ITEM NO. 17

MEMORANDUM

DATE: February 22, 2006

TO: Honorable Mayor and Councilmembers

FROM: Patricia Allison, City Manager's Office

SUBJECT: **REQUEST BY COUNCILMEMBER SANCHEZ TO RESCIND THE FOLLOWING COUNCIL ACTION OF 2/8/06 AND TO PROVIDE DIRECTION TO STAFF: ADOPTION OF A RESOLUTION SUMMARILY VACATING THE EXCESS PUBLIC STREET RIGHT-OF-WAY SITUATED TO THE SOUTH OF 1103 NORTH COAST HWY; ADOPTION OF A RESOLUTION DECLARING UNDERLYING PROPERTY AS EXCESS, AND OFFERING THAT PROPERTY FOR SALE TO CH OCEANSIDE, LLC; APPROVAL OF THE REAL PROPERTY DISPOSITION AND ACQUISITION AGREEMENT WITH CH OCEANSIDE, LLC, FOR ITS PURCHASE OF THE LAND IN THE AMOUNT OF $288,000; AUTHORIZATION FOR THE MAYOR TO EXECUTE THE AGREEMENT AND DEED CONVEYING THE PROPERTY TO CH OCEANSIDE, LLC; AND DIRECTION TO STAFF TO OPEN ESCROW AND CONCLUDE THE TRANSACTION (RESOLUTION NO. 06-R0060-1, RESOLUTION NO. 06-R0061-1, DOCUMENT NO. 06-D0062-1, DOCUMENT NO. 06-D0063-1 – APPROVED 5-0 ON 2/8/06)**

ITEM NO. 8

STAFF REPORT

CITY OF OCEANSIDE

Date: February 8, 2006

To: Honorable Mayor and City Councilmembers

From: Public Works Department

Subject: **VACATION AND DISPOSAL OF EXCESS STREET RIGHT-OF-WAY SOUTH OF 1103 NORTH COAST HIGHWAY**

SYNOPSIS

Staff recommends that City Council (1) adopt a resolution summarily vacating the excess public street right-of-way situated to the south of 1103 North Coast Highway; (2) adopt a resolution declaring the vacated public street right of way as excess real property and offer the land for sale to the adjoining property owner, CH Oceanside, LLC, for assemblage with its development for private access purposes; (3) approve a real property disposition and acquisition agreement with CH Oceanside, LLC, for its purchase of the property in the amount of $288,000; (4) authorize the Mayor to execute the agreement and the grant deed conveying the property to CH Oceanside, LLC; and (5) direct staff to open escrow and conclude the transaction.

BACKGROUND

CH Oceanside has requested the vacation of the excess public street right-of-way situated to the south of 1103 North Coast Highway. The property was granted to the City of Oceanside, by Grant Deed, on October 22, 1940, by David Rorick and Maureen Rorick for street and sidewalk purposes. This right-of-way is sixty feet wide by one hundred feet deep running westerly of North Coast Highway. It does not connect to any other street, public or private, and has not been used for street purposes for the last few decades.

The Public Streets, Highways and Service Easement Vacation Law, being section 8300, et seq. of the California Streets and Highways Code (the "Vacation Law"), authorizes the summary vacation of excess right-of-way not required for street or highway purposes that lies within property under one ownership and that does not continue through such ownership or end touching property of another. A local agency may also summarily vacate a street or highway if for a period of five consecutive years, the street or highway has been impassable for vehicular travel; and no public money was expended for maintenance on the street or highway during such period. The right-of-way described in this report meets these criteria.

A title company has confirmed that should the right-of-way be vacated the underlying fee interest in the land would revert to the City. Because of the need to access its adjoining property to the west and the recently sold Renaissance Terrace development, both of which do not have street frontage, CH Oceanside, LLC, desires to purchase the right-of-way for assemblage with its property for use as private access purposes.

ANALYSIS

The total area of the street right-of-way proposed to be vacated is 6,000 sq. ft., of which the City holds the underlying fee interest. Due to the location of the property, and the adjacent property being landlocked, without a private entry through the subject property, it would be impractical to develop the subject property. Once the right-of-way is vacated, the underlying parcel of land would revert back to the City and should be considered excess because it cannot be independently developed without damage to the properties lying to the west that do not front on Coast Highway.

It is recommended that the City Council declare the vacated right-of-way as excess real property and offer it for sale to the adjoining property owner, CH Oceanside, LLC, for private access to its adjoining property to the west and the Renaissance Terrace condominium development, with the retention of easement rights reserved in the vacation resolution.

