

# STAFF REPORT



ITEM NO. 14  
CITY OF OCEANSIDE

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DATE: July 16, 2008

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

FROM: Development Services Department – Planning Division  
Harbor and Beaches Department

SUBJECT: **ADOPTION OF A RESOLUTION APPROVING A REGULAR COASTAL PERMIT FOR A PROPERTY LINE ADJUSTMENT AFFECTING THE MARINA TOWERS LEASEHOLD PROPERTY; AND 2) APPROVAL OF A 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 adopt the resolution approving Regular Coastal Permit (RC-16-06) for a Property Line Adjustment affecting the four parcels in the Oceanside Small Craft Harbor, and authorize the Mayor to execute related documents; and approve a purchase and sale agreement in the amount of \$5,000,000 with the Oceanside Marina Towers Association to sell real property, authorize the Mayor to execute the agreement and authorize staff to consummate the transaction.

## **BACKGROUND**

The Marina Towers real property consists of approximately 1.26 acres ("Property"). The Property is part of the real property that is ground leased from the City of Oceanside ("City") to the Oceanside Small Craft Harbor District ("District"). The Property was then sub-ground leased to the Oceanside Marina Towers Association ("OMTA"), which sub-ground lease commenced in October 1975. The Property was subsequently improved, by OMTA's predecessor in interest, with a seventeen-story building containing sixty-seven condominium units, a parking structure and other residential-related improvements. The current sub-ground lease with OMTA expires in December 2036.

Beginning in the early 1990s, OMTA began requesting either an extension of the sub-ground lease or a purchase of the underlying Property. OMTA indicated that it was becoming more difficult to obtain conventional 30-year mortgages as the remaining term of the sub-ground lease went below 40 years. The City Council was willing to discuss

an extension of the sub-ground lease but was not interested in a sale of the Property. However, in 2004, staff, at the request of the City Council, was directed to negotiate a purchase and sale agreement for a portion of the Property with the OMTA.

Through the course of negotiations and City Council action on March 15, 2006, it was agreed that approximately 1.209 acres of the Property would be sold to the OMTA ("Subject Property"), which is more particularly shown on attached Exhibit "A". In order for the City to sell the Subject Property, an application for a Property Line Adjustment ("PLA") will be needed. To create the separate legal parcel, other parcels that were acquired as part of the creation of the Oceanside Small Craft Harbor ("Harbor") are affected and are shown on Exhibit "B".

## **ANALYSIS**

As a condition precedent to the consummation of the purchase and sale agreement for the Subject Property, adoption of a resolution approving the PLA will be required. In addition to creating the separate legal parcel, the proposed PLA will also eliminate the fragmentation of the tide and submerged lands area within the Harbor. The proposed PLA will remove that portion of the Property which is tide and submerged lands and consolidate those lands into the remainder of the Harbor, which consists primarily of such tide and submerged lands. This will allow for better management and conservation of these sensitive coastal resources.

Staff believes the Regular Coastal Permit ("RCP") is consistent with the City's Local Coastal Program (LCP") and the Coastal Act. The Oceanside Small Craft Harbor Precise Plan ("Precise Plan"), which is part of the City's LCP, includes both a short-range and a long-range plan for the Harbor. The short-range plan covers the period from mid-1979 to the early 1980s. The long-range plan covers the post-1985 period with eventual build-out of all public and private improvements assumed to occur by the end of the century. Uses and activities within the Harbor are divided into one of the following five categories - lease parcels (areas leased from the District by private entities), service buildings, streets and parking lots, water uses, and other uses and activities.

The Property is identified in the Precise Plan as "Parcel A: Oceanside Marina Towers." The Precise Plan states that the 67-unit Marina Towers condominium complex would remain as the principal use of the parcel during the duration of both the short-range and long-range plans. The plan also states the District or City "should indicate their desire for consideration, by the lessee, of multiuse building/parking garage possibilities and suggests that the lessee determine the potential for, and substantiate, any intended approach for realizing any alternative or additional future uses of the structure including: residential, prestige office, resort, residential (seasonal) and recreation uses on the garage roof."

Consistent with the Precise Plan, the Subject Property will continue to be utilized as a residential condominium project as it has since the mid-1970s. Approval of the RCP will not change the type or intensity of the land use of the site. No adverse impacts to traffic, beach access, or coastal views will be created by approving the PLA and RCP. The California Coastal Commission staff suggested in 2006, that an LCP amendment is necessary to change the current designation of the Property. However, staff was given direction by the City Council on March 15, 2006 not to pursue that amendment in light of the fact that the proposed use of the Subject Property will continue as presently allowed under the LCP with no changes following the sale.

The approval of a Regular Coastal Permit for the PLA is “appealable” to the California Coastal Commission (“Commission”) under Section 30603(a) of the California Public Resources Code. An aggrieved person may appeal the decision to the Commission with ten working days following the Commission receipt of the Notice of Final Action on this matter. The Notice of Final Action is mailed after the City’s last action or City Council resolution. Appeals must be in writing. The Commission’s San Diego District Office is at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402.

The proposed sale of the Subject Property will generate a lump-sum payment to the City at the close of escrow. Notwithstanding other considerations, the sale is analyzed against receiving the annual lease payments through 2036 and repossessing the Subject Property at that time, including the building and other improvements in a reasonably maintained condition, free and clear of a lease encumbrance. Under generally accepted appraisal methodology, the value of the Subject Property at the end of the lease term typically reflects a value for the land component only. The rationale is that this type of building and the other improvements are generally depreciated to little or no value once the analysis period goes beyond 30 years into the future.

A major component in the analysis of the sale of the Subject Property is the discounting of future revenue and the value of real property together with the building and other improvements in 2036 also discounted to a “present value”. The appraisal provided for the sale of the Subject Property is supportive of the sales price in terms of the discounted present value of these two components. In addition to the above-described values, the appraisal also mentions an “enhanced” fee ownership value. Citing recent sales of an underlying fee interest to a lessee, an “enhanced” value to the lessee occurs when the leasehold interest is combined with the underlying fee interest. The purchase price also takes into consideration such a value.

Some of the significant terms of the purchase and sale agreement are generally as follows:

1. A purchase price of \$5,000,000.
2. OMTA shall pay an initial deposit upon opening of escrow, plus pay an additional deposit of \$25,000 upon completing its due diligence.

3. OMTA shall have a 90-day period in which to conduct its due diligence of the Subject Property including, but not limited to, title and the physical condition of the underlying real property.
4. Escrow shall close the earlier of the 5<sup>th</sup> business day after satisfaction or waiver of all condition precedents (e.g. approval of the PLA) or 180 days following the opening of escrow.
5. OMTA agrees to commit \$500,000 for general exterior improvements to the building over the next 7 years.
6. The City of Oceanside will continue to own the existing parking lot adjacent to the Subject Property and will continue to make it available to the general public. OMTA rights to park in the lot will be the same as any other member of the general public which OMTA currently enjoys. Provided however, OMTA will have an easement for ingress and egress over said property in order to access their property and parking structure and OMTA will continue to be responsible for the maintenance of the City-owned parking lot and surrounding landscaping. The City and OMTA will enter into an Access Easement and Maintenance License Agreement setting forth the rights and obligations of the parties pertaining thereto.
7. In the event of any action litigating the validity of the sale and escrow does not close within 24 months thereafter, OMTA will pay up to an additional \$203,000 to the City. In the event escrow has not closed within 36 months due to the pending litigation OMTA shall pay up to an additional \$216,000 to the City. In the event escrow does not close within 48 months due to the pending litigation OMTA shall pay up to an additional \$231,000 to the City. In the event that escrow does not close within 60 months due to the pending litigation, the parties may agree to extend the close of escrow. If not, either party may terminate the agreement. No payment shall be due City should OMTA fail to complete the transaction for reasons not constituting an event of default.
8. The consummation of the sale of the Subject Property to the OMTA pursuant to the terms and conditions of the Purchase and Sale Agreement will terminate the Lease Agreement dated May 7, 2003, between the City and the District with respect to Subject Property.

### **FISCAL IMPACT**

As for the sale of the Subject Property, three value components need to be examined to determine the fiscal impact of the sale. The first value that needs to be analyzed is the discounted or "present value" of the future rental revenue of the current sub-lease with

OMTA. The second component is the "present value" of the underlying real property, together with the value of the building and other improvements in 2036. The third component is the "enhanced" fee ownership value that is achieved when an underlying fee interest is combined with a leasehold interest.

In analyzing the fiscal impact of the \$5,000,000 purchase price, the first component, the future rental revenue under the terms of the sub-ground lease with OMTA, has a "present value" of \$750,000. The second component or "present value" of the Subject Property at the end of the lease term in 2036 reflects a value for the underlying land, otherwise called a reversion, which is \$1,930,000. The \$2,320,000 difference (between the purchase price and the two present value components) is the "enhanced" value resulting from the sale of the fee interest to the leaseholder, although subjective and problematic to verify.

The appraisal provided for the sale of the Subject Property takes into consideration the three components described above and provides conclusions that can support the purchase price of \$5,000,000. However, the appraisal also mentions that should the building be maintained in a good condition through 2036, the reversion value could be as high as \$3,480,000 rather than land only value of \$1,930,000.

There is no fiscal impact to the City for the PLA. However, should approval of the PLA, through the regular coastal permit process, be appealed to the California Coastal Commission or otherwise litigated, all costs associated therewith will be paid for by OMTA.

Until such time as an equitable distribution of the sales proceeds between the City and the District is determined, the revenue received from the sale of the Subject Property will be deposited to the General Fund 1010 revenue account (101.1010.4895.00002). The use of said revenue shall be allocated to the construction of such projects as Fire Station No. 1, Fire Station No. 8 or such other community facility as determined by the City Council.

### **INSURANCE REQUIREMENTS**

Does not apply to either item.

### **COMMISSION OR COMMITTEE REPORT**

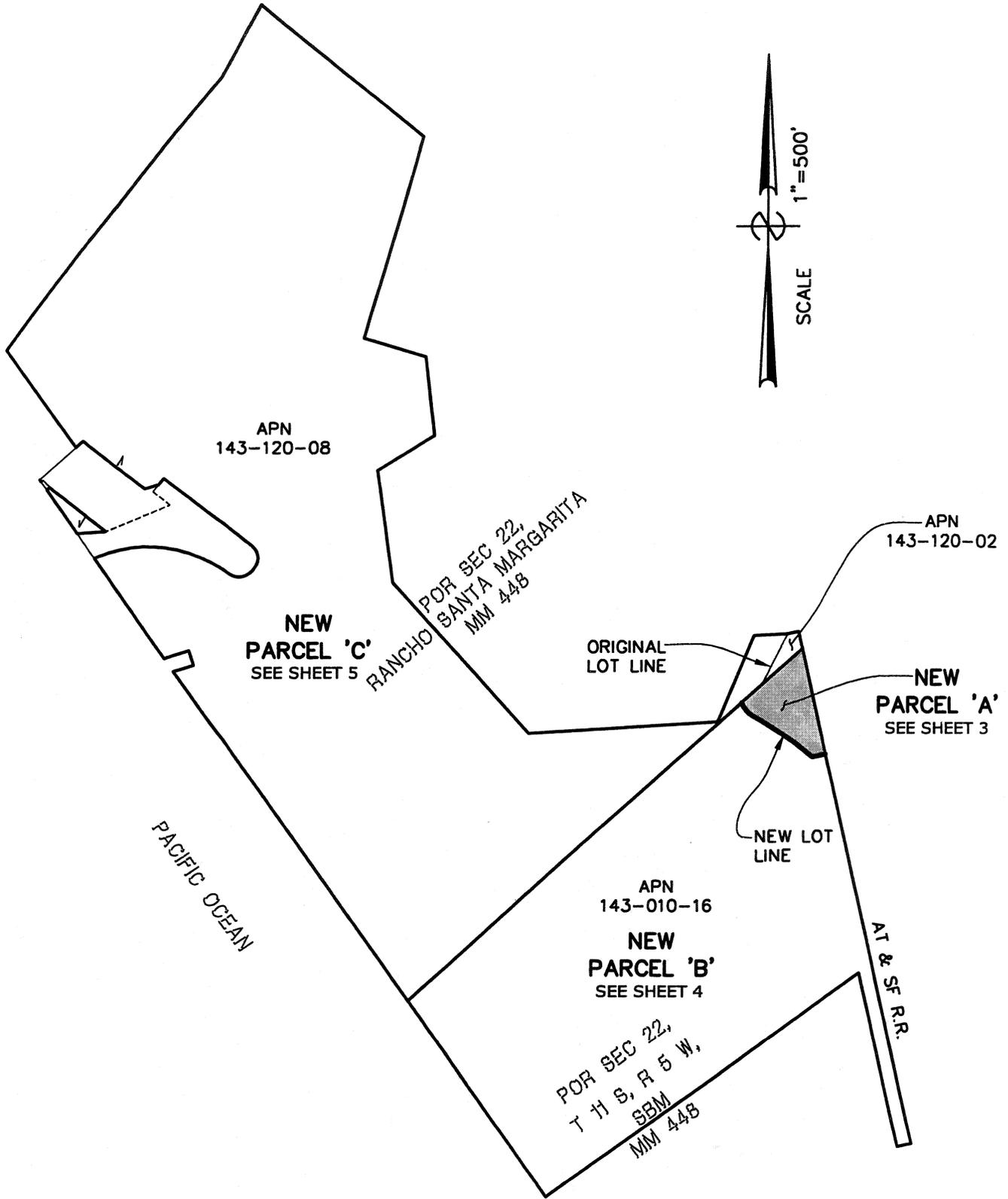
Does not apply.

