no disposal, releases, or threatened releases of hazardous substances on, from, or under the Relinquished Easement Property.

b. There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on the Relinquished Easement Property.

c. CITY has not used the Relinquished Easement Property for any industrial operations that use hazardous substances. CITY has not installed any underground storage tanks, aboveground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Relinquished Easement Property.

d. CITY has not conveyed, transferred or sold the CITY's right to use the Relinquished Easement Property pursuant to the Easement, or otherwise, to any other party and

has full right title and authority to enter into this Agreement and consummate the transaction completed contained herein.

For purposes of this Section 4, the phrase “CITY’S actual knowledge” shall mean the current actual knowledge of _____, as the CITY’S _____, as of the effective date of this Agreement without any obligation of inquiry or investigation.

5. Environmental Matters / Release. As used in this Agreement, “Hazardous Materials” includes petroleum, asbestos, radioactive materials or substances defined as “hazardous substances,” “hazardous materials” or “toxic substances” (or words of similar import) in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, et seq.), and under the applicable laws of California. NEW HERITAGE LP must rely on its own investigation and not on any representation by CITY regarding Hazardous Materials. NEW HERITAGE LP shall rely solely upon its own investigation and inspection of the Relinquished Easement Property in purchasing the Relinquished Easement Property, and shall take title to the Relinquished Easement Property in its “AS IS” condition, without any warranty, express or implied, by CITY or any employee or agent of CITY.

Accordingly, NEW HERITAGE LP hereby expressly waives and relinquishes any and all rights and remedies NEW HERITAGE LP may now or hereafter have against CITY, whether known or unknown, with respect to any past present, or future presence of Hazardous Materials on, under or about the Relinquished Easement Property or with respect to any past, present or future violations of any rules, regulations or laws, now or hereinafter enacted, regulating or governing use, handling, storage or disposal of Hazardous Materials, including, without limitation (i) any and all remedies NEW HERITAGE LP may now or hereafter have under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), as amended, and any similar law, rule or regulation, (ii) any and all rights NEW HERITAGE LP may now or hereafter have against CITY under the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code, Section 25300 et seq.), as amended and any similar law, rule or regulation, and (iii) any and all claims, whether known or unknown, now or hereafter existing, with respect to the Relinquished Easement Property under Section 107 of CERCLA (42 U.S. C.A. § 9607).

NEW HERITAGE LP HEREBY ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542 (“SECTION 1542”), WHICH IS SET FORTH BELOW:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”

BY INITIALING BELOW, NEW HERITAGE LP HEREBY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

(Initials)

6. Entire Agreement. This Agreement is the final expression of, and contains the entire agreement between, the parties hereto with respect to the subject matter hereof and supersedes all prior understandings with respect thereto.
7. Amendment in Writing/Recitals Incorporated and Accurate. This Agreement may be modified, changed, or rescinded only by an instrument in writing executed by the parties hereto. The parties agree that the recitals set forth above are truthful, complete and accurate.
8. Authority. Each individual executing this Agreement represents that he or she is duly authorized to execute and deliver this Agreement on behalf of the party for which he or she is signing, and that this Agreement is binding upon the party for which he or she is signing in accordance with its terms.
9. Survival of Specific Obligations. The representations and warranties contained in Section 4 and the indemnity and parties' obligations in Section 5 of this Agreement shall survive the Closing.
10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument or document.

This Agreement is subject to the approval of the CITY's City Council.

EXHIBITS:

- Exhibit A: Legal Description of Relinquished Easement Property
- Exhibit B: Form of Easement Quitclaim Deed

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY:

CITY OF EL PASO DE ROBLES,
a municipal corporation and general law city

By: _____
Name: _____
Its: _____

Date: _____

NEW HERITAGE LP:

NEW HERITAGE LP
a _____ limited partnership

By: _____
Name: _____
Its: _____

Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF RELINQUISHED EASEMENT PROPERTY

EXHIBIT B

RECORDING REQUESTED BY, AND
WHEN RECORDED MAIL TO:

New Heritage LP

APN: _____

The undersigned Grantor(s) declare(s):

Documentary transfer tax is \$_____.

- Computed on full value of property conveyed, or
- Computed on full value less value of liens and encumbrances remaining at time of sale.
- Unincorporated area City of Paso Robles, and

EASEMENT QUITCLAIM DEED

CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California ("Grantor") holds certain easement rights over real property situated in the City of Paso Robles, County of San Luis Obispo, State of California pursuant to that certain _____ recorded _____, 1992, as Instrument No. _____, Official Records of San Luis Obispo County, California (the "Easement"). The real property encumbered by the Easement is referenced herein as the "Easement Property" and is currently owned by the NEW HERITAGE LP a _____ limited partnership ("Grantee"). Grantor is not using, and has no use for, a portion of the Easement described as follows (the "Relinquished Easement Property"):

See Exhibit A hereto.

Grantor hereby remises, releases, relinquishes and forever quitclaims to Grantee all of Grantor's rights pursuant to the Easement, or otherwise, to use the Relinquished Easement Property.

GRANTOR:

CITY OF EL PASO DE ROBLES, a municipal corporation of the State of California

By: _____
Its: _____

Date: _____

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of _____)

On _____ before me, _____, Notary Public
(insert name and title of the officer)

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

EXHIBIT A

LEGAL DESCRIPTION OF THE RELINQUISHED EASEMENT PROPERTY