

**OPERATING COVENANT AGREEMENT
(Downs Companies)**

among

**THE CITY OF CORONA
a California municipal corporation,**

**DOWNS ENERGY
a California corporation,**

and

**DOWNS OIL CO., INC.
a California corporation**

[Dated November 15, 2006 for reference purposes only]

This OPERATING COVENANT AGREEMENT (Downs Companies) ("Agreement") is entered into, among the CITY OF CORONA, a California municipal corporation ("City"), DOWNS ENERGY, a California corporation ("Downs Energy") and DOWNS OIL CO., INC., a California corporation ("Downs Oil"). The City, Downs Energy and Downs Oil are sometimes each, individually, referred to in this Agreement as a "Party" and, collectively, as the "Parties." Downs Energy and Downs Oil are collectively referred to herein as the "Downs Companies." The City and the Downs Companies enter into this Agreement with reference to the following facts ("Recitals"):

RECITALS

WHEREAS, the Downs Companies own and operate a commercial fueling and energy operation facility within the City and currently located at 1296 Magnolia Avenue in the City of Corona, County of Riverside; and

WHEREAS, the Downs Companies expect to generate significant sales and service-related revenues and to expand their commercial fueling and energy sales operations outside of the City, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, the Downs Companies have agreed to maintain their sales office operations (the "Facility") within the City for a period of twenty-five (25) years from the effective date of this Agreement and to expand their commercial fueling and energy sales activities throughout the State of California; and

WHEREAS, the City, in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by City arising from the operation of the Facility within the City and the expansion of the Downs Companies' commercial fueling and energy operations as described in this Agreement, desires to provide certain payments to the Downs Companies as an incentive for operating the Facility within the City; and

WHEREAS, the operation of the Facility and the expansion of the Downs Companies' commercial fueling and energy operations will provide significant public benefits to the City, in that the additional sales tax revenues to be generated by such activities represent a significant source of new and additional public revenue for the City, which may be used by the City for the funding of necessary public services and facilities, including public safety services and facilities. The City has further determined that the guaranteed operation of the Facility and expansion of the Downs Companies' commercial fueling and energy operations serves the additional public purpose of fostering a business and civic environment which may attract additional businesses and investment in the community due to the availability of the increased public and private services and economic activity resulting therefrom.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH IN THIS AGREEMENT, THE CITY AND THE DOWNS COMPANIES AGREE AS FOLLOWS:

1. Incorporation of Recitals. The Recitals of fact set forth above are true and correct and are incorporated into this Agreement in their entirety by this reference.

2. Effective Date of this Agreement.

2.1 This Agreement is dated November 15, 2006 for reference purposes only. This Agreement will not become binding on either of the Parties unless and until the first date on which all of the following occur, if at all ("Effective Date"):

2.1.1 Both of the Downs Companies have delivered fully executed copies of the Official Action authorizing their entry into and performance of this Agreement;

2.1.2 This Agreement is approved by the City Council of the City at a public meeting of the City and such approval is evidenced by a resolution adopted by the City Council of the City; and

2.1.3 This Agreement is executed by the authorized representative(s) of the City and delivered to the Downs Companies.

2.2 If all conditions precedent to the Effective Date are not satisfied on or before December 31, 2006, then no part of this Agreement shall become binding on or enforceable against any Party and any prior signatures or approvals of this Agreement by either the City or the Downs Companies shall be void and of no force or effect.

3. Term of this Agreement. This Agreement shall commence on the Effective Date and, unless terminated sooner pursuant to the provisions of this Agreement, shall continue in effect thereafter until the last day of Computation Quarter 100 (which time period is referred to in this Agreement as the "Term"), subject to any rights or remedies available to a Party to earlier terminate this Agreement as set forth hereinafter.

4. Representations and Warranties of the City.

4.1 The City represents and warrants to the Downs Companies that, to the City's actual current knowledge:

4.1.1 The City's entry into this Agreement and/or the performance of the City's obligations under this Agreement does not violate any contract or agreement to which the City is a party;

4.1.2 There are no pending claims or lawsuits against the City that will delay or prevent the performance of the City's obligations under this Agreement; and

4.1.3 The City has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

4.2 The representations and warranties of the City set forth in this Section 4 are material consideration to the Downs Companies and the City acknowledges that the Downs Companies are relying upon the representations of the City set forth in this Section 4 in undertaking its obligations under this Agreement.

4.3 As used in this Agreement, the term "City's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Beth Groves (City Manager) as of the Effective Date, without having undertaken any independent inquiry or investigation for the purposes of making such representation or warranty and without any duty of inquiry or investigation.

5. Representations and Warranties of the Downs Companies.

5.1 Representations and Warranties of Downs Energy.

5.1.1 Downs Energy represents and warrants to the City that, to Downs Energy's actual current knowledge:

5.1.1.1 Downs Energy is a duly formed California corporation, organized, qualified and in good standing to do business in the State of California and in the City;

5.1.1.2 The individual(s) executing this Agreement on behalf of Downs Energy is/are authorized to execute this Agreement on behalf of Downs Energy;

5.1.1.3 Downs Energy's entry into this Agreement and/or the performance of Downs Energy's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Downs Energy;

5.1.1.4 Downs Energy's entry into this Agreement and/or the performance of the Downs Energy's obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which Downs Energy is subject;

5.1.1.5 There are no pending lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of Downs Energy's obligations under this Agreement; and

5.1.1.6 Downs Energy has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by Downs Energy and no other action by Downs Energy is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

5.1.2 The representations and warranties of Downs Energy set forth in this Section are material consideration to the City and Downs Energy acknowledges that the City is relying upon the representations of Downs Energy set forth in this subsection 5.1 in undertaking its obligations under this Agreement.

5.1.3 As used in this Agreement, the term "Downs Energy's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Michael J. Downs as of the date of the making of the representation or warranty, without having undertaken

any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

5.2 Representations and Warranties of Downs Oil.

5.2.1 Downs Oil represents and warrants to the City that, to Downs Oil's actual current knowledge:

5.2.1.1 Downs Oil is a duly formed California corporation, organized, qualified and in good standing to do business in the State of California and in the City;

5.2.1.2 The individual(s) executing this Agreement on behalf of Downs Oil is/are authorized to execute this Agreement on behalf of Downs Oil;

5.2.1.3 Downs Oil's entry into this Agreement and/or the performance of Downs Oil's obligations under this Agreement do not violate any contract, agreement or other legal obligation of Downs Oil;

5.2.1.4 Downs Oil's entry into this Agreement and/or the performance of the Downs Oil's obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which Downs Oil is subject;

5.2.1.5 There are no pending lawsuits or other actions or proceedings which would delay, prevent or impair the timely performance of Downs Oil's obligations under this Agreement; and

5.2.1.6 Downs Oil has the legal right, power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement, and the execution, delivery and performance of this Agreement have been duly authorized by Downs Oil and no other action by Downs Oil is requisite to the valid and binding execution, delivery and performance of this Agreement, except as otherwise expressly set forth in this Agreement.

5.2.2 The representations and warranties of the Downs Oil set forth in this Section are material consideration to the City and Downs Oil acknowledges that the City is relying upon the representations of Downs Oil set forth in this subsection 5.2 in undertaking its obligations under this Agreement.

5.2.3 As used in this Agreement, the term "Downs Oil's actual current knowledge" shall mean, and shall be limited to, the actual current knowledge of Michael J. Downs as of the date of the making of the representation or warranty, without having undertaken any independent inquiry or investigation for the purpose of making such representation or warranty and without any duty of inquiry or investigation.

6. **Definitions.** All initially capitalized terms used in this Agreement shall have the meanings set forth below or, if not set forth below, where such terms first appear in this Agreement.

6.1 "CEQA" means and refers to the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

6.2 "City" means and refers to the City of Corona, a California municipal corporation.

6.3 "City Attorney" means and refers to the City Attorney of the City of Corona, California.

6.4 "Company Sales Activities" means and refers to the sale and distribution of petroleum products for commercial, industrial and retail applications, including, without implied limitation, the Retail Sales Expansion Project. The Company Sales Activities will be undertaken by the Downs Companies in compliance with this Agreement and all federal, state and local laws and regulations. The Downs Companies shall promote and market the Company Sales Activities in a commercially reasonable business matter, with the objective of maximizing the generation of Local Sales Tax Revenues.

6.5 "Computation Quarter" means and refers to each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The Parties agree that the first Computation Quarter within the Eligibility Period commenced July 1, 2006 and is referred to herein as "Computation Quarter 1", with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with "Computation Quarter 100."

6.6 "Covenant Payment(s)" means and refers to any and all payments made to the Downs Companies in accordance with Section 8.

6.7 "Downs Companies" means and refers to Downs Energy and Downs Oil, collectively. The rights, obligations and liabilities of the Downs Companies are the joint and several rights, obligations and liabilities of Downs Energy and Downs Oil.

6.8 "Eligibility Period" means and refers to the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 100, i.e. June 30, 2031.

6.9 "Enforced Delay" shall have the meaning ascribed to the term in Section 32.

6.10 "Facility" means the sales office operations located at 1296 Magnolia Avenue, Corona, California and relating to the commercial fueling and energy operation facility of the Downs Companies. If the Facility is relocated from 1296 Magnolia Avenue to another location within the City's territorial jurisdiction, then the definition of Facility shall be automatically amended to mean and refer to such new location.

6.11 "Final Computation Period Covenant Payment" shall have the meaning ascribed to the term in subsection 8.1.

6.12 "Interim Computation Period Covenant Payments" shall have the meaning ascribed to the term in subsection 8.1.

6.13 "Liquidated Damages" means, for purposes of Section 14, as follows:

6.13.1 If the breach occurs during Computation Quarters 1 through 20, an amount equal to the sum of the following: (1) the aggregate amount of all Covenant Payments (Interim and Final) paid to the Downs Companies at any time prior to the Computation Quarter in which the breach occurs, less (2) the amount by which the total of the Local Sales Tax Revenues attributable to all Computation Quarters preceding the Computation Quarter in which the breach occurs exceeds One Million One Hundred Thousand Dollars (\$1,100,000).

6.13.2 If the breach occurs during Computation Quarters 21 through 100, an amount equal to the sum of the following: (1) the amount (if any) by which the total of the Local Sales Tax Revenues attributable to Computation Quarters 1 through 20, inclusive, is less than One Million One Hundred Thousand Dollars (\$1,100,000), plus (2) the net Covenant Payment (Interim and Final) (if any) paid to the Downs Companies related to the last full Computation Period occurring prior to the Computation Quarter in which the breach occurs.