### **CITY ATTORNEY'S ANALYSIS**

The City Council/Harbor Board is authorized to hold a public hearing in the matter of the PLA. Consideration of the PLA matter should be based on the testimony and evidence presented at the public hearing. After conducting the public hearing, the City



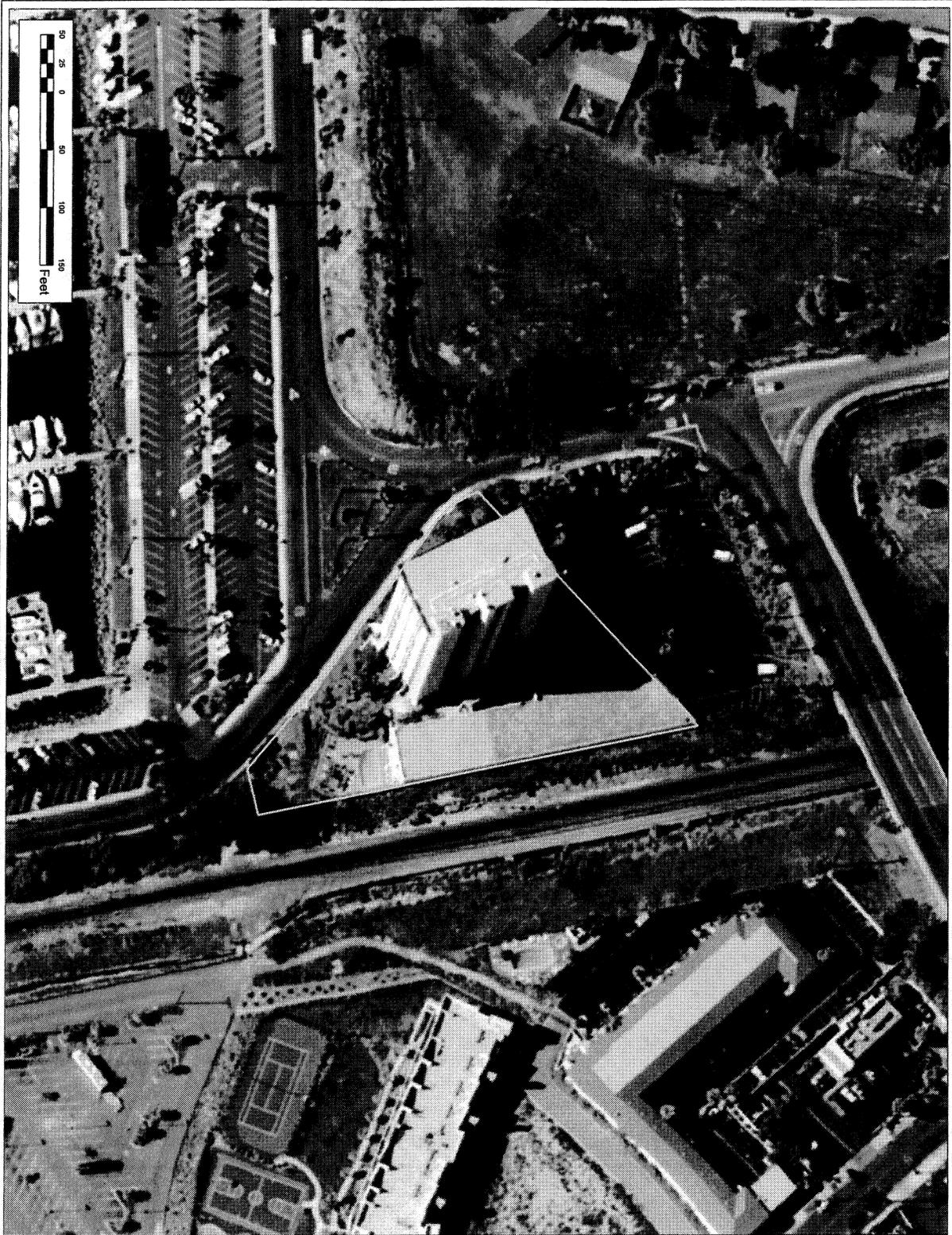
# EXHIBIT "B"



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

<b>LOT LINE ADJUSTMENT</b>	
DATE: DEC. 20, 2007	SHEET 2 OF 6

# EXHIBIT "A"



DATE: 08/11/11  
DRAWN BY:  
CHECKED BY:  
PROJECT: OCEANSIDE MARINA TOWERS  
SCALE: AS SHOWN

AERIAL EXHIBIT



OCEANSIDE MARINA TOWERS  
LOT LINE ADJUSTMENT



**CITY OF OCEANSIDE**

**REAL PROPERTY PURCHASE AND SALE AGREEMENT**

**(Marina Towers Condominium Property)**

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT (Marina Towers Condominium Property) (this "Agreement") is dated as of July 16, 2008, for reference purposes only, 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"). 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 enter into this Agreement with reference to the following recited facts (each a "Recital"):

**RECITALS**

A. The City owns that certain real property defined in Section 1.1(xx) as the "Property". The Property is leased by the City to 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"), pursuant to that certain Oceanside Harbor Lease, dated as of May 7, 2003, between the City and the District (the "City/District Lease");

B. 1972 Lease: A lease (hereinafter "Lease") was entered into on September 13, 1972 by and between Oceanside Small Craft Harbor District ("District") as lessor, and Oceanside Marina Towers, Inc., as tenant. The Lease was recorded two years later on March 19, 1974, Instrument No. 74-068434. The Lease provided in Article XI that the tenant shall have the right to create leasehold condominium interests in the leased premises, and to record a Condominium Plan and a Declaration of Covenants, Conditions and Restrictions and all documents necessary to create such condominium interests;

C. An Abstract of Lease was recorded on September 14, 1972, in Book 1782, page 246109, referring to the Lease executed September 13, 1972;

D. Articles of Incorporation for the Oceanside Marina Towers Association (a Common Interest Development nonprofit mutual benefit corporation formed for the management of the leasehold condominiums) were filed with the Secretary of State on October 11, 1974;

E. A Condominium Plan for Oceanside Marina Towers was recorded on October 31, 1974, File No. 74-289774. The Condominium Plan was signed by the City of Oceanside, a municipal corporation, as owner, the Oceanside Small Craft Harbor District, as tenant, and the Oceanside Marina Towers Joint Venture by Oceanside Marina Towers, Inc. The Condominium Plan included an incorporation by reference of the subdivision map describing the Property, and included a survey of the surface of the land included within the Property to which the Condominium Plan relates, and diagrammatic floor plans of the building built thereon. The

Condominium Plan divided the building into sixty-seven (67) individual leasehold condominium units;

F. The Declaration of Covenants, Conditions and Restrictions for Oceanside Marina Towers, a condominium project, was recorded in 1974, File No. 74-289775 of Official Records, San Diego County ("Declaration"). The Declaration was amended by document recorded in 1975, File No. 75-222219, and was further amended by document recorded in 1988, File No. 88-172839;

G. The Lease was amended by Document dated September 10, 1974;

H. The Lease was further amended by document dated April 3, 1975;

I. The Lease was further amended by document dated July 28, 1975;

J. 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 October 7, 1975, in the official records of the Recorder of the County of San Diego, California, as document number 75-275949 (the "District/Association Lease");

K. Helix Imperial Harbour 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 (Assignment of Lease recorded April 11, 1989, File No. 89-188826);

L. An amendment to and restatement of the Declaration of Covenants, Conditions and Restrictions for Oceanside Marina Towers a Condominium Project was recorded on January 30, 1982, Document No. 1992-0051425. That document referred to and incorporated the Condominium Plan recorded October 31, 1974, referred to in Recital E above;

M. The Helix Companies all assigned their interests in the District/Association Lease to the Association on or about April 23, 1987;

N. The Association approached the City and offered to purchase the Property from the City for the continued use of the Property as a residential condominium development;

O. Lot Line Adjustment: The parties have agreed that a Lot Line Adjustment would be appropriate in order to resolve boundary issues through an exchange and termination of any State and public trust interest in the Property and the Adjacent Property, and to reduce the size of the Property which is presently included in the Lease and is subject to the Declaration, by eliminating therefrom certain parcels which include the public parking lot and all tidelands, thus reducing the Property to be acquired to 1.209 acres, more or less, and confirming that the Property to be acquired is a legal lot approved subject to the Condominium Plan for Oceanside Marina Towers recorded October 31, 1974, as File/Page No. 74-289774;

P. The City desires to sell the Property 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;

## AGREEMENT

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS AGREEMENT, 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 this Agreement, the following words, terms and phrases are used in this Agreement, as follows, unless the particular context of usage of a word, term or phrase requires another interpretation:

(a) **“Access Easement Agreement”** means and refers to that certain Access Easement and Maintenance License Agreement to be entered into by and between the City and the Association at the Close of Escrow, in the form of Exhibit “G” to this Agreement.

(b) **“Additional Earnest Money Deposit”** shall have the meaning ascribed to the term in Section 2.2(c).

(c) **“Adjacent Property”** means the properties south and east of Harbor Drive and west of the railroad ROW that have been used historically for parking and landscaping, including the area described in the Access Easement Agreement, more particularly described in Exhibit “A-2” attached hereto.

(d) **“Association Official Action”** means and refers to the form of official action attached to this Agreement as Exhibit “H” executed by the authorized representative(s) of the Association.

(e) **“CEQA”** means and refers to the California Environmental Quality Act, Public Resources Code Sections 21000, et seq.

(f) **“City”** means and refers to the City of Oceanside, California.

(g) **“City Deed”** means and refers to a quitclaim deed in the form of Exhibit “C” to this Agreement, conveying the City’s interest in the Property to the Association, subject to the reservations and other agreements set forth in such deed or this Agreement. In the event that the Association elects to have title conveyed to the Escrow Holder pursuant to Section 2.1, the City Deed shall be modified as appropriate to name the Escrow Holder as Grantee.

(h) **“City/District Lease”** shall have the meaning ascribed to the term in Recital A.

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

(j) **“City Manager”** means and refers to the City Manager of the City or his or her designee or successor in function.

(k) **“City Parties”** means and refers, collectively, to the City, its governing body, elected officials, employees, agents and attorneys.

(l) **“City Party”** means and refers, individually, to the City, its governing body, elected officials, employees, agents and attorneys.

(m) **“Close of Escrow”** means and refers to the recording of the City Deed in the Official Records of the Recorder of the County of San Diego, California, and completion of each of the actions set forth in ARTICLE III by the Escrow Holder for the City to sell the Property to the Association and the Association to purchase the Property from the City.

(n) **“Coastal Act”** means and refers to California Public Resources Code Section 30000, et seq.

(o) **“District”** shall have the meaning ascribed to the term in Recital B.

(p) **“District/Association Lease”** shall have the meaning ascribed to the term in Recital J.

(q) **“District/Association Lease Termination Agreement”** means and refers to that certain Lease Termination 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.

(r) **“Due Diligence Completion Notice”** means and refers to a Notice from the Association delivered to both City and the Escrow Agent, prior to the end of the Due Diligence Period, stating either: (1) the Association’s acceptance of the condition of the Property; or (2) indicating the Association’s rejection or conditional acceptance of the condition of the Property and refusal to accept a conveyance of the Property, describing in reasonable detail the actions that the Association reasonably believes are necessary (if any) to allow the Association to accept the condition of the Property and conveyance of the Property.

(s) **“Due Diligence Investigations”** means and refers to the Association’s due diligence investigations of the Property to determine the suitability of the Property, including, without limitation, investigations of the environmental and geotechnical conditions of the Property, as deemed appropriate in the reasonable discretion of the Association, all at the sole cost and expense of the Association, except as otherwise specifically provided in this Agreement.

(t) **“Due Diligence Period”** means and refers to the ninety (90) calendar day period commencing on the Escrow Opening Date.

(u) **“Earnest Money Deposit”** shall have the meaning ascribed to the term in Section 2.2(a).

(v) **“Effective Date”** means and refers to the first date on which this Agreement has been approved by the City Council and the City is in receipt of four (4) counterpart originals of this Agreement executed by the authorized representative(s) of the Association and a certified copy of the Association Official Action taken by the governing body of the Association approving this Agreement, certified by the Secretary of the Association.

(w) **“Environmental Claims”** shall have the meaning ascribed to the term in Section 5.4.

(x) **“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.

(y) **“Environmental Matters”** shall have the meaning ascribed to the term in Section 5.4.

(z) **“Escrow”** shall have the meaning ascribed to the term in Section 2.1.

(aa) **“Escrow Closing Date”** shall have the meaning ascribed to the term in Section 3.6.

(bb) **“Escrow Holder”** means and refers to First American Fund Control, 200 Commerce, Irvine, CA 92602, Attn: Janice Yeh.

(cc) **“Escrow Opening Date”** shall have the meaning ascribed to the term in Section 3.1.

(dd) **“Event of Default”** shall have the meaning ascribed to the term in Section 7.2.

(ee) **“Facade Improvements”** means and refers to those certain private facade, improvements that the Association proposes to construct and install on the Improvements, including all hardscape and landscaping, as specifically described in Exhibit “B” attached to this Agreement, and all to be developed in accordance with plans and specifications approved by the City and any conditions imposed by the City in its approval of the Association’s development application(s) related to Facade Improvements.