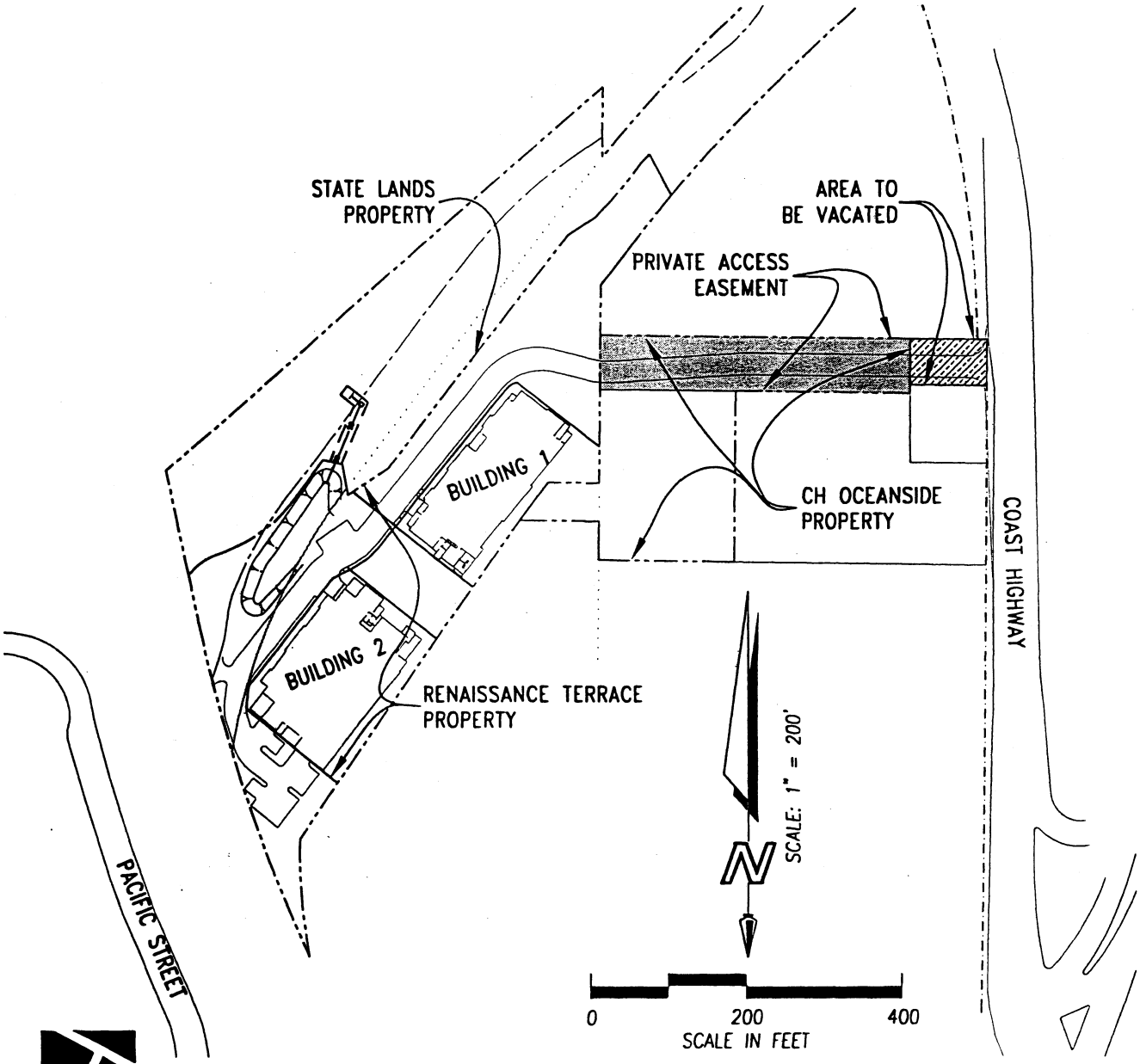
Staff has negotiated the terms of a real property disposition and acquisition agreement for the sale of the property to CH Oceanside, LLC. Under the terms of the agreement, CH Oceanside, LLC would pay a purchase price of $288,000, all escrow and title fees, transfer taxes, and recording charges at the close of escrow, which is to occur within 45 days of the City Council's approval of the agreement and the opening of escrow.

Should the City Council determine that the street right-of way requested to be vacated and the underlying parcel are not needed for present or prospective use, it would be appropriate to adopt resolutions to do the following:

(1) summarily vacating the street right-of-way and reserving easements for public utilities, fire and emergency access, and pedestrian and non-motorized vehicular access;

(2) declaring the land excess and offering it for sale to CH Oceanside, LLC.

RENAISSANCE TERRACE ACCESS EXHIBIT



TAIT
Consulting, Inc.
702 Civic Center Drive
Oceanside, CA 92054
Phone: 760-433-1166

FISCAL IMPACT

The sale of the property to CH Oceanside would yield the City an additional $288,000 in revenue. In addition, it would place the property back on the tax rolls resulting in future revenue earnings.

COMMISSION OR COMMITTEE REPORT

The Redevelopment Advisory Committee will have considered this item on the same date of this meeting and verbal report to the City Council will be made.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

Staff recommends that City Council (1) adopt a resolution summarily vacating the excess public street right-of-way situated to the south of 1103 North Coast Highway; (2) adopt a resolution declaring the vacated public street right of way as excess real property and offer the land for sale to the adjoining property owner, CH Oceanside, LLC, for assemblage with its development for private access purposes; (3) approve a real property disposition and acquisition agreement with CH Oceanside, LLC, for its purchase of the property in the amount of $288,000; (4) authorize the Mayor to execute the agreement and the grant deed conveying the property to CH Oceanside, LLC; and (5) direct staff to open escrow and conclude the transaction.

PREPARED BY:

Heidi Janz
Program Specialist

SUBMITTED BY:

Mike Blessing for
Steven R. Jepsen
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Assistant to the City Manager

Peter A. Weiss, Public Works Director

Douglas E. Eddow, Real Property Manager

Kathy Baker, Redevelopment Manager

D. R. HORTON-CONTINENTAL SERIES
5927 Priestly Drive, Suite 200
Carlsbad, California 92008
Tel. 760-931-1980 $ Fax 760-931-0237

December 15, 2005

Via Facsimile (760-804-1577) and U. S. Mail

CH Oceanside, LLC
1903 Wright Place, Suite 120
Carlsbad, California 92008
Attention: Don Underwood

Re: Renaissance Terrace, Oceanside/Commonwealth Escrow No. 03205849-609

Dear Don:

Reference is made to that certain Purchase Agreement and Escrow Instructions dated as of April 26, 2005 ("Agreement") between CH Oceanside, LLC ("Seller") and Continental Residential, Inc. ("Buyer"). Initially capitalized terms not otherwise defined have the same meaning as in the Purchase Agreement.

