



DATE: April 8, 2009

TO: Honorable Mayor and Members of the City Council
Honorable President and Members of the Board of Directors

FROM: Economic and Community Development Department

SUBJECT: **APPROVAL OF AN AMENDMENT TO THE PURCHASE AND SALE AGREEMENT WITH THE OCEANSIDE MARINA TOWERS ASSOCIATION FOR THE SALE OF REAL PROPERTY**

SYNOPSIS

Staff recommends that the City Council and Harbor Board approve Amendment 1 to the Real Property Purchase and Sale Agreement with the Oceanside Marina Towers Association to sell real property; authorize the Mayor to execute the amendment; and authorize staff to consummate the transaction.

BACKGROUND

In July 2008, the City Council and Harbor Board approved a purchase and sale agreement ("Agreement") with the Oceanside Marina Towers Association ("Marina Towers"). Also, at the same meeting, the City Council and Harbor Board adopted a resolution approving a Regular Coastal Permit (RC-16-06) for a Property Line Adjustment ("RCP") affecting parcels in the Oceanside Small Craft Harbor in order to create a separate legal parcel of the underlying Marina Towers property. The above RCP action was subsequently appealed to the California Coastal Commission ("Commission") as Commission Appeal No. A-6-OCN-08-075 ("Permit").

At the Commission hearing held in September 2008 the Commission continued the matter to a later date pending the inclusion of additional language and the adoption of a revision to the Permit by the Harbor Board. In October 2008, the City Council and Harbor Board adopted a revision to the resolution approving the RCP to include language recommended by the Commission staff. At the January 2009 meeting, the Commission conditionally approved the Permit. One of the conditions imposed by the Commission necessitates a change to the Marina Towers Agreement regarding the use of the adjacent public parking lot by the Marina Towers.

In addition, subsequent to the approval of the purchase and sale agreement independent of any actions by the Commission, the Marina Towers requested a change to the Agreement. The Marina Towers requested that the language and corresponding exhibits be changed from a termination and partial termination of the underlying leasehold interests to an assignment thereof.

ANALYSIS

One of the conditions of approval for the Permit by the Commission was to prohibit the Marina Towers residents or its guests from parking in a portion of the adjacent public parking lot. In return, the Marina Towers residents or its guests would be allowed the exclusive use of twelve parking spaces in the adjacent public parking lot. This condition requires Exhibit "G" to the Agreement, entitled "Access Easement and Maintenance License Agreement" be changed to be consistent with the Commission's condition. Accordingly, a new Exhibit "G" to the Agreement, entitled "Restated Access Easement and Maintenance License Agreement" will replace the original Exhibit "G" together with changes to any references thereto in the Agreement.

The other changes to the Agreement pertain to Exhibit "E" and "F" to the Agreement, entitled "Partial Lease Termination Agreement" and "Lease Termination Agreement". Per the amendment, said exhibits will be deleted in their entirety and replaced by a new Exhibit "E" entitled "Partial City/District Lease Assignment Agreement" and a new Exhibit "F" entitled "District/Association Lease Assignment Agreement". The replacement of these exhibits and changes to any references thereto in the Agreement would make it easier for the Marina Towers to obtain the appropriate title insurance for the subsequent conveyances of the underlying fee title interest to each of its members.

Notwithstanding the approval of the amendment to the Agreement by the City Council and Harbor Board, it is possible that the Commission could still be in the process of reviewing documentation required by the conditional approval of the Permit. In order to expedite the sale of the Marina Towers property, staff's request to consummate the transaction will include the ability to make additional minor changes to the Agreement as recommended by the Commission, provided that any such recommendations do not materially change the intent or terms of the Agreement.

FISCAL IMPACT

There are no fiscal impacts as a result of the proposed amendment to the purchase and sale agreement.

INSURANCE REQUIREMENTS

Does not apply.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

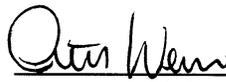
Staff recommends that the City Council and Harbor Board approve Amendment 1 to the Real Property Purchase and Sale Agreement with the Oceanside Marina Towers Association to sell real property; authorize the Mayor to execute the amendment; and authorize staff to consummate the transaction.

PREPARED BY:



Douglas E. Eddow
Real Estate Manager

SUBMITTED BY:



Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Donald L. Hadley, Deputy City Manager

Jane McVey, Economic and Community Development Director

Teri Ferro, Director of Financial Services



FIRST AMENDMENT TO REAL PROPERTY PURCHASE AND SALE AGREEMENT

(Marina Towers Condominium Property)

This First Amendment to the Real Property Purchase and Sale Agreement, dated 3/25/09 2009, is entered into by and between OCEANSIDE MARINA TOWERS ASSOCIATION, a California non-profit mutual benefit corporation (the "Association") and the CITY OF OCEANSIDE, a California municipal corporation (the "City"). The City and the Association are sometimes referred to in this Agreement, each individually, as a "Party", or collectively, as the "Parties." The City and the Association hereby amend the Real Property Purchase and Sale Agreement (the "Agreement") in reference to the following recited facts:

RECITALS

A. On July 16, 2008, the Parties entered into the Agreement whereby it was agreed, among other things, that the City would sell certain Real Property described in the ("Property") Agreement to the Association.

B. Currently, the Property is encumbered by a lease by and between the City and the Oceanside Small Craft Harbor District, a Small Craft Harbor District existing and operating pursuant to California Harbors and Navigation Code sections 7000, et seq. (the "District") referred to in the Agreement as the "City/District Lease," and by a sublease by and between the District and the Association described as the "District/Association Lease" in the Agreement.

C. The Agreement calls for both the City and the District to terminate the City/District Lease and the District/Association Lease upon close of escrow. The Parties believe at this time, it would be in their best interest to partially assign the City/District Lease as it relates to the Property, and to assign the District/Association Lease to the Association.

D. In order to ensure the Agreement is consistent with the conditions imposed by the California Coastal Commission, Exhibit G to the Agreement, the Access Easement and Maintenance License Agreement shall be deleted in its entirety and replaced with as revised Exhibit G, the Restated Access Easement and Maintenance License Agreement.

E. The Parties hereto believe that it is in their best interest to amend the Agreement as provided herein below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS AMENDMENT TO THE AGREEMENT, THE CITY AND ASSOCIATION AGREE AS FOLLOWS:

Section 1.0. The Recitals contained above are incorporated herein by the reference as though fully set forth.

Section 2.0. All references in the Agreement to the partial termination of the City/District Lease and the termination of the District/Association Lease are hereby deleted from the Agreement. It is the intention of the Parties to partially assign the City/District Lease as it relates to the Property and to assign the District/Association Lease to Association.

Section 3.0. The following sections of the Agreement shall be amended as follows:

3.1 Section P of the Recitals of the Agreement shall be deleted and the following shall be inserted in its place:

“P. The City desires to sell the Property and to partially assign the City/District Lease and the District/Association Lease to the Association for the continued use of the Property as a residential condominium development and the Association desires to purchase the Property as reconfigured by the Lot Line Adjustment from the City for the same purpose. The parties agree that the Association may assign its rights to and obligations under this agreement to the members of the Association who are the owners of leasehold condominiums in the project, so that those owners may acquire title to their units, including an undivided interest as tenants-in-common in the Property to be purchased from the City;”

3.2. Section 1.1 (i) of the Agreement shall be deleted in its entirety, and the following inserted in its place:

“(i) **“Partial City/District Lease Assignment Agreement”** means and refers to that certain Lease Assignment (Marina Towers Condominium Property: City/District Lease) to be entered into between the City, the District, and the Association in the form of Exhibit “E” attached to this Agreement.”

3.3. Section 1.1 (q) of the Agreement shall be deleted in its entirety, and the following inserted in its place.

“(8) **“District/Association Lease Assignment Agreement”** means and refers to that certain Lease Assignment Agreement (Marina Towers Condominium Property: District/Association Lease) to be entered into between the District and the Association in the form of Exhibit “F” attached to this Agreement.”

3.4 Section 1.1 (uu) of the Agreement shall be deleted in its entirety, and the following inserted in its place:

“uu **“Permitted Exceptions”** means and refers to: (1) any and all items shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that the Association accepts, pursuant to Section 2.4; (2)

any exceptions from coverage under the proposed Title Policy resulting from the Association's activities on the Property; (3) non-delinquent property taxes and assessment; (4) this Agreement; (5) the Partial City/District Lease Assignment Agreement; (6) the District/Association Lease Assignment Agreement (7) the Restated Access Easement and Maintenance License Agreement; (8) the City Deed; (9) the Notice of Agreement; or (10) the Right of First Offer Agreement.”

3.5. Section 2.1 of the Agreement shall be amended to reflect the partial assignment of the City/District Lease as it relates to the property and the assignment of the District/Association Lease to the Association so that the entire Section 2.1 shall read, as amended, as follows:

“Section 2.1 **Purchase and Sale.** The City shall sell the Property to the Association and the Association shall purchase the Property from the City pursuant to the terms and conditions of this Agreement. The City shall partially assign the City/District Lease, as it relates to the Property, and the District shall assign the District/Association Lease to the Association, and the Association shall accept the assignment of the aforesaid Leases. The Association may assign its rights hereunder to the condominium owners (Members of the Association), and in the event of such assignment the City shall at close of escrow transfer title to the Escrow Holder under a holding agreement so that title to separate interests in the Property may be conveyed by the Escrow Holder to the purchasing Member. For the purposes of exchanging funds and documents to complete the sale from the City to the Association and the purchase by the Association from the City of the Property, pursuant to the terms of this Agreement, the City and the Association agree to open an escrow with the Escrow Holder (the “Escrow”). ARTICLE III of this Agreement constitutes the joint escrow instructions of the Parties to the Escrow Holder for conduct of the Escrow for the sale of the Property, as contemplated by this Agreement. The Association and the City shall execute such further escrow instructions, consistent with the provisions of this Agreement, as may be reasonably requested by the Escrow Holder. In the event of any conflict between the provisions of this Agreement and any other Escrow instructions requested by the Escrow Holder, the provisions of this Agreement shall control.”

3.6. Section 3.3 (e) of the Agreement shall be deleted, and the following inserted in its place:

“(e) **District/Association Lease Assignment Agreement.** The District/Association Lease Assignment Agreement executed in recordable form by the authorized representative(s) of the Association for recordation at the Close of Escrow;”

3.7. Section 3.4 (d) of the Agreement shall be deleted, and the following inserted in its place:

“(d) Partial City/District Lease Assignment Agreement. The Partial City/District Lease Assignment Agreement executed by the authorized representatives(s) of both the District and the City in recordable form.”

3.8. Section 3.4 (e) of the Agreement shall be deleted, and the following inserted in it’s place:

“(e) District/Association Lease Assignment Agreement. The District/Association Lease Termination Agreement executed by the authorized representative(s) of the District in recordable form;”

3.9. Section 3.7 of the Agreement shall be deleted in its entirety, and the following inserted in its place.

“Section 3.7 Recordation and Distribution of Documents. The Escrow Holder shall cause the following documents to be recorded in the official records of the Recorder of the County of San Diego, California, in the following order at the Close of Escrow: (1) the City Deed, with the Association’s certificate of acceptance attached; (2) the Notice of Agreement; (3) the Right of First Offer Agreement; (4) the Partial City/District Lease Assignment Agreement; (5) the District/Association Lease Assignment Agreement; (6) the Access Easement Agreement; and (7) any other documents to be recorded through Escrow upon the joint instructions of the Parties. All recorded documents shall provide that they are to be returned to the Escrow Holder after recordation. When originals of such recorded documents are returned to the Escrow Holder, the Escrow Holder shall deliver; (i) the original City Deed, with the Association’s original certificate of acceptance attached, to the Association and a conformed copy to the City, each showing all recording information; (ii) the original of the Notice of Agreement to the City, with a conformed copy to the Association, each showing all recording information; (iii) the original of the Partial City/District Lease Assignment Agreement to the Association, with a conformed copy to the City, each showing all recording information; (iv) the original of the District/Association Lease Assignment Agreement to the Association, with a conformed copy to the City/District, each showing all recording information; (v) the original of the Restated Access Easement and Maintenance and License Agreement to the City with a conformed copy to the Association, each showing all recording information; (vi) the original of any other document recorded at the Close of Escrow to the Party or other person designated in the joint escrow instructions of the Parties for such recordation and a conformed copy of each such document to the other Party or the Parties, each showing all recording information.”

3.10. Section 7.2 (e) of the Agreement shall be deleted in its entirety and the following substituted in its place:

“(e) Except for assignment by the Association to its Members of its rights under this Agreement and the partial or full relinquishment of its interest in the Assigned Leases, as provided in Section 2.1, the Association transfers its interest in all or any portion of this Agreement, or the Property, whether voluntarily or involuntarily or by operation of law, in violation of the terms and conditions of this Agreement;

3.11 Exhibit G to the Agreement, entitled Access Easement and Maintenance License Agreement, is hereby deleted in its entirety and replaced with the Restated Access Easement and Maintenance License Agreement, Exhibit G attached hereto.

Section 4.0. Except for those items that have been deleted or amended as provided herein, the Real Property Purchase and Sale Agreement (Marina Towers Condominium Property) shall remain the same.