(ff) **“Facade Improvements Completion Date”** means and refers to any date upon which Façade Improvements are completed that is on or before the seventh (7th) anniversary of the date of the Close of Escrow.

(gg) **“Final”** means relative to the Lot Line Adjustment and/or the approval of the Agreement by the City, when all administrative appeal periods regarding such matter have expired, all administrative appeals or challenges regarding such matter (if any) have been resolved to the reasonable satisfaction of both the City and the Association, all statutory periods for challenging such matter have expired, all litigation or other proceedings (if any) challenging any such matter have been resolved to the reasonable satisfaction of both the City and the Association, all appeal periods relating to any such litigation or other proceedings have expired, all referendum periods regarding such matter have expired and all referenda regarding such matter (if any) have been resolved to the reasonable satisfaction of both the City and the Association.

(hh) **“FIRPTA Affidavit”** means and refers to an affidavit complying with Section 1445 of the United States Internal Revenue Code.

(ii) **“Form 593”** means and refers to a California Franchise Tax Board Form 593-W.

(jj) **“Governmental Agency”** means and refers to any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise), including the City, pursuant to its general police power jurisdiction, whether now or later in existence with jurisdiction over the Property or the construction or installation of any portion of Facade Improvements on the Property.

(kk) **“Governmental Requirements”** means and refers to all codes, statutes, ordinances, laws, permits, orders, and any rules and regulations promulgated thereunder of any Governmental Agency.

(ll) **“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.

(mm) **“Helix Companies”** shall have the meaning ascribed to the term in Recital K.

(nn) **“Improvements”** means and refers to, collectively, the 17-story, 67 residential condominium unit building and associated parking structure and swimming pool structures located on the Property.

(oo) **“Lot Line Adjustment”** is defined in Section 2.7.

(pp) **“Maintenance Deficiency”** shall have the meaning ascribed to the term in Section 5.1(a).

(qq) **“Notice of Agreement”** means and refers to the notice in the form of Exhibit “D” to this Agreement to be recorded against the Property at the Close of Escrow to provide constructive record notice of the existence and application of this Agreement to the Property.

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

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

(tt) **“PCO Statement”** means and refers to a preliminary change of ownership statement required under California Revenue and Taxation Code Section 480.3.

(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 assessments; (4) this Agreement; (5) the City/District Lease Termination Agreement; (6) the District/Association Lease Termination Agreement; (7) the Access Easement Agreement; (8) the City Deed; (9) the Notice of Agreement; or (10) the Right of First Offer Agreement.

(vv) **"Pre-Closing Liquidated Damages Amount"** shall have the meaning ascribed to the term in Section 7.3.

(ww) **"Preliminary Report"** means and refers to a preliminary report issued by the Title Company in contemplation of the issuance of the Title Policy, accompanied by copies of all documents listed in Schedule B of the report as exceptions to coverage under the proposed title policy.

(xx) **"Property"** means and refers to that certain improved real property commonly known as and located at 1200 Harbor Drive, Oceanside, California, and specifically described in Exhibit "A-1" attached to this Agreement and incorporated into this Agreement by this reference, as modified by the Lot Line Adjustment.

(yy) **"Purchase Price"** means \$5,000,000 plus such amounts, if any, due pursuant to Section 3.6.

(zz) **"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.

(aaa) **"Right of First Offer Agreement"** means and refers to that certain Agreement attached to this Agreement as Exhibit "I" in which the Association grants the City a right of first offer to purchase the Property from the Association, following the Close of Escrow.

(bbb) **"Title Company"** means and refers to First American Title, c/o Janice Yeh, First American Fund Control, 200 Commerce, Irvine, CA 92602.

(ccc) **"Title Notice"** means and refers to a written notice from the Association to the City indicating the Association's acceptance of the state of the title to the Property, as described in the Preliminary Report, or the Association's objection to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy, describing in suitable detail the actions that the Association reasonably believes are indicated to cure or correct each of the Association's objections (if any).

(ddd) **"Title Notice Response"** means and refers to the written response of the City to the Association's Title Notice, in which the City either: (1) elects to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Association's Title Notice; or (2) elects not to cause the removal from the Preliminary Report of any matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy that were objected to in the Association's Title Notice.

(eee) **“Title Notice Waiver”** means and refers to a written notice from the Association to the City waiving the Association’s previous objection(s) in the Association’s Title Notice to specific matters shown in Schedule B of the Preliminary Report as exceptions to coverage under the proposed Title Policy.

(fff) **“Title Policy”** means and refers to an extended coverage ALTA owners’ policy of title insurance issued by the Title Company, with coverage in the full amount of the Purchase Price and insuring fee title to the Property vested in the Association.

(ggg) **“Transfer”** means and refers to any of the following:

(1) Any total or partial sale, assignment, conveyance, trust, power, or transfer in any other mode or form, by the Association of all or any portion of its interest in this Agreement or the Property; or

(2) Any total or partial sale, lease, assignment, conveyance, or transfer in any other mode or form, of or with respect to any interest in the Association; or

(3) Any merger, consolidation, sale, lease, assignment, conveyance or transfer in any other mode or form of all or substantially all of the assets of the Association.

(hhh) **“Unavoidable Delay”** means and refers to any delay that is beyond the control of the City or the Association, including delay caused by strikes, acts of God, weather, inability to obtain labor or materials, inability to obtain governmental permits or approvals, governmental restrictions, litigation that challenges, interferes with or delays the Lot Line Adjustment, the issuance of a Coastal Development Permit, if required, or the completion of the sale and/or the change of the existing leasehold condominiums into fee title condominiums, civil commotion, acts of terrorism, fire or similar causes, but excluding: (1) financial circumstances, (2) events that may be resolved by the payment of money and (3) circumstances subject to Section 5.3.

## ARTICLE II

### PROPERTY DISPOSITION

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 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 Members. 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.

Section 2.2 **Payment of Purchase Price.** Subject to the provisions of Section 3.6, the purchase price shall be paid to the City, through escrow, in the sum of \$5,000,000 (five million dollars), the “Purchase Price”, which shall be payable as follows:

(a) **Earnest Money Deposit.** Concurrent with its opening of the Escrow, the Association shall deposit into Escrow (into an interest bearing account) a deposit in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000), in cash, or other immediately available funds (the “**Earnest Money Deposit**”). Upon the Close of Escrow, the Earnest Money Deposit (including interest) shall be credited to the Association toward the Purchase Price and paid to the City as part of the Purchase Price, except upon the occurrence of an Event of Default prior to the Close of Escrow, as otherwise provided in this Agreement.

(b) **Additional Earnest Money Deposit.** Within ninety (90) days following the Escrow Opening Date, the Association shall deposit into Escrow a deposit in the amount of TWENTY-FIVE THOUSAND DOLLARS (\$25,000), in cash, or other immediately available funds (the “**Additional Earnest Money Deposit**”). Upon the Close of Escrow, the Additional Earnest Money Deposit (including interest) shall be credited to the Association toward the Purchase Price and paid to the City as part of the Purchase Price, except upon the occurrence of an Event of Default prior to the Close of Escrow, as otherwise provided in this Agreement.

(c) **At Close of Escrow.** At least twenty-four (24) hours preceding the Close of Escrow, the Association shall cause to be deposited into the Escrow the Purchase Price (less the sum of the Earnest Money Deposit and the Additional Earnest Money Deposit), in cash, or other immediately available funds.

Section 2.3 **Disclosure of Rights of the United States of America.** The Association acknowledges and agrees that the City has disclosed to the Association that a small portion of the Adjacent Property may be subject to rights reserved to the United States of America to enter upon and occupy all or a portion of said Adjacent Property for a definite or indefinite period of time, as more specifically set forth in one or more of the following recorded documents of which the City has previously provided copies to the Association: (i) Quitclaim Deed from the United States of America to the City of Oceanside, recorded on July 21, 1960, as document number 147820, and (ii) Quitclaim Deed from the United States of America to the City of Oceanside, recorded on July 27, 1962, as document number 128125. Any title matters or exceptions to the coverage of the Title Policy arising from these deeds shall be deemed to be approved by the Association, notwithstanding the provisions of Section 2.4 or any other section of this Agreement.

#### Section 2.4 **Title Approval.**

(a) **Title Notice.** As soon as possible after the Escrow Opening Date, City shall obtain the Preliminary Report from the Title Company and deliver a copy of the Preliminary Report to the Association. Within sixty (60) days following the Association’s receipt of the Preliminary Report, the Association shall send the Title Notice to both City and the Escrow Holder.

(b) **Failure to Deliver Title Notice.** If the Association fails to send the Title Notice to City and the Escrow Agent, within the time period provided in Section 2.4(a) the Association will be deemed to disapprove the status of title to the Property and refuse to accept conveyance of the Property and both the Association and City shall have the right to cancel the Escrow and terminate this Agreement upon seven (7) days Notice, in their respective sole and absolute discretion.

(c) **Title Notice Response.** Within thirty (30) days following the earlier of: (1) City's receipt of the Title Notice or (2) expiration of the time period provided in Section 2.4(a), for delivery of the Title Notice, City shall send the Title Notice Response to both the Association and the Escrow Holder. If the Title Notice does not disapprove or conditionally approve any matter in the Preliminary Report or the Association fails to deliver the Title Notice, City shall not be required to send the Title Notice Response. If City does not send the Title Notice Response, if necessary, within the time period provided in this Section 2.4(c), City shall be deemed to elect not to take any action in reference to the Title Notice. If City elects in the Title Notice Response to take any action in reference to the Title Notice, City shall complete such action, prior to the Escrow Closing Date or as otherwise specified in the Title Notice Response.

(d) **Title Notice Waiver.** If the City elects or is deemed to have elected not to address one or more matters set forth in the Title Notice to the Association's reasonable satisfaction, then within fifteen (15) days after the earlier of: (1) the Association's receipt of the City's Title Notice response or (2) the last date for the City to deliver its Title Notice Response, the Association shall either: (a) refuse to accept the title to and conveyance of the Property; or (b) waive its disapproval or conditional approval of all such matters set forth in the Title Notice by sending the Title Notice Waiver to both the City and the Escrow Holder. Failure by the Association to timely send the Title Notice Waiver, where the Title Notice Response or the City's failure to deliver the Title Notice Response result in the City's election not to address one or more matters set forth in the Title Notice to the Association's reasonable satisfaction, will be deemed the Association's continued refusal to accept the title to and conveyance of the Property, in which case both the Association and the City shall have the right to cancel the Escrow and terminate this Agreement upon seven (7) days Notice, in their respective sole and absolute discretion, until such time (if ever) as the Association sends the Title Notice Waiver.

(e) **No Termination Liability.** Any termination of this Agreement and cancellation of the Escrow pursuant to this Section 2.4 shall be without liability to the other Party or any other Person, and shall be accomplished by delivery of a Notice of termination to both the other Party and the Escrow Agent at least seven (7) days prior to the termination date, in which case the Parties and the Escrow Agent shall proceed pursuant to Section 3.14.

## Section 2.5 **Due Diligence Investigations.**

(a) **License to Enter.** The City licenses the Association and its contractors to enter the Property for the purpose of undertaking the Due Diligence Investigations as the Association deems necessary and appropriate. The license given in this Section 2.5 shall be effective until the earlier of: (1) the termination of this Agreement; or (2) the Close of Escrow. The Association shall conduct all Due Diligence Investigations during the Due Diligence Period and at its sole cost and expense. Any Due Diligence Investigations by the Association shall not

unreasonably disrupt any then existing use or occupancy of the Property. The City shall make all non-privileged documents from its files relating to the Property available to the Association for inspection and copying during the Due Diligence Period.

(b) **Limitations.** The Association shall not conduct any intrusive or destructive testing of any portion of the Property, other than low volume soil samples, without City's prior written consent. The Association shall pay all of its third-party vendors, inspectors, surveyors, consultants or agents engaged in any inspection or testing of the Property, such that no mechanics liens or similar liens for work performed are imposed upon the Property by any such Persons. Following the conduct of any Due Diligence Investigations on the Property, the Association shall restore the Property to substantially its condition prior to the conduct of such Due Diligence Investigations. The City may condition the Association's or its agents entry onto the Property on delivery to the City of proof of liability insurance reasonably acceptable to the City and naming the City as an additional insured under such policy of insurance by endorsement.

(c) **Indemnity.** The activities of the Association directly or indirectly related to the Due Diligence Investigations shall be subject to the Association's indemnity obligations under this Agreement.

(d) **Due Diligence Completion Notice.** The Association shall deliver a Due Diligence Completion Notice to both the City and the Escrow Holder, prior to the end of the Due Diligence Period. If the Association does not unconditionally accept the condition of the Property by delivery of its Due Diligence Completion Notice stating such acceptance, prior to the end of the Due Diligence Period, the Association shall be deemed to have rejected the condition of the Property and refused to accept conveyance of the Property. If the condition of the Property is rejected or deemed rejected by the Association, then either the Association or the City shall have the right to cancel the Escrow and terminate this Agreement, in their respective sole and absolute discretion, until such time (if ever) as the Association delivers the Due Diligence Completion Notice stating the Association's unconditional acceptance of the condition of the Property. Any termination of this Agreement and cancellation of the Escrow, pursuant to this Section 2.5, shall be without liability to the other Party or any other Person, and shall be accomplished by delivery of a written Notice of termination to the other Party and the Escrow Holder, in which case the Parties and the Escrow Holder shall proceed pursuant to Section 3.10. Notwithstanding any other provision of this Agreement, the Association may reject the condition of the Property at any time during the Due Diligence Period for any reason or no reason, in the Association's sole and absolute discretion, and terminate this Agreement and cancel the Escrow by Notice to both the City and the Escrow Holder, in which case the Parties and the Escrow Agent shall proceed pursuant to Section 3.10.