6.14 "Local Sales Tax Revenues" means the net Sales Tax received by the City from the SBE pursuant to the application of the Sales Tax Law (as such statutes may hereafter be amended, substituted, replaced, re-numbered, moved or modified by any successor law) attributable to Company Sales Activities in a particular Computation Quarter during the Eligibility Period. Local Sales Tax Revenues shall not include: (i) Penalty Assessments, (ii) any Sales Tax levied by, collected for or allocated to the State of California, the County of Riverside, or a district or any entity (including an allocation to a statewide or countywide pool) other than City, (iii) any administrative fee charged by the SBE, (iv) any Sales Tax subject to any sharing, rebate, offset or other charge imposed pursuant to any applicable provision of federal, state or local (except City's) law, rule or regulation, (v) any Sales Tax attributable to any transaction not consummated within the Eligibility Period, or (vi) any Sales Tax (or other funds measured by Sales Tax) required by the State of California to be paid over to another public entity (including the State) or set aside and/or pledged to a specific use other than for deposit into or payment from the City's general fund.

Without limiting the generality of the foregoing, the Downs Companies acknowledge that the California legislature has in the past adopted certain legislation which diverted to the State of California a portion of the Local Sales Tax Revenues which were otherwise be payable to the City. The Downs Companies acknowledge that it is possible that the legislature may enact similar legislation in the future which would cause a corresponding reduction of and/or delay in the payment of the Local Sales Tax Revenues and that such reduction will cause the Downs Companies a corresponding reduction and/or delay in the payment of the Covenant Payments due to the Downs Companies during such time as such legislation is in effect. Furthermore, the Downs Companies acknowledge that it is possible that the legislation described above, or some variant thereof, may be enacted and effective during one or more subsequent times during the Term and may materially and negatively impact the amount of Local Sales Tax Revenues and, accordingly, Covenant Payments. The City does not make any representation, warranty or commitment concerning the future actions of the California legislature with respect to the allocation of Local Sales Tax Revenues to the City. The Downs Companies agree that they are undertaking their obligations under this Agreement after having considered, and is expressly assuming the risk of, the possibility of the enactment of such legislation.

The foregoing paragraph notwithstanding, City acknowledges that the California legislature may provide for the payment to City of other revenues for the purpose of offsetting any losses in Local Sales Tax Revenues resulting from the enactment of legislation of the type described in the immediately preceding paragraph. City agrees that, should the California legislature provide for such offsetting revenues, then for purposes of this Agreement and the computation of any Covenant Payments which may become due to the Downs Companies hereunder, City will consider any such offsetting revenues which are (i) indexed to Sales Tax and offset the loss of Sales Tax revenues to the City on a dollar for dollar basis, (ii) actually received by the City, and (iii) not subject to any restrictions on use beyond those which are otherwise generally applicable to sales tax revenues received by California municipalities, to be Local Sales Tax Revenues within the meaning of this Agreement.

6.15 "Negotiation Period" shall have the meaning ascribed to the term in subsection 9.2.

6.16 "Net Computation Period Local Sales Tax Revenues" shall have the meaning ascribed to the term in subsection 8.1.

6.17 "Notice of Appeal" shall have the meaning ascribed to the term in subsection 9.1.

6.18 "Notice of Determination" shall have the meaning ascribed to the term in subsection 9.1

6.19 "Official Action" means and refers to the official action of Downs Energy and Downs Oil authorizing their entry into and performance of this Agreement, in substantially the form attached to this Agreement as Exhibit A, executed by a authorized representative(s) of the Downs Companies.

6.20 "Penalty Assessments" means penalties, assessments, collection costs and other costs, fees or charges resulting from late or underpaid payments of Sales Tax and which are levied, assessed or otherwise collected from the Downs Companies.

6.21 "Prohibited Financial Assistance" shall have the meaning ascribed to the term in subsection 10.3.

6.22 "Property" means that certain real property and improvements located at 1296 Magnolia Avenue, Corona, California and commonly known as Assessor's Parcel Nos. 107-080-049 and 107-080-050. If the Facility is relocated from 1296 Magnolia Avenue to another location within the City's territorial jurisdiction, then the definition of Property shall be automatically amended to mean and refer to such new location.

6.23 "Retail Sales Expansion Project" means the series of steps and activities which the Downs Companies shall undertake to expand its network of commercial fueling and energy retail outlets throughout the State of California. The Retail Sales Expansion Project is more specifically described in the attached Exhibit B.

6.24 "Sales Tax" means all sales and use taxes levied under the authority of the Sales Tax Law attributable to Company Sales Activities, excluding Sales Tax which is to be refunded to The Downs Companies because of an overpayment of Sales Tax.

6.25 "Sales Tax Law" means (i) California Revenue and Taxation Code Section 7200 *et seq.*, and any successor law thereto, (ii) any legislation allowing City or other public agency with jurisdiction in City to levy any form of local Sales Tax on the operations of The Downs Companies, and (iii) regulations of the SBE and other binding rulings and interpretations relating to (i) and (ii) hereof

6.26 "SBE" means the California State Board of Equalization and any successor agency.

6.27 "Subject Computation Period" shall have the meaning ascribed to the term in subsection 8.1.

6.28 "Term" shall have the meaning ascribed to the term in Section 3.

6.29 "Total Interim Computation Period Covenant Payments" shall have the meaning ascribed to the term in subsection 8.1.

7. Restrictions on Assignment and Change in Control.

7.1 The qualifications and identity of the Downs Companies are of particular concern to the City. The City would not enter into this Agreement were it not for the qualifications and identity of the Downs Companies. The Downs Companies shall promptly notify the City in writing of any and all changes whatsoever in the identity of the business entities or individuals either comprising or in control of the Downs Companies, as well as any and all material changes in the interest or the degree of control of the Downs Companies by any such person, of which information the Downs Companies or any of their principals, shareholders, members or officers are notified or may otherwise have knowledge or information. This Agreement may be terminated by the City if there is any significant or material change, whether voluntary or involuntary, in membership, ownership, management or control of either of the Downs Companies (other than such changes occasioned by (i) the death or incapacity of any individual, (ii) changes for estate planning purposes which do not effect an actual change of ultimate control prior to the death of the individual whose estate is being dealt with, or (iii) employee stock option exercises which, when considered in the aggregate with all prior stock option exercises, do not result in more than a twenty-five percent (25%) change in control), that have not been approved by the City prior to the time of such change, or the City may seek other appropriate relief; provided, however, that (A) the City shall first notify the Downs Companies in writing of its intention to terminate this Agreement or to exercise any other remedy, and (B) Downs Companies shall have twenty (20) calendar days following receipt of such written notice to commence and thereafter diligently and continuously proceed to cure the default of Downs Companies and submit evidence of the initiation and satisfactory completion of such cure to the City, in a form and substance reasonably satisfactory to the City.

7.2 The Downs Companies shall not sell, assign, convey, create any trust estate with respect to or otherwise transfer, assign or encumber (all of the foregoing, collectively,

"Transfer") any of their rights or interests in this Agreement. Any actual or attempted Transfer shall be a Default of the Downs Companies.

8. Covenant Payments.

8.1 For Computation Quarter 1 through Computation Quarter 20:

8.1.1 In consideration for the Downs Companies' obligation set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, and further subject to the provisions of subsection 8.1.2 and Section 9, the City shall, with respect to Computation Quarter 1 through Computation Quarter 20, inclusive, pay the Downs Companies an amount equal to fifty percent (50%) of the Local Sales Tax Revenues received by the City in the subject Computation Quarter in excess of Sixty-Two Thousand Five Hundred Dollars (\$62,500) (each such payment, an "Interim Computation Period Covenant Payment").

8.1.2 The Parties acknowledge that although the City will make Interim Computation Period Covenant Payments based on Computation Quarters as prescribed in subsection 8.1.1, it is the Parties' intention that the City's obligation with respect to Covenant Payments not exceed fifty percent (50%) of the Local Sales Tax Revenues received by the City which in the aggregate exceed Two Hundred Fifty Thousand Dollars (\$250,000) in each consecutive four (4) Computation Quarter period occurring within the Eligibility Period, commencing with Computation Quarter 1. Accordingly, the Parties agree that every fourth (4th) Computation Quarter occurring during the Computation Quarter 1 through Computation Quarter 20 period (i.e., Computation Quarters 4, 8, 12, 16 and 20) (each such Computation Quarter, a "Reconciliation Quarter") shall be used as an adjustment Computation Quarter for the purposes of ensuring that the City pays no more or no less than fifty percent (50%) of the amount by which the Local Sales Tax Revenues received by the City and attributable to the Subject Computation Period (defined below) exceeds Two Hundred Fifty Thousand Dollars (\$250,000). As used herein, the term "Subject Computation Period" means a particular Reconciliation Quarter and the three (3) Computation Quarters immediately preceding it. With respect to Covenant Payments to be paid with respect to Computation Quarter 1 through Computation Quarter 20, inclusive, the Parties shall do the following and the City shall include such information and calculations in the Notice of Determination issued with respect to the subject Reconciliation Quarter:

1. First, the City shall calculate the total amount of Local Sales Tax Revenues received by the City and attributable to the Subject Computation Period. The City shall deduct the sum of Two Hundred Fifty Thousand Dollars (\$250,000) from such amount to arrive at the "Net Computation Period Local Sales Tax Revenues" attributable to the Subject Computation Period.
2. If the Net Computation Period Local Sales Tax Revenues are zero or less than zero, then the Downs Companies shall repay, within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter, the entirety of any Interim Computation Period Covenant Payments previously paid by the City with respect to the Subject Computation Period.

3. If the Net Computation Period Local Sales Tax Revenues are greater than zero, then the City shall calculate an amount ("Final Computation Period Covenant Payment") attributable to the Subject Computation Period by multiplying 0.50 times the Net Computation Period Local Sales Tax Revenues for the Subject Computation Period. The City shall also calculate an amount ("Total Interim Computation Period Covenant Payments") for the Subject Computation Period by determining the total of any Interim Computation Period Covenant Payments previously paid by the City with respect to the Subject Computation Period.
4. If the Total Interim Computation Period Covenant Payments for the Subject Computation Period exceed the calculated Final Computation Period Covenant Payment for the Subject Computation Period, then, within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter, the Downs Companies shall remit to the City the amount by which the Total Interim Computation Period Covenant Payments exceed the calculated Final Computation Period Covenant Payment. If the Total Interim Computation Period Covenant Payments are less than the calculated Final Computation Period Covenant Payment, then the City shall pay to the Downs Companies the amount by which the calculated Final Computation Period Covenant Payment exceeds the Total Interim Computation Period Covenant Payments in accordance with Section 9.

8.2 For Computation Quarter 21 through Computation Quarter 100:

8.2.1 Covenant Payments related to Computation Quarter 21 through Computation Quarter 100 period shall be determined, and shall be subject to the same conditions, as provided in subsection 8.1 for the Covenant Payments related to the Computation Quarter 1 through Computation Quarter 20 period, except that the applicable Reconciliation Quarters shall be Computation Quarters 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 72, 76, 80, 84, 88, 92, 96 and 100. Anything to the contrary in subsection 8.1 or elsewhere in this Agreement notwithstanding, however, the City shall be relieved and discharged from any obligation to make Covenant Payments related to any Subject Computation Period within the Computation Quarter 21 through Computation Quarter 100 period unless the total Local Sales Tax Revenues received by the City and attributable to such Subject Computation Period exceed One Million One Hundred Thousand Dollars (\$1,100,000) ("Minimum Local Sales Tax Revenues"). The total Local Sales Tax Revenues for each Subject Computation Period shall be determined as of each Reconciliation Quarter (commencing with Computation Quarter 24) within the Computation Quarter 21 through Computation Quarter 100 period and shall be set forth in the applicable Notice of Determination for the subject Reconciliation Quarter. If the amount so determined is less than the Minimum Local Sales Tax Revenues, then the City shall be irrevocably released and discharged from any obligation to make any Covenant Payments with respect to the Subject Computation Period and the Downs Companies shall repay the Total Interim Computation Period Covenant Payments for the Subject Computation Period within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter.