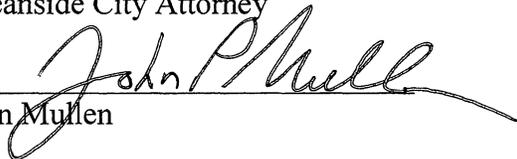
IN WITNESS WHEREOF, the City and the Association have executed this First Amendment to Real Property Purchase and Sale Agreement (Marina Towers Condominium Property) by and through the signatures of their duly authorized representative(s) set forth below:

CITY:
CITY OF OCEANSIDE, a California
municipal corporation

By: _____
City Mayor

Barbara Riegel Wayne
City Clerk

APPROVED AS TO FORM:
Oceanside City Attorney


John Mullen

ASSOCIATION:
OCEANSIDE MARINA TOWERS
ASSOCIATION, a non-profit mutual benefit
corporation

By: 
President

By: 
Name: Secretary

EXHIBIT "E"
FORM OF CITY/DISTRICT
PARTIAL LEASE ASSIGNMENT
AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention: _____

MAIL TAX STATEMENTS TO:

Attention: _____

SPACE ABOVE FOR RECORDER'S USE ONLY
NO RECORDING FEE PURSUANT TO GOVERNMENT CODE §27383

PARTIAL LEASE ASSIGNMENT AGREEMENT

(Marina Towers Condominium Property: City/District Lease)

THIS PARTIAL LEASE ASSIGNMENT AGREEMENT (Marina Towers Condominium Property: City/District Lease) (this "Agreement") is entered into by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, a Small Craft Harbor District existing and operating pursuant to California Harbors and Navigation Code Sections 7000, et seq. (the "District"), the CITY OF OCEANSIDE, a California municipal corporation (the "City"), as of July 16, 2008 (the "Effective Date") and OCEANSIDE MARINA TOWERS ASSOCIATION, a California non-profit mutual benefit corporation (the "Association"). The District, the City and the Association are sometimes referred to in this Agreement, each individually, as a "Party," or, collectively, as the "Parties." The District, the City and the Association enter into this Agreement with reference to the following recited facts (each a "Recital"):

Recitals

WHEREAS, the City owns that certain real property generally described as 1200 Harbor Drive North within the City, as more specifically described in Exhibit " A to this Agreement (the "Property");

WHEREAS, the City and the District entered into that certain Oceanside Harbor Lease, dated as of May 7, 2003, between the City and the District (the "City/District Lease"), that includes the Property within the leasehold estate created by the City/District Lease;

WHEREAS, the District entered into that certain Second Amended Lease, dated as of October 6, 1975, with Oceanside Marina Towers, a joint venture, relating to that certain real property located in the City of Oceanside, California, specifically described in Exhibits "A" and "B" to such agreement, which lease agreement was recorded in the records of the Recorder of the County of San Diego, California, as document number 75-275949 (the "District/Association Lease");

WHEREAS, Helix Imperial Harbor Development Corporation, Helix Land Company, and Helix 1960, Ltd. (collectively, the "Helix Companies"), succeeded to the interests of Oceanside Marina Towers in the District/Association Lease on or about April 25, 1977;

WHEREAS, the Helix Companies assigned all their interests in the District/Association Lease to the Oceanside Marina Towers Association, a California non-profit mutual benefit corporation (the "Association"), on or about April 23, 1987;

WHEREAS, the City and the Association have entered into that certain Real Property Purchase and Sale Agreement, dated as of July 16, 2008, for the City to sell the Property to the Association and the Association to purchase the Property from the City (the "Purchase Agreement");

WHEREAS, the District, the City and the Association have determined that the transactions described in the Purchase Agreement are mutually beneficial to each of them and, therefore, the District, the City, and the Association mutually desire to enter into this Agreement to assign the City/District Lease solely as such lease relates to the Property, on the terms and conditions of this Agreement, in furtherance of the transactions contemplated in the Purchase Agreement;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE DISTRICT, THE CITY, AND THE ASSOCIATION AGREE, AS FOLLOWS:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference, as though fully set forth in this Agreement.

2. City/District Lease Assignment. The District and the City hereby mutually assign to the Association all of their respective right, title and interest in the City/District Lease, solely as such lease relates to the Property, and the District and neither the City nor the District shall have any further right nor obligation under the City/District Lease with respect to the Property, except with respect to those covenants and obligations contained in the City/District Lease and this Agreement that survive this assignment. Association hereby accepts the foregoing assignment and transfer and specifically assumes and agrees to perform and observe each and every covenant agreement, and condition to be performed by the "lessor" under City/District Lease.

3. Estoppels. The Association acknowledges and agrees that, as of the date of this Agreement, that the City and the District have performed each and every one of the City's and District's obligations under the City/District Lease and no performance of the City or the District is due to the District under the City/District Lease.

4. Releases of Liability.

(a) The Association, on behalf of itself, its successors and assigns, releases and discharges the City, its officers, directors, employees and agents from any and all debts, claims, demands, liabilities, obligations, causes of action and rights, including attorney's fees and court costs, whether known or unknown, that the District or the Association owns or holds, or at any time prior to the effective Date owned or held, by reason of my act, matter, cause or thing relating to the City/District Lease, the leasehold estate created by the City/District Lease or the Property, as of the Effective Date.

(b) The releases contained in this Paragraph 4 extend to any and all claims, whether or not claimed or suspected by either Party, to and including the Effective Date, and constitutes a waiver of the application of each and all of the provisions of California Civil Code Section 1542, which reads as follows:

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



Initials of Authorized
Association Representative



Initials of Authorized

(c) The Association acknowledges that the import of the provisions of Civil Code Section 1542 were explained to it by its own legal counsel and that it understands the same.

(d) The Association expressly understands and acknowledges that the facts with respect to which the releases contained in this Paragraph 4 are given may subsequently turn out to be other than or different from the facts in that connection now known or believed to be true and the Association expressly assumes the risk of the facts turning out to be so different, and agrees that the releases contained in this Paragraph 4 shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts. The Association further understands and acknowledges the significance and the consequence of such a specific waiver of unknown claims and assumes full responsibility for any injuries, damages, losses or liabilities that it may incur in the future as a result of the releases contained in this Paragraph 4 of said unknown claims.

(e) The Association warrants and represents that in executing the releases contained in this Paragraph 4 it relied on legal advice from the attorney of its choice, that the terms of the releases contained in this Paragraph 4 and their consequences were completely read and explained to the Party by that attorney and that the Party fully understands the terms and consequences of the releases contained in this Paragraph 4.

(f) The Association acknowledges and represents that, in executing the releases contained in this Paragraph 4, it did not rely on any inducements, promises or representations made by any other Party or any person representing any other Party to this Agreement.

(g) The Association further represents and warrants that its execution of this Agreement and, specifically, the releases contained in this Paragraph 4, is free and voluntary and is not given under duress.

(h) The releases contained in this Paragraph 4 do not constitute an admission of liability by The Association.

5. Indemnity.

(a) The Association agrees to indemnify, defend, and hold harmless the City and the District as well as its respective officers, directors, employees and agents (individually, a "City Indemnitee" or "District Indemnitee" and collectively, the "City/District Indemnitees") from and against any and all third party suits, demands, claims, causes of action, losses, liabilities, penalties, charges, costs and expenses, including reasonable investigation costs, attorneys' fees and disbursements, and fees of consultants and expert witnesses (collectively, a "Third Party Claim") that may be imposed on, incurred by or asserted against the City or District Indemnitees by reason of, on account of or in connection with any negligence, willful misconduct or failure to act (when obligated to do

so) by the District, the City and/or its agents, contractors or employees relating to the City/District Lease or the Property.

(b) The indemnity and defense obligations of the Association under this Paragraph 5 shall not be affected by the absence or unavailability of insurance covering the same or by failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of insurance. If a City Indemnitee or a District Indemnitee (each an "Indemnitee") is entitled to defense or indemnification under this Paragraph 5 (each, an "Indemnification Claim"), the District, (the "Indemnitor"), shall not be obligated to defend, indemnify or hold harmless Indemnitee, unless and until Indemnitee provides written notice to Indemnitor, promptly after such Indemnitee has actual knowledge of the facts or circumstances of the Third Party Claim on which such Indemnification Claim is based, describing in reasonable detail such facts and circumstances of the Third Party Claim with respect to such Indemnification Claim and a request for such indemnity and/or defense (the "Indemnification Claim Notice"). Indemnitee shall not be entitled to indemnification or defense to the extent Indemnitee's failure to notify or delay notifying Indemnitor materially prejudices Indemnitor's ability to defend against any Third Party Claim on which such Indemnification Claim is based, or materially increases the amount of damages, losses, costs or fees incurred with respect to such Third Party Claim.

6. City/District Lease Assignment. The District and the City assign all rights in or to the Property pursuant to the City/District Lease and the leasehold estate in the Property created pursuant to the City/District Lease, as of the Effective Date, and the Association accepts this assignment of the Property, as of the Effective Date.

7. Representation of No Assignment. The District and the City represent and warrant that the District and the City has made no assignment, sublease, transfer, or other disposition of the Property, any interest in the City/District Lease, as it relates to the Property or any demand, obligation, liability, or cause of action arising out of the City/District Lease as it relates to the Property.

8. Amendment. No amendment or modification of this Agreement shall be effective, unless it is made in writing and signed by the Party against whom the addition or modification is sought to be enforced. The Party benefitted by any condition or obligation may waive the same, but such waiver shall not be enforceable by another Party, unless it is made in writing and signed by the waiving Party.

9. Severability. If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

10. Headings. Unless otherwise indicated, all article and section references are to the articles and sections of this Agreement. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings.

11. Governing Law. This Agreement shall be governed by the laws of the State of California applicable to contracts made by residents of the State of California and to be performed in the State of California, without reference to their conflicts of laws principles.

12. Time of Essence. Time is of the essence of each provision of this Agreement.

13. Attorney Fees. In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, or the nondismissing party when a dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.

14. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

15. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties to this Agreement and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party to this Agreement or give any third person any right of subrogation or action over or against any Party to this Agreement.

16. Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the City/District Lease or the Property.

17. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. Contingency. This Agreement is contingent upon the Close of Escrow under the Purchase Agreement.

IN WITNESS WHEREOF, the District , the City and the Association execute this Lease Assignment Agreement (Marina Towers Condominium Property: City/District Lease), as follows:

OCEANSIDE SMALL CRAFT HARBOR

DISTRICT, a Small Craft Harbor District existing and operating pursuant to California Harbors and Navigation Code Sections 7000, et seq.

CITY OF OCEANSIDE, a California municipal corporation

By: _____
City Mayor

By: _____
Name: _____
Its: _____

Attest _____
Barbara Reigel Wayne City Clerk

Attest: _____
Barbara Reigel Wayne
City Clerk

Approved as to form:

Approved as to form:
Oceanside City Attorney

Legal Counsel

John Mullen

Oceanside Marina Towers Association, a non-profit Mutual Benefit Corporation

By: 
Its President

By: 
Its Secretary

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL A

THAT PORTION OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 5, 1881, DESCRIBED AS PARCEL 2 IN CORPORATION GRANT DEED TO THE CITY OF OCEANSIDE RECORDED JULY 26, 1960 AS FILE PAGE NO. 151 177 AND LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 14, 1975 AS FILE PAGE NO. 75-085622, BOTH OF OFFICIAL RECORDS, ALL AS SHOWN ON MISCELLANEOUS MAP NO. 448, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 27, 1962 AS FILE PAGE NO. 128125 OF OFFICIAL RECORDS;

THENCE ALONG THE SOUTHEASTERLY LINE OF RANCHO SANTA MARGARITA Y LAS FLORES AS SHOWN ON SAID MISCELLANEOUS MAP NO. 448 SOUTH 47°22'00" WEST 279.19 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN EXHIBIT 'A' OF AMENDED LEASE RECORDED SEPTEMBER 12, 1974 AS FILE PAGE NO. 74-246957 OF OFFICIAL RECORDS, AND A POINT ON A 95.00 FOOT RADIUS CURVE DESCRIBED IN SAID EXHIBIT 'A';

THENCE SOUTHEASTERLY ALONG THE WESTERLY BOUNDARY OF SAID LAND THROUGH A CENTRAL ANGLE OF 37°25'23" A DISTANCE OF 62.05 FEET;

THENCE SOUTH 58°39'42" EAST 35.02 FEET;

THENCE LEAVING SAID WESTERLY BOUNDARY SOUTH 54°44'13" EAST 123.67 FEET;

THENCE SOUTH 50°58'29" EAST 88.95 FEET;

THENCE NORTH 77°30'50" EAST 47.95 FEET TO THE EASTERLY LINE OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 14, 1975 AS FILE PAGE NO. 75-085622 OF OFFICIAL RECORDS

THENCE ALONG SAID EASTERLY LINE NORTH 12 DEGREES 29' 10 WEST 378.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.209 ACRES MORE OR LESS.

SUBJECT TO CONDOMINIUM PLAN FOR OCEANSIDE MARINA TOWERS RECORDED OCTOBER 31, 1974 AS FILE PAGE NO. 74-289774.

EXCEPTING AND RESERVING FROM SUCH PROPERTY A NON-EXCLUSIVE EASEMENT FOR PURPOSES OF RECONSTRUCTING, REMOVING, REPLACING, OPERATING, INSPECTING, MAINTAINING, REPAIRING, AND IMPROVING EXISTING PUBLIC SAFETY COMMUNICATIONS EQUIPMENT ON THE ROOF OF ANY IMPROVEMENTS ON SUCH PROPERTY, ALONG WITH ALL REASONABLY REQUIRED RIGHTS OF WAY FOR INGRESS TO AND ACCESS FROM THE ROOF OF ANY IMPROVEMENTS ON SUCH PROPERTY FOR PURPOSES OF EXERCISING THE EASEMENT RIGHTS EXCEPTED AND RESERVED.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO }

On 3/25/09 before me, REBECCA PENNINGTON,
Date Here Insert Name and Title of the Officer

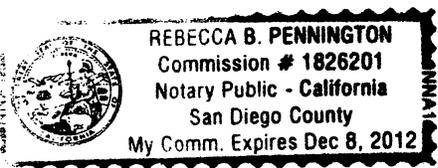
personally appeared DAVID WILSON
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Rebecca Pennington
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

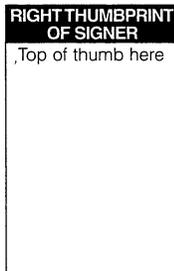
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

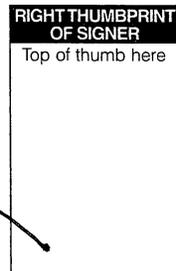
- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

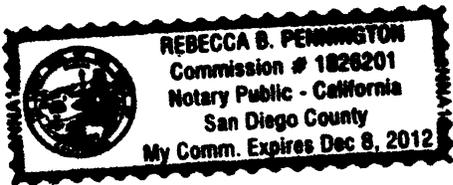
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO }

On 3/25/09 before me, REBECCA PENNINGTON
Date Here Insert Name and Title of the Officer

personally appeared E. R. FROECHTING
Name(s) of Signer(s)



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

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

WITNESS my hand and official seal.