(e) **Acceptance of Property "AS-IS."** The Association's delivery of its Due Diligence Completion Notice indicating the Association's unconditional acceptance of the condition of the Property shall evidence the Association's unconditional acceptance of the condition of the Property in the Property's AS IS, WHERE IS, SUBJECT TO ALL FAULTS CONDITION, WITHOUT WARRANTY AS TO QUALITY, CHARACTER, PERFORMANCE OR CONDITION and with full knowledge of the physical condition of the Property, all Laws applicable to the Property, the Permitted Exceptions and of any and all conditions, restrictions, encumbrances and all matters of record relating to the Property. The Association's delivery of

its Due Diligence Completion Notice indicating its unconditional acceptance of the condition of the Property shall constitute the Association's representation and warranty to the City that the Association has received assurances acceptable to the Association by means independent of the City or any agent of the City of the truth of all facts material to the Association's acquisition of the Property pursuant to this Agreement, and that the Property is being acquired by the Association as a result of its own knowledge, inspection and investigation of the Property and not as a result of any representation(s) made by the City or any employee, official, consultant or agent of the City relating to the condition of the Property, unless such statement or representation is expressly and specifically set forth in this Agreement. The City hereby expressly and specifically disclaims any express or implied warranties regarding the Property. The City acknowledges the existence of encroachments and legal non-conforming setbacks as depicted in Exhibit "D" to Exhibit "G" to the Access Easement.

**Section 2.6 Financing.** Within one hundred fifty (150) calendar days following the Effective Date, either: (1) the Association shall provide written evidence to the City that the Association has obtained a commercially reasonable commitment from one or more lenders to provide one or more loans to the Association such that when the proceeds of such loan or loans are combined with the available funds of the Association committed to pay the Purchase Price, the total of such loan proceeds and available funds of the Association equal or exceed the sum of the Purchase Price and the escrow closing costs and charges to be paid by the Association pursuant to this Agreement at the Close of Escrow; or (2) written evidence shall be provided that the Members of the Association (condominium owners) have deposited funds into Escrow and/or have obtained reasonable loan commitments from one or more lenders to provide loans sufficient to pay the Purchase Price when combined with cash deposited by Members. The Association's obligation to purchase the Property from the City pursuant to the terms and conditions of this Agreement is expressly conditioned upon the Association obtaining such commercially reasonable loan commitment or commitments, or the Members doing so.

**Section 2.7 Lot Line Adjustment.** The City shall prepare an application for a Lot Line Adjustment to separate the tidelands and the public parking lot from the Property, so that the Property to be purchased shall consist of approximately 1.209 acres, as described in Exhibit "A-1" being a legal parcel of land in compliance with California law prior to the Close of Escrow. All costs of the Lot Line Adjustment, including, City Staff time (not to exceed \$5,000), fees, recording costs, charges, deposits and bonds shall be borne by the City. Costs of appeal of any City Council decision shall be borne solely by the Association. The City shall pay the reasonable costs for the Association to obtain an ALTA survey of the Property prepared by a licensed surveyor or engineer at the Close of Escrow. The Association shall deliver a copy of the ALTA survey and the surveyor's invoice for costs and services in preparing such survey to the City at least ten (10) business days prior to the Close of Escrow. At the Close of Escrow, the City shall pay the reasonable charges of the surveyor for preparation of the ALTA survey by depositing such funds into the Escrow for distribution to the Association at the Close of Escrow. The Association shall be responsible for the incremental cost of the ALTA premium, as stated in Section 3.8. The Association shall defend and indemnify the City against any claim or action file to contest the validity or legality of the Lot Line Adjustment.

Section 2.8 **Grant of Right of First Offer.** The Association agrees to grant the City a right of first offer to purchase the Property from the Association following the Close of Escrow, when and if the Association offers or intends to accept an offer for the "bulk" purchase and sale of the entire Property to a third person, all as specifically set forth in and pursuant to the Right of First Offer Agreement. The Association agrees to execute the Right of First Offer Agreement in recordable form and deposit such agreement into Escrow for recordation against the Property at the Close of Escrow,

Section 2.9 **No Change in Density or Intensity of Use.** The purpose and intent of this Agreement is to enable the existing tenants, who own and occupy existing leasehold condominiums, to acquire fee title to the land that they (collectively) now lease, and to enable the City to improve the performance of an under-performing asset and to thereby release needed funds to be used for important public purposes. No change in density or intensity of use of the Property is contemplated, nor should this agreement or the proposed Lot Line Adjustment be interpreted to allow any increase in density or intensity of use of the Property.

Section 2.10 **Access Easement Agreement.** The Association and its Members shall continue to have rights of access for ingress, egress and utilities over the Public Parking Lot located within the Adjacent Property, as provided in Exhibit "G".

Section 2.11 **Parking License.** The Association and its Members shall continue to have a license to park on the Adjacent Property as provided in Exhibit "G".

### ARTICLE III

#### JOINT ESCROW INSTRUCTIONS

Section 3.1 **Opening of Escrow.** For purposes of this Agreement, the opening of Escrow shall be the first date on which a fully executed copy of this Agreement and the Earnest Money Deposit are deposited with the Escrow Holder (the "Escrow Opening Date"). The Association shall cause the Escrow to be opened within five (5) days following the Effective Date. Escrow Holder shall promptly confirm in writing to each of the Parties the date of the Escrow Opening Date. This ARTICLE III shall constitute the joint escrow instructions of the City and the Association to the Escrow Holder for conduct of the Escrow to complete the purchase and sale of the Property between the City and the Association, as contemplated in this Agreement. City and Association agree to sign Escrow Holder's general escrow instructions in substantially the form attached to this Agreement as Exhibit "J."

Section 3.2 **Conditions to Close of Escrow.** The conditions set forth below in this Section 3.2 shall be satisfied or waived by the respective benefited Party on or before the Escrow Closing Date or the Party benefited by any unsatisfied condition shall not be required to proceed to close the Escrow.

(a) **Association's Conditions.** The Association's obligation to purchase the Property from the City on the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, each of which can only be waived in writing by the Association:

(1) Final approval of the Lot Line Adjustment by the City and (if necessary) the California Coastal Commission;

(2) The Association agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

(3) Title Company is committed to issue the Title Policy to the Association;

(4) The Association, and/or the Members (condominium owners) obtain the loan commitment or commitments described in Section 2.6 prior to the Escrow Closing Date; and

(5) The City deposits all of the items into Escrow required by Section 3.4.

(b) **City's Conditions.** The City's obligation to sell the Property to the Association on or before the Escrow Closing Date shall be subject to the satisfaction of the following conditions precedent, which can only be waived in writing by the City:

(1) Final approval of the Lot Line Adjustment by the City;

(2) The Association has deposited both the Earnest Money Deposit and the Additional Earnest Money Deposit into Escrow;

(3) The Association agrees to accept the title to and conveyance of the Property, pursuant to Section 2.4;

(4) The Association and/or the Members provide the City with reasonable written evidence of one or more loan commitments in accordance with Section 2.6 prior to the Escrow Closing Date;

(5) The Association deposits all of the items into Escrow required by Section 3.3; and

(6) The representations, warranties and covenants of the Association set forth in ARTICLE VII are true and correct in all material respects on the Effective Date and on the Escrow Closing Date.

**Section 3.3 Association's Escrow Deposits.** The Association shall cause to be deposited the following funds and documents into Escrow and, concurrently, provide a copy of each deposited document to the City, at least four (4) business days prior to the Escrow Closing Date scheduled by Escrow Holder in a writing delivered to each of the Parties:

(a) **Purchase Price.** The full Purchase Price less the Earnest Money Deposit, plus any additional funds required to be deposited into Escrow by the Association under the terms of this Agreement to close the Escrow, all in immediately available funds;

(b) **PCO Statement.** A PCO Statement executed by the authorized representative(s) of the Association;

(c) **Acceptance of City Deed.** The Certificate of Acceptance of City Deed, in the form attached to the City Deed, executed by the authorized representative(s) of the Association in recordable form;

(d) **Notice of Agreement.** The Notice of Agreement executed by the authorized representative(s) of the Association in recordable form;

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

(f) **Access Easement Agreement.** The Access Easement Agreement executed in recordable form by the authorized representative(s) of the Association; and

(g) **Right of First Offer.** The Right of First Offer Agreement executed in recordable form by the authorized representative(s) of the Association.

**Section 3.4 City's Escrow Deposits.** The City shall deposit the following documents into Escrow and, concurrently, provide a copy of each deposited document to the Association, at least two (2) business days prior to the Escrow Closing Date, as scheduled by Escrow Holder in a writing delivered to each of the Parties:

(a) **City Deed.** The City Deed executed by the authorized representative(s) of the City in recordable form;

(b) **FIRPTA Affidavit.** The FIRPTA Affidavit completed and executed by the authorized representative(s) of the City;

(c) **Notice of Agreement.** The Notice of Agreement executed by the authorized representative(s) of the City in recordable form;

(d) **City/District Lease Termination Agreement.** The City/District Lease Termination Agreement executed by the authorized representative(s) of both the District and the City in recordable form;

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

(f) **Access Easement Agreement.** The Access Easement Agreement executed by the authorized representative(s) of the City in recordable form;

(g) **Form 593.** A Form 593 executed by the authorized representative(s) of the City;

(h) **Right of First Offer.** The Right of First Offer Agreement executed by the authorized representative(s) of the City in recordable form; and

**Section 3.5 Closing Procedure.** When each of the Association's Escrow deposits, as set forth in Section 3.3 and each of the City's Escrow deposits, as set forth in Section 3.4, are deposited into Escrow, Escrow Holder shall request confirmation in writing from both the City and the Association that each of their respective conditions to the Close of Escrow, as set forth in Section 3.2, are satisfied or waived. Upon Escrow Holder's receipt of written confirmation from both the City and the Association that each of their respective conditions to the Close of Escrow are either satisfied or waived, Escrow Holder shall close the Escrow by doing all of the following:

(a) **Recordation of Documents.** File the City Deed, with the Association's certificate of acceptance attached, the Notice of Agreement, the City/District Lease Termination Agreement, the District/Association Lease Termination Agreement, the Right of First Offer Agreement and the Access Easement Agreement with the Office of the Recorder of the County of San Diego, California, for recordation in the order set forth in Section 3.7;

(b) **Distribution of Recorded Documents.** Distribute each recorded document to the Party or person designated for such distribution in Section 3.7;

(c) **PCO Statement.** File the PCO Statement with the Office of the Recorder of the County of San Diego, California;

(d) **FIRPTA Affidavit.** File the FIRPTA Affidavit with the United States Internal Revenue Service;

(e) **Form 593.** File the City's Form 593 with the California Franchise Tax Board.

(f) **Title Policy.** Obtain and deliver to the Association the Title Policy issued by the Title Company; and

(g) **Funds.** Deliver the Purchase Price to the City, less the City's share of Escrow closing costs, and less any other charges to the account of the City, and return all remaining funds held by Escrow Holder for the account of the Association to the Association, less the Association's share of Escrow closing costs, and less any other charges to the account of the Association.

**Section 3.6 Close of Escrow.** Close of Escrow shall occur no later than the earlier of: (1) the fifth (5th) business day following Escrow Holder's receipt of written confirmation from both the City and the Association of the satisfaction or waiver of all conditions precedent to the Close of Escrow or (2) one hundred eighty (180) days following the Escrow Opening Date (the "**Escrow Closing Date**"). If any litigation is commenced by or against the Association regarding the Lot Line Adjustment, or the transfer of the Property to the Association or its Members pursuant to this Agreement or if the Close of Escrow is prevented due to litigation ("Unavoidable Delay"), then the Escrow Closing Date shall be extended during the duration of any such litigation up to a maximum time period extension of sixty (60) months from the time the litigation is commenced (defined below as the "Filing Date"). Notwithstanding any other provision of this Agreement, the Escrow Closing Date shall not be extended for any reason, including Unavoidable Delay, for more than sixty (60) months, except by a separate written agreement between the City and the Association. If for any reason the Close of Escrow has not

occurred by the Escrow Closing Date, then any Party not then in default of this Agreement may cancel the Escrow and terminate this Agreement, without liability to the other Party or any other person for such termination and cancellation, by delivering written notice of termination to both the other Party and the Escrow Holder and, thereafter, the Parties shall proceed pursuant to Section 3.10. Without limiting the right of either Party to terminate this Agreement, pursuant to the preceding sentence, if Escrow does not close on or before the Escrow Closing Date (subject to extensions as noted), and neither Party has exercised its continuing right to cancel the Escrow and terminate this Agreement before the first date on which the Escrow Holder is in a position to close the Escrow, then Escrow shall close as soon as reasonably possible pursuant to the terms and conditions of this Agreement. If the Escrow does not close within twenty four (24) months after the date of filing of any action litigating the validity of the sale, the Lot Line Adjustment, or the issuance of the CDP ("Filing Date"), the Association will pay up to an additional \$203,000 to the City, for months 25 through 36 on a pro-rated basis, at the Close of Escrow. If the litigation is still pending and remains unresolved and the Escrow has not closed due to pending litigation within thirty six (36) months after the Filing Date, the Association shall pay up to an additional \$216,000 to the City for months 37 through 48 on a pro-rated basis at the Close of Escrow, and, if the Escrow has not closed due to pending litigation within forty eight (48) months after the Filing Date, the Association shall pay up to an additional \$231,000 to the City for months 49 through 60 on a pro-rated basis at the Close of Escrow. If, at the end of the sixty (60) months from the Filing Date, Escrow has not closed due to the pending litigation, the parties may agree to a further extension upon mutually acceptable terms. If the City elects not to extend the Closing Date beyond sixty (60) months, or if the Association fails to consummate the purchase due to unresolved litigation, the agreement may be terminated by either party after sixty (60) months. If the parties together determine that they will not be able to successfully terminate the litigation, they may agree to terminate the Agreement without any financial obligation to each other. If the Association elects to unilaterally terminate the Agreement, the liquidated damages clause (Section 7.3) shall apply. The additional payment amount due at Close of Escrow shall be prorated on a daily basis using a 360 day year starting with month 25. The additional payment due at the Close of Escrow shall be payable regardless of any decline in the fair market value of the Property. No payment shall be due City should the Association fail to complete the transition for reasons not constituting an Event of Default.