8.3 At any time after the end of Computation Period 20, either Party may request in writing to commence negotiations with respect to the amendment of any financial term or

provision of this Agreement, including, without implied limitation, the redesignation of the Two Hundred Fifty Thousand Dollar (\$250,000) Local Sales Tax Revenues baseline to another amount deemed more equitable by the Parties based on past and reasonably anticipated future Local Sales Tax Revenues generation. The Parties agree to meet with each other as often as reasonably requested by either Party for a period of no less than sixty (60) and no more than ninety (90) days following receipt of the aforementioned request to negotiate. The Parties agree to conduct such negotiations in good faith, but neither Party represents or warrants that it will agree to any particular change or any change at all. The City shall not be bound by any preliminarily agreed change or amendment until such time as it has been reduced to an appropriate written amendment to this Agreement and approved by the City Council. The Downs Companies acknowledge and agree that the City shall not be bound by any representation, statement or promise made by City staff members during the course of such negotiations. Neither the City nor the Downs Companies shall have any right, remedy or relief, including, without implied limitation, the right to terminate this Agreement, solely as a result of the failure of the Downs Companies and City staff to agree on proposed amendments or upon the City Council's disapproval of any such proposed amendments, it being the intention of the Parties that their obligation under this Section 8.3 is limited to the obligation to meet and negotiate in good faith.

9. Determination of Local Sales Tax Revenues and Covenant Payments.

9.1 Within thirty (30) days following the end of each Computation Quarter within the Term, the Downs Companies shall jointly submit to City: (i) certified copies of the Downs Companies' quarterly reports to the SBE, including any and all reports filed in connection therewith, which set forth the amount of Sales Tax paid to the SBE during such Computation Quarter in connection with Company Sales Activities. Within one hundred twenty (120) days following its receipt of the foregoing information from the Downs Companies, the City will determine the Local Sales Tax Revenues and the Interim (or Final, if applicable) Computation Period Covenant Payment applicable to that Computation Quarter and, if the subject Computation Quarter is a Reconciliation Quarter, the City will complete the calculations described in subsection 8.1.2 or 8.2.1, as applicable, due for that Computation Quarter and the Subject Computation Period and shall provide the Downs Companies with joint written notice of the City's determination ("Notice of Determination"), together with reasonable supporting documents and calculations. Notwithstanding any other provision of law, including, without implied limitation, any statutes of limitation provided therefore in the Government Code or the Code of Civil Procedure, the City's determination of the matters set forth in the Notice of Determination shall be deemed final, conclusive, and non-appealable unless, within thirty (30) days from the receipt of the Notice of Determination by the Downs Companies, the Downs Companies notify the City in writing that the Downs Companies appeal one or more of the matters set forth in the Notice of Determination, which notice must specifically identify the matter appealed and all of the bases for such appeal ("Notice of Appeal"). Any matter set forth in the Notice of Determination that is not appealed in the manner and within the time limits set forth above, shall be final and conclusive as against the Downs Companies and all others claiming by or through the Downs Companies. The provisions of this Section 9 shall be strictly construed and the Downs Companies waive, to the maximum legal extent, any statutory or judicially created right to institute any administrative or judicial proceeding to contest any matter

set forth in a Notice of Determination that is not timely appealed in strict accordance with this subsection 9.1.

9.2 If the Downs Companies do not file a Notice of Appeal, the City shall tender any amounts due pursuant to Section 8 for such Computation Quarter within forty five (45) days from the receipt of the Notice of Determination by the Downs Companies. If the Downs Companies file a timely Notice of Appeal with the City, the City and the Downs Companies shall negotiate in good faith to resolve their dispute for a period of no less than thirty (30) days (the "Negotiation Period"). If, by the end of the Negotiation Period, the City and the Downs Companies are unable to resolve the dispute set forth in the notice of appeal, each of them may exercise any judicial remedy available to them pursuant to this Agreement for the resolution of such dispute; provided, however, that any provision of law to the contrary notwithstanding, such judicial remedy must be instituted (defined as the filing of an action in a court of competent jurisdiction in strict accordance with the terms of this Agreement) within ninety (90) days following the end of the Negotiation Period or be barred forever. In connection therewith, the City and the Downs Companies irrevocably consent to the appointment of a referee to resolve such dispute in accordance with Code of Civil Procedure Section 638, et seq., and to pay equal amounts of the cost of such referee.

9.3 The City and the Downs Companies agree that any disputed amount shall not accrue interest during the pendency of any Negotiation Period or subsequent legal proceeding (including any appeals filed in connection therewith), unless the court makes a determination upon recommendation of the referee that the City acted in bad faith with regard to the dispute, in which case, any amount ultimately adjudged to be owing by the City shall be deemed to have accrued interest at the rate of four percent (4%) simple interest per annum, commencing on the ninetieth (90th) day following the end of the Negotiation Period and continuing thereafter until paid. Each of the Downs Companies hereby waives, to the maximum legal extent, the right to the imposition of any different rate of interest in accordance with any provision of law.

9.4 Any Covenant Payments due under the terms of this Agreement may be payable from any source of any legally available funds of the City. City covenants to reasonably consider such actions as may be necessary to include all payments owed hereunder in each of its annual budgets during the Term and to reasonably consider the necessary annual budgetary appropriations for all such payments.

9.5 The City's obligation to make Covenant Payments is contingent on a Computation Quarter to Computation Quarter basis and, for each Computation Quarter within the Term, the City's obligations to make any payments to the Downs Companies under this Agreement is expressly contingent upon the Downs Companies, for the entirety of such Computation Quarter, completely fulfilling their material obligations under this Agreement. If for any reason either of the Downs Companies fail to authorize the release or use of sales tax information regarding the Facility in a manner satisfactory to the SBE or provide any information reasonably required by the City to perform the City's obligations under this Agreement, or if such information is otherwise unavailable to the City or the City is not legally authorized to use such information for the purposes of performing its obligations under this Agreement, the City shall have no obligation to make any Covenant Payment to the Downs Companies for such period.

9.6 The City and the Downs Companies agree that, except as otherwise provided in subsections 8.1.2, 8.2.1, and 9.7, the calculation and determination of all financial components of the Parties' rights and obligations under this Agreement shall be computed on a Computation Quarter to Computation Quarter basis. Except as otherwise provided in subsections 8.1.2, 8.2.1 or 9.7, revenues generated in one Computation Quarter may not be carried forward or back to any prior or future Computation Quarter, it being the express understanding of the Parties that for each Computation Quarter the financial obligations of the Parties and satisfaction of the conditions precedent to such obligations shall be determined and made independently of any other Computation Quarter.

9.7 If, at any time during or after the Term of this Agreement, the SBE determines that all or any portion of the Local Sales Tax Revenues received by the City were improperly allocated and/or paid to the City, and if the SBE requires repayment of, offsets against future sales tax payments, or otherwise recaptures from the City those improperly allocated and/or paid Local Sales Tax Revenues, then the City shall recalculate its obligations hereunder in accordance with such revised Local Sales Tax Revenues and the Downs Companies shall, within thirty (30) days after written demand from the City, repay all Covenant Payments (or applicable portions thereof) theretofore paid to the Downs Companies which are attributable to such repaid, offset or recaptured Local Sales Tax Revenues. If the Downs Companies fail to make such repayment within thirty (30) days after the City's written demand, then the Downs Companies shall be in breach of this Agreement and such obligation shall accrue interest from the date of the City's original written demand at the then-maximum legal rate imposed by the California Code of Civil Procedure on prejudgment monetary obligations, compounded monthly, until paid. This subsection 9.7 shall survive the expiration or termination of this Agreement.

10. Continuous Operation and Retail Sales Expansion Project Completion Covenants.

10.1 The Downs Companies covenant to the City to cause the Facility to be continuously operated throughout the entirety of the Term. The Downs Companies shall, in all reports to the SBE, designate the City as the "point of sale" for all Company Sales Activities occurring at any location in the State of California. The Downs Companies shall, for the full Term, at its sole cost and expense, maintain all permits, contractual arrangements, licenses, and registrations necessary for the Downs Companies to lawfully conduct Company Sales Activities and to designate the City as the "point of sale" in all reports and returns submitted to the SBE.

10.2 The Downs Companies acknowledges and agrees that the sales and use tax reporting and payment information related to sales and use taxes attributable to Company Sales Activities may become a public record as a result of the covenants of the Downs Companies contained in this Section 10 and the payments to be made by the City to the Downs Companies. The Downs Companies hereby authorizes the City to use the sales and use tax reporting and payment information related to Company Sales Activities to allow the City to perform its obligations under this Agreement and to disclose such information when, in the City Attorney's reasonable opinion, such disclosure is required by law. The City agrees, however, to notify the Downs Companies prior to making any such disclosure in order to allow the Downs Companies to seek judicial determination of whether or not any particular disclosure is legally required, provided, however, that the Downs Companies shall defend, indemnify and hold the City

harmless from and against all costs, expenses, fees, legal expenses, and other amounts paid or incurred by the City in connection with such judicial proceeding.

10.3 The Downs Companies covenant to the City that for the Term the Downs Companies will not directly or indirectly solicit, accept or enter into any agreement concerning any Prohibited Financial Assistance from any other public or private person or entity, to the extent such Prohibited Financial Assistance is given for the purpose of causing or would result in: (i) the relocation of the point of sale for Company Sales Activities from the City, (ii) a material (i.e., five percent (5%) or greater) reduction in the amount of Local Sales Tax Revenues which would be generated from the Company Sales Activities in the absence of such an agreement, or (iii) any event of default by either of the Downs Companies. For purposes of this subsection 10.3, the term "Prohibited Financial Assistance" means any direct or indirect payment, subsidy, rebate or other similar or dissimilar monetary or nonmonetary benefit, including, without implied limitation, payment of land subsidies, relocation expenses, financial incentives, public financing, property or sales tax relief or rebates, relief from public improvement obligations, and payment for public improvements to or for the benefit of the Downs Companies.

10.4 The Downs Companies covenant to the City that they shall immediately undertake and diligently prosecute the Retail Sales Expansion Project to completion in accordance with the requirements of this Agreement, including Exhibit B hereto. Subject to Section 32, the Downs Companies further covenant to complete the Retail Sales Expansion Project on or before the commencement of Computation Quarter 21.

11. **Covenant to Maintain Property on Tax Rolls During the Term.**

11.1 The Downs Companies covenant to the City to cause the Property to remain on the County of Riverside, California, secured real property tax rolls throughout the Term or for so long as the Downs Companies (or their related or affiliated entities) own the Property.