Signature Rebecca Pennington
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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Document Date: _____ Number of Pages: _____

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Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____

EXHIBIT "F"

FORM OF DISTRICT/ASSOCIATION

LEASE ASSIGNMENT AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention: _____

MAIL TAX STATEMENTS TO:

Attention: _____

SPACE ABOVE FOR RECORDER'S USE ONLY
NO RECORDING FEE PURSUANT TO GOVERNMENT CODE §27383

LEASE ASSIGNMENT AGREEMENT

(Marina Towers Condominium Property: District/Association Lease)

THIS LEASE ASSIGNMENT (Marina Towers Condominium Property: District/Association Lease) (this "Agreement") is entered into by and between the OCEANSIDE SMALL CRAFT HARBOR DISTRICT, a Small Craft Harbor District existing and operating pursuant to California Harbors and Navigation Code Sections 7000, et seq. (the "District"), and OCEANSIDE MARINA TOWERS Association, a California non-profit mutual benefit corporation (the "ASSOCIATION"), as of _____ (the "Effective Date"). The District and the Association are sometimes referred to in this Agreement, each individually, as a "Party," or, collectively, as the "Parties." The District and the Association enter into this Agreement with reference to the following recited facts (each a "Recital");

Recitals

WHEREAS, the District entered into that certain Second Amended Lease, dated as of October 6, 1975, with Oceanside Marina Towers, a joint venture, relating to that certain real property located in the City of Oceanside, California, specifically described in Exhibits " A and "B"

to such agreement, which lease agreement was recorded in the records of the Recorder of the County of San Diego, California, as document number 75-275949 (the "District/Association Lease");

WHEREAS, Helix Imperial Harbor Development Corporation, Helix Land Company, and Helix 1960, Ltd. (collectively, the "Helix Companies"), succeeded to the interests of Oceanside Marina Towers in the District/Association Lease on or about April 25, 1977;

WHEREAS, the Helix Companies all assigned their interest in the District/Association Lease to the Association on or about April 23, 1987;

WHEREAS, the Association has entered into that certain Real Property Purchase and Sale Agreement, dated as of July 16, 2008, with the City of Oceanside, California ("City"), to purchase the fee title to a portion of the real property that is the subject of the District/Association Lease (the "Purchase Agreement");

WHEREAS, the District and the Association have determined that the transactions described in the Purchase Agreement are mutually beneficial to each of them and, therefore, the District and the Association mutually desire to enter into this Agreement to assign the District/Association Lease from the District to the Association in its entirety, on the terms and conditions of this Agreement, in furtherance of the transactions described in the Purchase Agreement; and

WHEREAS, the Association and the City have negotiated the Purchase Agreement and the Association is to acquire title to the leasehold premises;

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH IN THIS AGREEMENT AND OTHER GOOD AND VALUABLE CONSIDERATION, THE DISTRICT AND THE ASSOCIATION AGREE, AS FOLLOWS:

1. Incorporation of Recitals. The Recitals set forth above are true and correct and are incorporated into this Agreement by this reference, as though fully set forth in this Agreement.
2. District/Association Lease Assignment. The District hereby assigns to the Association its right, title and interest in the District/Association Lease in its entirety and the District shall have no further right or obligation under the District/Association Lease, except with respect to those covenants and obligations contained in the District/Association Lease and this Agreement that survive assignment of the District/Association Lease. Association hereby accepts the foregoing assignment and transfer and specifically assumes and agrees to perform and observe each and every covenant, agreement and condition to be performed by the "lessor" under the District/Association lease.
3. Estoppels. The Association acknowledges and agrees that, as of the date of this Agreement, the District has performed each and every one of the District's obligations under the District/Association Lease and no performance of the District is due to the Association under the District/Association Lease. The District acknowledges and agrees that, as of the date of this Agreement, that the Association has performed each and every one of the Association's obligations

under the District/Association Lease and no performance of the Association is due to the District under the District/Association Lease.

4. Releases of Liability.

(a) The Association, on behalf of itself, its successors and assigns, releases and discharges the District, its elected officials, officers, directors, employees and agents from any and all debts, claims, demands, liabilities, obligations, causes of action and rights, including attorney's fees and court costs, whether known or unknown, that the Association now owns or holds, or at any time prior to the Effective Date owned or held, by reason of any act, matter, cause or thing relating to the District/Association Lease, the leasehold estate created by the District/Association Lease or the Property, as of the Effective Date.

(b) The release contained in this Paragraph 4 extend to any and all claims, whether or not claimed or suspected by the Association, to and including the Effective Date, and constitutes a waiver of the application of each and all of the provisions of California Civil Code Section 1542, which reads as follows:

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



Initials of Authorized



Initials of Authorized
Association Representative

(d) The Association acknowledges that the import of the provisions of Civil Code Section 1542 were explained to it by its own legal counsel and that it understands the same.

(e) The Association expressly understands and acknowledges that the facts with respect to which the releases contained in this Paragraph 4 are given may subsequently turn out to be other than or different from the facts in that connection now known or believed to be true and each Party expressly assumes the risk of the facts turning out to be so different, and agrees that the releases contained in this Paragraph 4 shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts. The Association further understands and acknowledges the significance and the consequence of such a specific waiver of unknown claims and assumes full responsibility for any injuries, damages, losses or liabilities that it may incur in the future as a result of the releases contained in this Paragraph 4 of said unknown claims.

(f) The Association warrants and represents that in executing the releases contained in this Paragraph 4 it relied on legal advice from the attorney of its choice, that the terms of the releases contained in this Paragraph 4 and their consequences were completely read and explained to the Party by that attorney and that the Party fully understands the terms and consequences of the releases contained in this Paragraph 4.

(g) The Association acknowledges and represents that, in executing the releases contained in this Paragraph 4, it did not rely on any inducements, promises or representations made by any other Party or any person representing any other Party to this Agreement.

(h) The Association further represents and warrants that its execution of this Agreement and, specifically, the releases contained in this Paragraph 4, is free and voluntary and is not given under duress.

(i) The releases contained in this Paragraph 4 do not constitute an admission of liability by the Association.

5. Indemnity.

(a) The Association agrees to indemnify, defend, and hold harmless the District, its elected officials, officers, directors, employees, attorneys and agents (individually, a "District Indemnitee" and collectively, the "District Indemnitees") from and against any and all Third Party Claims that may be imposed on, incurred by or asserted against the District Indemnitees by reason of, on account of or in connection with any negligence, willful misconduct or failure to act (when obligated to do so) by the Association, its agents, contractors or employees relating to the District/Association Lease or the Property.

(b) The indemnity and defense obligations of the Association under this Paragraph 5 shall not be affected by the absence or unavailability of insurance covering the same or by failure or refusal by any insurance carrier to perform any obligation on its part under any such policy of insurance. If a District Indemnitee is entitled to defense or indemnification under this Paragraph 5 (each, an "Indemnification Claim"), the Association, as applicable (the "Indemnitor"), shall not be obligated to defend, indemnify or hold harmless Indemnitees, unless and until Indemnitees provides written notice to Indemnitor, promptly after such Indemnitees has actual knowledge of the facts or circumstances of the Third Party Claim on which such Indemnification Claim is based, describing in reasonable detail such facts and circumstances of the Third Party Claim with respect to such Indemnification Claim and a request for such indemnity and/or defense (the "Indemnification Claim Notice"). Indemnitees shall not be entitled to indemnification or defense to the extent Indemnitee's failure to notify or delay notifying Indemnitor materially prejudices Indemnitor's ability to defend against any Third Party Claim on which such Indemnification Claim is based, or materially increases the amount of damages, losses, costs or fees incurred with respect to such Third Party Claim.

6. District/Association Lease Assignment. The District assigns all rights in, to, or under the District/Association Lease and the leasehold estate created, as of the Effective Date, and the Association accepts this assignment of the Property.

7. Representation of No Assignment. The District represents and warrants that the District has made no assignment, sublease, transfer, or other disposition of the District/Association Lease, any interest in the District/Association Lease, or any demand, obligation, liability, or cause of action arising out of the District/Association Lease.
8. Amendment. No amendment or modification of this Agreement shall be effective, unless it is made in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefitted by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party, unless it is made in writing and signed by the waiving party.
9. Severability. If any provision of this Agreement as applied to any party or to any circumstance is adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, this fact shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.
10. Heading. Unless otherwise indicated, all article and section references are to the articles and sections of this Agreement. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings.
11. Governing Law. This Agreement shall be governed by the laws of the State of California applicable to contracts made by residents of the State of California and to be performed in the State of California, without reference to their conflicts of laws principles.
12. Time of Essence. Time is of the essence of each provision of this Agreement.
13. Attorney Fees. In the event of any action or proceeding to enforce a term or condition of this Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Agreement or any action or proceeding in any way arising from this Agreement, the prevailing party in such action, or the nondismissing party when a dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorney fees and costs of defense paid or incurred in good faith. The "prevailing party," for purposes of this Agreement, shall be deemed to be that party who obtains substantially the result sought, whether by settlement, dismissal, or judgment.
14. Binding on Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.
15. No Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties to this Agreement and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any Party to

this Agreement or give any third person any right of subrogation or action over or against any Party to this Agreement.

16. Entire Agreement. This Agreement integrates all of the terms and conditions mentioned in this Agreement or incidental to this Agreement, and supersedes all negotiations or previous agreements between the Parties with respect to the District/Association Lease or the Property.

17. Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. Concurrently. This Agreement is contingent upon the Close of Escrow under the Purchase Agreement.

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IN WITNESS WHEREOF, the District and the Association execute this Lease Assignment Agreement (Marina Towers Condominium Property: District/Association Lease), as follows:

OCEANSIDE SMALL CRAFT HARBOR DISTRICT, a Small Craft Harbor District existing and operating pursuant to California Harbors and Navigation Code Sections 7000, et seq.

Oceanside Marina Towers Association, a non-profit Mutual Benefit Corporation

By: _____
Name: _____
Its: _____

By:  _____
Its President
By:  _____
Its Secretary

Attest: _____
Barbara Reigel Wayne
City Clerk

Approved as to form:

Legal Counsel

[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO }

On 3/25/09 before me, REBECCA PENNINGTON,
Date Here Insert Name and Title of the Officer

personally appeared DAVID WILSON
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature Rebecca Pennington
Signature of Notary Public



Place Notary Seal Above

OPTIONAL

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Title or Type of Document: _____

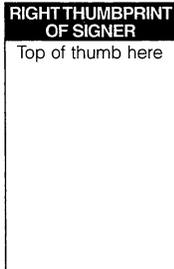
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

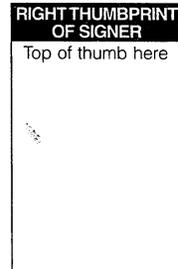
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- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
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Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN DIEGO

On 3/25/09 before me, REBECCA PENNINGTON
Date Here Insert Name and Title of the Officer

personally appeared E.R. FRUECHTING
Name(s) of Signer(s)

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



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

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Place Notary Seal Above

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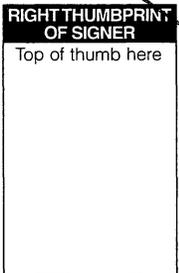
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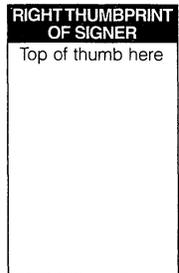
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Capacity(ies) Claimed by Signer(s)

- Signer's Name: _____
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 - Trustee
 - Guardian or Conservator
 - Other: _____



- Signer's Name: _____
- Individual
 - Corporate Officer — Title(s): _____
 - Partner — Limited General
 - Attorney in Fact
 - Trustee
 - Guardian or Conservator
 - Other: _____



Signer Is Representing: _____

Signer Is Representing: _____

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Attention: _____

MAIL TAX STATEMENTS TO:

Attention: _____

SPACE ABOVE FOR RECORDER'S USE ONLY
NO RECORDING FEE PURSUANT TO GOVERNMENT CODE §27383

CITY OF OCEANSIDE

RESTATED ACCESS EASEMENT AND MAINTENANCE LICENSE AGREEMENT

(Marina Towers Condominium Property)

THIS RESTATED ACCESS EASEMENT AND MAINTENANCE LICENSE AGREEMENT (Marina Towers Condominium Property) (this "Easement Agreement") is dated as of MARCH 25, 2009, and is entered into by and between OCEANSIDE MARINA TOWERS ASSOCIATION, a California non-profit mutual benefit corporation (the "Association"), and the CITY OF OCEANSIDE, a California municipal corporation (the "City"), with reference to the following recited facts (each, "Recital"):

RECITALS

WHEREAS, the City and the Association previously entered into that certain Real Property Purchase and Sale Agreement (Marina Towers Condominium Property), dated as of July 16, 2008 (the "Purchase Agreement"), providing for the acquisition by the Association of that certain real property owned by the City and specifically described in Exhibit "A" attached to this Easement Agreement and incorporated into this Easement Agreement by this reference (the "Property"); and

WHEREAS, in order to facilitate the use and enjoyment of the Property for the existing Marina Towers Condominiums, the City and the Association desire to provide an easement for specific purposes specifically set forth in this Easement Agreement, over and across that certain real property owned by the City that is defined in the Purchase Agreement as within the "Adjacent Property" that is specifically described in Exhibit "A-2" to the Purchase Agreement. The easement hereby granted over the Adjacent Property is described in Exhibit "B" attached hereto and incorporated by reference herein ("Access Easement"); and

WHEREAS, the easement rights granted in this Easement Agreement are intended by the Parties to be equitable servitudes that shall run with the land and be binding upon the Adjacent Property for the benefit of the Property and the Parties further intend for this Easement Agreement to create certain rights and obligations in accordance with Section 1468 of the California Civil Code; and