Section 5.12 of the Agreement, captioned "City Parcel", provides that (i) Buyer will be responsible for obtaining City vacation of the City Parcel, (ii) that upon such vacation the City Parcel will be owned by Seller as part of the Retained Property, (iii) that Seller will make any payment required by the City as a condition to such vacation, and (iv) that Seller will grant Buyer easements over the City Parcel for the purposes, and subject to the same terms and conditions, described in Section 5.10 of the Agreement, captioned "Easements over Retained Property".

At the time we entered into the Agreement we contemplated that the City Parcel would have been vacated prior to the Closing. That has not happened, and both Buyer and Seller have acknowledged and agreed that both parties' obligations under Section 5.12 will survive the Closing and continue as post-Closing obligations. We also acknowledge and agree that the City Parcel easements will be on the same terms and subject to the same conditions as are applicable to the "Continental Easements" granted in Paragraph 1 of the Agreement and Reciprocal Grant of Easements being delivered by Buyer and Seller through the above-referenced escrow.

I would appreciate your confirming that your understanding is consistent with the foregoing, by signing and returning a copy of this letter. Thank you for your cooperation.

Sincerely,

CONTINENTAL RESIDENTIAL, INC.

Greg Hastings
Division President

cc: Mr. David W. Bagley, II
Mr. David Hymer
Ms. Melissa Trunnell

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

BY AND BETWEEN

CH OCEANSIDE, LLC
("Seller")

and

CONTINENTAL RESIDENTIAL, INC.
("Buyer")

1.24 **Notice of Approval.** The term "Notice of Approval" means the written notice to be delivered to Seller if Buyer approves of its feasibility studies during the Feasibility Period.

1.25 **Notice of Disapproval.** The term "Notice of Disapproval" means the written notice to be delivered to Seller if Buyer disapproves of its feasibility studies during the Feasibility Period. If Buyer does not actually deliver to Seller during the Feasibility Period either a Notice of Approval or a Notice of Disapproval, Buyer shall be deemed to have delivered a Notice of Disapproval.

1.26 **Permitted Exceptions.** The term "Permitted Exceptions" has the meaning set forth in **Section 4.2.1** below.

1.27 **Prime.** The term "Prime" means the rate announced from time to time by Bank of America, N.A. ("Bank of America") as its prime or reference rate. If Bank of America ceases to announce a prime, the prime lending rate of an equivalent lending institution selected by Seller will be substituted therefor.

1.28 **Preliminary Report.** The term "Preliminary Report" means the amended preliminary report issued by the Title Company with respect to the Property dated November 9, 2004, as Order No. 03695728.

1.29 **Property.** The term "Property" means the real property that is the subject of this Agreement described in **Exhibit "A"** attached hereto.

1.30 **Property Documents.** The term "Property Documents" means the documents relating to the Property made available to Buyer, including those listed on **Schedule "1"** attached hereto.

1.31 **Purchase Price.** The term "Purchase Price" means the purchase price to be paid by Buyer to Seller for the Property as set forth in **Article 2** of this Agreement.

1.32 **Residence.** The term "Residence" means a condominium unit to be constructed on the Property.

1.33 **Retained Property.** The term "Retained Property" means the real property that will be retained by Seller and is described in **Exhibit "A-1"** attached hereto.

1.34 **Seller.** The term "Seller" means CH Oceanside, LLC, a Delaware limited liability company.

1.35 **Seller's Indemnitees.** The term "Seller's Indemnitees" means Seller, Seller's members and Seller's affiliates, and the past, present and future employees, officers, directors, agents, representatives, members, managers, shareholders and successors and assigns of Seller, Seller's members and Seller's affiliates.

1.36 **State Lands River Parcel.** The term "State Lands River Parcel" means the real property adjacent to the Property consisting of approximately 3.8 acres that has been conveyed to the City as trustee for the State of California, and is more particularly described on **Exhibit "A-2"** attached hereto.

1.3 **ALTA Standard Title Policy and ALTA Extended Title Policy**. The term "ALTA Standard Title Policy" means the American Land Title Association ("ALTA") Owner's policy of title insurance with western regional exceptions (ALTA Standard) (or its CLTA equivalent) to be issued by the Title Company upon the Close of Escrow pursuant to the terms of this Agreement. The term "ALTA Extended Title Policy" means the ALTA Owner's additional coverage policy of title insurance, Form B, which Buyer may request in lieu of the ALTA Standard Title Policy in accordance with the provisions of **Section 4.2.2** of this Agreement.

1.4 **Business Day**. The term "Business Day" means any day other than a Saturday or Sunday or legal holiday in the State of California.

1.5 **Buyer**. The term "Buyer" means Continental Residential, Inc., a California corporation.

1.6 **Buyer's Agents**. The term "Buyer's Agents" means the agents, representatives, officers, employees, members, managers, partners, affiliates, contractors and licensees of Buyer and their successors and assigns.

1.7 **Cash**. The term "Cash" means (i) currency of the United States of America, (ii) cashier's check(s) currently dated and payable to Escrow Holder or Seller, as required under this Agreement, drawn and paid through a California banking institution, tendered to Escrow Holder or Seller, as required under this Agreement at least one additional Business Day before funds are required to be available in Escrow or (iii) an amount credited by wire transfer into Escrow Holder's or Seller's bank account as required under this Agreement.

1.8 **City**. The term "City" means the City of Oceanside, California.

1.9 **Close of Escrow**. The term "Close of Escrow" means the consummation of the purchase of the Property by Buyer from Seller and the recordation of Seller's Grant Deed in accordance with this Agreement.