**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 City/District Lease Termination Agreement; (5) the District/Association Lease Termination 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 Right of First Offer Agreement to the City, with a conformed copy to the Association, each showing all recording information; (iv) the original of the City/District Lease Termination Agreement to the City, with a conformed copy to the Association, each showing

all recording information; (v) the original of the District/Association Lease Termination Agreement to the City, with a conformed copy to the Association, each showing all recording information; (vi) the original of the Access Easement Agreement to the City, with a conformed copy to the Association, each showing all recording information; (vii) a copy of the Association's Modified CC&Rs, approved by the Board of Directors to the City, to be followed by a conformed copy of the recorded CC&Rs as soon as the document has been recorded; and (viii) 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.

**Section 3.8 Escrow Closing Costs, Taxes and Title Policy Premium.** The City and the Association shall each pay one-half (1/2) of the Escrow fees and such other costs as the Escrow Holder may charge for the conduct of the Escrow. The Escrow Holder shall notify the Association and the City of the costs to be borne by each of them at the Close of Escrow by delivering the Escrow Holder's estimated closing/settlement statement to both the City and the Association, at least, four (4) business days prior to the Escrow Closing Date. The City shall pay the standard title insurance premium charged by the Title Company for CLTA coverage, exclusive of any endorsements or other supplements to the coverage of the Title Policy that may be requested by the Association. The Association shall pay the incremental increase in the premium for the extended ALTA coverage. The Association shall pay any and all recording fees, and any and all other charges, fees and taxes levied by a governmental authority other than the City relative to the recordation of documents and/or conveyance of the Property through the Escrow transaction contemplated in this Agreement. Documentary transfer taxes, if any are required, shall be paid by the City.

**Section 3.9 Escrow Cancellation Charges.** If the Escrow fails to close due to the City's material default under this Agreement, the City shall pay all ordinary and reasonable Escrow and title order cancellation charges associated with cancellation of the Escrow and associated title order(s). If the Escrow fails to close due to the Association's material default under this Agreement, the Association shall pay all ordinary and reasonable Escrow and title order cancellation charges associated with cancellation of the Escrow and associated title order(s). If the Escrow fails to close for any reason other than the material default of either the Association or the City, the Association and the City shall each pay one-half (1/2) of any ordinary and reasonable Escrow and title order cancellation charges associated with cancellation of the Escrow and associated title order(s).

**Section 3.10 Escrow Cancellation.** If this Agreement is terminated and the Escrow cancelled pursuant to a contractual right granted to a Party in this Agreement (other than arising from an Event of Default) to terminate this Agreement and cancel the Escrow, the Parties shall do each of the following:

(a) **Cancellation Instructions.** The Parties shall, within three (3) business days following receipt of the Escrow Holder's written request, execute any reasonable Escrow cancellation instructions requested by the Escrow Holder;

(b) **Return of Funds and Documents.** Within ten (10) business days following receipt by the Parties of a settlement statement of Escrow and title order cancellation charges from the Escrow Holder: (1) the Association and/or the Escrow Holder shall return to the City any documents previously delivered by the City to the Association or the Escrow Holder, (2) the City and/or the Escrow Holder shall return to the Association all documents previously delivered by the Association to the City or the Escrow Holder; and (3) Escrow Holder shall return to the Association any funds deposited into the Escrow, except as otherwise provided in Section 7.3, less the Association's share of customary and reasonable Escrow and title order cancellation charges, if any.

**Section 3.11 Report to IRS.** Following the Close of Escrow and prior to the last date on which such report is required to be filed with the Internal Revenue Service, if such report is required pursuant to Section 6045(e) of the Internal Revenue Code, the Escrow Holder shall report the gross proceeds of the purchase and sale of the Property to the Internal Revenue Service on such form(s) as may be specified by the Internal Revenue Service pursuant to Section 6045(e). Upon the filing of such reporting form with the Internal Revenue Service, the Escrow Holder shall deliver a copy of the filed form to both the City and the Association.

#### ARTICLE IV

##### FAÇADE IMPROVEMENTS

**Section 4.1 Association Covenant to Undertake Facade Improvements.** The Association covenants to and for the mutual benefit of the City and the Association that the Association shall commence and complete up to \$500,000 worth of the construction and installation of Facade Improvements on the Property within seven (7) years after Close of Escrow, in conformity with the terms and conditions of this Agreement, and all applicable ordinances, building codes, laws, regulations, orders and conditions of each Governmental Agency.

#### ARTICLE V

##### COVENANTS OF THE ASSOCIATION

**Section 5.1 Maintenance Condition of the Property.** The Association for itself, its successors and assigns covenants and agrees that:

(a) The entirety of the Property shall be maintained by the Association in good condition and repair and a neat, clean and orderly condition, ordinary wear and tear excepted, including, without limitation, 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, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future, by or with the consent of the Association, as necessary to maintain the appearance and character of the Property. The Association's obligation to maintain the Property described in the immediately preceding sentence shall include, without limitation, (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; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; and (vi) maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary, all at the sole cost and expense of the Association. The Association's obligation to maintain the Property described in the two immediately preceding sentences is referred to in this Agreement as the "Maintenance Standard." 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 Property; provided, however, that the Association shall remain responsible and liable for the maintenance of the Property, at all times.

(b) If, at any time following the Close of Escrow, there is an occurrence of an adverse condition on any area of the Property in contravention of the Maintenance Standard (each such occurrence being a "**Maintenance Deficiency**"), then the City may notify the Association in writing of the Maintenance Deficiency. If the Association fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written notice of the hearing to the Association, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Association has failed to comply with the provisions of this Section 5.1. If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency exists and remains uncured, the City shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 5.1 that is not paid within thirty (30) calendar days after written demand for payment to the Association from the City, shall accrue interest at the rate of ten percent (10%) per annum, until paid.

(c) Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Association by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of receipt by the Association from the City of written notice of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti after giving notice to the management company managing the Property for the Association, and to the Secretary of the Board, and the Maintenance Supervisor. If any amount becoming due to the City under this Section 5.1(c) is not paid within thirty (30) calendar days after written demand to the Association from the City, such amount shall accrue interest at the rate of ten percent (10%) per annum, until paid in full. In any event, the Property shall be subject to any applicable graffiti ordinances adopted by the City, as amended from time to time.

**Section 5.2 Non-Discrimination.** The Association covenants by and for itself, its successors and assigns, and all persons claiming under or through any of them, that there shall be no restriction on the rental, sale or lease of all or any portion of the Property on any basis listed in subdivision (a) or (d) of Government Code Section 12955, as those bases are defined in Government Code Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Government Code Section 12955, and Government Code Section 12955.2. The covenant of this Section 5.2 shall run with the land of the Property and bind all successive owners of the Property, in perpetuity.

**Section 5.3 Association Assumption of Risks.** The Association acknowledges that the City is a “public entity” and/or a “public Agency” as defined under applicable California law. Therefore, the City must satisfy the requirements of certain California statutes relating to the actions of public entities, including, without limitation, CEQA and the Coastal Act. Also, as a public body, the City’s action in approving this Agreement may be subject to proceedings to invalidate this Agreement or mandamus. Subject to the provisions of Sections (jjj) and 3.6, the Association assumes the risk of delays and damages that may result to the Association from any third-party legal actions related to the City’s approval of this Agreement, creation of the Property or any adjacent parcel as a legal parcel or the pursuit of other activities contemplated by this Agreement. Nothing contained in this Section 5.3 shall be deemed or construed to be an express or implied admission that the City is liable to the Association or any other person for damages alleged from any alleged or established failure of the City to comply with any statute, including, without limitation, CEQA or the Coastal Act.

**Section 5.4 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 counsel selected by the Association and approved by 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” existing or occurring during or arising from the Association’s ownership of the Property:

(1) The presence of Hazardous Materials on, in, under, from or affecting all or any portion of the Property, provided, however, that with respect to subsurface Hazardous Materials, the presence of which pre-dates the construction of the existing 17 story condominium building, the Association hereby releases City from any liability to the Association arising from the discovery of the presence of such Hazardous Materials, but the Association is not obligated to defend and/or hold the City harmless from third party claims related to the discovery of such Hazardous Materials, and the parties agree to cooperate with each other in pursuing claims against those persons or entities ultimately determined to be responsible for the presence of such Hazardous Materials, if any are discovered.

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

(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 Materials on, in, under, from or affecting the 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 Materials existing, stored or generated on, in, under or from the Property;

(7) Any investigation, inquiry, order, hearing, action or other proceeding by or before any Governmental Agency in connection with any Hazardous Materials on, in, under, from or affecting the Property or Facade Improvements or the violation of any Environmental Law relating to the 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 5.4 are payable on demand from the City. Any amount due and payable under this Section 5.4 to the City that is not paid within thirty (30) 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 or the maximum rate allowed by California law, whichever is less. 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 5.4 or the enforcement such environmental indemnity. The environmental indemnity given by the Association in this Section 5.4 will survive expiration or earlier termination of this Agreement, until all such Environmental Claims are completely barred by applicable statutes of limitation.

(d) The obligations of the Association to hold the City harmless hereunder do not include or extend to Hazardous Materials that are proved to have been present on the Property before the Close of Escrow and that are not proven to be on the Property as a result of actions by the Association or its Members.

**Section 5.5 Survival of Covenants.** Each of the covenants set forth in this ARTICLE V shall survive the Close of Escrow, execution and recordation of the City Deed and all other documents to be recorded pursuant to this Agreement, for the time period specifically set forth in each such covenant.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF THE ASSOCIATION

**Section 6.1 Representations and Warranties by the Association.** The Association makes the following representations and warranties as of the Effective Date and the Close of Escrow and acknowledges that the execution of this Agreement by the City is made in material reliance by the City on such representations and warranties of the Association:

(a) The Association has taken all requisite action and obtained all requisite consents in connection with entering into this Agreement, such that this Agreement is valid and enforceable against the Association in accordance with its terms and each instrument to be executed by the Association pursuant to or in connection with this Agreement will, when executed, be valid and enforceable against the Association in accordance with its terms. No approval, consent, order or authorization of, or designation or declaration of any other person, is required in connection with the valid execution, delivery or performance of this Agreement by the Association.

(b) If the Association becomes aware of any act or circumstance that would change or render incorrect, in whole or in part, any representation or warranty made by the Association under this Agreement, whether as of the date given or any time thereafter, whether or not such representation or warranty was based upon the Association's knowledge and/or belief as of a certain date, the Association will give immediate written notice of such changed fact or circumstance to the City.

## ARTICLE VII

### DEFAULTS, REMEDIES AND TERMINATION

#### Section 7.1 Default.

(a) Subject to any extensions of time provided for in this Agreement and the provisions of Section 7.2, failure or delay by either Party to perform any term or provision of this Agreement shall constitute a default under this Agreement; provided, however, that a Party otherwise in default shall not be in default if such Party cures the default within thirty (30) days after notice to the Party alleged to be in default describing the default in reasonable detail, or, in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after such notice, if the Party alleged to be in default does all of the following: (i) within thirty (30) days after notice of such default, advise the other Party of the intention of the Party alleged to be

in default to take all reasonable steps to cure such default; (ii) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (iii) complete such cure within a reasonable time under the circumstances.

(b) The injured Party shall give written notice of the occurrence of a default to the Party in default, specifying the default complained of by the non-defaulting Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default.