WHEREAS, the City and the Association further intend that the Association will continue to maintain the Adjacent Property, and intend to provide a license to the Association for it to enter the Adjacent Property to undertake these maintenance activities, all as more specifically described in this Easement Agreement;

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE CITY AND THE ASSOCIATION AGREE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

Section 1.1 **Defined Terms.** In addition to the usage of certain words, terms or phrases that are defined in the initial paragraph or Recitals of or elsewhere in this Easement Agreement, the following words, terms and phrases are used in this Easement Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

- (a) **“Access Easement”** means and refers to the easement described in Exhibit “B”, and granted to the Association by the City in Section 2.1.
- (b) **“Adjacent Property”** means the property described in Exhibit “C” attached hereto.
- (c) **“Adjacent Property Maintenance Default”** shall have the meaning ascribed to the term in Section 4.1.
- (d) **“City Parties”** means and refers to, collectively, the City and its elected officials, employees, agents and attorneys.
- (e) **“City Party”** means and refers to, individually, each of the City, its elected officials, employees, agents and attorneys.
- (f) **“Environmental Claims”** shall have the meaning ascribed to the term in Section 5.3.1.
- (g) **“Environmental Laws”** means and refers to all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or

industrial hygiene (to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances 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 U.S.C. Section 9601 *et seq.*]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 U.S.C. Section 6901 *et seq.*]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 U.S.C. Section 1251 *et seq.*]; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Section 2601 *et seq.*]; the Hazardous Materials Transportation Act ("HMTA") [49 U.S.C. Section 1801 *et seq.*]; the Insecticide, Fungicide, Rodenticide Act [7 U.S.C. Section 6901 *et seq.*]; the Clean Air Act [42 U.S.C. Section 7401 *et seq.*]; the Safe Drinking Water Act [42 U.S.C. Section 300f *et seq.*]; the Solid Waste Disposal Act [42 U.S.C. Section 6901 *et seq.*]; the Surface Mining Control and Reclamation Act [30 U.S.C. Section 101 *et seq.*]; the Emergency Planning and Community Right to Know Act [42 U.S.C. Section 11001 *et seq.*]; the Occupational Safety and Health Act [29 U.S.C. Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code Section 25280 *et seq.*]; the California Hazardous Substances Account Act [Health and Safety Code Section 25300 *et seq.*]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code Section 24249.5 *et seq.*]; the Porter-Cologne Water Quality Act [Water Code Section 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 occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

(h) "Environmental Matters" shall have the meaning ascribed to the term in Section 5.3.1.

(i) "Hazardous Substances" means and refers to, without limitation, substances defined as "hazardous substances," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminate" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601, *et seq.*; the Toxic Substances Control Act ("TSCA") [15 U.S.C. Sections 2601, *et seq.*]; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, *et seq.*; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the EPA, or any successor authority, as hazardous substances [40 CFR Part 302]; and those substances defined as "hazardous waste" in Section 25117 of the California Health and Safety Code or, as "hazardous substances" in Section 25316 of the California Health and Safety Code; 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 in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products, and substances designated as a hazardous substance pursuant to 33 U.S.C. Section 1321 or listed pursuant to 33 U.S.C. Section 1317.

(j) **“Mechanic’s Lien”** means and refers to any lien or claim asserted by a person who has provided services, labor, material or equipment to the Association, its agents or contractors.

(k) **“Maintenance License”** means and refers to the license provided in Section 3.1.

(l) **“Party”** means and refers, individually, to either the City or the Association, as applicable.

(m) **“Parties”** means and refers, collectively, to the City and the Association

(n) **“Permitted Vehicles and Pedestrians”** shall mean and refer to appropriately licensed passenger automobiles, sports utility vehicles, motorcycles, and trucks having carrying capacity of ¾ ton or less, vans having seating capacity of eight (8) persons or less, and any other licensed motor vehicle that fits within a standard parking space, owned and operated by persons who are, either (1) employees or invitees of the Association, (2) a resident of the Property or (3) a guest or invitee of a resident of the Property. For the purposes of this Easement Agreement, the term “Motor Vehicle” shall mean and refer to any “Passenger Vehicle,” as defined in Vehicle Code Section 465, or a “Motorcycle,” as defined in Vehicle Code Section 400, but exclusive of “House Cars,” as defined in Vehicle Code Section 362, “Recreational Vehicles,” as defined in Health and Safety Code Section 18010, trailers, campers and the like.

(o) **“Record,” “recorded,” “recording” or “recordation”** each mean and refer to recordation of the referenced document in the official records of the Recorder of the County of San Diego, California.

ARTICLE II

ACCESS EASEMENT

Section 2.1 **Grant of Access Easement.** The City hereby grants to the Association, and its Members and their successors and assigns, a non-exclusive, easement for utilities and encroachments, and for ingress and egress by Permitted Vehicles and Pedestrians over and across the Adjacent Property, and for existing surface drainage from the Property over and across the Adjacent Property, existing as of the date of this Easement Agreement, and for existing utility facilities (and the maintenance, repair and replacement of said utilities) installed in or on the Adjacent Property that are used to service the Property and existing as of the date of this Easement Agreement, and for continuation of existing encroachments (including set-back discrepancies) as described in Exhibit “D” attached hereto.

Section 2.2 **Easement Appurtenant to Property.** The Access Easement, subject to all of the terms and provisions of this Easement Agreement, constitutes a covenant running with the land and shall pass to successive owners of the Property with the fee title to the Property and shall burden the title to the Adjacent Property. Every conveyance of an interest in either the Property or the Adjacent Property shall be deemed to have been made with reference

to this Easement Agreement, and shall be deemed to include the conveyance of the Access Easement appurtenant to the Property and over the Adjacent Property, and each successive owner of either the Property or the Adjacent Property shall be bound by this Easement Agreement.

Section 2.3 Use of Access Easement. Except as otherwise specifically provided in this Easement Agreement, no use or operation shall be made, conducted or permitted on or with respect to all or any portion of the Adjacent Property that would impede the flow of pedestrian and/or vehicular traffic on the Adjacent Property or the use of the Adjacent Property by the City or the public.

Section 2.4 Restriction on Barriers. Except as otherwise specifically set forth in this Easement Agreement, no improvements, walls, fences, or barriers of any sort or kind shall be constructed or maintained by the Association or the City on the Adjacent Property, except those existing as of the date of this Easement Agreement, that may prevent or impair the safety or security of residents, or the free access and movement of pedestrians and/or vehicular traffic on the Adjacent Property, or that will add to the maintenance or insurance obligations of the Association specified in this Agreement, or result in exposing the Association to increased liability. The City may install reasonable traffic controls where necessary, or guide and control the orderly flow of pedestrians and/or vehicular traffic when appropriate on the Adjacent Property, so long as reasonable access to the Property pursuant to the Access Easement is not impaired. Notwithstanding the first sentence of this Section 2.4, after obtaining all required City approvals for such construction, the Association may construct a small fence or wall along the northern property line of the Adjacent Property at the north east corner of the Adjacent Property along Harbor Drive that is no larger than necessary to inhibit pedestrian access to the Adjacent Property through the landscaped area along the northern boundary of the Adjacent Property.

Section 2.5 Parking Easement. The Association is hereby granted an exclusive easement for the use of the twelve (12) parking spaces numbered 1-5 and 19-25, described in Exhibit "E" hereto, which easement rights are for the use and benefit of and are to be shared by the Members of the Association (the owners of condominiums) and their tenants and guests. Neither the Association, nor its Members, tenants or guests, shall have any rights to park in the remaining parking spaces in the Adjacent Property.

Section 2.6 Termination of Parking Easement. In the event that the use of the Property should in the future be changed to a non-residential use, the Property and the then owners of the Property shall no longer have any exclusive parking easement rights, but shall be subject to the same ordinances and have the same rights as the public in general, and the maintenance and insurance obligations provided for in Article IV shall terminate.

Section 2.7 No Effect Upon City's Use of Police Powers. Nothing in this Agreement shall diminish the City's authority to enforce its ordinances and applicable State laws within the Access Easement Area.

ARTICLE III

MAINTENANCE LICENSE

Section 3.1 **Maintenance License.** Subject to the terms and conditions of this Easement Agreement, the City permits, authorizes and licenses the Association, on a non-exclusive basis, to enter the Adjacent Property for the purpose of performing the maintenance obligations of the Association set forth in ARTICLE 4.

ARTICLE IV

ASSOCIATION MAINTENANCE COVENANTS

Section 4.1 **Maintenance of Adjacent Property.** The entirety of the Adjacent Property shall be maintained by the Association in good condition and repair, at the sole cost and expense of the Association. The Association shall be responsible for the maintenance, repair, reconstruction and replacement of any and all asphalt, concrete, landscaping, utility systems, irrigation systems, drainage facilities or systems, grading, subsidence, retaining walls or similar support structures, foundations, and all other improvements on or to the Adjacent Property, now existing or made in the future, by or with the consent of the Association, as necessary to maintain the character of the Adjacent Property. Without limiting the generality of the foregoing, the maintenance of the Adjacent Property shall include (i) maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use, and durability; (ii) removing all papers, mud, sand, debris, filth and refuse and thoroughly sweeping areas to the extent reasonably necessary to keep areas in a clean and orderly condition; (iii) removing or covering graffiti with the type of surface covering originally used on the affected area, (iv) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines; and (v) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary. The Association shall maintain all the artificial lighting in the Adjacent Property. The Association may contract with a maintenance contractor to provide for performance of all or part of the duties and obligations of the Association with respect to the maintenance of the Adjacent Property; provided, however, that the Association shall remain responsible and liable for the maintenance of the Adjacent Property, at all times.

(a) If at anytime, there is an occurrence of an adverse condition on any area of the Adjacent Property in contravention of the general maintenance standards described in Section 4.1 (each, an "Adjacent Property Maintenance Default"), then the City may notify the Association in writing of the Adjacent Property Maintenance Default. If the Association fails to cure or commence and diligently pursue to cure the Adjacent Property Maintenance Default within thirty (30) calendar days following its receipt of notice of the Adjacent Property Maintenance Default, the City shall have the right to enter the Adjacent Property and perform all acts necessary to cure the Adjacent Property Maintenance Default, or to take any other action at law or in equity that may be available to the City to accomplish the abatement of the Adjacent Property Maintenance Default. All costs incurred by the City in abating any and every such

Adjacent Property Maintenance Default shall be paid to the City by the Association, upon demand. Any such amounts not paid to the City by the Association within seven (7) calendar days following written demand from the City for payment shall accrue interest at the rate of ten percent (10%) per annum from the date of demand, until paid in full.

(b) The provisions of this Section 4.1 shall also be covenants running with the land of the Property that are binding on all successive owners of the Property for the benefit of the Adjacent Property.

Section 4.2 Termination of Maintenance License. The City may terminate the Maintenance License upon sixty (60) calendar days advance written notice of termination to the Association, for any reason, and any such termination will also terminate the maintenance obligations of the Association and the covenants of the Association contained in Section 4.1 as of the Effective Date of such termination stated in the notice.

Section 4.3 Restoration of Adjacent Property. By the date of the expiration or earlier termination of the Maintenance License, the Association shall, at its sole cost and expense, remove all equipment, improvements, Permitted Vehicles, debris or other items brought onto or added to the Adjacent Property by the Association or its contractors in conjunction with its maintenance obligations, excluding fixtures and items reasonably required for the continued use and operation of the Adjacent Property, unless otherwise agreed in writing by the City.

Section 4.4 Mechanic's Liens. If (as a result of action by the Association or its agents and contractors) any Mechanic's Lien is recorded or asserted against the Adjacent property, or any interest in either such property, or the City, the Association shall cause such Mechanic's Lien to be satisfied and/or released, at the sole cost and expense of the Association, within thirty (30) calendar days following notice to the Association of the existence or assertion of such Mechanic's Lien. The Adjacent Property is owned by the City, which is a public entity, and as a result, such property is not subject to the imposition of Mechanic's Liens. The Association agrees to inform each provider of labor, material or services on or to the Adjacent Property of such fact that the City is not responsible for payment of any claims by any such providers of labor, material or services. The City shall have the right at all reasonable times to post and keep posted on the Adjacent Property any notices that the City may deem necessary for the protection of the City or such property from Mechanic's Liens or other claims. The Association shall give the City, at least, ten (10) calendar days prior written notice of the commencement of any work on the Adjacent Property that could give rise to a Mechanic's Lien or other similar claim or lien to enable the City to post any notices that the City may deem necessary for the protection of the City and/or such properties from Mechanic's Liens or such other claims.

ARTICLE V

PROPERTY CONDITIONS AND ENVIRONMENTAL MATTERS

Section 5.1 **“AS-IS” CONDITION OF ADJACENT PROPERTY.** THE ASSOCIATION ENTERS UPON THE ADJACENT PROPERTY PURSUANT TO THE ACCESS EASEMENT AND THE MAINTENANCE LICENSE, RESPECTIVELY, IN ITS “AS IS” CONDITION, WITH ALL FAULTS, AS OF THE DATE OF THIS AGREEMENT, AND THEREAFTER, AS IMPROVED AND/OR MAINTAINED BY THE ASSOCIATION AND/OR ITS CONTRACTORS. THE ASSOCIATION ACKNOWLEDGES THAT THE CITY MAKES AND HAS MADE NO WARRANTIES OR REPRESENTATIONS REGARDING THE CONDITION OF THE ADJACENT PROPERTY AND THAT THE ASSOCIATION HAS BEEN USING AND MAINTAINING THE ADJACENT PROPERTY, AS DESCRIBED IN THIS EASEMENT AGREEMENT, FOR MORE THAN TWENTY (20) YEARS AND IS RELYING SOLELY ON ITS OWN KNOWLEDGE AND INVESTIGATION OF THE ADJACENT PROPERTY IN ENTERING ONTO THE ADJACENT PROPERTY. THE CITY SHALL HAVE NO RESPONSIBILITY FOR INJURY OR DAMAGE TO ANY PERSON OR INJURY OR DAMAGE OR LOSS BY THEFT OF ANY PROPERTY OF THE ASSOCIATION OR ANY OTHER PERSONS ON ANY PORTION OF THE ADJACENT PROPERTY DURING THE TERM OF OR PURSUANT TO THIS EASEMENT AGREEMENT.