1.10 **Closing Date**. The term "Closing Date" means the date on which the closing will be held as described in **Section 3.2** of this Agreement.

1.11 **Deposits**. The term "Deposits" means collectively the First Deposit, the Second Deposit and, if applicable, the Third Deposit, including any interest earned thereon, each as defined in **Section 2.2** below.

1.12 **DRE**. The term "DRE" means the California Department of Real Estate.

1.13 **Effective Date**. The term "Effective Date" means the date in the first paragraph of this Agreement.

1.14 **Environmental Laws**. The term "Environmental Laws" means any federal, state or local laws, ordinances, codes, statutes, regulations, administrative rules, policies and orders, and other authority, existing now or in the future, which classify, regulate, list or define Hazardous Materials, including, without limitation, the following:

5.10 **Easements over Retained Property**. Pursuant to the Grant of Easements, Seller will grant to Buyer the following non-exclusive easements over the Retained Property: (i) an easement for road and utility purposes over the 60 foot wide area shown as the "Proposed Private Road Easement" on the Tentative Map ("Roadway Easement"), (ii) an easement for public bicycle access over the Roadway Easement ("Bicycle Easement"), (iii) an easement for public pedestrian access over the five foot wide area shown as the "Proposed Public Pedestrian Access Easement" on the Tentative Map ("Pedestrian Easement"), and (iv) an easement for landscaping purposes over areas adjacent to the Roadway Easement and the Pedestrian Easement as shown on the Landscape Concept Plan for Renaissance Terrace Condominiums prepared by Lightfoot Planning (dated 4-13-04), a copy of which was provided to Buyer as part of the Property Documents. The Bicycle Easement and the Pedestrian Easement are required in connection with the California Coastal Commission's Notice of Intent to Issue Permit No. CDP 6-03-23 ("NOI"). Buyer agrees to comply with the covenants, conditions and restrictions contained in the Grant of Easements, including the indemnity and insurance obligations set forth therein. At Buyer's request, Seller will reasonably cooperate, at no additional out of pocket cost to Seller, with Buyer in connection with dedications of the areas within the Bicycle Easement and the Pedestrian Easement to the public for access purposes that may be required by the NOI, provided that the granting of such dedications will not impose any liability on Seller or the Retained Property.

5.11 **Easements Reserved over Property**. Pursuant to the Grant of Easements, Seller will reserve non-exclusive easements over the Property for utilities and drainage, including the right to drain into the detention basins within the Property, so long as capacity is available in such basins. Such easements may not materially interfere with development of the Property.

5.12 **City Parcel**. The City owns and/or has easement rights over the parcel ("City Parcel") that is located between the Roadway Easement and Coast Highway. The conditions of the Notice of Intent to Issue Coastal Development Permit No. CDP 6-03-23 require Buyer to have the City's interest in the City Parcel vacated in order to provide access to the Property. Buyer will be responsible for obtaining such vacation. Seller and Buyer agree to reasonably cooperate with each other in connection with such process. Buyer will allow Seller to participate in the vacation process, including giving Seller reasonable notice of and an opportunity to attend all meetings with the City regarding the vacation. Buyer acknowledges that fee title to the City Parcel will be vacated to Seller to be owned by Seller as part of the Retained Property. If the City requires any payment as a condition to such vacation, Seller agrees to pay such amount to the City. Seller agrees to grant to Buyer easements over the City Parcel for the purposes, and subject to the same terms and conditions, described in **Section 5.10** above.

5.13 **Seller's Covenants Regarding Property**. Seller agrees not to take any affirmative action, or expressly allow any other party to take any affirmative action, that would result in a material adverse change in the physical condition of the Property or a material and adverse change in the representations and warranties of Seller contained in **Section 7.9**. Seller shall not enter into any leases, licenses, occupancy agreements or transfer, option or convey any interest in the Property or any portion thereof, nor shall Seller enter into any agreement granting to any person or entity any option to purchase or rights superior to Buyer with respect to the Property or any part thereof, without Buyer's prior consent, which shall be at Buyer's sole discretion; provided, however, that Seller will have the right to mortgage, pledge or encumber its interest in the Property in connection with any financing that Seller may obtain, subject to Seller's obligation to remove such

13.22 **Survival**. All obligations hereunder intended to be performed after the Close of Escrow shall survive the Close of Escrow, subject to the limitations of Section 7.9 above.

13.23 **Corporate Approval of Officer of Buyer**. This Agreement, including all exhibits and addendum which require signature, and any amendment hereto, except for those which merely provide for an extension of time, shall not be a valid or enforceable obligation of Buyer unless signed or acknowledged in writing by either one of Donald R. Horton, Donald J. Tomnitz or Thomas F. Noon, officers of Buyer, not later than five (5) days after this Agreement or any amendment hereto has been signed on behalf of Buyer and Seller. Failure of an amendment for lack of approval pursuant to this provision, however, shall not invalidate or otherwise affect this Agreement in any way.

13.24 **Permitted Funding Days**. If the (i) stated Closing Date (as extended, if applicable), or (ii) last day for delivery of funds falls upon a day which is not a Permitted Funding Day, the Closing Date (as extended, if applicable) or such last day, as the case may be, shall be the next following Permitted Funding Day. As used herein, "Permitted Funding Day" means a Tuesday, Wednesday or Thursday that is not a national holiday or the day before or the day after a national holiday.