(c) Any failure or delay by either Party in asserting any of their rights and/or remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delay by either Party in asserting any of its rights and/or remedies shall not deprive either Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 7.2 Events of Default.** In addition to other acts or omissions of the Association that may legally or equitably constitute a default or breach of this Agreement, the occurrence of any of the following specific events shall constitute an **"Event of Default"** under this Agreement:

(a) Any failure of the Association to undertake and/or complete Façade Improvements pursuant to and in accordance with ARTICLE IV that is not cured within thirty (30) days after notice to the Association of such default, or, in the case of a default that cannot with reasonable diligence be cured within thirty (30) days after such notice, if the Association does not do all of the following: (i) within thirty (30) days after notice of such default, advise the City of the intention of the Association to take all reasonable steps to cure such default; (ii) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (iii) complete such cure within a reasonable time under the circumstances;

(b) Any representation, warranty or disclosure made to the City by the Association regarding this Agreement or Façade Improvements is materially false or misleading;

(c) The Association fails to make any payment or deposit of funds required under this Agreement or to pay any other charge set forth in this Agreement, following thirty (30) days' written notice to the Association of such failure;

(d) The Association fails to indemnify or defend the City as required under this Agreement, following thirty (30) days' written notice to the Association of such failure;

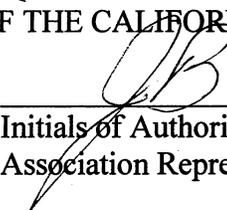
(e) Except for assignment by the Association to its Members of its rights under this Agreement as provided in Section 2.1, the Association Transfers its interest in all or any portion of this Agreement, or the Property, whether voluntarily or involuntarily or by operation of law, in violation of the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

(f) The Association becomes insolvent or a receiver is appointed to conduct the affairs of the Association under state or federal law; or

(g) The Association's legal status as a California non-profit mutual benefit corporation authorized by the Secretary of State of the State of California to transact business in California is suspended or terminated, and its legal status is not restored within sixty (60) days from the date the Association receives notice of the termination or suspension.

**Section 7.3 PRE-CLOSING LIQUIDATED DAMAGES TO THE CITY.** UPON THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE ASSOCIATION UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY MAY CANCEL THE ESCROW, PURSUANT TO SECTION 3.10, AND UPON CANCELLATION OF THE ESCROW THE CITY SHALL BE RELIEVED OF ANY OBLIGATION UNDER THIS AGREEMENT TO SELL OR CONVEY THE PROPERTY TO THE ASSOCIATION AND ANY SUCH ESCROW CANCELLATION SHALL BE WITHOUT ANY LIABILITY OF THE CITY TO THE ASSOCIATION OR ANY OTHER PERSON ARISING FROM SUCH ACTION. THE CITY AND THE ASSOCIATION ACKNOWLEDGE THAT IT IS EXTREMELY DIFFICULT AND IMPRACTICAL, IF NOT IMPOSSIBLE, TO ASCERTAIN THE AMOUNT OF DAMAGES THAT WOULD BE SUFFERED BY THE CITY, IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE ASSOCIATION UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. HAVING MADE DILIGENT BUT UNSUCCESSFUL ATTEMPTS TO ASCERTAIN THE ACTUAL DAMAGES THE CITY WOULD SUFFER, IN THE EVENT OF A CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE ASSOCIATION UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE CITY AND THE ASSOCIATION AGREE THAT A REASONABLE ESTIMATE OF THE CITY'S DAMAGES IN SUCH EVENT IS FIFTY THOUSAND DOLLARS (\$50,000) (THE "PRE-CLOSING LIQUIDATED DAMAGES AMOUNT"). THEREFORE, UPON THE CANCELLATION OF THE ESCROW BY THE CITY DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE ASSOCIATION UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW, THE ESCROW HOLDER SHALL IMMEDIATELY CANCEL THE ESCROW AND PAY THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT TO THE CITY FROM THE EARNEST MONEY DEPOSIT, WITHIN FIVE (5) CALENDAR DAYS FOLLOWING ESCROW CANCELLATION. RECEIPT OF THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT SHALL BE THE CITY'S SOLE AND EXCLUSIVE REMEDY UPON THE CANCELLATION OF THE ESCROW DUE TO THE OCCURRENCE OF AN EVENT OF DEFAULT BY THE ASSOCIATION UNDER THIS AGREEMENT PRIOR TO THE CLOSE OF ESCROW. PAYMENT OF THE PRE-CLOSING LIQUIDATED DAMAGES AMOUNT TO CITY IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

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**Section 7.4 LIMITATION ON ASSOCIATION REMEDIES AND RECOVERY OF DAMAGES PRIOR TO CLOSE OF ESCROW.**

(a) IN THE EVENT OF A MATERIAL BREACH OF THIS AGREEMENT BY THE CITY PRIOR TO THE CLOSE OF ESCROW, THE ASSOCIATION SHALL BE LIMITED TO PURSUING SPECIFIC PERFORMANCE OF THIS AGREEMENT AGAINST THE CITY AS THE ASSOCIATION'S SOLE AND EXCLUSIVE REMEDY ARISING FROM SUCH EVENT. THE ASSOCIATION WAIVES ANY RIGHT TO RECOVER ANY MONETARY DAMAGES OR RELIEF (OTHER THAN SPECIFIC PERFORMANCE OF THIS AGREEMENT) AND ENFORCEMENT OF ANY INDEMNITY OBLIGATIONS ARISING FROM ANY BREACH OF THIS AGREEMENT BY THE CITY PRIOR TO THE CLOSE OF ESCROW. THE ASSOCIATION ACKNOWLEDGES THE PROTECTIONS OF CIVIL CODE SECTION 1542 RELATIVE TO THE WAIVER AND RELEASE CONTAINED IN THIS SECTION 7.4, WHICH CIVIL CODE SECTION 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.

(b) BY INITIALING BELOW, THE ASSOCIATION KNOWINGLY AND VOLUNTARILY WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE WAIVERS AND RELEASES CONTAINED IN THIS SECTION 7.4:

  
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**Section 7.5 Specific Performance.** Association and City acknowledge that, pursuant to the terms of this Agreement, City is obligated to perform, and in the event Escrow fails to close by reason of default by City, Association shall be entitled to specific performance of this Agreement by the City. Notwithstanding City's obligations under this Agreement, in the event City is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of City, Association shall only be entitled to the return of the Earnest Money Deposit and the Additional Earnest Money Deposit, if made, without any right to seek specific performance of this Agreement by the City or recover any other damages from the City.

**Section 7.6 Mediation.** The Association shall mediate any and all dispute(s) or claim(s) with the City arising out of or related to this Agreement, or any resulting transaction before resorting to arbitration or court action. Mediation is a process by which parties attempt to resolve a dispute or claim by negotiating it before an impartial, neutral mediator, who facilitates the resolution of the dispute, but who is not empowered to impose a settlement on the parties. Mediation fees, if any, shall be divided equally among the parties involved. Evidence of anything said, any admission made, and any documents prepared, in the course of the mediation, shall not be admissible in evidence, or subject to discovery, in any arbitration or

court action, pursuant to Evidence Code § 1115 et. seq. Except as provided in Section 7.7, IF THE ASSOCIATION COMMENCES AN ARBITRATION OR COURT ACTION BASED ON A DISPUTE OR CLAIM TO WHICH THIS SECTION APPLIES WITHOUT FIRST ATTEMPTING TO RESOLVE THE MATTER THROUGH MEDIATION, THE ASSOCIATION SHALL NOT BE ENTITLED TO RECOVER ATTORNEY'S FEES AS THE PREVAILING PARTY, EVEN IF IT WOULD OTHERWISE BE ENTITLED TO SUCH RECOVERY IN ANY SUCH ARBITRATION OR COURT ACTION. THIS PROVISION APPLIES WHETHER OR NOT THE ARBITRATION OF DISPUTES PROVISION IS INITIALED.

  
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**Section 7.7 ARBITRATION.** ANY DISPUTE OR CLAIM IN LAW OR EQUITY BETWEEN THE ASSOCIATION AND THE CITY ARISING OUT OF THIS AGREEMENT OR ANY RESULTING TRANSACTION THAT IS NOT SETTLED THROUGH MEDIATION SHALL BE DECIDED BY NEUTRAL, BINDING ARBITRATION AND NOT BY COURT ACTION, EXCEPT AS PROVIDED BY CALIFORNIA LAW FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS. THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH THE RULES OF EITHER THE AMERICAN ARBITRATION ASSOCIATION (“AAA”) OR JUDICIAL ARBITRATION AND MEDIATION SERVICES, INC. (“JAMS”). THE RIGHT TO SELECT BETWEEN AAA AND JAMS RULES SHALL BE MADE BY THE CLAIMANT FIRST FILING FOR THE ARBITRATION. THE PARTIES TO ARBITRATION MAY AGREE IN WRITING TO USE DIFFERENT RULES AND/OR ARBITRATOR(S). IN ALL OTHER RESPECTS, THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE WITH PART III, TITLE 9 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. JUDGMENT UPON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF. THE PARTIES SHALL HAVE THE RIGHT TO DISCOVERY IN ACCORDANCE WITH CODE OF CIVIL PROCEDURE §1283.5. “NOTICE: YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE ‘ARBITRATION OF DISPUTES’ PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISIONS IS VOLUNTARY.”

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Association Representative

**Section 7.8 City Remedies for Association Failure to Complete Façade Improvements.** The Association acknowledges and agrees that construction and installation of Façade Improvements is a material part of the consideration to the City for transfer of the Property to the Association under the terms and conditions of this Agreement. Further, the Association acknowledges and agrees that Façade Improvements are to be incorporated into the Property as permanent fixtures and are, therefore, a unique element of the Property. The Association agrees that the City cannot be adequately compensated in monetary damages for the Association's failure to commence and complete Façade Improvements in accordance with the terms and conditions of this Agreement. The Association agrees that the City shall be entitled to specifically enforce the obligations of the Association under this Agreement to construct and install Façade Improvements on the Property.

**Section 7.9 Legal Actions.**

(a) Following the Close of Escrow, either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy available to that Party under this Agreement, at law or in equity. Such legal actions must be instituted in the Superior Court of the State of California in and for the County of San Diego, California, in any other appropriate court within the County of San Diego, California, or in the United States District Court for the Southern District of California.

(b) The laws of the State of California shall govern the interpretation and enforcement of this Agreement, without regard to their conflicts of laws principles. The Parties acknowledge and agree that this Agreement is entered into, is to be fully performed in and relates to real property located in the City of Oceanside, County of San Diego, California.

**Section 7.10 Rights and Remedies are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties set forth in this ARTICLE VII are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

**Section 7.11 Association Indemnification of the City.**

(a) **Indemnity.** In addition to any other specific indemnification or defense obligations of the Association set forth in this Agreement and to the fullest extent permitted by law, the Association agrees to indemnify, defend (upon written request by the City and with counsel reasonably acceptable to the City) and hold harmless each and all of the City Parties from and against all Claims, as defined in sub-section (b), that are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part by:

(1) Any act, omission, fault or negligence, whether active or passive, of the Association or the Association's officers, agents, employees, independent contractors or subcontractors of any tier, relating in any manner to this Agreement, any work to be performed by any such person related to this Agreement, the Property, or Façade Improvements; or

(2) Any authority or obligation exercised or undertaken by the Association under this Agreement; or

(3) Any breach or default in performance of any obligation of the Association under this Agreement.

(b) **Definition of "Claims."** For purposes of this Agreement, "Claims" means any and all claims, losses, costs, damages, expenses, liabilities, liens, actions, causes of action (whether in tort or contract, at law or in equity, or otherwise), charges, awards, assessments, fines, and penalties of any kind (including consultant and expert expenses, court costs, and reasonable attorneys fees of counsel retained by the City Parties, expert fees, costs of staff time, and investigation costs, of whatever kind or nature), and judgments, including, but not limited to, Claims for: (1) injury to any person (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) regardless of where located, including the property of the City Parties; (3) any workers' compensation or prevailing wage determination; (4) all economic losses and consequential or resulting damage of any kind; and (5) any and all administrative proceedings or litigation related to any City approval related to this Agreement, or the Lot Line Adjustment, or Coastal Development Permit (if any), including any environmental studies, reports, documents or findings. The Association's responsibility to indemnify City Parties shall not extend to Claims resulting from acts or omissions of third parties over whom the Association has no control and who are not acting as agents of the Association.

(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.

(d) **Exclusion of City Party Negligence.** 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.

(e) **Independent of Insurance Obligations.** The Association's indemnification obligations pursuant to this Section 7.11 shall not be construed or interpreted as in any way restricting, limiting, or modifying the Association's insurance or other obligations under this Agreement and is independent of the Association's insurance and other obligations under this Agreement. The Association's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Association's indemnification obligations under this Agreement.

(f) **Survival of Indemnification and Defense Obligations.** The Association's indemnification and defense obligations pursuant to this 7.11 shall survive the expiration or earlier termination of this Agreement, for a period of four (4) years following the date of expiration or earlier termination, or, in the event of recordation of the City Deed, shall survive for a period of four (4) years following the recording of the City Deed, and, with respect to the Façade Improvements, four (4) years following the completion thereof.

## ARTICLE VIII

### GENERAL PROVISIONS

Section 8.1 **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 8.2 **Restrictions on Assignment or Transfer.**

(a) The Association acknowledges that the qualifications and identity of the Association are of particular importance to the City. The Association further recognizes and acknowledges that the City has relied and is relying on the specific qualifications and identity of the Association in entering into this Agreement with the Association and, as a consequence, Transfers are permitted only as expressly provided in this Agreement.

(b) Except as expressly permitted in this Agreement, the Association represents to the City that it has not made and agrees that it will not create or suffer to be made or created any Transfer, either voluntarily, involuntarily or by operation of law, without the prior written approval of the City, in the City's sole and absolute discretion.

(c) This Section shall not be construed so as to preclude the Association from assigning its rights to its Members, to facilitate purchase by the Members of undivided interests in the Property, or the use by the Association of its interest in the Property to secure a loan. The restrictions on Assignment or transfer do not survive the Close of Escrow except for the Right of First Offer.