11.2 During the Term, the Downs Companies covenant and agree to pay all property tax bills with respect to the Property and all improvements thereon on or before the last day for the timely payment of each property tax installment on each December 10 and April 10 and to timely pay all supplemental tax bills regarding such property issued by the County of Riverside, California.

11.3 The Downs Companies covenant to the City that the Downs Companies shall not use or otherwise sell, transfer, convey, assign, lease, leaseback or hypothecate the Property or any portion thereof to any entity or party, or for any use of the Property, that is partially or wholly exempt from the payment of real property taxes or that would cause the exemption of the payment of all or any portion of real property taxes otherwise assessable regarding the Property, without the prior written consent of the City, given or withheld in the City's sole and absolute discretion.

12. **Covenant to Maintenance Condition of the Property.**

12.1 The Downs Companies covenant to the City that areas of the Property that are subject to public view (including all existing improvements, paving, walkways, landscaping,

exterior signage and ornamentation) shall be maintained in good repair and a neat, clean and orderly condition, ordinary wear and tear excepted.

12.2 Graffiti, as this term is defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed within seventy two (72) hours following its placement by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or by removal with solvents, detergents or water, as appropriate.

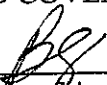
13. **Covenant Not to Discriminate.** The Downs Companies covenant to the City that they will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry, and that they will comply with all applicable local, state and federal fair employment laws and regulations. The Down Companies further covenant and agree that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Downs Companies themselves, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessee or vendees of the Property.

14. **Liquidated Damages for Default of Section 10 Obligations.**


14.1 The Parties acknowledge that the consideration to the City for its entry into this Agreement and the performance of its obligations hereunder include the City's receipt of Local Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation and location of the Downs Companies in the City in accordance with Section 10 of this Agreement. The Downs Companies agree that the City will suffer damages if the Downs Companies commits any Default with respect to any of its obligations arising under Section 10. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to subsection 6.13) represents a reasonable estimate of the damages which would be suffered by the City if the Downs Companies commits any Default with respect to any of its obligations set forth in Section 10. Accordingly, as its sole and exclusive monetary remedy for the Downs Companies' Default with respect to any of its covenants and obligations set forth in Section 10, the City shall be entitled to (1) terminate this Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments, and (2) receive from the Downs Companies the applicable amount of Liquidated Damages as provided by subsection 6.13.

14.2 LIQUIDATED DAMAGES TO THE CITY UPON THE DOWNS COMPANIES DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS UNDER SECTION 10. UPON THE DOWNS COMPANIES' DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 10 (SUBSECTIONS 10.1 THROUGH 10.4, INCLUSIVE), FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT

TO SECTION 21, THE CITY AND THE DOWNS COMPANIES ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH SUBSECTION 6.13 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON THE DOWNS COMPANIES DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 10, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO (1) RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 6.13, WHICH THE DOWNS COMPANIES SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY, AND (2) TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.



Initials of Authorized
City Representative



Initials of Authorized
Downs Companies
Representative

15. Payment of Prevailing Wages.

15.1 The Downs Companies acknowledge that the City has made no representation, express or implied, to the Downs Companies or any person associated with the Downs Companies regarding whether or not laborers employed relative to the construction and installation of capital improvements on the Property, if any, must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.* The Downs Companies agree with the City that the Downs Companies shall assume the responsibility and be solely responsible for determining whether or not laborers employed relative to any construction of capital improvements on the Property must be paid the prevailing per diem wage rate for their labor classification, as determined by the State of California, pursuant to Labor Code Sections 1720, *et seq.*

15.2 The Downs Companies, on behalf of themselves, their successors, and assigns, waive and release the City from any right of action that may be available to any of them pursuant to Labor Code Sections 1726(c) and 1781. The Downs Companies acknowledge the protections of Civil Code Section 1542 relative to the waiver and release contained in this Section 15.2, which reads as follows: ↵

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, THE DOWNS COMPANIES KNOWINGLY AND VOLUNTARILY WAIVE THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES OF THIS SECTION 15:


Downs Oil Initials


Downs Energy Initials

Additionally, the Downs Companies shall indemnify, defend with counsel acceptable to the City and hold harmless the City against any claims pursuant to Labor Code Sections 1726(c) and 1781 arising from this Agreement or the construction or installation of any capital improvements on the Property, in accordance with the terms of Section 16 of this Agreement.

Notwithstanding any other provision of this Agreement, the City shall not be under any duty to monitor or ensure the compliance of the Downs Companies with any State of California labor laws, including, without limitation, prevailing wage laws.

16. Indemnification. The Parties hereby agree to indemnify and save and hold one another harmless from and against all "damages" (which term shall mean actual cash expenditures arising out of, resulting from, or relating to any damage, liability, loss, cost or deficiency, including, but not limited to, reasonable attorneys' fees and other costs and expenses incident to proceedings or investigations for the defense of any claim) incurred by any of the Parties arising out of, resulting from, or relating to any failure by any of the Parties to duly perform and observe any term, provision or covenant to be performed by any of the Parties pursuant to this Agreement.

17. Defense of this Agreement. The Downs Companies acknowledge that the City is a "public entity" as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA. Also, as a public body, the City's action in approving this Agreement may be subject to proceedings to invalidate this Agreement, injunctive relief or damages. The Downs Companies assume the risk of delays and damages that may result to the Downs Companies from any third-party legal actions related to the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, even in the event that an error, omission or abuse of discretion by the City is determined to have occurred. If a third-party files a legal action regarding the City's approval of this Agreement or the pursuit of the activities contemplated by this Agreement, the City may terminate this Agreement on thirty (30) days' written notice to the Downs Companies of the City's intent to terminate this Agreement, referencing this Section 17 without any further obligation to perform the terms of this Agreement and without any liability to the Downs Companies resulting from such termination, unless the Downs Companies both unconditionally agree to indemnify and defend the City against such third-party legal action, as provided hereinafter in this Section 17. Within thirty (30) days of receipt of the City's notice of intent to terminate this Agreement, as provided in the preceding sentence, the Downs Companies may offer to defend the City in the third-party legal action and pay all of the court costs, attorney fees, monetary awards, sanctions, attorney fee awards, expert witness and consulting fees, and the expenses of any and all financial or performance obligations resulting from the disposition of the legal action. Any such offer from the Downs Companies must be in writing and in a form reasonably acceptable to the City. Nothing contained in this

Section 17 shall be deemed or construed to be an express or implied admission that the City is or may be liable to either of the Downs Companies or any other person or entity for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA.

18. No Effect On City's Legislative Authority. Nothing in this Agreement shall limit or restrict the authority of the City Council to take any other actions with respect to the Property and/or Downs Energy or Downs Oil without notice to or consent from either Downs Energy and/or Downs Oil, except as may otherwise be expressly provided by applicable law.

19. Nonliability of the City or City Officials and Employees. No council member, official, contractor, consultant, attorney or employee of the City shall be personally liable to the Downs Companies, any voluntary or involuntary successors or assignees, or any lender or other party holding an interest in the Property, in the event of any default or breach by the City, or for any amount which may become due to the Downs Companies or to their successors or assignees, or on any obligations arising under this Agreement.

20. Conflict of Interests. No council member, official, contractor, consultant, attorney or employee of the City shall have any personal interest, direct or indirect, in this Agreement nor shall any such council member, official or employee participate in any decision relating to this Agreement which affects his/her personal interests or the interests of any corporation or partnership in which he/she is directly or indirectly interested.

21. Defaults - General. Subject to any extensions of time provided for in this Agreement for event of enforced Delay, the occurrence of any of the following shall constitute a "Default."

21.1 The failure by any Party to perform any obligation of such Party under this Agreement or the Declaration of Covenants for the payment of money, if such failure is not cured within ten (10) days after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due; or

21.2 The failure by any Party to perform any of its obligations set forth in this Agreement or the Declaration of Covenants, other than obligations subject to subsection 21.1, if such failure is not cured within thirty (30) days after the non-performing Party's receipt of written notice from the injured Party that such obligation was not performed when due or, if such failure is of a nature that cannot reasonably be cured within thirty (30) days, the failure by such Party to commence such cure within thirty (30) days after receipt of such notice and to, thereafter, diligently prosecute such cure to completion; or

21.3 Any representation or warranty by a Party set forth in this Agreement proves to have been false or misleading in any material respect when made and said Party does not take the necessary action, following notice pursuant to subsection 21.2, to remedy said misrepresentation or breach of warranty within the time period set forth in subsection 21.2, such that the original representation or warranty becomes truthful and accurate.

21.4 Any failure or delays by any Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by any Party in asserting any of their rights and/or remedies shall not deprive any Party

of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

22. City Remedies. Except as otherwise provided by Section 14, the City's rights and remedies for a Default by either of the Downs Companies shall be any one or more of the following:

22.1 Pursue any available legal or equitable action or remedy to recover damages to the City arising from such Default, including, without limitation, to collect any amount of money due to the City from the Downs Companies, following the notice and opportunity to cure provided in Section 21; and

22.2 Off-set any amount of money due to the City from the Downs Companies, following the notice and opportunity to cure provided in Section 21, against any Covenant Payment(s) due or becoming due to the Downs Companies; and

22.3 Terminate this Agreement and the entirety of its obligations hereunder, including the obligation to make any Covenant Payments accrued but not paid.

23. Legal Actions. In addition to any other rights or remedies, and except as may be limited by Section 14 any Party may institute legal action to cure, correct or remedy any default, to recover general or consequential damages for any default, or to obtain any other remedy available to that Party under this Agreement or at law or in equity.

24. Governing Law. The procedural and substantive laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to its conflicts of laws principles.

25. Rights and Remedies are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties under this Agreement are cumulative and the exercise by any Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by another Party.

26. Notices, Demands and Communications Between the Parties.

26.1 Any and all notices, demands or communications submitted by a Party to the other Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight courier service or by registered or certified United States mail, postage prepaid, return receipt requested, to the principal office of the Party, as designated in subsection 26.2. Such written notices, demands and communications may be sent in the same manner to such other addresses as the Party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender or the date set forth on such return receipt, on the day that it is dispatched by messenger for immediate personal delivery, on the date of delivery by a nationally recognized overnight courier service or three (3) calendar days after it is placed in the United States mail, as provided in this subsection 26.1.

26.2 The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

To the Downs Companies

Downs Companies
1296 Magnolia Avenue
Corona, CA 92879
Attn: Michael J. Downs

With courtesy copy to:

Gresham Savage Nolan & Tilden, PC
550 E. Hospitality Lane, Suite 300
San Bernardino, CA 92408
Attn: Robert W. Ritter, Jr.