SELLER:

CH OCEANSIDE, LLC, a Delaware limited liability company

By: Concordia Communities, LLC, a Delaware limited liability company, its Managing Member

By: _____
Its: _____

BUYER:

CONTINENTAL RESIDENTIAL, Inc., a California corporation

By: _____
Its: Division President

By: _____
Its: VICE PRESIDENT

ACKNOWLEDGED AND AGREED:

CH OCEANSIDE, LLC, a Delaware limited liability company

By: Concordia Communities, LLC, a Delaware limited liability company, its Managing Member

By O. Randolph Hoon Jr.
Its Manager

D. R. HORTON-CONTINENTAL SERIES
5927 Priestly Drive, Suite 200
Carlsbad, California 92008
Tel. 760-931-1980 $ Fax 760-931-0237

December 15, 2005

Via Facsimile (760-804-1577) and U. S. Mail

CH Oceanside, LLC
1903 Wright Place, Suite 120
Carlsbad, California 92008
Attention: Don Underwood

Re: Renaissance Terrace, Oceanside/Commonwealth Escrow No. 03205849-609

Dear Don:

Reference is made to that certain Purchase Agreement and Escrow Instructions dated as of April 26, 2005 ("Agreement") between CH Oceanside, LLC ("Seller") and Continental Residential, Inc. ("Buyer"). Initially capitalized terms not otherwise defined have the same meaning as in the Purchase Agreement.

Section 5.12 of the Agreement, captioned "City Parcel", provides that (i) Buyer will be responsible for obtaining City vacation of the City Parcel, (ii) that upon such vacation the City Parcel will be owned by Seller as part of the Retained Property, (iii) that Seller will make any payment required by the City as a condition to such vacation, and (iv) that Seller will grant Buyer easements over the City Parcel for the purposes, and subject to the same terms and conditions, described in Section 5.10 of the Agreement, captioned "Easements over Retained Property".

At the time we entered into the Agreement we contemplated that the City Parcel would have been vacated prior to the Closing. That has not happened, and both Buyer and Seller have acknowledged and agreed that both parties' obligations under Section 5.12 will survive the Closing and continue as post-Closing obligations. We also acknowledge and agree that the City Parcel easements will be on the same terms and subject to the same conditions as are applicable to the "Continental Easements" granted in Paragraph 1 of the Agreement and Reciprocal Grant of Easements being delivered by Buyer and Seller through the above-referenced escrow.

I would appreciate your confirming that your understanding is consistent with the foregoing, by signing and returning a copy of this letter. Thank you for your cooperation.

Sincerely,

CONTINENTAL RESIDENTIAL, INC.

Greg Hastings
Division President

cc: Mr. David W. Bagley, II
Mr. David Hymer
Ms. Melissa Trunnell

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE, CALIFORNIA, ORDERING THE SUMMARY VACATION OF PUBLIC STREET RIGHT-OF-WAY WITHIN THE CITY OF OCEANSIDE

(PARCEL SOUTH OF 1103 NORTH COAST HIGHWAY)

WHEREAS, the California Streets and Highways Code, §8330, et seq., being the Public Streets, Highways and Service Easement Vacation Law (the "Law"), authorizes the City Council of the City of Oceanside to summarily vacate public service easements and street right-of-way;

WHEREAS, §8334 of the Law authorizes the summary vacation of excess rights-of-way not required for street and highway purposes, or a portion of a street or highway that lies within property under one ownership and does not continue through such ownership or end touching property of another;

WHEREAS, the public street right-of-way intended to be vacated pursuant to the above cited provision of the Law is described in Exhibit "A", and shown on Exhibit "B" , attached hereto and incorporated herein by reference;

WHEREAS, there is a need to reserve easements for public utilities, fire and emergency access, and pedestrian and non-motorized vehicular public access in, over, under, across, and through said area to be vacated, as provided under §8340 of the Law; and

WHEREAS, after consideration of all the evidence submitted, this City Council finds and determines that the right-of-way described in said Exhibit "A" and shown on Exhibit "B" is not needed for present or prospective public street purposes.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. The right-of-way described in said Exhibit "A", and shown on Exhibit "B" shall be and hereby is summarily vacated.

SECTION 2. That pursuant to §8340 of the Streets and Highways Code there is hereby reserved and excepted from this vacation the easements and rights at any time, or from time to time, to construct, maintain, operate, replace, remove, renew and enlarge lines of pipe, conduits, cables, wires, poles, and other convenient structures, equipment, and fixtures for the operation of gas pipelines, telegraphic, telephone and telecommunication lines, and for the transportation and distribution of electric energy, petroleum and its products, ammonia, and water, sanitary sewers, storm drains and appurtenant structures, and for fire and emergency access, pedestrian and non-motorized vehicular access, and all incidental purposes thereto, including access to protect these works from all hazards in, under, upon, over, across and through the street proposed to be vacated.

SECTION 3. The City Clerk shall cause a certified copy of this resolution to be recorded in the Office of the County Recorder of San Diego County in accordance with the provisions of §8336 of the Streets and Highways Code.

SECTION 4. That pursuant to §8335 of the Streets and Highways Code, from and after the date the resolution is recorded, the street or highway no longer constitutes a street, highway.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this _____day of _____, 2006, by the following vote:

AYES:
NAYS:
ABSENT:
ABSTAIN:

_____
Mayor of the City of Oceanside

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
City Attorney

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE DECLARING CERTAIN REAL PROPERTY EXCESS AND OFFERING THE PROPERTY FOR SALE TO THE ADJOINING PROPERTY OWNER

(Parcel South of 1103 North Coast Highway)

WHEREAS, the City of Oceanside is the owner of that certain real property in the City of Oceanside, County of San Diego, State of California, as more particularly described in a legal description thereof marked Exhibit "A" and, as shown on a sketch thereof marked Exhibit "B", attached hereto and incorporated herein, said parcel being designated as a vacated excess public street right of way determined not to be needed for present or prospective public street purposes (the "Property");

WHEREAS, CH Oceanside, LLC, owner of the adjoining property, desires to purchase the Property from the City for assemblage with its property for private access purposes;

WHEREAS, if the Property were to be put to another use, the adjoining property to the west would become land locked;

WHEREAS, the sale of the Property to the adjoining property owner is for the benefit of the public and is in the furtherance of the public purposes of the City; and

WHEREAS, based upon the evidence submitted to and considered by this City Council, it is determined that the Property is deemed excess and that it be offered for sale to the adjoining property owner for assemblage with its property for private access purposes.