Section 5.2 **Unpermitted Events.** The Association shall not cause or permit any Hazardous Substance to be stored, released or discharged on, in, under or about the Adjacent Property in any manner in violation of any Environmental Laws, or in any manner requiring remediation or removal of any Hazardous Substance under any Environmental Laws, including, without limitation, leaks and discharges from vehicles, equipment and operations on the Adjacent Property. For purposes of this Easement Agreement, the storage, use, release or discharge of any Hazardous Substance in violation of the preceding sentence shall be referred to as an “Unpermitted Event.” If the Association discovers or receives notice of the occurrence of an Unpermitted Event, then the Association shall immediately remedy, repair and remediate any damage or harm caused by such Unpermitted Event, and shall notify the City of such Unpermitted Event, as soon as possible, but in all cases within seven (7) calendar days following the discovery by or notice to the Association of such Unpermitted Event.

Section 5.3 **Environmental Indemnity of the City by the Association.**

(a) The Association agrees, at its sole cost and expense, to fully indemnify, protect, hold harmless, and defend (with reasonable acceptability to the City) each and every City Party from and against any and all claims, demands, damages, losses, liabilities, obligations, penalties, fines, actions, causes of action, judgments, suits, proceedings, costs, disbursements and expenses, including, without limitation, attorney fees, disbursements and costs of attorneys, environmental consultants and other experts, and all foreseeable and unforeseeable damages or costs of any kind or of any nature whatsoever (collectively, “Environmental Claims”) that may, at any time, be imposed upon, incurred or suffered by, or claimed, asserted or awarded against, any City Party directly or indirectly relating to or arising from any of the following

“Environmental Matters” arising from and as a proximate result of the Association’s use of or entry upon the Adjacent Property:

(1) The presence of Hazardous Substances on, in, under, or affecting all or any portion of the Adjacent Property (except for Hazardous Substances, the presence of which pre-dates the Association’s use of the Adjacent Property);

(2) The storage, holding, handling, release, threatened release, discharge, generation, leak, abatement, removal or transportation of any Hazardous Substances on, in, under or from the Adjacent Property;

(3) The violation of any law, rule, regulation, judgment, order, permit, license, agreement, covenant, restriction, requirement or the like by the Association, its agents or contractors, relating to or governing in any way Hazardous Substances on, in, under, or affecting the Adjacent Property;

(4) The failure of the Association, its agents or contractors, to properly complete, obtain, submit and/or file any and all notices, permits, licenses, authorizations, covenants and the like in connection with the Association’s activities on the Adjacent Property;

(5) The implementation and enforcement by the Association, its agents or contractors of any monitoring, notification or other precautionary measures that may, at any time, become necessary to protect against the release, potential release or discharge of Hazardous Substances on, in, under, from or affecting the Adjacent Property;

(6) The failure of the Association, its agents or contractors, in compliance with all applicable Environmental Laws, to lawfully remove, contain, transport or dispose of any Hazardous Substances existing, stored or generated on, in, under or from the Adjacent Property (except for Hazardous Substances, the presence of which is not the result of any action by the Association or its agents);

(7) Any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency in connection with any Hazardous Substances on, in, under, from or affecting the Adjacent Property (except for Hazardous Substances, the presence of which is not the result of any action by the Association) or the violation by Association of any Environmental Law relating to the Adjacent Property;

(b) The Association shall pay to the City all costs and expenses including, without limitation, reasonable attorneys fees and costs, incurred by the City in connection with enforcement of the aforementioned environmental indemnity.

(c) All obligations of the Association under the environmental indemnity given in this Section 5.3 are payable on demand from the City. Any amount due and payable under this Section 5.3 to the City that is not paid within ten (10) calendar days after written demand from the City for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of ten percent (10%) per annum. The Association shall also pay to the City all costs and expenses, including, without

limitation, reasonable attorneys fees and costs, incurred by the City in connection with the environmental indemnity given in this Section 5.3 or the enforcement such environmental indemnity. The environmental indemnity given by the Association in this Section 5.3 will survive expiration or earlier termination of this Agreement, until all such Environmental Claims are completely barred by applicable statutes of limitation.

ARTICLE VI

INDEMNITY AND INSURANCE

Section 6.1 **Indemnification.**

(a) The Association's Indemnification of the City Parties. Except as otherwise provided in this Agreement, in addition to any other specific indemnity obligations contained in this Easement Agreement and to the fullest extent permitted by law, the Association shall, at the Association's sole expense and with counsel reasonably acceptable to the City, indemnify, defend, and hold harmless the City Parties from and against all Claims, as defined in Section (b), arising out of or relating (directly or indirectly) to: (1) any act, error, omission, or other negligence of the Association or of any agent or contractor of the Association relative to the activities of any of them on the Adjacent Property pursuant to this Easement Agreement or (2) any breach or default in the performance of any obligation of the Association under this Easement Agreement.

(b) Definition of Claims. For purposes of this Easement Agreement, "Claims" means any and all claims, losses, costs, damage, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, at law or in equity, or otherwise), charges, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys fees) including, but not limited to, claims for: (1) injury to any persons (including death at any time resulting from that injury); (2) loss of, injury or damage to, or destruction of property (including all loss of use resulting from that loss, injury, damage, or destruction); and (3) all economic losses and consequential or resulting damage of any kind.

(c) Strict Liability. The indemnification obligation of the Association shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more of the City Parties. The indemnification obligations of the Association shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a Claim against a City Party was proximately caused by the negligence or willful misconduct of that City Party. In such event, however, the Association's indemnification obligations to all other City Parties shall be unaffected.

(d) Indemnification Independent of Insurance Obligations. The Association's indemnification obligations pursuant to this Section 6.1 shall not be construed or interpreted as in any way restricting, limiting, or modifying the Association's insurance or other obligations under this Easement Agreement and is independent of the Association's insurance and other obligations. The Association's compliance with its insurance requirements and other obligations under this Easement Agreement shall not in any way restrict, limit, or modify the Association's indemnification obligations under this Easement Agreement.

(e) Survival of Indemnification. The Association's indemnification obligations pursuant to this Section 6.1 shall survive the expiration or earlier termination of this Easement Agreement, until all Claims against any of the City Parties involving any of the indemnified matters are completely barred by the applicable statutes of limitations.

(f) Duty to Defend. All obligations of the Association under the environmental indemnity given in this Section 6.1 are payable on demand from the City. Any amount due and payable under this Section 6.1 to the City that is not paid within ten (10) calendar days after written demand from the City for payment of such amount, with an explanation of the amounts demanded, will bear interest from the date of the demand at the rate of ten percent (10%) per annum. The Association shall also pay to the City all costs and expenses, including, without limitation, reasonable attorneys fees and costs, incurred by the City in connection with the environmental indemnity given in this Section 6.1 or the enforcement such environmental indemnity. The environmental indemnity given by the Association in this Section 6.1 will survive expiration or earlier termination of this Agreement, until all such Environmental Claims are completely barred by applicable statutes of limitation.

Section 6.2 Liability Insurance Coverage.

(a) At all times during the term of this Easement Agreement, the Association shall, at the Association's sole expense, obtain and maintain the liability insurance coverage set forth in this Section 6.2 for the protection of the City Parties.

(1) Commercial General Liability Insurance. The Association shall obtain commercial general liability insurance written on an "occurrence" policy form, covering bodily injury and property damage, with endorsements providing broad form property damage liability coverage, contractual liability to cover liability assumed under this Easement Agreement, completed operations liability coverage pollution liability coverage and coverage for explosion, collapse and underground hazards, and with a combined single limit coverage of, at least, two million dollars (\$2,000,000) per occurrence plus excess umbrella liability coverage of \$200,000,000. The commercial general liability insurance policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Easement Agreement as an 'insured contract' for the performance of the Association's indemnity obligations under this Easement Agreement.

(2) The Association's Workers' Compensation and Employer Liability Coverage. During the time that the Association is obligated to maintain the Adjacent Property pursuant to Section 4.1, the Association shall procure and maintain workers' compensation insurance as required by law and employer's liability insurance with limits of no less than One Million Dollars (\$1,000,000) plus excess umbrella liability coverage of \$200,000,000. By executing this Easement Agreement, the Association makes the following certification, required by Section 1861 of the Labor Code:

"I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the

provisions of that code, and I will comply with such provisions before commencing the performance of the work of the License Agreement.”

(3) The Association’s Automobile Liability Coverage. Automobile Liability Insurance against claims of personal injury (including bodily injury and death) and property damage covering all owned, leased, hired and non-owned vehicles used by the Association with a minimum aggregate limit for bodily injury and property damage of, at least, one million dollars (\$1,000,000), . Such automobile liability insurance shall be provided by a business or commercial vehicle policy.

(b) During the time that the Association is obligated to maintain the Adjacent Property pursuant to Section 4.1, the Association shall cause all of its contractors entering on the Adjacent Property, for any reason, pursuant to this Easement Agreement, to maintain all of the same liability insurance coverage required of the Association in this Section 6.2 or cause such contractors to be covered under the liability insurance policies obtained and maintained by the Association in satisfaction of the insurance requirements of this Easement Agreement.

Section 6.3 **General Insurance Requirements.**

(a) Primary Insured. The Association shall be the first or primary named insured on each policy of insurance obtained or maintained by the Association in satisfaction of the insurance requirements of this Easement Agreement.

(b) Additional Insured Endorsements. The City Parties shall be named by endorsement as additional insured under the Association’s commercial general liability insurance policy on an ISO Form CG 20 11 11 85 or equivalent form reasonably acceptable to the City, with such modifications as the City may require. The City Parties shall also be named as additional insured under the Association’s automobile liability insurance policies on an endorsement form reasonably acceptable to the City.

(c) Cross-Liability; Severability of Interests. The Association’s commercial general liability and automobile liability policies shall be endorsed to provide cross-liability coverage for the Association and the City Parties and to provide severability of interests.

(d) Primary Insurance Endorsements for Additional Insured. The Association’s commercial general liability and automobile liability policies shall be endorsed to provide that the insurance afforded by those policies to the additional insured is primary and that all insurance carried by the City Parties is strictly excess and secondary and shall not contribute with any commercial general liability or automobile liability policies carried by the City Parties.

(e) Scope of Coverage for Additional Insured. The coverage afforded to the City Parties as an additional insured under any policy obtained or maintained by the Association in satisfaction of the insurance requirements of this Easement Agreement must be at least as broad as that afforded to the Association and may not contain any terms, conditions, exclusions, or limitations applicable to the City Parties that do not apply to the Association.

(f) Delivery of Certificate, Policy, and Endorsements. Prior to any entry onto the Adjacent Property by the Association or its agents pursuant to this Easement Agreement, the Association shall deliver to the City Manager certified copies of the Association's liability policies, the endorsements required by this Section 6.3 and original certificates of insurance for each policy, executed by an authorized agent of the insurer or insurers, evidencing compliance with the liability insurance requirements of this Easement Agreement. The certificates shall provide for no less than thirty (30) days' advance written notice to the City Manager from the insurer or insurers of any cancellation, non-renewal, or material change in coverage or available limits of liability and shall confirm compliance with the liability insurance requirements in this Easement Agreement. The Association shall also deliver copies of each policy or policies, all required endorsements and certificates to the City Manager: (a) at least thirty (30) days before the expiration date of any policy and (b) upon renewal of any policy. The "endeavor to" and "failure to mail such notice shall impose no obligation or liability of any kind upon the Company" language and any similar language shall be stricken from the certificate. Receipt by the City Manager of evidence of insurance that does not comply with the requirements of this Easement Agreement shall not constitute a waiver of the insurance requirements of this Easement Agreement.

(g) Concurrency of Primary, Excess, and Umbrella Policies. The Association's liability insurance coverage may be provided by a combination of primary, excess, and umbrella policies, but those policies must be absolutely concurrent in all respects regarding the coverage afforded by the policies. The coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy.

(h) Survival of Insurance Requirements. The Association shall, at the Association's sole expense maintain in full force and effect the liability insurance coverage required under this Easement Agreement and shall maintain the City Parties as additional insured for a period of no less than two (2) years after expiration or earlier termination of this Easement Agreement.

(i) Insurance Independent of Indemnification. The insurance requirements set forth in Section 6.3 are independent of the Association's indemnification and other obligations under this Easement Agreement and shall not be construed or interpreted in any way to restrict, limit, or modify the Association's indemnification or other obligations or to limit the Association's liability under this Easement Agreement, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall the provision of such insurance preclude the City from taking such other actions as are available to it under any other provision of this Easement Agreement or otherwise at law or in equity.

(j) Admitted Carriers. Each policy of insurance obtained or maintained by the Association in satisfaction of the insurance requirements of this Easement Agreement must be issued by an insurance company with a rating of no less than A:VIII in the current Best's Insurance Guide as of the date of issuance of the insurance policy, or that is otherwise acceptable to the City Manager, and admitted to engage in the business of insurance in the State of California by the California Department of Insurance.

(k) Deductibles and Self-Insured Retentions. All deductibles and self-insured retentions under the Association's policies are subject to the reasonable prior written approval of the City Manager. The Association shall pay any and all deductibles and self-insured retentions regarding Claims against the City Parties.

(l) Right to Procure Insurance at the Association's Expense. If the Association fails to procure and maintain the insurance required of it under this Easement Agreement and does not cure such failure within ten (10) calendar days of the date of notice of such failure to the Association, the City may, but shall not be required to, procure and maintain such insurance and be reimbursed for the cost of such insurance by the Association.

(m) No Representation Regarding Adequacy of Insurance. The City makes no representation that the limits or forms of coverage of insurance specified in this Easement Agreement are adequate to cover the Association's property, business operations or obligations under this Easement Agreement.