To the City:

City of Corona
400 South Vicentia Avenue
Corona, CA 92882
Attention: City Manager

With courtesy copy to:

Best Best & Krieger LLP
3750 University Avenue
Suite 400
Riverside, California 92501
Attention: Kevin K. Randolph

Notwithstanding the foregoing, for the purpose of this Agreement, any and all notices, demands or communications submitted by either Downs Energy or Downs Oil to the City pursuant to or as required by this Agreement shall be deemed to be from the Downs Companies, collectively. Conversely, any and all notices, demands or communications submitted by the City to either Downs Energy or Downs Oil shall be deemed to be submitted by the City to the Downs Companies, collectively.

27. Attorneys' Fees. In the event of the bringing of an arbitration, action or suit by a Party to this Agreement against the other Party to this Agreement by reason of any breach of any of the covenants or agreements or any intentional inaccuracies in any of the representations and warranties on the part of the Party arising out of this Agreement or any other dispute between the Parties concerning this Agreement, then, in that event, the prevailing party in such action or dispute, whether by final judgment or arbitration award, shall be entitled to have and recover of and from the other Party or Parties all costs and expenses of suit or claim, including reasonable attorneys' fees. Any judgment, order or award entered in any final judgment or award shall contain a specific provision providing for the recovery of all costs and expenses of suit or claim, including reasonable attorneys' fees (collectively, the "Costs") incurred in enforcing, perfecting and executing such judgment or award. For the purposes of this Section 27, Costs shall include, without implied limitation, reasonable attorneys' and experts' fees, costs and expenses incurred in the following: (i) post judgment motions and appeals, (ii) contempt proceedings, (iii) garnishment, levy and debtor and third party examination; (iv) discovery; and (v) bankruptcy litigation. This Section 27 shall survive any termination of this Agreement.

28. **Jurisdiction and Venue.** Any legal action or proceeding concerning this Agreement shall be filed and prosecuted in the appropriate state or federal court in the State of California. All Parties to this Agreement irrevocably consent to the personal jurisdiction of that court.

29. **Interpretation.** The Parties acknowledge that this Agreement is the product of arms-length negotiation and drafting and that each of the Parties have been represented by legal counsel in the negotiation and drafting of this Agreement. Accordingly, any rule of construction that the ambiguities in a document shall be construed against the drafter of that document shall have no application to the interpretation and enforcement of this Agreement. In any action or proceeding to interpret or enforce this Agreement, the finder of fact may refer to any extrinsic evidence not in direct conflict with any specific provision of this Agreement to determine and give effect to the intention of the Parties.

30. **Counterpart Originals; Integration.** This Agreement may be executed in duplicate originals, each of which is deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement and the Exhibits attached to this Agreement represent the entire understanding of the Parties and supersedes all negotiations, letters of intent, memoranda of understanding or previous agreements between the Parties with respect to all or any part of the subject matter of this Agreement.

31. **No Waiver.** Failure to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers under this Agreement at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

32. **Time is of the Essence/Force Majeure.** Time is of the essence in the performance of the Parties' obligations under this Agreement. In addition to specific provisions of this Agreement providing for extensions of time, times for performance under this Agreement shall be extended where delays or defaults are due to war; insurrection; any form of labor dispute; lockouts; riots; floods; earthquakes; fires; acts of God or of third parties; third party litigation; acts of a public enemy; referenda; acts of governmental authorities (except that the failure of the City to act as required under this Agreement shall not excuse its performance); moratoria; epidemics; quarantine restrictions; and freight embargoes (each, an "Enforced Delay"), provided, however, that the Party claiming the extension notify the other Party of the nature of the matter causing the Enforced Delay within thirty (30) days from the occurrence thereof; and, provided further, that the extension of time shall be only for the period of the Enforced Delay.

32.1 ANYTHING IN THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, THE DOWNS COMPANIES EXPRESSLY ASSUME THE RISK OF UNFORESEEABLE CHANGES IN ECONOMIC CIRCUMSTANCES AND/OR MARKET DEMAND/CONDITIONS AND WAIVE, TO THE GREATEST LEGAL EXTENT, ANY DEFENSE, CLAIM, OR CAUSE OF ACTION BASED IN WHOLE OR IN PART ON ECONOMIC NECESSITY, IMPRACTICABILITY, CHANGED ECONOMIC CIRCUMSTANCES, FRUSTRATION OF PURPOSE, OR SIMILAR THEORIES.

32.2 THE DOWNS COMPANIES EXPRESSLY AGREES THAT ADVERSE CHANGES IN ECONOMIC CONDITIONS, EITHER OF THE DOWNS COMPANIES SPECIFICALLY OR THE ECONOMY GENERALLY, OR CHANGES IN MARKET CONDITIONS OR DEMANDS, SHALL NOT OPERATE TO EXCUSE OR DELAY THE STRICT OBSERVANCE OF EACH AND EVERY OF THE OBLIGATIONS, COVENANTS, CONDITIONS AND REQUIREMENTS OF THIS AGREEMENT. THE DOWNS COMPANIES EXPRESSLY ASSUME THE RISK OF SUCH ADVERSE ECONOMIC OR MARKET CHANGES, WHETHER OR NOT FORESEEABLE AS OF THE EFFECTIVE DATE.


Downs Energy Initials


Downs Oil Initials

33. **No Third Party Beneficiaries.** The performance of the Parties' respective obligations under this Agreement are not intended to benefit any party other than the City, Downs Energy and Downs Oil, except as may be expressly provided otherwise in this Agreement. No person or entity not a signatory to this Agreement shall have any rights or causes of action against any Party to this Agreement as a result of that Party's performance or non-performance under this Agreement.

34. **No Effect on Eminent Domain Authority.** Nothing in this Agreement shall be deemed to limit, modify, or abridge or affect in any manner whatsoever the City's eminent domain powers with respect to the Property, the Facility or any other improvements on the Property.

35. **Tax Consequences.** The Downs Companies acknowledge that they may experience tax consequences as a result of its receipt of the payments provided for in this Agreement and agrees that it shall bear any and all responsibility, liability, costs, and expenses connected in any way therewith.

36. **Joint and Several Liability.** For the purposes of this Agreement, Downs Energy and Downs Oil shall be jointly and severally liable and responsible for any damages, claims, demands, causes of action, costs, expenses, liability, or losses arising out of or incident to any actual or alleged acts, omissions or willful misconduct of Downs Energy and/or Downs Oil, their directors, officials, officers, employees, agents, volunteers and subcontractors (this shall also include any damages, claims, demands, causes of action, costs, expenses, liability or losses caused by either of the Downs Companies).


37. **Warranty Against Payment of Consideration for Agreement.** Both of the Downs Companies warrant that they have not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 37, shall not include persons to whom fees are paid for professional services if rendered by attorneys, consultants, accountants, engineers, architects and the like when such fees are considered necessary by the Downs Companies.

[Signatures on Following Pages]

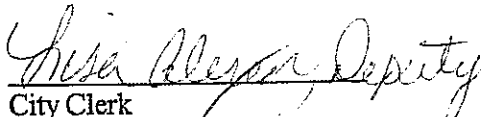
SIGNATURE PAGE
TO
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

CITY:

CITY OF CORONA
a California general law municipal corporation

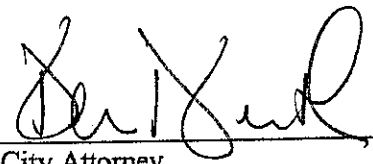
By: 
Beth Groves
City Manager

ATTEST:


City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

By: 
City Attorney

SIGNATURE PAGE
TO
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

DOWNS ENERGY:

DOWNS ENERGY
a California corporation

Dated: 11-6-06

By: Mulhal J. Downs
Its: President

Dated: 11-6-06

By: Sharon H. Messner
Its: Corp. Sec.

SIGNATURE PAGE
TO
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

DOWNS OIL:

DOWNS OIL CO., INC.
a California corporation

Dated: 11-6-06

By: Muel J. Downro
Its: President

Dated: 11-6-06

By: Sharon A. Messine
Its: Corp. Sec.

ACKNOWLEDGMENT

State of California

County of Riverside

On 11-6-06 before me, Sandra D. Campos, Notary Public

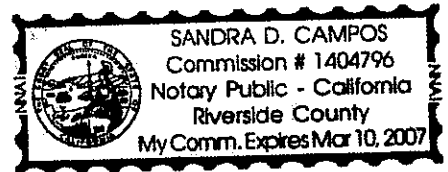
(here insert name and title of the officer)

personally appeared Michael John Downs and Sharon Louise Messner

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

WITNESS my hand and official seal.

Signature Sandra D. Campos



(Seal)

EXHIBIT A
TO
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

Form of Official Action

[Attached Behind This Page]

EXHIBIT A

RESOLUTION OF THE BOARD OF DIRECTORS OF

[_____],

A _____

At a meeting of the board of directors of [_____], a [_____] (the "Corporation"), duly held on _____, 20__, at which meeting all of the directors of the Corporation were in attendance, the following resolutions were unanimously adopted:

WHEREAS, the Corporation is about to enter into that certain Operating Covenant and Tax Sharing Agreement (Downs Companies) with the City of Corona, dated as of _____, 2006 (the "Agreement"), to set forth the terms of certain payments to be made by the City to the Downs Energy and Downs Oil Co., Inc., ("collectively, the "Downs Companies") as an incentive for owning and operating a certain facility in the City of Corona California as more specifically described in the Agreement (the "Facility"); and

WHEREAS, the Board of Directors of the Corporation has reviewed the Agreement and all documents executed or to be executed in connection with the Agreement and considers the transaction to be in the best interest of the Downs Companies and the Corporation.

NOW, THEREFORE, BE IT RESOLVED that the Corporation execute the Agreement on behalf of the [_____] and all documents previously presented to, reviewed, and approved by the Board of Directors of the Corporation.

RESOLVED, FURTHER, that the following officers of the Corporation acting alone be, and they hereby are, authorized, empowered, and directed on behalf of the Corporation to execute and deliver the Agreement on behalf of [_____] and all other documents to be executed in connection with it, and to take all actions that may be necessary to conclude the transaction contemplated by these documents:

President
[Name]

Secretary
[Name]

The authority conferred by this Resolution shall be considered retroactive and any and all acts authorized in this Resolution that were performed before the passage of this Resolution are hereby approved and ratified by the Corporation. The authority conferred by this Resolution shall continue in full force and effect until the City of Corona shall have received notice in writing, certified by the Secretary of the Corporation, of the revocation of this authority by a resolution duly adopted by the Board of Directors of the Corporation.

The undersigned, _____, Secretary of the Corporation, certifies that the foregoing is a true copy of the Resolution duly adopted by the Board of Directors of the Corporation at a meeting held on _____, 2006.

IN TESTIMONY WHEREOF, I have executed this Resolution and affixed the corporate seal of the Corporation, as of _____, 2006.