NOW, THEREFORE, the City Council of the City of Oceanside does resolve as follows:

SECTION 1. That the Property, as described hereinabove is not needed for present or prospective public use and hereby is determined to be excess real property.

SECTION 2. That the Property shall be and hereby is offered for sale to CH Oceanside, LLC, a Delaware Limited Liability Company, for the purposes of assemblage with its adjoining property for private access purposes.

SECTION 3. That the Mayor is authorized to execute a Real Property Disposition and Acquisition Agreement for the disposition of the Property and a Grant Deed conveying the Property to CH Oceanside, LLC, and that the City Manager or his designated agent is authorized to take any necessary actions to complete the transaction through an escrow.

PASSED AND ADOPTED by the City Council of the City of Oceanside, California, this ___ day of _____, 2006, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____
MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

_____
CITY CLERK

APPROVED AS TO FORM:

_____
CITY ATTORNEY

Resolution Declaring Parcel South of 1103 North Cost Highway as Excess and Offering it for Sale to CH Oceanside.

REAL PROPERTY DISPOSITION AND ACQUISITION AGREEMENT
[And Joint Escrow Instructions]

This Real Property Disposition and Acquisition Agreement ("Agreement") is made and entered into this ___ day of _____, 2006 by and between the City of Oceanside, a municipal corporation, in and of the State of California, hereinafter referred to as "Seller", and CH Oceanside, L.L.C., a Delaware Limited Liability Corporation, hereinafter referred to as "Buyer". This Agreement shall be effective as of the date this Agreement is approved by the Oceanside City Council and signed by City (the "Effective Date").

WITNESSETH THAT:

WHEREAS, City is the owner of that certain real property, consisting of a total area of 6,000 (net) square feet more or less, as described in a Legal Description thereof designated as Exhibit "A," attached hereto and incorporated herein by reference, (the "Property").

WHEREAS, City acquired the underlying fee interest in the Property by Grant Deed from David Rorick and Maureen Rorick on October 22, 1940.

WHEREAS, the Property has been vacated as excess street right-of-way and Seller has determined that the Property is not independently developable;

WHEREAS, Buyer is the owner of the adjacent parcel of land and has indicated its desire and interest in acquiring the Property for assemblage with its parcel for the development of a residential condominium project; and

WHEREAS, Seller has determined that the disposition of the Property in accordance with the terms and conditions set forth in this Agreement would be a public benefit and is in the furtherance of the public purpose of Seller.

NOW THEREFORE, in consideration of which, and the other considerations hereinafter set forth, the parties hereto mutually covenant and agree as follows:

ARTICLE I
RECITALS

101. Description of Property. Seller is the owner of the fee simple interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in said Exhibit "A," attached hereto and incorporated by this reference.

102. Status and Powers of Seller. Seller is a municipal corporation of the State of California, organized and existing pursuant to the California Constitution and statutes and is authorized to sell the Property to Buyer and perform the actions and duties of the Seller more particularly described in this Agreement.

103. Status and Powers of Buyer. Buyer is a Delaware Limited Liability Company and is authorized by the laws of the State of California to enter into this Agreement, purchase the Property from Seller and perform the actions and duties of Buyer as more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions in this Agreement. The purchase of the Property is for the assemblage of the Property with Buyer's adjacent parcel for the development of a residential condominium project in compliance with the uses permitted and standards set forth in the Oceanside Zoning Ordinance and all other applicable federal, state and local laws, codes and regulations.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purpose of Seller.

ARTICLE II
DEFINITIONS AND GENERAL PROVISIONS

201. Agreement. For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

202. Definitions in General. The terms defined in Exhibit "C" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale Agreement.

203. Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

ARTICLE III
PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is **Two Hundred Twenty Eight Thousand Dollars ($228,000.00) the ("Purchase Price").**

ARTICLE IV
CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 408 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII

"ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, any matter for which Buyer's approval is required, Buyer may:

(a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;

(b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or

(c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, except for those uses reserved for the public as set forth in the resolution vacating the public street use of the property, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property but makes no representations or warranties as to the accuracy or reliability thereof. Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the condition of the Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Commonwealth Land Title Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's policy of title insurance), together with copies of all exceptions and plotted easements and the documents supporting the exceptions (the "Supporting Documents").

Within fifteen (15) days after receipt of legible copies of the Preliminary Report and Supporting Documents, Buyer shall give written notice to Seller of its disapproval of the Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the Supporting Documents. If Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the Close of Escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions that materially and adversely limit or affect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be obligated to pay any property taxes and assessments to the date of the Close of Escrow. The parties recognize that certain encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policy. On or before the Close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance, or, if requested by Seller, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and

(b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the Close of Escrow.

405. Physical Condition of the Property. Within fifteen (15) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 801 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is", "Where-Is" "With-All-Faults" condition, except as expressly provided for elsewhere herein.

406. Non-foreign Affidavit. If applicable, on or before the Close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

407. Seller's Obligations. The performance by Seller of every material covenant, agreement, and promise to be performed by Seller pursuant to this Agreement and the related documents executed or to be executed by Seller.