Section 8.3 **Notices, Demands and Communications Between the Parties.**

(a) Any and all notices, demands or communications submitted by any Party to another Party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight delivery service ("Approved Notice") to the City or the Association and their agents, as applicable, as designated in sub-section (b). Such written notices, demands or communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by Approved Notice. Any such notice, demand or communication shall be deemed to be received by the addressee, regardless of whether or when any return receipt is received by the sender on the day that it is delivered by a nationally recognized overnight delivery service with recipient's signature as proof of delivery, as provided in this Section.

(b) The following are the authorized addresses for the submission of notices, demands or communications to the Parties and their Agents:

To the Association:	Oceanside Marina Towers Association 1200 Harbor Drive North, Unit 4D Oceanside, CA 92054 Attn: David Wilson Secretary of the Board of Directors
---------------------	---

To Association Manager: Cal West Management & Sales, Inc.  
2185 Faraday Avenue, Suite 140  
Carlsbad, CA 92008  
Attn: Signe Osteen

To Association Director of Maintenance:  
(Notices re graffiti removal and maintenance issues)  
Marina Towers Association  
1200 Harbor Drive North  
Oceanside, CA 92054  
Attn: Steve Pineda

With courtesy copies to: Alan H. Burson, Esq.  
P.O. Box 240  
Mission Avenue  
Oceanside, CA 92054

Galuppo and Blechschmidt  
2792 Gateway Road, Suite 102  
Carlsbad, CA 92009

Hanna & Van Atta  
Attorneys at Law  
525 University Avenue, Suite 600  
Palo Alto, CA 94301

To the City: City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: City Manager

With courtesy copy to: City of Oceanside  
300 North Coast Highway  
Oceanside, CA 92054  
Attention: City Attorney

Changes in authorized addresses for submission of notices shall be delivered in accordance with the notice requirements.

Section 8.4 **Submission of Requests for Approval to City.** Any requests for approval of documents submitted to the City under this Agreement shall contain the following heading in all capital letters and no less than twelve (12) point, bold type on the first page of the request with references to the applicable provisions of this Agreement inserted:

**ATTENTION CITY MANAGER:**

**THIS SUBMITTAL IS A REQUEST FOR CITY APPROVAL OF THE ATTACHED DOCUMENT(S) UNDER THAT CERTAIN REAL PROPERTY PURCHASE AND SALE AGREEMENT (MARINA TOWERS CONDOMINIUM PROPERTY), DATED AS OF JULY 16, 2008.**

**PLEASE REVIEW THE ATTACHED DOCUMENT(S) AND APPROVE OR DISAPPROVE THE ATTACHED DOCUMENT(S) IN WRITING WITHIN THE TIME ESTABLISHED FOR SUCH ACTION BY THE CITY IN SECTION \_\_\_ OF THE AGREEMENT OR PARAGRAPH \_\_\_ OF THE SCHEDULE OF PERFORMANCE. FAILURE TO DISAPPROVE THE ATTACHED DOCUMENT(S) IN WRITING WITHIN THE TIME PERIOD REFERENCED MAY BE DEEMED AN APPROVAL OF THE ATTACHED DOCUMENT(S) BY THE CITY.**

**Section 8.5 Calculation of Time Periods.** Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to business days in this Agreement shall mean and refer to business days of the City.

**Section 8.6 Warranty Against Payment of Consideration for Agreement.** The Association warrants that it has not illegally paid or given, and will not illegally pay or give, any third party any money or other consideration for obtaining this Agreement. Third parties, for the purposes of this Section 8.6, shall not include persons to whom fees are paid for professional services, if rendered by attorneys, consultants, project managers, accountants, engineers, architects, planners and the like when such fees are considered necessary by the Association.

**Section 8.7 Non-liability of City Officials and Employees.** No elected official, officer, employee or agent of the City shall be personally liable to the Association, or any successor in interest of the Association, in the event of any default or breach by the City under this Agreement or for any amount that may become due to the Association or to its successor, on any obligations under the terms of this Agreement, except as may arise from the gross negligence or willful misconduct of such elected official, officer, employee or agent.

**Section 8.8 Unavoidable Delay; Extension of Time for Performance.**

(a) Subject to specific provisions of this Agreement (particularly the provisions of Section 3.6), performance by either Party under this Agreement shall not be deemed, or considered to be in default, where any such default is due to an Unavoidable Delay. An extension of time for any Unavoidable Delay shall be for the period of the Unavoidable Delay and shall commence to run from the date of the occurrence of the Unavoidable Delay, if the Party asserting the existence of the Unavoidable Delay provides the other Party with written notice of the occurrence of the Unavoidable Delay, within thirty (30) calendar days following the date of the commencement of such asserted Unavoidable Delay. Otherwise, the extension of time for an Unavoidable Delay shall commence on the date of receipt of written notice of the occurrence of the Unavoidable Delay by the Party not claiming an extension of time to perform due to such Unavoidable Delay.

(b) The Parties expressly acknowledge and agree that changes in either general economic conditions or changes in the economic assumptions of either of them that may have provided a basis for entering into this Agreement and that occur at any time after the execution of this Agreement, do not constitute an Unavoidable Delay and do not provide any

Party with grounds for asserting the existence of an Unavoidable Delay in the performance of any covenant or undertaking arising under this Agreement. Each Party expressly assumes the risk that changes in general economic conditions or changes in such economic assumptions relating to the terms and covenants of this Agreement could impose an inconvenience or hardship on the continued performance of such Party under this Agreement.

**Section 8.9 Inspection of Books and Records.** The City shall have the right at all reasonable times, at the City's cost and expense, to inspect the books and records of the Association pertaining to this Agreement, the Property and/or Facade Improvements, to the extent relevant to the City's rights or obligations under this Agreement. The Association shall also have the right at all reasonable times, at the Association's sole cost and expense, to inspect the books and records of the City pertaining to this Agreement, the Property and/or Facade Improvements, to the extent relevant to the Association's rights or obligations under this Agreement.

**Section 8.10 City Attorney Fees and Costs.** For the purposes of this Agreement, all references to attorney fees 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 who provide legal services regarding the particular matter, adjusted to or billed at an hourly rate and multiplied by the time spent on such matter rounded to increments of 1/10<sup>th</sup> of an hour, in addition to attorney fees of outside counsel retained by the City for the particular matter.

**Section 8.11 Real Estate Commissions.** The City shall not be liable for any real estate commissions, brokerage fees or finder fees that may arise from or be related to this Agreement, the sale of the Property to the Association or any other transactions contemplated in this Agreement. The Association shall pay any fees or commissions or other expenses related to its retention or employment of real estate brokers, agents or other parties regarding this Agreement, the purchase of the Property, or any other transactions contemplated in this Agreement.

**Section 8.12 Binding on Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

**Section 8.13 Entire Agreement.**

(a) This Agreement shall be executed in four (4) originals, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement includes fifty-three (53) pages and fifteen (15) exhibits, that constitute the entire understanding and Agreement of the Parties regarding the Property, Facade Improvements and the other subjects addressed in this Agreement.

(b) 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 Property, Facade Improvements and the other subjects addressed in this Agreement.

(c) None of the terms, covenants, agreements or conditions set forth in this Agreement shall be deemed to be merged with any deed conveying title to the Property, and this Agreement shall continue in full force and effect before and after any such conveyances.

(d) All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representative(s) of both the City and the Association.

**Section 8.14 Execution of this Agreement.** Following execution of four (4) counterpart originals of this Agreement by the authorized representative(s) of the Association and prompt delivery of such originals, thereafter, to the City, accompanied by the certified Association Official Action authorizing the individuals executing this Agreement on behalf of the Association to execute and perform this Agreement, this Agreement shall be subject to the review and approval by the City Council, in its sole and absolute discretion, no later than forty-five (45) calendar days after the date of delivery to the City of all such documents. If the City has not approved, executed and delivered an original of this Agreement to the Association within the foregoing forty-five (45) day time period, then no provision of this Agreement shall be of any force or effect for any purpose. The City shall not be obligated to consider approval of this Agreement, unless and until the Association delivers the counterpart originals and certified Association Official Action.

**Section 8.15 Survival of Indemnity and Defense Obligations.** All general and specific indemnity and defense obligations of the Parties set forth in this Agreement shall survive the expiration or termination of this Agreement and the execution or recordation of the City Deed.

**SIGNATURE PAGE  
TO  
REAL PROPERTY PURCHASE AND SALE AGREEMENT  
(Marina Towers Condominium Property)**

IN WITNESS WHEREOF, the City and the Association have executed this 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: \_\_\_\_\_  
Jim Wood  
City Mayor

ATTEST:

\_\_\_\_\_  
Barbara Riegel Wayne  
City Clerk

APPROVED AS TO FORM:

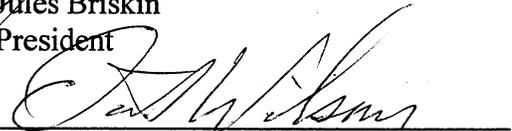
Oceanside City Attorney

  
\_\_\_\_\_  
John Mullen

ASSOCIATION:

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

By:   
\_\_\_\_\_  
Jules Briskin  
President

By:   
\_\_\_\_\_  
Name: David Wilson  
Secretary

**EXHIBIT "A-1"**

**PROPERTY LEGAL DESCRIPTION**

**[Exhibit "A-1" to be attached behind this cover page]**

**CERTIFICATE OF COMPLIANCE**  
CONTINUATION

**EXHIBIT "A-1"**

**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. 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;

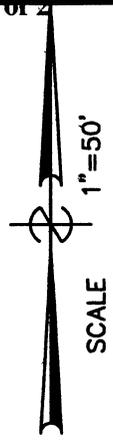
THENCE NORTH 77°30'50" EAST 47.95 FEET TO THE EASTERLY LINE OF LAND DESCRIBED IN SAID QUITCLAIM DEED TO THE CITY OF OCEANSIDE RECORDED APRIL 14, 1975 AS FILE/PAGE NO. 75-085622 OF OFFICIAL RECORDS

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-1"



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'**  
1.208 ACRES MORE OR LESS GROSS  
(SUBJECT TO CONDOMINIUM PLAN FOR  
OCEANSIDE MARINA TOWERS REC.  
10/31/1974 AS F/P NO. 74-289770)

AT & SF R.R.  
N 12°29'10" W 378.25'

NEW LOT  
LINE  
L=37'25'23"  
R=95.00'  
L=62.05'

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

APN  
143-010-16

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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

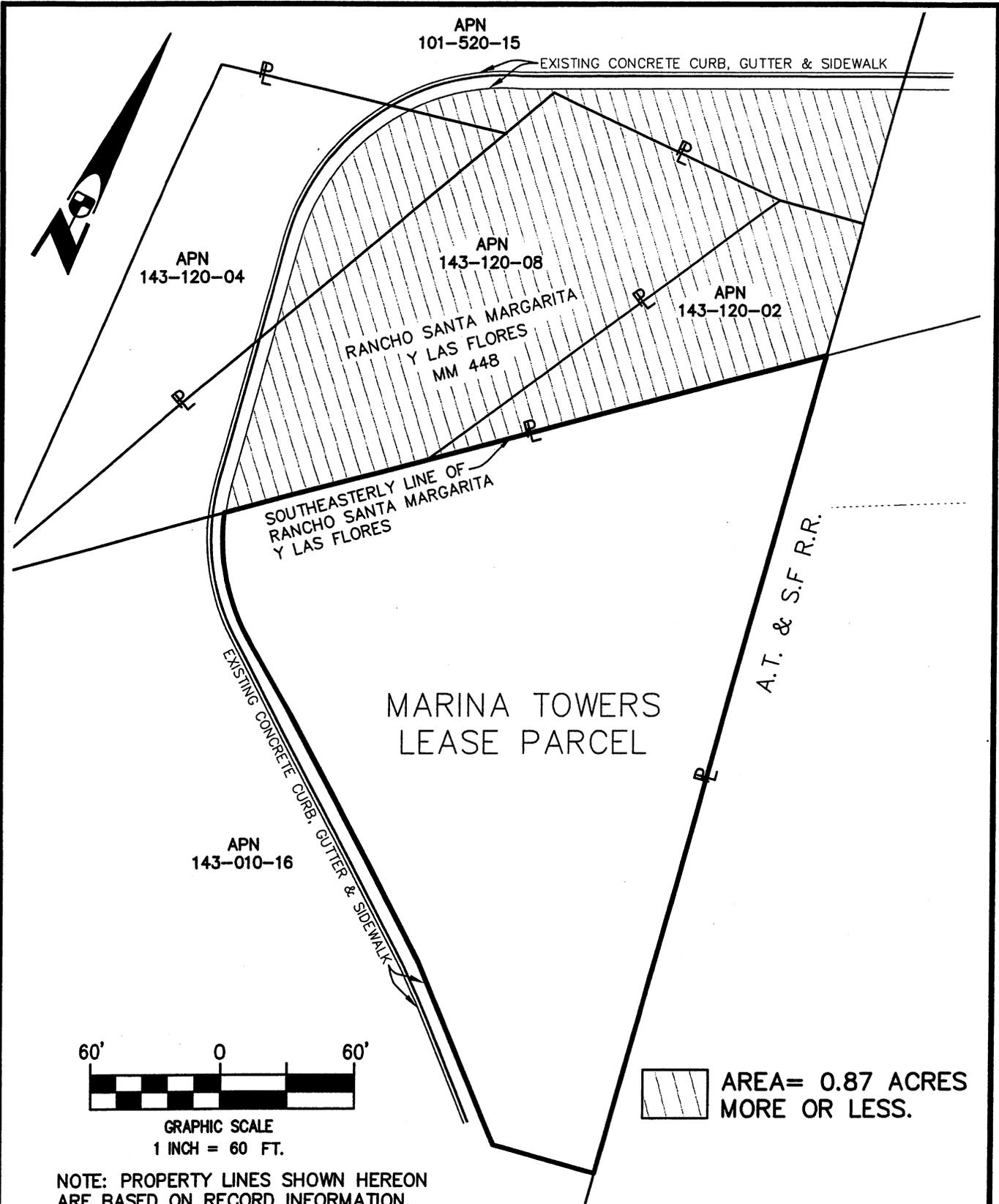
S 50°58'29" E  
88.95'

N 77°30'50" E  
47.95'

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

<b>LOT LINE ADJUSTMENT</b>	
DATE: JAN. 30, 2007	

EXHIBIT "A-2"



**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 Adjacent Property Plat.dwg

<b>MARINA TOWERS ADJACENT PROPERTY EXHIBIT</b>	
DATE: FEB. 5, 2008	SHEET 1 OF 1

## **EXHIBIT "B"**

### **FAÇADE IMPROVEMENTS**

The required minimum expenditure of \$500,000 for Façade Improvements may be chosen from among any of the following items (or items of a similar nature), some of which are generally depicted on Exhibit "B-1" attached hereto (the colored rendering) and which will be further delineated and designed where necessary as part of the required Development Plans and Local Coastal Permits to be filed with the City Planning Department.