Exhibit "A"

Date: _____

Name: _____
Secretary

[Seal]

Exhibit "A"

EXHIBIT B
TO
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

Retail Sales Expansion Project

[To be provided by Downs Companies]

Exhibit "B"

EXHIBIT B
OPERATING COVENANT AGREEMENT
(DOWNS COMPANIES)

Description of Retail Sales Expansion Project

Subject to Section 32 of the Agreement, not later than the commencement of Computation Quarter 21 Downs will acquire and/or complete (as evidenced by issuance of a certificate of occupancy) the construction of no less than two (2) Downs-owned and operated cardlock facilities having a total annual through put of not less than four (4) million gallons per facility. Each cardlock facility may have three (clear diesel, dyed diesel, and unleaded gasoline) to five (clear diesel, dyed diesel, unleaded gasoline, premium gasoline, and a race fuel) storage tanks, depending on products being offered for sale. Each cardlock facility would typically include two to four MPD's (multi-product dispensers), with each MPD creating two simultaneous fueling positions for gasoline and three to six fueling positions for diesel fuel.

**FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

among

**THE CITY OF CORONA,
a California municipal corporation,**

**DOWNS ENERGY,
a California corporation,**

and

**DOWNS OIL CO., INC.,
A California corporation**

[Dated as of June 6, 2012 for reference purposes only]

**FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

THIS FIRST AMENDMENT TO OPERATING COVENANT AGREEMENT (Downs Companies) ("**First Amendment**") is dated as of June 6, 2012 and is entered into by and between THE CITY OF CORONA, a California municipal corporation ("**City**"), DOWNS ENERGY, a California corporation ("**Downs Energy**"), and DOWNS OIL CO., INC., a California corporation ("**Downs Oil**"). The City, Downs Energy and Downs Oil are sometimes referred to in this First Amendment individually as a "**Party**" or collectively as the "**Parties.**" Downs Energy and Downs Oil are collectively referred to herein as the "**Downs Companies.**" The City, Downs Energy and Downs Oil enter into this First Amendment with reference to the following recited facts (each a "**Recital**"):

RECITALS

WHEREAS, the Downs Companies own and operate a commercial fueling and energy operation facility within the City and currently located as 1296 Magnolia Avenue in the City of Corona, County of Riverside ("**Property**"); and

WHEREAS, the Downs Companies expect to generate significant sales and service-related revenues and to expand their commercial fueling and energy sales operations outside of the City, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, the City, Downs Energy and Downs Oil previously entered into that certain Operating Covenant Agreement (Downs Companies), dated November 15, 2006 ("**Agreement**"), which, among other things, set forth the terms and conditions pursuant to which the Downs Companies agreed to maintain their sales office operations (the "**Facility**") within the City for a period of twenty-five (25) years from the effective date of the Agreement and to expand their commercial fueling and energy sales activities throughout the State of California, in exchange for the City providing certain payments to the Down Companies as an incentive for operating the Facility within the City during this period and in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by the City arising from the operation of the Facility within the City and the expansion of the Downs Companies' commercial fueling and energy operations, as further described in the Agreement; and

WHEREAS, since the effective date of the Agreement, market considerations and physical conditions of the Property and the surrounding area require an extension of the completion date for the expansion of the Downs Companies' commercial fueling and energy operations; and

WHEREAS, the purpose of this First Amendment is to revise the Agreement to: (i) extend by five (5) years the completion date for the expansion of the Downs Companies' commercial fueling and energy operations; and (ii) extend the Term of the Agreement by an additional five (5) years.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the Parties agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this First Amendment in their entirety by this reference.

2. **Amendments.** The Agreement is hereby amended as follows:

2.1 **Term of this Agreement.** Section 3 of the Agreement is hereby repealed and replaced in its entirety with the following:

Term of this Agreement. This Agreement shall commence on the Effective Date and, unless terminated sooner pursuant to the provisions of this Agreement, shall continue in effect thereafter until the last day of Computation Quarter 120 (which time period is referred to in this Agreement as the “Term”), subject to any rights or remedies available to a Party to earlier terminate this Agreement as set forth hereinafter.

2.2 **Computation Quarter.** Section 6.5 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Computation Quarter**” means and refers to each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The Parties agree that the first Computation Quarter within the Eligibility Period commenced July 1, 2006 and is referred to herein as “Computation Quarter 1”, with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with “Computation Quarter 120.”

2.3 **Eligibility Period.** Section 6.8 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Eligibility Period**” means and refers to the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 120, i.e. June 30, 2036.

2.4 **Liquidated Damages.** Section 6.13 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Liquidated Damages**” means, for purposes of Section 14, as follows:

6.13.1 If the breach occurs during Computation Quarters 1 through 40, an amount equal to the sum of the following: (1) the aggregate amount of all Covenant Payments (Interim and Final) paid to the Downs Companies at any time prior to the Computation Quarter in which the breach occurs, less (2) the amount by which the total of the Local Sales Tax Revenues attributable to all Computation

Quarters preceding the Computation Quarter in which the breach occurs exceeds One Million One Hundred Thousand Dollars (\$1,100,000).

6.13.2 If the breach occurs during Computation Quarters 41 through 120, an amount equal to the sum of the following: (1) the amount (if any) by which the total of the Local Sales Tax Revenues attributable to Computation Quarters 1 through 40, inclusive, is less than One Million One Hundred Thousand Dollars (\$1,100,000), plus (2) the net Covenant Payment (Interim and Final) (if any) paid to the Downs Companies related to the last full Computation Period occurring prior to the Computation Quarter in which the breach occurs.

2.5 Covenant Payments. Section 8 of the Agreement is hereby repealed and replaced in its entirety with the following:

8.1 For Computation Quarter 1 through Computation Quarter 40:

8.1.1 In consideration for the Downs Companies' obligation set forth in this Agreement, and subject to satisfaction of all conditions precedent thereto, and further subject to the provisions of subsection 8.1.2 and Section 9, the City shall, with respect to Computation Quarter 1 through Computation Quarter 40, inclusive, pay the Downs Companies an amount equal to fifty percent (50%) of the Local Sales Tax Revenues received by the City in the subject Computation Quarter in excess of Sixty-Two Thousand Five Hundred Dollars (\$62,500) (each such payment, an "Interim Computation Period Covenant Payment").

8.1.2 The Parties acknowledge that although the City will make Interim Computation Period Covenant Payments based on Computation Quarters as prescribed in subsection 8.1.1, it is the Parties' intention that the City's obligation with respect to Covenant Payments not exceed fifty percent (50%) of the Local Sales Tax Revenues received by the City which in the aggregate exceed Two Hundred Fifty Thousand Dollars (\$250,000) in each consecutive four (4) Computation Quarter period occurring within the Eligibility Period, commencing with Computation Quarter 1. Accordingly, the Parties agree that every fourth (4th) Computation Quarter occurring during the Computation Quarter 1 through Computation Quarter 40 period (i.e., Computation Quarters 4, 8, 12, 16, 20, 24, 28, 32, 36 and 40) (each such Computation Quarter, a "Reconciliation Quarter") shall be used as an adjustment Computation Quarter for the purposes of ensuring that the City pays no more or no less than fifty percent (50%) of the amount by which the Local Sales Tax Revenues received by the City and attributable to the Subject Computation Period (defined below) exceeds Two Hundred Fifty Thousand Dollars (\$250,000). As used herein, the term "Subject Computation Period" means a particular Reconciliation Quarter and the three (3) Computation Quarters immediately preceding it. With respect to Covenant Payments to be paid with respect to Computation Quarter 1 through Computation Quarter 40, inclusive, the Parties shall do the following and the City shall include such information and calculations in the Notice of Determination issued with respect to the subject Reconciliation Quarter:

1. First, the City shall calculate the total amount of Local Sales Tax Revenues received by the City and attributable to the Subject Computation Period. The City shall deduct the sum of Two Hundred Fifty Thousand Dollars (\$250,000) from such amount to arrive at the "Net Computation Period Local Sales Tax Revenues" attributable to the Subject Computation Period.

2. If the Net Computation Period Local Sales Tax Revenues are zero or less than zero, then the Downs Companies shall repay, within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter, the entirety of any Interim Computation Period Covenant Payments previously paid by the City with respect to the Subject Computation Period.

3. If the Net Computation Period Local Sales Tax Revenues are greater than zero, then the City shall calculate an amount ("Final Computation Period Covenant Payment") attributable to the Subject Computation Period by multiplying 0.50 times the Net Computation Period Local Sales Tax Revenues for the Subject Computation Period. The City shall also calculate an amount ("Total Interim Computation Period Covenant Payments") for the Subject Computation Period by determining the total of any Interim Computation Period Covenant Payments previously paid by the City with respect to the Subject Computation Period.

4. If the Total Interim Computation Period Covenant Payments for the Subject Computation Period exceed the calculated Final Computation Period Covenant Payment for the Subject Computation Period, then, within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter, the Downs Companies shall remit to the City the amount by which the Total Interim Computation Period Covenant Payments exceed the calculated Final Computation Period Covenant Payment. If the Total Interim Computation Period Covenant Payments are less than the calculated Final Computation Period Covenant Payment, then the City shall pay to the Downs Companies the amount by which the calculated Final Computation Period Covenant Payment exceeds the Total Interim Computation Period Covenant Payments in accordance with Section 9.

8.2 For Computation Quarter 41 through Computation Quarter 120:

8.2.1 Covenant Payments related to Computation Quarter 41 through Computation Quarter 120 period shall be determined, and shall be subject to the same conditions, as provided in subsection 8.1 for the Covenant Payments related to the Computation Quarter 1 through Computation Quarter 40 period, except that the applicable Reconciliation Quarters shall be Computation Quarters 44, 48, 52, 56, 60, 64, 68, 72, 76, 80, 84, 88, 92, 96, 100, 104, 108, 112, 116 and 120. Anything to the contrary in subsection 8.1 or elsewhere in this Agreement notwithstanding, however, the City shall be relieved and discharged from any

obligation to make Covenant Payments related to any Subject Computation Period within the Computation Quarter 41 through Computation Quarter 120 period unless the total Local Sales Tax Revenues received by the City and attributable to such Subject Computation Period exceed One Million One Hundred Thousand Dollars (\$1,100,000) ("Minimum Local Sales Tax Revenues"). The total Local Sales Tax Revenues for each Subject Computation Period shall be determined as of each Reconciliation Quarter (commencing with Computation Quarter 44) within the Computation Quarter 41 through Computation Quarter 120 period and shall be set forth in the applicable Notice of Determination for the subject Reconciliation Quarter. If the amount so determined is less than the Minimum Local Sales Tax Revenues, then the City shall be irrevocably released and discharged from any obligation to make any Covenant Payments with respect to the Subject Computation Period and the Downs Companies shall repay the Total Interim Computation Period Covenant Payments for the Subject Computation Period within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter.