408. Seller's Representations. The truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement.

ARTICLE V
SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the Close of Escrow and will survive the Close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey. Seller has not previously conveyed title to the Property to any other person. Seller has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Property. The Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report and/or the Grant Deed. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Hazardous Substances. To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property is or has been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

504. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

505. Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

506. Bankruptcy. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

507. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Seller's obligations or liabilities pertaining to the Property.

508. Special Studies Zone. The Property is not within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

509. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f) (3). Seller understands and agrees that Buyer may disclose the certification made in this Section to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

510. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

ARTICLE VI
COVENANTS

601. Power to Enter into Agreements.

(a) Buyer is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buyer in accordance with their terms and the terms of this Agreement.

(b) Seller is duly authorized to enter into this Agreement and to enter into the transactions contemplated by this Agreement. Seller has duly authorized and executed this Agreement.

602. No Violation of Other Agreements.

(a) Buyer hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Supporting Documents, Seller shall, to the best of its ability, discharge all obligations and liabilities under the Supporting Documents before the Close of Escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that there are no brokers or real estate agents involved in this transaction that would be entitled to a fee or commission. Buyer

shall hold Seller harmless from any claims for such fees or commissions claimed by any broker, real estate agent or other third party claiming through Buyer.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer, its officers and employees, harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller, its officers and employees, harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole and active negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 606 shall survive the Close of Escrow with respect to the Property.

ARTICLE VII
ESCROW

701. Establishment of Escrow. Within seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the escrow department of Commonwealth Land Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

702. Closing. No later than forty-five (45) days ("Closing Deadline") after opening Escrow the grant deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

703. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agency the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following;

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;

(ii) The original Non-Foreign Affidavit executed by Seller, if applicable;

(iii) A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;

(iv) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement.

(b) Buyer shall deposit with Escrow Agent the following:

(i) The amount of the Purchase Price for the Property;

(ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions;

(iii) A certificate executed by Buyer providing that all conditions to Close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow;

(iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

704. Closing Costs. Regardless of real estate industry standard or custom, Buyer shall pay all of the Escrow Agent's fee, the premium for the Policy of Title Insurance, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property.

705. Property Taxes and Prorations. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of said taxes.

706. Possession. Right to possession of the Property shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the Close of Escrow. Buyer shall have fifteen (15) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factor, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. If Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period, to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

802. Further Assurances. Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

803. Assignment. Seller shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of Buyer. Buyer shall have no right, power, or authority to assign this Agreement or any portion of this Agreement or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Seller's prior written approval. Neither party shall unreasonably withhold approval to any assignment.

804. Preservation and Inspection of Documents. Documents received by Seller or Buyer under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other

party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

805. Parties of Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

806. No Recourse under Agreement. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

807. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid:

If to Seller:

City of Oceanside
Property Management Division
ATTN: Heidi Janz
300 North Coast Highway
Oceanside, CA 92054

Phone: (760) 435-5168
Fax: (760) 435-5169

Copy to:

City Attorney
City of Oceanside
ATTN: Barbara L. Hamilton
300 North Coast Highway
Oceanside, CA 92054

Phone: (760) 435-3986
Fax: (760) 435-3970

If to Buyer:

CH Oceanside, L.L.C.
ATTN: Jeb Hall
1903 Wright Place, Suite 120
Carlsbad, CA 92008

Phone: (760) 804-1576 ext. 126
Fax:

Copy to:

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates, or other communications, will be sent.

808. Binding Effect. Without waiver of section 803, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

809. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

810. Headings. Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

811. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

812. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer are required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized Officer of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

813. Form of Certificate of Officers. Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons provided the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

814. Amendment. This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

815. Counterpart. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

816. Time of the Essence. Time is of the essence in this Agreement and every provision contained in this Agreement.

817. Integration. This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or parol agreements, which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

818. Waivers. No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

819. Attorney Fees, Litigation Costs and Related Matters. If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County, North County Branch. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon by a mediator appointed by the Judicial Arbitration and Mediation Service in San Diego County. The parties shall share the cost of mediation equally.

820. Exhibits. All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

821. Survival. Seller's representations and warranties, Buyer's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow and delivery and recordation of the Grant Deed.

822. Merger. All of the terms, provisions, representations, warrantees, and covenants of the parties under this Agreement shall survive the Close of Escrow and shall not be merged in the Deed or other documents.

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[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, this Agreement constitutes an offer to purchase the Property on the terms and conditions contained in this Agreement and the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

Seller
City of Oceanside, a
California municipal corporation

By: _____

Mayor

By: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____

City Attorney

Buyer
CH Oceanside, LLC,
Delaware Limited Liability Company

By: CONCORDIA COMMUNITIES, LLC

Its: Manager

By: _____ 12-9-05

Its Manager

BUYER'S SIGNATURE(S) MUST BE NOTARIZED
NOTARY USE CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California)
)ss
County of San Diego)

On December 29, 2005, before me, Cathlynn E. Aguirre, personally appeared Don P. Underwood, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

CATHLYNN E. AGUIRRE
COMM. #1562847
NOTARY PUBLIC-CALIFORNIA
SAN DIEGO COUNTY
MY COMM. EXPIRES MARCH 26, 2009

Signature of Notary Public

OPTIONAL

Description of Documents: **Real Property Disposition and Acquisition Agreement**