(n) Waiver of Subrogation. The Association shall cause each of the carriers issuing any insurance policy obtained or maintained in satisfaction of the insurance requirements of this Easement Agreement to waive any right of subrogation that such carrier may have or acquire in the future against the City Parties in a form acceptable to the City Manager.

ARTICLE VII

DEFAULT AND REMEDIES

Section 7.1 **Events of Default.** In addition to other acts or omissions of the Association that may legally or equitably constitute a default under or breach of this Easement Agreement, the occurrence of any of the following specific events shall constitute an "Event of Default" under this Easement Agreement that:

(a) Failure or delay by the Association in honoring or performing any term or provision of this Easement Agreement, subject to the notice and cure provisions of Section 7.2;

(b) The Association fails to pay any amount due or becoming due to the City under this Easement Agreement within thirty (30) calendar days after demand for such payment;

(c) The Association uses or allows the use of the Adjacent Property for activities that are not expressly permitted in this Easement Agreement;

(d) The Association or any of its contractors fails to obtain or maintain any insurance required under this Easement Agreement;

(e) The Association seeks to restrict or prevent the City's or the public's use of the Adjacent Property, in any way;

(f) The Association fails to timely satisfy its indemnity obligations pursuant to Section 7.2;

(g) The occurrence of an Unpermitted Event caused or permitted by the Association or any of its contractors that is not promptly remediated pursuant to Section 5.2;

(h) The Association attempts to assign, encumber or otherwise transfer its rights under this Easement Agreement in contravention of the terms of this Easement Agreement;

(i) The Association sells or otherwise transfers ownership of the Property or the Access Easement, except sales of condominium interests in the condominium development existing on the Property as of the date of this Easement Agreement;

(j) The Association ceases to exist as a California non-profit mutual benefit corporation;

(k) The Association is not in good standing with either the State of California Secretary of State or Franchise Tax Board.

Section 7.2 Notice of Default. The Party who alleges that a default under this Easement Agreement has occurred shall give the defaulting Party written notice of default specifying the alleged default, which if uncured by the Party alleged to be in default within sixty (60) calendar days following receipt of such notice, shall be deemed to be an Event of Default. Delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default; provided, however, a Party shall not exercise any remedy for a default (other than an Event of Default), without first delivering the written notice of default required in this Section 7.2. If a default by a Party remains uncured for more than sixty (60) calendar days following receipt of written notice, as provided above, an Event of Default shall be deemed to have occurred.

Section 7.3 Remedies. Upon the occurrence of an Event of Default, the non-defaulting Party shall be entitled to take any action authorized by this Easement Agreement and/or commence legal proceedings to enforce such contractual remedy and/or pursue any other remedy or damages available to such Party at law or in equity relating to such Event of Default.

Section 7.4 Rights and Remedies Cumulative. The rights and remedies of the Parties under this Easement Agreement are cumulative with any other right or power of the Parties under this Easement Agreement at law or in equity, and the exercise of one or more of such rights or remedies by a Party shall not preclude the exercise by that Party at the same or different times, of any other right or remedy for the same default.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.1 Taxes and Assessments. The Association shall pay prior to delinquency all real property taxes, possessory interest taxes, assessments, and other charges that may be levied, assessed, or charged against all or any portion of the Association's interests under this Easement Agreement (subject to the right of the Association to contest the imposition of such taxes or assessments).

Section 8.2 Compliance with Laws. The Association shall observe and comply with all laws, ordinances, rules and regulations of the United States, the State of California, the County of San Diego and the City of Oceanside, and all agencies of any of them applicable to the activities of the Association on the Adjacent Property pursuant to this Easement Agreement.

Section 8.3 City Ownership of the Adjacent Property. The Association acknowledges and agrees that the City is the sole and exclusive owner of the Access Easement Area within the Adjacent Property, and the remainder of the Adjacent Property is owned by the United States Government. This Easement Agreement does not and is not intended to give the Association or any other person any interest in any such property, other than the Access Easement and the exclusive parking rights. The Parties agree that, if any provision or provisions of this Easement Agreement is or are construed or interpreted to create any interest in the Adjacent Property, other than the Access Easement and the parking easement, in favor of the Association or any other person, such provision or provisions of this Easement Agreement shall immediately become void and of no further force or effect.

Section 8.4 City Reservation of Rights. The agents, contractors and employees of the City may enter onto the Adjacent Property, at any time, to inspect such property to determine the Association's compliance or non-compliance with the terms of this Easement Agreement, or for any other purpose that does not unreasonably interfere with the conduct of the permitted activities of the Association or its contractors allowed pursuant to this Easement Agreement. Nothing in this Easement Agreement shall prevent the City from using the Adjacent Property for the uses of such property allowed under this Easement Agreement, nor shall anything contained in this Easement Agreement terminate, prohibit or otherwise limit the continued public use of the Adjacent Property, provided such use does not unreasonably interfere with the Association's rights of ingress and egress.

Section 8.5 Incorporation of Recitals. The Recitals of fact preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

Section 8.6 No Intended Third-Party Beneficiaries. The Parties intend that the rights and obligations under this Easement Agreement shall benefit and burden only the Parties, and do not intend to create any rights in, or right of action to or for the use or benefit of any third person, including any governmental agency that is not one of the Parties to this Agreement. No third person shall have any right or power to enforce any provision of this Easement Agreement on behalf of the City or to compel the City to enforce any provision of this Easement Agreement against the Association.

Section 8.7 Amendments. This Easement Agreement may be amended or modified at any time by recording in the official records of the Recorder of the County of San Diego, California, an instrument in writing reciting such amendment or modification and bearing the notary acknowledged signatures of the authorized representative(s) of both the Association and the City.

Section 8.8 No Dedication. The provisions of this Easement Agreement are not intended to and shall not constitute a dedication for public use, and the rights and easements granted in this Easement Agreement created are private and for the benefit of only the Parties to this Easement Agreement and their respective successors and assigns.

Section 8.9 Agreement Effective upon Recordation. This Easement Agreement shall only be effective upon its recordation in the official records of the Recorder of the County of San Diego, California. This Easement Agreement shall be recorded against both the Adjacent Property and the Property at the Close of Escrow under the Purchase Agreement, and no sooner. (The Easement Agreement shall be recorded prior to the recording of the deed from the City to the Association).

Section 8.10 No Continuing Obligation. No Party, nor any successive owner of all or any portion of either the Property or the Adjacent Property, shall be liable or responsible for any obligation under this Easement Agreement accruing after the conveyance or transfer of their ownership of such property, except for obligations arising prior to such conveyance or transfer of ownership.

Section 8.11 Counterparts. This Easement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 8.12 Constructive Notice. Every person who acquires any right, title, or interest in or to any portion of the Adjacent Property or the Property following the recordation of this Easement Agreement shall be conclusively deemed to have consented to and agreed to the terms of this Easement Agreement, whether or not reference to this Easement Agreement is contained in the instrument by which such person acquires such right, title or interest.

Section 8.13 Survival of Provisions. Notwithstanding the expiration or earlier termination of this Easement Agreement, the Parties' rights and obligations pursuant to Sections 4.4, 5.1, 5.3, 6.1 through 6.3, inclusive, and 8.1 of this Easement Agreement shall survive and remain in full force and effect.

Section 8.14 Notices. For the purposes of this Easement Agreement, communications and notices between the Parties shall be in writing and shall be deemed to have been given when actually delivered, if given by personal delivery or transmitted by a nationally recognized overnight delivery service with recipient's signature as proof of delivery, and addressed as follows:

To the City:

City of Oceanside
300 North Coast Highway
Oceanside, California 92054
Attention: City Manager

To the Association:

Oceanside Marina Towers Association
1200 Harbor Drive North
Oceanside, California 92054
Attention: Secretary

Section 8.15 Attorney Fees and Costs. For the purposes of this Easement Agreement, all references to reasonable attorneys' fees and costs in reference to the City are intended to include the salaries, benefits and costs of the City Attorney and the lawyers employed in the Office of the City Attorney. In the event of any litigation filed by either Party, the prevailing party shall be entitled to reasonable attorneys' fees.

Section 8.16 Governing Law. The Parties acknowledge and agree that this Easement Agreement has been negotiated, entered into, is to be completely performed in and relates to real property located in the City of Oceanside, California. The Parties expressly agree that this Easement Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

Section 8.17 Partial Invalidity. If any term or provision or portion of any term or provision of this Easement Agreement or the application of any such term or provision to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Easement Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Easement Agreement shall be valid and enforced to the fullest extent permitted by law.

Section 8.18 Assignment. Except with respect to the transfer of interests to the Members of the Association in connection with their purchase of undivided interests as condominium owners, the Association shall not encumber, assign, or otherwise transfer this Easement Agreement, or any right or interest in this Easement Agreement to any other person, except a successor in fee title to the entirety of the Property. Any encumbrance, assignment, or transfer, in violation of the Easement Agreement, whether voluntary or involuntary, by operation of law or otherwise of any right or interest in this Easement Agreement by the Association, is void. The obligations of the Association under this Agreement with respect to maintenance of the Adjacent Property may not be assigned to the Members of the Association, and shall remain the obligation of the Association notwithstanding the transfer or assignment of interests under this Agreement to such Members.

Section 8.19 Waivers. No waiver of any breach of any covenant or provision contained in this Easement Agreement shall be deemed a waiver of any preceding or succeeding breach such covenant or provision, or of any other covenant or provision contained in this Easement Agreement. No extension of the time for performance of any obligation or act to be performed under this Easement Agreement shall be deemed to be an extension of the time for performance of any other obligation or act to be performed under this Easement Agreement.

Section 8.20 Construction. Headings at the beginning of each section and sub-section of this Easement Agreement are solely for the convenience of reference of the Parties and are not a part of this Easement Agreement. Whenever required by the context of this Easement Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Easement Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared it. Unless otherwise indicated, all references to sections are to this Easement Agreement. All exhibits referred to in this Easement Agreement are attached to this Easement Agreement. If the date on which any action is required to be performed under the terms of this Easement Agreement is not a business day of the City, the action shall be taken or performed on the next succeeding business day of the City.

Section 8.21 Entire Agreement. This Easement Agreement (including all exhibits attached to this Easement Agreement) is the final expression of, and contains the entire agreement between the Parties with respect to the subject matter of this Easement Agreement and supersedes all prior understandings between the Parties with respect to the Access Easement and the maintenance of the Adjacent Property. This Easement Agreement may not be modified, changed, supplemented or terminated, nor may any obligations under this Easement Agreement be waived, except by mutual written instrument signed by the both parties, except for the rights of the City under Sections 4.2 and 7.4.

Section 8.22 Counterparts. This Easement Agreement may be executed by the Parties in one or more counterparts, each of which shall be an original, and all of which together shall constitute a single instrument. This Easement Agreement may be executed by facsimile signatures, and each facsimile counterpart, when taken together, shall be deemed an original.

[Signatures on following page]

IN WITNESS WHEREOF, the City and the Association have executed this Easement Agreement by and through the signatures of their authorized representative(s), below:

CITY:

CITY OF OCEANSIDE, a California
municipal corporation

By: _____
Jim Wood
City Mayor

ATTEST:

Barbara Riegel Wayne
City Clerk

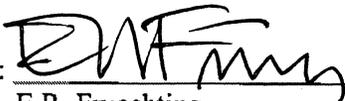
APPROVED AS TO FORM:

Oceanside City Attorney

John Mullen

ASSOCIATION:

OCEANSIDE MARINA TOWERS
ASSOCIATION, a California non-profit
mutual benefit corporation

By: 
E.R. Fruechting
President

By: 
David Wilson
Secretary

[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]

STATE OF CALIFORNIA

)

) ss.

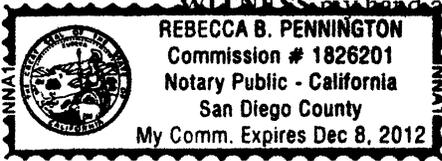
COUNTY OF

)

On this 25 day of MARCH, 2009, before me, ~~REBECCA PENNINGTON~~ Notary Public, personally appeared ANDREW WILSON who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Rebecca Pennington
Notary Public, State of California

STATE OF CALIFORNIA

)

) ss.

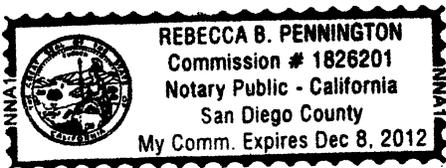
COUNTY OF

)

On this 25 day of MARCH, 2009, before me, ~~REBECCA PENNINGTON~~ Notary Public, personally appeared E. P. ERUECHING who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.