8.3 At any time after the end of Computation Quarter 40, either Party may request in writing to commence negotiations with respect to the amendment of any financial term or provision of this Agreement, including, without implied limitation, the redesignation of the Two Hundred Fifty Thousand Dollar (\$250,000) Local Sales Tax Revenues baseline to another amount deemed more equitable by the Parties based on past and reasonably anticipated future Local Sales Tax Revenues generation. The Parties agree to meet with each other as often as reasonably requested by either Party for a period of no less than sixty (60) and no more than ninety (90) days following receipt of the aforementioned request to negotiate. The Parties agree to conduct such negotiations in good faith, but neither Party represents or warrants that it will agree to any particular change or any change at all. The City shall not be bound by any preliminarily agreed change or amendment until such time as it has been reduced to an appropriate written amendment to this Agreement and approved by the City Council. The Downs Companies acknowledge and agree that the City shall not be bound by any representation, statement or promise made by City staff members during the course of such negotiations. Neither the City nor the Downs Companies shall have any right, remedy or relief, including, without implied limitation, the right to terminate this Agreement, solely as a result of the failure of the Downs Companies and City staff to agree on proposed amendments or upon the City Council's disapproval of any such proposed amendments, it being the intention of the Parties that their obligation under this Section 8.3 is limited to the obligation to meet and negotiate in good faith.

2.6 Retail Sales Expansion Project. Section 10.4 of the Agreement is hereby repealed and replaced in its entirety with the following:

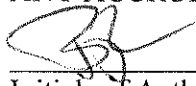
The Downs Companies covenant to the City that they shall immediately undertake and diligently prosecute the Retail Sales Expansion Project to completion in accordance with the requirements of this Agreement, including Exhibit B hereto. Subject to Section 32, the Downs Companies further covenant to complete the Retail Sales Expansion Project on or before the commencement of Computation Quarter 41.

2.7 Liquidated Damages. Section 14 of the Agreement is hereby repealed and replaced in its entirety with the following:

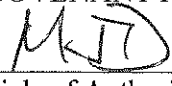
14.1 The Parties acknowledge that the consideration to the City for its entry into this Agreement and the performance of its obligations hereunder include the City's receipt of Local Sales Tax Revenues, employment and other payroll taxes, property taxes, and other direct and indirect financial and non-financial benefits arising from the operation and location of the Downs Companies in the City in accordance with Section 10 of this Agreement. The Downs Companies agree that the City will suffer damages if the Downs Companies commits any Default with respect to any of its obligations arising under Section 10. The Parties agree that the exact determination of such damages would be impracticable and extremely difficult to quantify. Accordingly, the Parties have determined that Liquidated Damages (as determined pursuant to subsection 6.13) represents a reasonable estimate of the damages which would be suffered by the City if the Downs Companies commits any Default with respect to any of its obligations set forth in Section 10. Accordingly, as its sole and exclusive monetary remedy for the Downs Companies' Default with respect to any of its covenants and obligations set forth in Section 10, the City shall be entitled to receive from the Downs Companies the applicable amount of Liquidated Damages as provided by subsection 6.13. In addition to payment of Liquidated Damages by the Downs Companies, as set forth in the preceding sentence, in the event of a Default by the Downs Companies the City, in the City's sole and absolute discretion, may additionally terminate this Agreement and the entirety of its obligations hereunder, including any accrued and unpaid Covenant Payments.

14.2 LIQUIDATED DAMAGES TO THE CITY UPON THE DOWNS COMPANIES DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS UNDER SECTION 10. UPON THE DOWNS COMPANIES' DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 10 (SUBSECTIONS 10.1 THROUGH 10.4, INCLUSIVE), FOLLOWING NOTICE AND OPPORTUNITY TO CURE PURSUANT TO SECTION 21, THE CITY AND THE DOWNS COMPANIES ACKNOWLEDGE AND AGREE THAT IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY WITH RESPECT TO SUCH DEFAULT. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, THE PARTIES AGREE THAT THE LIQUIDATED DAMAGES AMOUNT AS DETERMINED IN ACCORDANCE WITH

SUBSECTION 6.13 REPRESENTS A REASONABLE ESTIMATION OF THOSE DAMAGES. THEREFORE, UPON THE DOWNS COMPANIES DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS SET FORTH IN SECTION 10, AS ITS SOLE AND EXCLUSIVE REMEDY FOR SUCH DEFAULT, THE CITY SHALL BE ENTITLED TO RECEIPT OF THE LIQUIDATED DAMAGES AMOUNT CALCULATED IN ACCORDANCE WITH SUBSECTION 6.13, WHICH THE DOWNS COMPANIES SHALL PAY WITHIN TEN (10) DAYS FOLLOWING WRITTEN DEMAND FROM THE CITY. IN ADDITION TO THE PAYMENT OF LIQUIDATED DAMAGES BY THE DOWNS COMPANIES, AS SET FORTH IN THE PRECEDING SENTENCE, IN THE EVENT OF A DEFAULT BY THE DOWNS COMPANIES THE CITY, IN THE CITY'S SOLE AND ABSOLUTE DISCRETION, MAY ADDITIONALLY TERMINATE THIS AGREEMENT AND THE ENTIRETY OF ITS OBLIGATIONS HEREUNDER, INCLUDING ANY ACCRUED BUT YET UNPAID COVENANT PAYMENTS.

OK
BT


Initials of Authorized
City Representative



Initials of Authorized
Downs Companies
Representative

2.8 Exhibit B. Exhibit "B" of the Agreement is hereby repealed and replaced in its entirety with Exhibit "1" attached to this First Amendment and incorporated herein by reference.

3. Except as amended by this First Amendment, all provisions of the Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this First Amendment. From and after the date of this First Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this First Amendment.

4. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this First Amendment.

[Signatures on following pages]


**SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

IN WITNESS WHEREOF, City, Downs Energy and Downs Oil have executed this First Amendment to Operating Covenant Agreement (Downs Companies) by and through the signatures of their duly authorized representative(s) set forth below:


CITY:

CITY OF CORONA, a California municipal corporation

Dated: 4/7/12

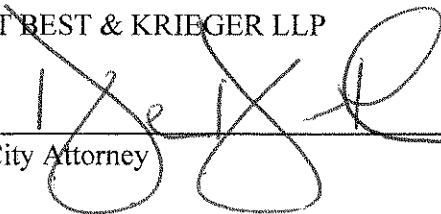
By: 
Bradly L. Robbins
City Manager

ATTEST:

By: 
City Clerk, (with Deputy)

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: 
City Attorney

**SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

DOWNS ENERGY:

DOWNS ENERGY, a California corporation

Dated: 5-21-12

By: Michael J Downs
Name: Michael J Downs
Its: President

Dated: 5-21-12

By: Sharon Messner
Name: Sharon Messner
Its: Secretary

**SIGNATURE PAGE
TO
FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

DOWNS OIL:

DOWNS OIL CO., INC., a California
corporation

Dated: 5-21-12

By: *Michael J. Downs*
Name: Michael J. Downs
Its: President

Dated: 5-21-12

By: *Sharon Messner*
Name: Sharon Messner
Its: Secretary

EXHIBIT "1"
TO
FIRST AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)

Retail Sales Expansion Project

(Attached behind this cover page)

EXHIBIT B
OPERATING COVENANT AGREEMENT
(Downs Companies)

Description of Retail Sales Expansion Project

Subject to Section 32 of the Agreement, not later than the commencement of Computation Quarter 41 Downs Companies will acquire and/or complete and/or rebuild (as evidenced by issuance of a certificate of occupancy) the construction of no less than two (2) Downs-owned and operated cardlock facilities having a total annual through put of not less than two (2) million gallons per facility. Each cardlock facility may have three (clear diesel, dyed diesel, and unleaded gasoline) to five (clear diesel, dyed diesel, unleaded gasoline, premium gasoline, and a race fuel) storage tanks, depending on products being offered for sale. Each cardlock facility would typically include two to four MPD's (multi-product dispensers), with each MPD creating two simultaneous fueling positions for gasoline and three to six fueling positions for diesel fuel.

**SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

among

**THE CITY OF CORONA,
a California municipal corporation,**

and

**DOWNS ENERGY,
a California corporation**

[Dated as of December 16, 2015, for reference purposes only]

**SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

THIS SECOND AMENDMENT TO OPERATING COVENANT AGREEMENT (Downs Companies) (“**Second Amendment**”) is dated as of December 16, 2015, and is entered into by and between THE CITY OF CORONA, a California municipal corporation (“**City**”) and DOWNS ENERGY, a California corporation (“**Downs Energy**”). The City and Downs Energy are sometimes referred to in this Second Amendment individually as a “**Party**” or collectively as the “**Parties**.” The City and Downs Energy enter into this Second Amendment with reference to the following recited facts (each a “**Recital**”):

RECITALS

WHEREAS, Downs Energy owns and operates a commercial fueling and energy operation facility within the City and currently located as 1296 Magnolia Avenue in the City of Corona, County of Riverside (“**Property**”); and

WHEREAS, Downs Energy expects to generate significant sales and service-related revenues and to expand their commercial fueling and energy sales operations, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, the City, Downs Energy and Downs Oil Co., Inc. (“**Downs Oil**”) previously entered into that certain Operating Covenant Agreement (Downs Companies), dated November 15, 2006, and as amended on June 6, 2012 (collectively, the “**Agreement**”), which, among other things, set forth the terms and conditions pursuant to which Downs Energy and Downs Oil agreed to maintain their sales office operations (the “**Facility**”) within the City for a period of twenty-five (25) years from the effective date of the Agreement and to expand their commercial fueling and energy sales activities throughout the State of California, in exchange for the City providing certain payments to the Downs Energy and Downs Oil as an incentive for operating the Facility within the City during this period and in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by the City arising from the operation of the Facility within the City and the expansion of Downs Energy and Downs Oil commercial fueling and energy operations, as further described in the Agreement; and

WHEREAS, subsequent to the effective date of the Agreement, Downs Energy and Downs Oil merged into Downs Energy, which remains a Party to the Agreement and the sole operator of the Facility; and

WHEREAS, the purpose of this Second Amendment is to revise the Agreement to: (i) provide additional sixty (60) month extensions to the Term; and (ii) to set forth the amount of the Covenant Payments made by the City during any Extended Term; and

WHEREAS, the incentives provided in this Second Amendment are intended to ensure Owner maintains the existing Facility within the City and expands its operations within the City

as appropriate; and

WHEREAS, entering into this Second Amendment will generate substantial revenue for the City, create the potential for additional job growth, ensure the retention of 8 existing jobs, continue to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the Parties agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this Second Amendment in their entirety by this reference.

2. **Definitions.** All terms with initial capital letters used herein but not otherwise defined shall have the respective meanings set for the in the Agreement.

3. **Amendments.** The Agreement is hereby amended as follows:

3.1 Reference to Downs Companies. Each reference to "Downs Companies" in the Agreement is hereby amended to read "Downs Energy".

3.2 Term of this Agreement. Section 3 of the Agreement is hereby repealed and replaced in its entirety with the following:

"Term of this Agreement. This Agreement shall commence on the Effective Date and, unless terminated sooner pursuant to the provisions of this Agreement, shall continue in effect thereafter until the last day of Computation Quarter 120 (which time period is referred to in this Agreement as the "**Term**"), subject to any rights or remedies available to a Party to earlier terminate this Agreement as set forth hereinafter.

Upon expiration of the Term, the Term shall automatically renew for subsequent sixty (60) month periods (each an "**Extended Term**"), unless either Party provides written notice indicating its intent to terminate the Agreement to the other Party no less than one (1) year prior to expiration of the then existing Term or Extended Term, as applicable. (The Term together with any Extended Term shall be referred to herein collectively as the "Term".)"