Document Date: **undated**

Signer(s) Other Than Named Above: **City of Oceanside Mayor and City Attorney**

Signer is Representing: **CH Oceanside, LLC**
Concordia Communities, LLC

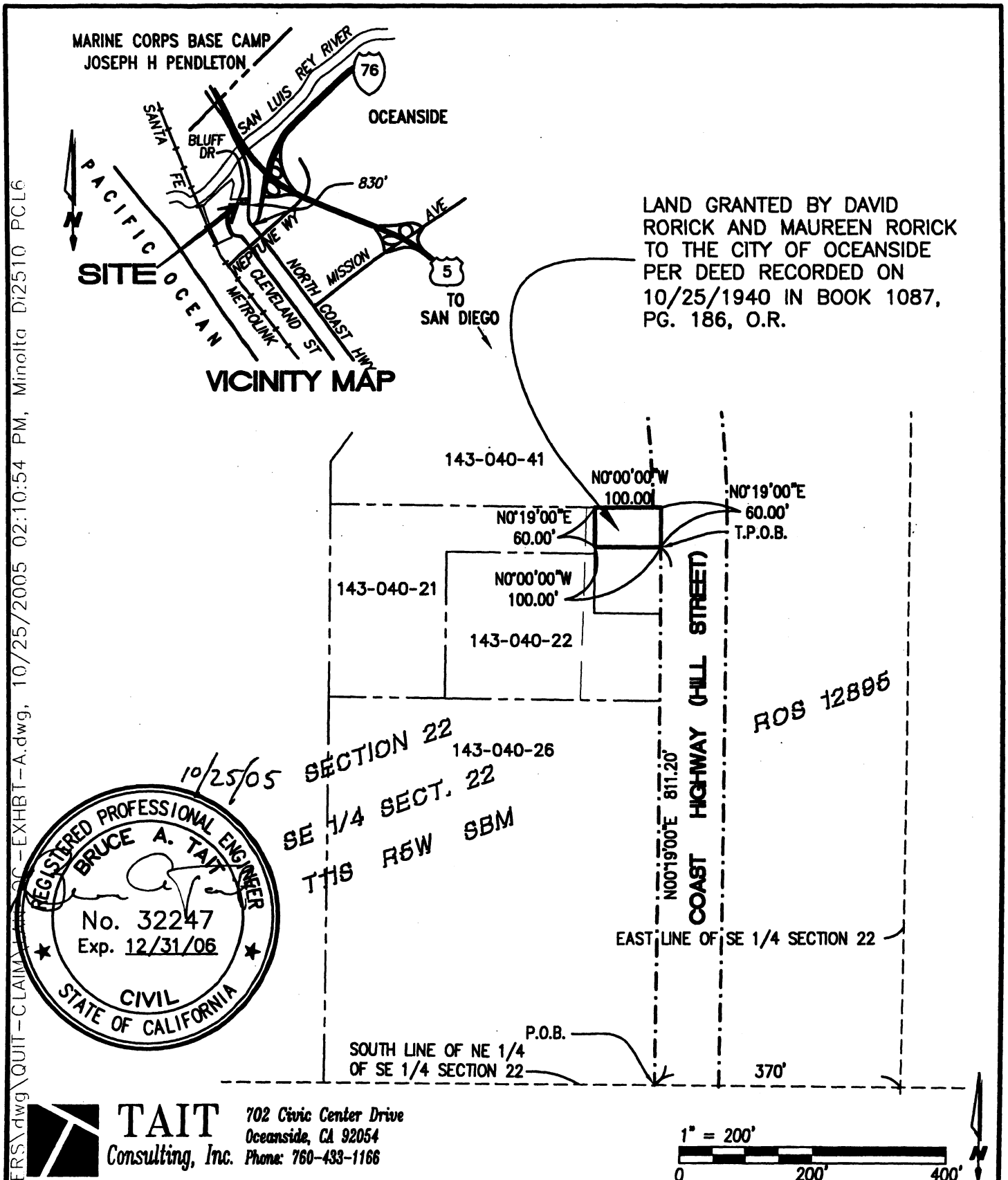
Exhbit "A"

LEGAL DESCRIPTION

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, AS MORE PARTICULARLY DESCRIBED AS BEING THAT PORTION OF THE NE 1/4 OF THE SE 1/4 OF SEC. 22, T11S, R5W, SAN BERNARDINO MERIDIAN, GRANTED ON OCTOBER 22, 1940, BY DAVID RORICK AND MAUREEN RORICK TO THE CITY OF OCEANSIDE FOR STREET AND SIDEWALK PURPOSES AND DESCRIBED IN THAT CERTAIN GRANT DEED RECORDED ON OCTOBER 25, 1940, IN BOOK 1087 PAGE 186 OF OFFICIAL RECORDS.

10/19/05

No. 32247
Exp. 12-31-06
CIVIL



Revision	By	Approved	Date	CITY OF OCEANSIDE	EXHIBIT "B"
				COAST HIGHWAY QUITCLAIM & VACATION CONTAINING 6,000 S.F., MORE OR LESS	

L:\LANDERS\dwg\QUIT-CLAIM\...OC-EXHBT-A.dwg, 10/25/2005 02:10:54 PM, Minolta Di2510 PCL6

EXHIBIT "C"

DEFINITIONS

Seller. The term "Seller" means the City of Oceanside, California.

Buyer. The term "Buyer" means C.H. Oceanside, L.L.C., a Delaware Limited Liability Company, existing under California law with its principal place of business in San Diego County, California.

Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means the Mayor, City Manager or any employee designated by the City Manager of Seller as an Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the President of Buyer or any other officer of Buyer designated by its Board of Directors as an Authorized Officer.

Environmental Laws. The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Qualify Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

Hazardous Substances. The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

Property. The term "Property" means that certain real property within the City of Oceanside, California, together with the improvements (if any) located thereon, as more fully described in Exhibit "A" attached hereto.

State. The term "State" means the State of California.