Rebecca Pennington
Notary Public, State of California

APPLICANT: City of Oceanside

CERTIFICATE OF COMPLIANCE
CONTINUATION

EXHIBIT "A"
LEGAL DESCRIPTION

THAT PORTION OF SECTION 22, TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO UNITED STATES GOVERNMENT SURVEY APPROVED APRIL 5, 1881, DESCRIBED AS PARCEL 2 IN CORPORATION GRANT DEED TO THE CITY OF OCEANSIDE RECORDED JULY 26, 1960 AS FILE/ PAGE NO. 151177 AND LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 14, 1975 AS FILE/PAGE NO. 75-085622, BOTH OF OFFICIAL RECORDS, ALL AS SHOWN ON MISCELLANEOUS MAP NO. 448, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 27, 1962 AS FILE/PAGE NO. 128125 OF OFFICIAL RECORDS;

THENCE ALONG THE SOUTHEASTERLY LINE OF RANCHO SANTA MARGARITA Y LAS FLORES AS SHOWN ON SAID MISCELLANEOUS MAP NO. 448 SOUTH 47°22'00" WEST 279.19 FEET TO THE NORTHWEST CORNER OF THE LAND DESCRIBED IN EXHIBIT 'A' OF AMENDED LEASE RECORDED SEPTEMBER 12, 1974 AS FILE/PAGE NO. 74-246957 OF OFFICIAL RECORDS, AND A POINT ON A 95.00 FOOT RADIUS CURVE DESCRIBED IN SAID EXHIBIT 'A';

THENCE SOUTHEASTERLY ALONG THE WESTERLY BOUNDARY OF SAID LAND THROUGH A CENTRAL ANGLE OF 37°25'23" A DISTANCE OF 62.05 FEET;

THENCE SOUTH 58°39'42" EAST 35.02 FEET;

THENCE LEAVING SAID WESTERLY BOUNDARY SOUTH 54°44'13" EAST 123.67 FEET;

THENCE SOUTH 50°58'29" EAST 88.95 FEET;

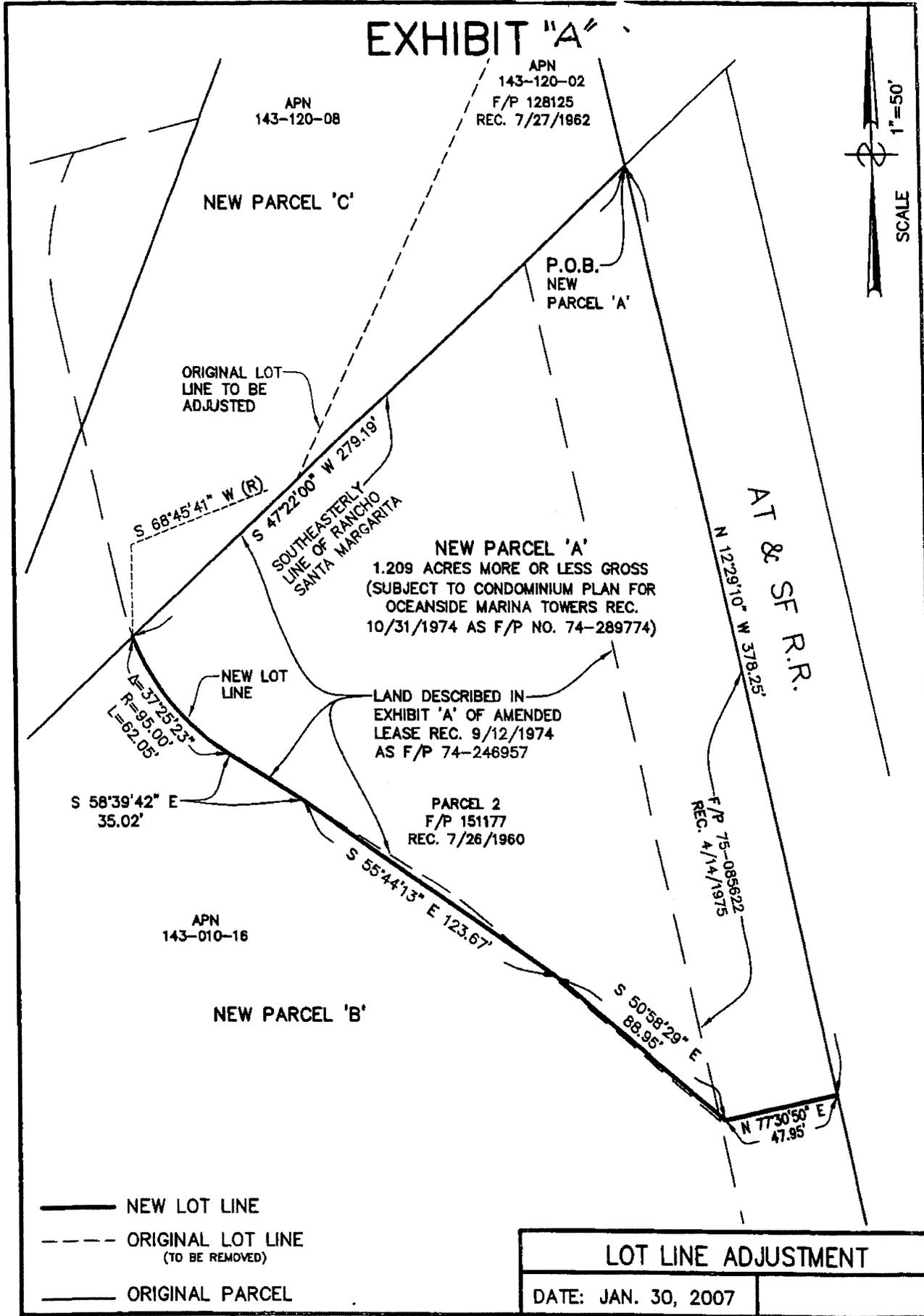
THENCE NORTH 77°30'50" EAST 47.95 FEET TO THE EASTERLY LINE OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 14, 1975 AS FILE/PAGE NO. 75-085622 OF OFFICIAL RECORDS

THENCE ALONG SAID EASTERLY LINE NORTH 12°29'10" WEST 378.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.209 ACRES MORE OR LESS.

SUBJECT TO CONDOMINIUM PLAN FOR OCEANSIDE MARINA TOWERS RECORDED OCTOBER 31, 1974 AS FILE/PAGE NO. 74-289774.

EXHIBIT "A"



APN
143-120-08

APN
143-120-02
F/P 128125
REC. 7/27/1962

NEW PARCEL 'C'

P.O.B.
NEW
PARCEL 'A'

ORIGINAL LOT
LINE TO BE
ADJUSTED

S 68°45'41" W (R)

S 47°22'00" W 279.19'
SOUTHEASTERLY
LINE OF RANCHO
SANTA MARGARITA

NEW PARCEL 'A'
1.209 ACRES MORE OR LESS GROSS
(SUBJECT TO CONDOMINIUM PLAN FOR
OCEANSIDE MARINA TOWERS REC.
10/31/1974 AS F/P NO. 74-289774)

AT & SF R.R.
N 12°29'10" W 378.25'

L=37.25'
R=95.00'
L=62.05'

NEW LOT
LINE

LAND DESCRIBED IN
EXHIBIT 'A' OF AMENDED
LEASE REC. 9/12/1974
AS F/P 74-246957

S 58°39'42" E
35.02'

PARCEL 2
F/P 151177
REC. 7/26/1960

F/P 75-085622
REC. 4/14/1975

APN
143-010-16

S 55°44'13" E 123.67'

NEW PARCEL 'B'

S 50°58'29" E
88.95'

N 77°30'50" E
47.95'

- NEW LOT LINE
- - - ORIGINAL LOT LINE
(TO BE REMOVED)
- ORIGINAL PARCEL

LOT LINE ADJUSTMENT

DATE: JAN. 30, 2007



EXHIBIT "B"
LEGAL DESCRIPTION OF ACCESS EASEMENT

APNS: 143-120-02, 143-120-04 & 143-120-08

VESTING: VESTING: CITY OF OCEANSIDE, A MUNICIPAL CORPORATION

THAT PORTION OF RANCHO SANTA MARGARITA Y LAS FLORES DESCRIBED IN QUITCLAIM DEEDS TO THE CITY OF OCEANSIDE RECORDED JULY 21, 1960 AS FILE/PAGE NO. 147820 AND RECORDED JULY 27, 1962 AS FILE/PAGE NO. 128125, AND RECORDED OCTOBER 20, 1965 AS FILE/PAGE NO. 190800, ALL OF OFFICIAL RECORDS, AS SHOWN ON MISCELLANEOUS MAP NO. 448, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 27, 1962 AS FILE/PAGE NO. 128125 OF OFFICIAL RECORDS;

THENCE ALONG THE SOUTHEASTERLY LINE OF RANCHO SANTA MARGARITA Y LAS FLORES AS SHOWN ON SAID MISCELLANEOUS MAP NO. 448 SOUTH 47°22'00" WEST 278.23 FEET TO A POINT ON A NON-TANGENT 91.35 FOOT RADIUS CURVE, CONCAVE EASTERLY, A RADIAL FROM SAID POINT BEARS NORTH 69°05'29" EAST;

THENCE LEAVING SAID SOUTHERLY LINE OF RANCHO SANTA MARGARITA Y LAS FLORES, NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 8°17'03" A DISTANCE OF 13.21 FEET;

THENCE NORTH 12°37'28" WEST 112.15 FEET TO THE BEGINNING OF A 93.00 FOOT RADIUS CURVE, CONCAVE EASTERLY;

THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°10'17" A DISTANCE OF 78.19 FEET TO THE NORTHERLY BOUNDARY OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED OCTOBER 20, 1965 AS FILE/PAGE NO. 190800;

THENCE ALONG SAID NORTHERLY BOUNDARY, NON-TANGENT TO SAID CURVE, NORTH 75°35'33" EAST 44.38 FEET TO THE BOUNDARY OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 21, 1960 AS FILE/PAGE NO. 147820 ALSO BEING THE LINE BETWEEN CORNER NO. 14 AND CORNER NO. 15 AS SHOWN ON SAID MISCELLANEOUS MAP NO. 448;

THENCE ALONG SAID BOUNDARY NORTH 22°05'01" EAST 28.61 FEET TO AN ANGLE POINT IN SAID BOUNDARY;

THENCE CONTINUING ALONG SAID BOUNDARY NORTH 87°16'26" EAST 113.03 FEET TO AN ANGLE POINT THEREIN, SAID ANGLE POINT BEING THE NORTHWEST CORNER OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 27, 1962 AS FILE/PAGE NO. 128125;

THENCE ALONG THE NORTHERLY BOUNDARY OF SAID LAND DESCRIBED IN QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED JULY 27, 1962 AS FILE/PAGE NO. 128125 NORTH 77°30'50" EAST 39.06 FEET TO THE NORTHEAST CORNER OF SAID LAND;

THENCE ALONG THE EASTERLY BOUNDARY OF SAID LAND SOUTH 12°29'10" EAST 60.84 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.73 ACRES MORE OR LESS

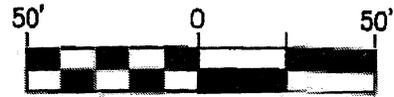
ATTACHED HERETO AND MADE A PART HEREOF THIS LEGAL DESCRIPTION IS A PLAT
LABELED EXHIBIT "B"

THIS REAL PROPERTY DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY
DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

MICHAEL SCHLUMPBERGER, PLS 7790

DATE

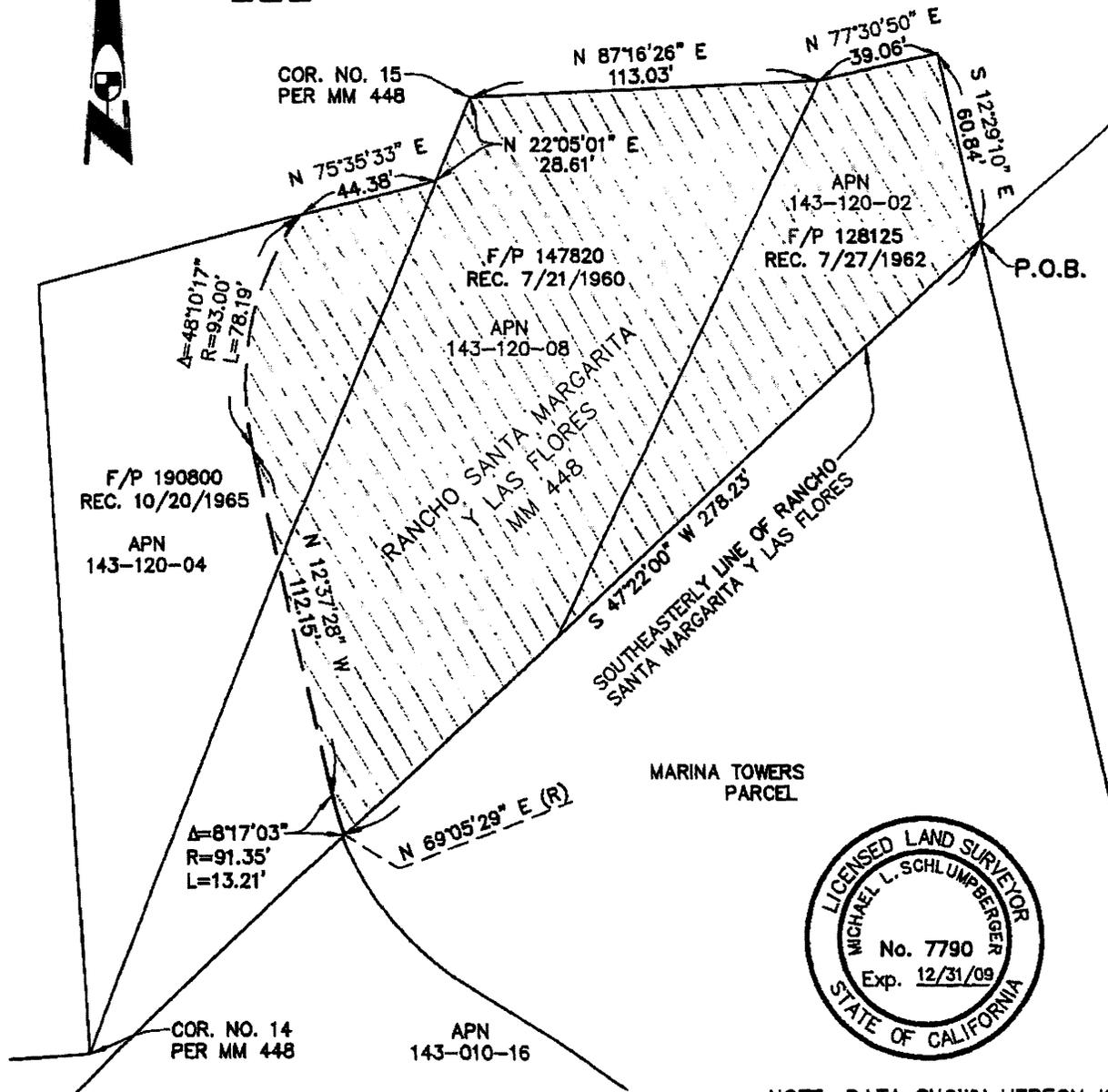
EXHIBIT "B"



GRAPHIC SCALE
1 INCH = 50 FT.