3.3 Computation Quarter. Section 6.5 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Computation Quarter**” means and refers to each calendar quarter beginning on January 1, April 1, July 1, or October 1, as applicable, and ending on the succeeding March 31, June 30, September 30, or December 31, as applicable. The Parties agree that the first Computation Quarter within the Eligibility Period commenced July 1, 2006 and is referred to herein as “Computation Quarter 1”, with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding with “Computation Quarter 120.” During any Extended Term, Computation Quarters shall commence with “Computation Quarter 121”, with each succeeding Computation Quarter within the Eligibility Period being consecutively numbered, concluding upon the Computation Quarter then existing as of expiration of the applicable Extended Term pursuant to Section 3.1.”

3.4 Eligibility Period. Section 6.8 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**Eligibility Period**” means and refers to the period commencing as of the first (1st) day of Computation Quarter 1 and ending the last day of Computation Quarter 120, i.e. June 30, 2036, or the last day of the Computation Quarter of an Extended Term, as applicable.”

3.5 Covenant Payments During Extended Term. A new Section 8.4 is hereby added to the Agreement to read in its entirety as follows:

“**8.4** The City shall, with respect to any Computation Quarter during an Extended Term, pay Downs Energy an amount equal to fifty percent (50%) of the Local Sales Tax Revenues received by the City in the subject Computation Quarter.”

3.6 Jobs Creation Covenant. A new Section 10.5 is hereby added to the Agreement to read in its entirety as follows:

“**10.5** Downs Energy covenants and agrees that the continued operation of the Facility for the Extended Term shall result in retention of not less than 8 jobs in the City and Down’s Energy shall use its best commercially reasonable efforts to expand the workforce at the Property.”

4. Except as amended by this Second Amendment, all provisions of the Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Second Amendment. From and after the date of this Second Amendment, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Second Amendment.

5. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

[Signatures on following pages]


**SIGNATURE PAGE
TO
SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

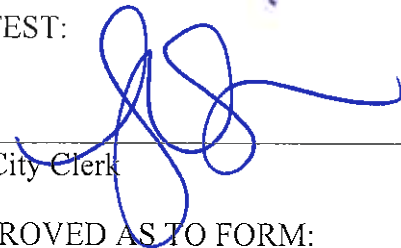
IN WITNESS WHEREOF, City and Downs Energy have executed this Second Amendment to Operating Covenant Agreement (Downs Companies) by and through the signatures of their duly authorized representative(s) set forth below:

CITY:

CITY OF CORONA, a California municipal corporation

Dated: 12/28/15

By: 
Darrell Talbert
City Manager

ATTEST:
By: 
City Clerk

APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
Special Counsel

**SIGNATURE PAGE
TO
SECOND AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

IN WITNESS WHEREOF, City and Downs Energy have executed this Second Amendment to Operating Covenant Agreement (Downs Companies) by and through the signatures of their duly authorized representative(s) set forth below:

CITY:

CITY OF CORONA, a California municipal corporation

Dated: _____

By: _____

Darrell Talbert
City Manager

ATTEST:

By: _____

City Clerk

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

By: Elizabeth Hull

Special Counsel

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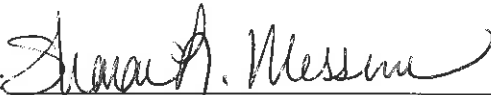
DOWNS ENERGY:

DOWNS ENERGY, a California corporation

Dated: 12-14-15

By: 
Name: Michael J. Downs
Its: President

Dated: 12-14-15

By: 
Name: Sharon L. Messner
Its: Secretary

**THIRD AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

among

**THE CITY OF CORONA,
a California municipal corporation,**

and

**DOWNS ENERGY,
a California corporation**

[Dated as of August 2, 2017, for reference purposes only]

**THIRD AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

THIS THIRD AMENDMENT TO OPERATING COVENANT AGREEMENT (Downs Companies) (“**Third Amendment**”) is dated as of August 2, 2017, and is entered into by and between THE CITY OF CORONA, a California municipal corporation (“**City**”) and DOWNS ENERGY, a California corporation (“**Downs Energy**”). The City and Downs Energy are sometimes referred to in this Third Amendment individually as a “**Party**” or collectively as the “**Parties**.” The City and Downs Energy enter into this Third Amendment with reference to the following recited facts (each a “**Recital**”):

RECITALS

WHEREAS, Downs Energy owns and operates a commercial fueling and energy operation facility within the City and currently located as 1296 Magnolia Avenue in the City of Corona, County of Riverside (“**Property**”); and

WHEREAS, Downs Energy expects to generate significant sales and service-related revenues and to expand their commercial fueling and energy sales operations, all of which will result in the generation of significant new local sales tax revenues; and

WHEREAS, the City, Downs Energy and Downs Oil Co., Inc. (“**Downs Oil**”) previously entered into that certain Operating Covenant Agreement (Downs Companies), dated November 15, 2006, and as amended on June 6, 2012 and December 16, 2015 (collectively, the “**Agreement**”), which, among other things, set forth the terms and conditions pursuant to which Downs Energy and Downs Oil agreed to maintain their sales office operations (the “**Facility**”) within the City for a period of twenty-five (25) years from the effective date of the Agreement and to expand their commercial fueling and energy sales activities throughout the State of California, in exchange for the City providing certain payments to the Downs Energy and Downs Oil as an incentive for operating the Facility within the City during this period and in consideration of the new and additional local sales tax revenues, property taxes, employment benefits, and other tangible and intangible benefits to be received by the City arising from the operation of the Facility within the City and the expansion of Downs Energy and Downs Oil commercial fueling and energy operations, as further described in the Agreement; and

WHEREAS, subsequent to the effective date of the Agreement, Downs Energy and Downs Oil merged into Downs Energy, which remains a Party to the Agreement and the sole operator of the Facility; and

WHEREAS, the purpose of this Third Amendment is to revise the Agreement to provide that the City will only be obligated to make Covenant Payments to Downs Energy if the Sales Tax Revenue received by the City that is attributable to Downs Energy exceeds \$1.1 million per year commencing in Computation Quarter 61 rather than Computation Quarter 41; and

WHEREAS, the incentives provided in this Third Amendment are intended to ensure

Downs Energy maintains the existing Facility within the City and expands its operations within the City as appropriate; and

WHEREAS, entering into this Third Amendment will generate substantial revenue for the City, create the potential for additional job growth, ensure the retention of 8 existing jobs, continue to stimulate the economy in an area of the City which has suffered a loss of jobs and businesses during the economic downturn of the mid-2000's, and result in community and public improvements that might not otherwise be available to the community for many years.

NOW THEREFORE, in consideration of the mutual covenants set forth herein and the mutual benefits to be derived therefrom, the Parties agree as follows:

TERMS

1. **Incorporation of Recitals.** The Recitals set forth above are true and correct and are incorporated into this Third Amendment in their entirety by this reference.
2. **Definitions.** All terms with initial capital letters used herein but not otherwise defined shall have the respective meanings set for the in the Agreement.
3. **Amendments.** The Agreement is hereby amended as follows:

3.1 Liquidated Damages. Section 6.13 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**6.13 ‘Liquidated Damages’** means, for purposes of Section 14, as follows:

6.13.1 If the breach occurs during Computation Quarters 1 through 60, an amount equal to the sum of the following: (1) the aggregate amount of all Covenant Payments (Interim and Final) paid to the Downs Companies at any time prior to the Computation Quarter in which the breach occurs, less (2) the amount by which the total of the Local Sales Tax Revenues attributable to all Computation Quarters preceding the Computation Quarter in which the breach occurs exceeds One Million One Hundred Thousand Dollars (\$1,100,000).

6.13.2 If the breach occurs during Computation Quarters 61 through 120, an amount equal to the sum of the following: (1) the amount (if any) by which the total of the Local Sales Tax Revenues attributable to Computation Quarters 1 through 60, inclusive, is less than One Million One Hundred Thousand Dollars (\$1,100,000), plus (2) the net Covenant Payment (Interim and Final) (if any) paid to the Downs Companies related to the last full Computation Period occurring prior to the Computation Quarter in which the breach occurs.”

3.2 Covenant Payments. Section 8.2.1 of the Agreement is hereby repealed and replaced in its entirety with the following:

“**8.2.1** Covenant Payments related to Computation Quarter 41 through Computation Quarter 120 period shall be determined, and

shall be subject to the same conditions, as provided in subsection 8.1 for the Covenant Payments related to the Computation Quarter 1 through Computation Quarter 40 period, except that the applicable Reconciliation Quarters shall be Computation Quarters 44, 48, 52, 56, 60, 64, 68, 72, 76, 80, 84, 88, 92, 96, 100, 104, 108, 112, 116 and 120. Anything to the contrary in subsection 8.1 or elsewhere in this Agreement notwithstanding, however, the City shall be relieved and discharged from any obligation to make Covenant Payments related to any Subject Computation Period within the Computation Quarter 61 through Computation Quarter 120 period unless the total Local Sales Tax Revenues received by the City and attributable to such Subject Computation Period exceed One Million One Hundred Thousand Dollars (\$1,100,000) ("Minimum Local Sales Tax Revenues"). The total Local Sales Tax Revenues for each Subject Computation Period shall be determined as of each Reconciliation Quarter (commencing with Computation Quarter 64) within the Computation Quarter 61 through Computation Quarter 120 period and shall be set forth in the applicable Notice of Determination for the subject Reconciliation Quarter. If the amount so determined is less than the Minimum Local Sales Tax Revenues, then the City shall be irrevocably released and discharged from any obligation to make any Covenant Payments with respect to the Subject Computation Period and the Downs Companies shall repay the Total Interim Computation Period Covenant Payments for the Subject Computation Period within ten (10) days following its receipt of the Notice of Determination for the subject Reconciliation Quarter."

4. Except as amended by this Third Amendment, all provisions of the Agreement, including without limitation the indemnity and insurance provisions, shall remain in full force and effect and shall govern the actions of the Parties under this Third Amendment. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Third Amendment.

5. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

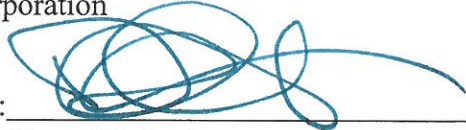
[Signatures on following pages]

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CITY OF CORONA, a California municipal corporation

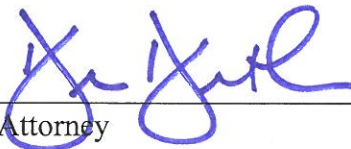
By: 
Darrell Talbert
City Manager

Dated: 8.14.17

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney

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TO
THIRD AMENDMENT
TO
OPERATING COVENANT AGREEMENT
(Downs Companies)**

DOWNS ENERGY:

DOWNS ENERGY, a California corporation

Dated: 7/26/17

By: Michael J. Downs
Name: Michael J. Downs
Its: President

Dated: 7/26/17

By: Sharon L. Messner
Name: Sharon L. Messner
Its: Secretary