DENOTES AREA OF EASEMENT.
0.73 ACRES MORE OR LESS.



NOTE: DATA SHOWN HEREON IS
BASED ON RECORD INFORMATION.

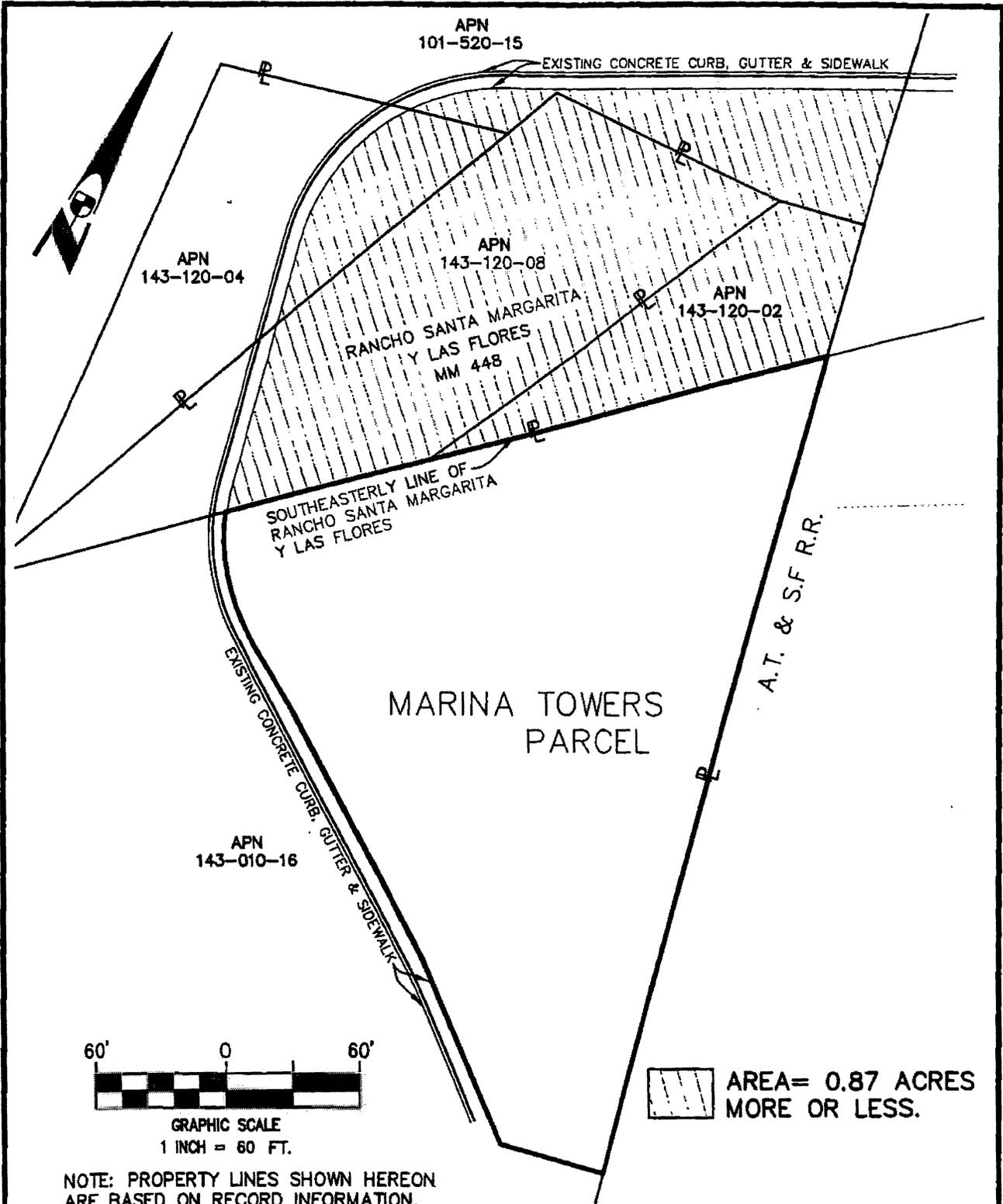
MARINA TOWERS EASEMENT

VESTING: THE CITY OF OCEANSIDE, A
MUNICIPAL CORPORATION

DATE: JAN. 29, 2008

Right-Of-Way Engineering Services, Inc.
Land Surveying
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
FILE NAME: Marina Towers Esmt Plat.dwg

EXHIBIT "C"



GRAPHIC SCALE
1 INCH = 60 FT.

AREA = 0.87 ACRES
MORE OR LESS.

NOTE: PROPERTY LINES SHOWN HEREON
ARE BASED ON RECORD INFORMATION.

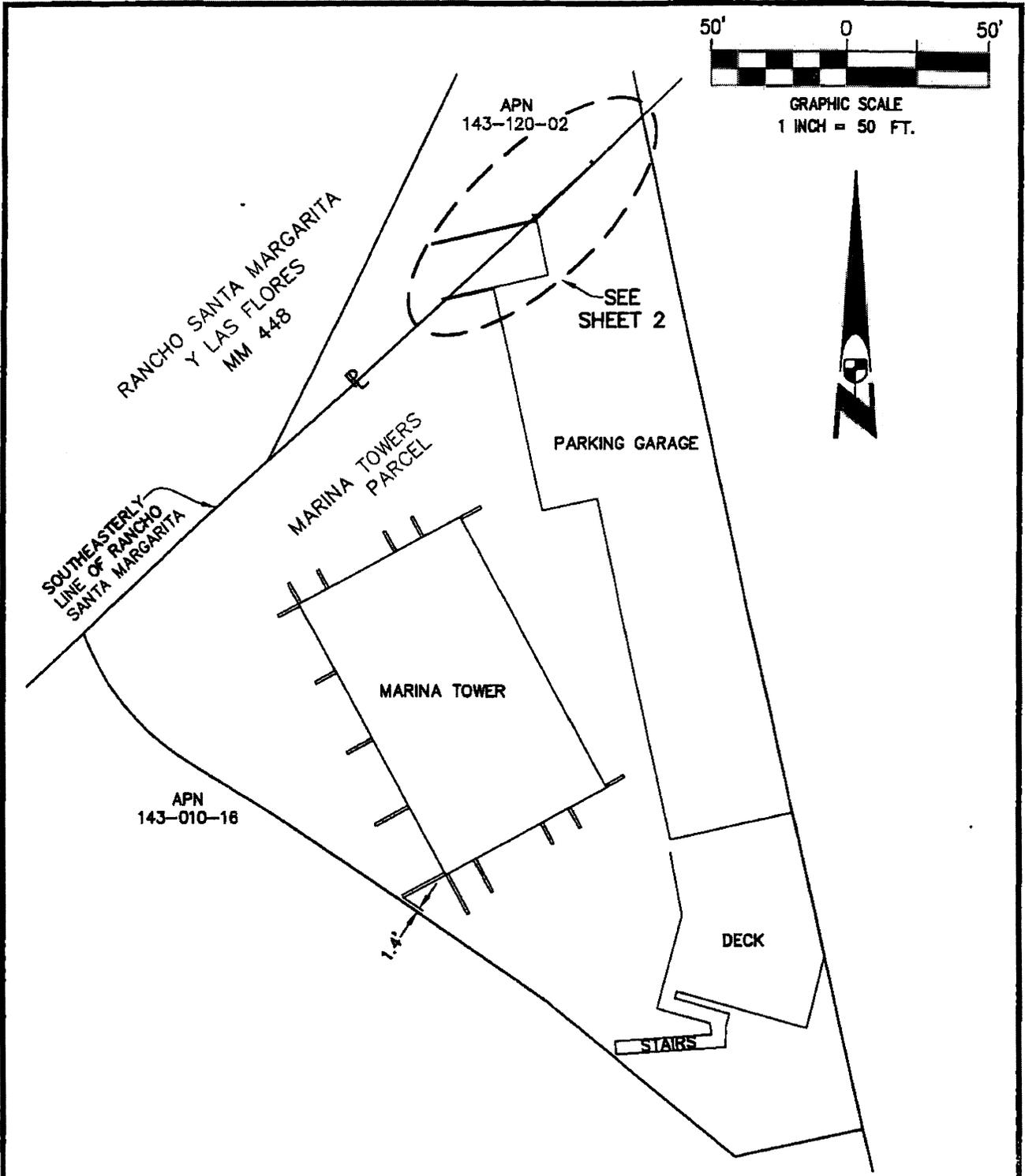
Right-Of-Way Engineering Services, Inc.
 Land Surveying
 4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
 (760) 732-1368 FAX (760) 732-1367
 FILE NAME: Marina Towers Adjacent Property Plat.dwg

MARINA TOWERS
ADJACENT PROPERTY EXHIBIT

DATE: FEB. 5, 2008

SHEET 1 OF 1

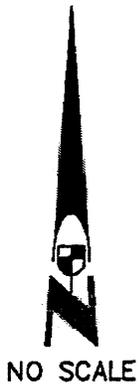
EXHIBIT "D"



NOTE: PROPERTY LINES SHOWN HEREON ARE BASED ON RECORD INFORMATION.

Right-Of-Way Engineering Services, Inc.
 Land Surveying
 4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
 (760) 732-1366 FAX (760) 732-1367
 FILE NAME: Marina Towers Encroachment Plat.dwg

MARINA TOWERS ENCROACHMENTS AND NON-CONFORMING SETBACKS	
DATE: JAN. 29, 2008	SHEET 1 OF 2



RANCHO SANTA MARGARITA
Y LAS FLORES
MM 448
APN
143-120-02

PARKING GARAGE

MARINA TOWERS
PARCEL
APN
143-010-16

NOTE: PROPERTY LINES SHOWN HEREON
ARE BASED ON RECORD INFORMATION.

Right-Of-Way Engineering Services, Inc.
Land Surveying
4187 Avenida de la Plata Ste. 114 · Oceanside, CA 92056
(760) 732-1366 FAX (760) 732-1367
FILE NAME: Marina Towers Encroachment Plat.dwg

MARINA TOWERS ENCROACHMENTS AND NON-CONFORMING SETBACKS	
DATE: JAN. 29, 2008	SHEET 2 OF 2

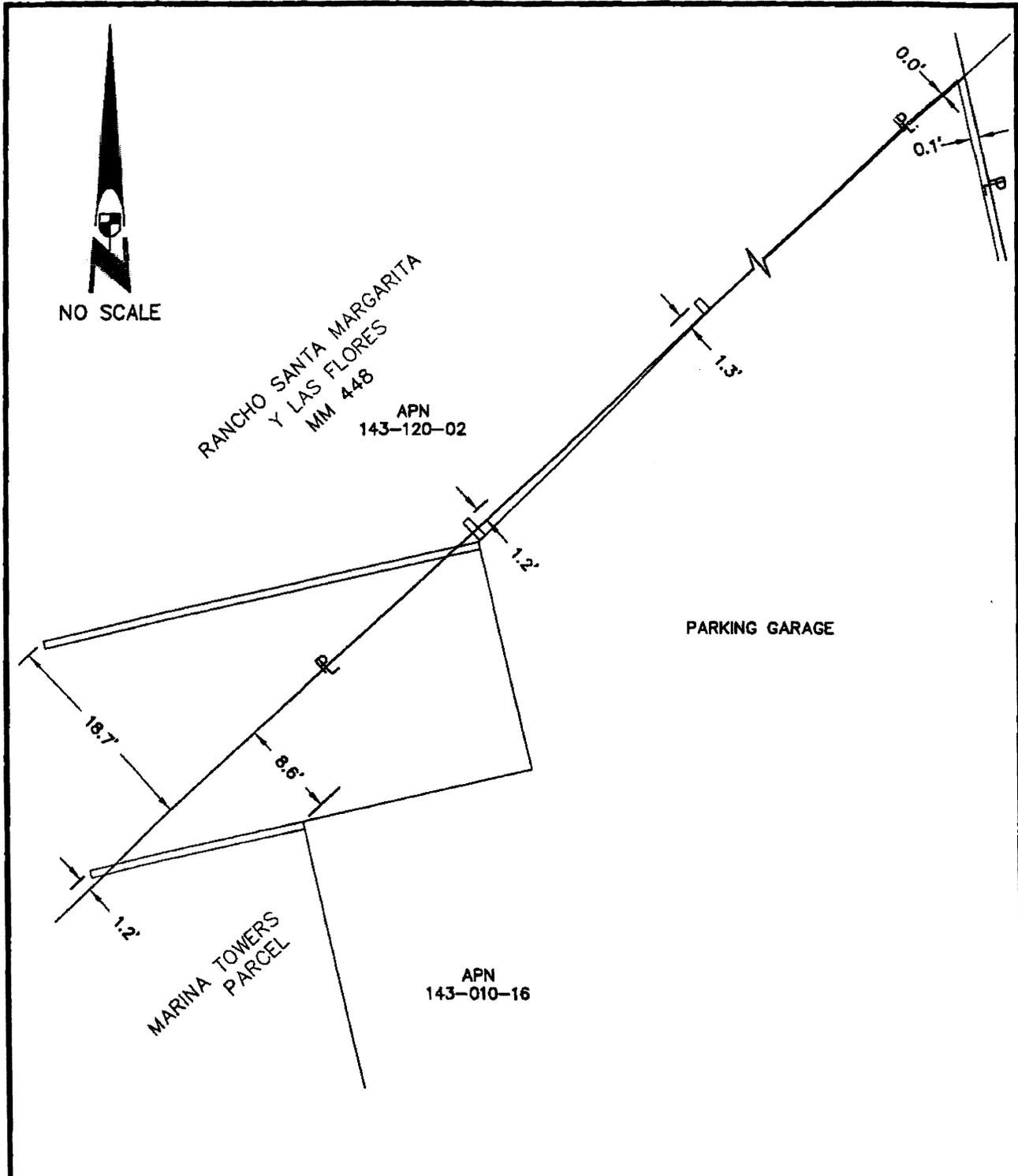


EXHIBIT E