- (a) Removal and replacement or sheeting of existing blue tile;
- (b) Re-painting of concrete block surfaces;
- (c) Repair and/or replacement of patio railings;
- (d) Repair and/or replacement of windows and patio doors;
- (e) Installation of building exterior accent lighting;
- (f) Installation of non-structural decorative elements such as balcony corbels;
- (h) Enhancement of landscaping on the Property;
- (i) Repair and/or replacement of pool decks or equipment;
- (j) Repair or replacement of entry doors or entryway enhancements; and
- (k) Modification of building roofline.

EXHIBIT "B-1"



**EXHIBIT "C"**  
**FORM OF CITY DEED**

**[Attached behind this cover page]**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

SPACE ABOVE FOR RECORDER'S USE ONLY

**CITY OF OCEANSIDE**  
**QUITCLAIM DEED**

THE UNDERSIGNED DECLARES:

- Documentary Transfer Tax is: \$ \_\_\_\_\_
- County of San Diego unincorporated area;  City of Oceanside
- Assessor's Parcel No.: \_\_\_\_\_
- computed on full value of interest or property conveyed, or
- computed on full value of liens or encumbrances remaining at time of sale.

**ARTICLE I**

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the City of Oceanside, California, a municipal corporation (the "City"), hereby remises, releases and quitclaims to Oceanside Marina Towers Association, a California non-profit mutual benefit corporation (the "Association"), all of the City's right, title and interest in and to that certain real property legally described in Exhibit "A" attached to and by this reference incorporated into this Quitclaim Deed (the "Property").

**ARTICLE II**

The quitclaim of the Property by the City to the Association in ARTICLE I is subject to the following terms, conditions, covenants and restrictions running with the land of the Property for the benefit of the City:

**Section 2.1 Conveyance Subject to Terms of a Real Property Purchase and Sale Agreement.** The Property is conveyed subject to that certain Real Property Purchase and Sale Agreement (Marina Towers Condominium Property), dated as of July 16, 2008, by and between the City and the Association (the "Agreement"). The provisions of the Agreement are incorporated into this Quitclaim Deed by this reference and are deemed to be a part of this Quitclaim Deed, as though fully set forth in this Quitclaim Deed.

CITY DEED  
CERTIFICATE OF ACCEPTANCE

Section 2.2 **Condition of Property.** The Association acknowledges and agrees that the Property is quitclaimed by the City to the Association in its "AS IS," "WHERE IS" and "SUBJECT TO ALL FAULTS CONDITION," as of the date of recordation of this Quitclaim Deed, with no warranties, expressed or implied, as to the environmental or other physical condition of the Property, the presence or absence of any patent or latent environmental or other physical condition on or in the Property, or any other matters affecting the Property.

Section 2.3 **Prohibited Uses.** The Association covenants and agrees for itself, its successors and assigns that the following uses on the Property are prohibited:

bars or businesses with "on-sale" alcoholic beverage sale licenses (other than as part of a hotel or restaurant), coin laundries or laundromats (other than as may be provided at a hotel), used clothing stores, used appliance stores, used furniture stores or rummage stores, churches or other religious institutions, massage parlors, or so-called adult book or adult entertainment establishments.

Section 2.4 **Non-Discrimination.** Association covenants by and for itself, its successors and assigns, and all Persons claiming under or through any of them, that there shall be no restriction on the rental, sale or lease of all or any portion of the Property on any basis listed in subdivision (a) or (d) of Government Code Section 12955, as those bases are defined in Government Code Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Government Code Section 12955, and Government Code Section 12955.2. The covenant of this Section 2.4 shall run with the land of the Property and bind all successive owners of the Property, in perpetuity.

Section 2.5 **Maintenance Condition of the Property.** The Association for itself, its successors and assigns covenants and agrees that:

(a) The entirety of the Property shall be maintained by the Association in good condition and repair and a neat, clean and orderly condition, ordinary wear and tear excepted, including, without limitation, 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, signage, ornamentation, and all other improvements on or to the Property, now existing or made in the future, by or with the consent of the Association, as necessary to maintain the appearance and character of the Property. The Association's obligation to maintain the Property described in the immediately preceding sentence shall include, without limitation, (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; (v) operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required; and (vi) maintaining, mowing, weeding, trimming and

watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary, all at the sole cost and expense of the Association. The Association's obligation to maintain the Property described in the two immediately preceding sentences is referred to in this Agreement as the "Maintenance Standard." 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 Property; provided, however, that the Association shall remain responsible and liable for the maintenance of the Property, at all times.

(b) If, at any time following the date of recordation of this Quitclaim Deed, there is an occurrence of an adverse condition on any area of the Property in contravention of the Maintenance Standard (each such occurrence being a "Maintenance Deficiency"), then the City may notify the Association in writing of the Maintenance Deficiency. If the Association fails to cure or commence and diligently pursue to cure the Maintenance Deficiency within thirty (30) calendar days following its receipt of notice of the Maintenance Deficiency, the City may conduct a public hearing, following transmittal of written notice of the hearing to the Association, at least, ten (10) days prior to the scheduled date of such public hearing, to verify whether a Maintenance Deficiency exists and whether the Association has failed to comply with the provisions of Section 2.5(a) or this Section 2.5(b). If, upon the conclusion of the public hearing, the City finds that a Maintenance Deficiency exists and remains uncured, the City shall have the right to enter the Property and perform all acts necessary to cure the Maintenance Deficiency, or to take any other action at law or in equity that may then be available to the City to accomplish the abatement of the Maintenance Deficiency. Any sum expended by the City for the abatement of a Maintenance Deficiency on the Property pursuant to this Section 2.5(b) that is not paid within thirty (30) calendar days after written demand for payment to the Association from the City, shall accrue interest at the rate of ten percent (10%) per annum, until paid.

(c) Graffiti, as defined in Government Code Section 38772, that has been applied to any exterior surface of a structure or improvement on the Property that is visible from any public right-of-way adjacent or contiguous to the Property, shall be removed by the Association by either painting over the evidence of such vandalism with a paint that has been color-matched to the surface on which the paint is applied, or graffiti may be removed with solvents, detergents or water, as appropriate. If any such graffiti is not removed within seventy-two (72) hours following the time of the discovery of the graffiti, the City shall have the right to enter the Property and remove the graffiti, without notice to the Association. Any sum expended by the City for the removal of graffiti from the Property pursuant to this Section 2.6(c), shall be limited to an amount not to exceed Four Hundred Dollars (\$400) per entry by the City. If any amount becoming due to the City under this Section 2.5(c) is not paid within thirty (30) calendar days after written demand to the Association from the City, such amount shall accrue interest at the rate of ten percent (10%) per annum, until paid in full

**2.6 Reservation of Rights.** 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. The foregoing rights apply to communications equipment owned and/or operated by the City. Such equipment may be

relocated on the roof only with consent of the Association, such consent not to be withheld unreasonably. No permanent fastening to the roof or any penetration of the roof membrane shall be permitted. The City's equipment shall not interfere with the signal or reception of any of the Association's communications equipment, or that of the Association's Members (condominium unit owners and occupants), nor shall the City's equipment preclude or interfere with the use of the roof by third parties under contract currently or in the future with the Association from time to time for installation of communications equipment, or interfere with the signal or reception of such equipment. The Association agrees not to install or allow to be installed any equipment that would cause interference with the signal or reception of the City's existing communication equipment, which include a security camera and radio network equipment for the Fire Department. The Association consents to the continued use of that equipment. The installation of replacement equipment shall be subject to conditions within the reasonable discretion of the Association.

The City waives any claim for injury or property damage occurring as a result of or during the exercise by City or its agents or employees of the rights of access, and the City agrees to defend, indemnify and hold harmless the Association and its Members (the owners and occupants of condominiums) from any claims or damages for injuries or damage arising out of the use of the roof or the elevators and other means of access to the roof.

The City shall promptly repair, at its expense, any damage to the Property caused by the City or its agents.

The City shall provide at least forty-eight (48) hour written notice to the Association prior to entering the Property for purposes of servicing the City's communications equipment, except in case of local emergency, in which case no advanced notice shall be required.

### ARTICLE III

Section 3.1 **Duration of Covenants, Conditions and Restrictions.** The covenants, conditions, restrictions and agreements of ARTICLE II of this Quitclaim Deed shall have the durations set forth below:

Section 2.3: in perpetuity;

Section 2.4: in perpetuity; and

Section 2.5: for the life of the existing high-rise condominium building currently existing on the Property.

Section 3.2 **Covenants, Conditions and Restrictions Run with the Land of the Property.** Each of the covenants, conditions, restrictions and agreements contained in ARTICLE II of this Quitclaim Deed touch and concern the Property and each of them is expressly declared to be for the benefit and in favor of the City for the entire period that such covenants, conditions, restrictions and/or agreements are in full force and effect, regardless of whether the City is or remains an owner of any land or interest in land to which such covenants relate. The City, in the event of any breach of any such covenants, conditions, restrictions and agreements, has the right to exercise all of the rights and remedies, and to maintain any actions at

law or suits in equity or other proper proceedings, to enforce the curing of such breach, as provided in the Agreement or by law. All such covenants, conditions, restrictions and agreements shall survive for the time period set forth for each covenant in Section 3.1.

**Section 3.3 Interpretation.** It is the intent of the City in giving this Quitclaim Deed that all of the covenants, conditions, restrictions and agreements set forth in this Quitclaim Deed be given full force and effect in favor of the City, as the City would not have given this Quitclaim Deed without such covenants, conditions, restrictions and agreements, and that each such covenant, condition, restriction and agreement should be characterized in the manner necessary to its enforcement in favor of the City, regardless of any specific characterization in this Quitclaim Deed.

**Section 3.4 Costs and Attorneys' Fees for Enforcement Proceeding.** If legal proceedings are initiated to enforce the rights, duties or obligations of any of the covenants set forth in this Quitclaim Deed, then the prevailing party in such proceeding shall be entitled to collect its reasonable attorney fees and costs from the other party in addition to any other damages or relief obtained in such proceedings.

**Section 3.5 Incorporation of Defined Terms.** Any terms indicated to be defined terms in this Quitclaim Deed by initial capitalization and not defined in this Quitclaim Deed shall have the meaning ascribed to the same term in the Agreement.

IN WITNESS WHEREOF, the City has caused this Quitclaim Deed to be executed by its authorized representative(s) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY:

CITY OF OCEANSIDE, a California  
municipal corporation

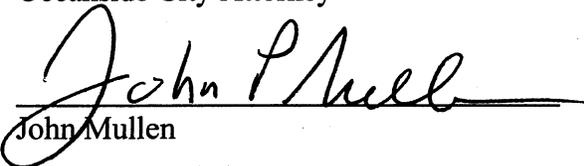
By: \_\_\_\_\_  
Jim Wood  
City Mayor

ATTEST:

\_\_\_\_\_  
Barbara Riegel Wayne  
City Clerk

APPROVED AS TO FORM:

Oceanside City Attorney

  
John Mullen

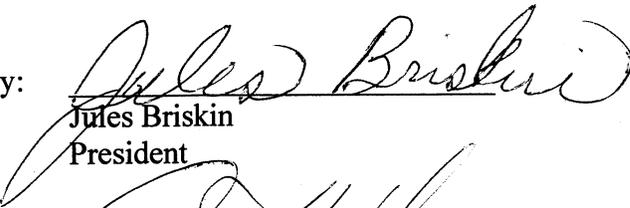
CITY DEED  
CERTIFICATE OF ACCEPTANCE

**CERTIFICATE OF ACCEPTANCE OF  
QUITCLAIM DEED  
CONTAINING COVENANTS, CONDITIONS AND RESTRICTIONS**

The undersigned hereby acknowledge acceptance by OCEANSIDE MARINA TOWERS ASSOCIATION, a California non-profit mutual benefit corporation, the Association in the within Quitclaim Deed, of the delivery of the subject Property described in the within Quitclaim Deed from the City of Oceanside, California, subject to all of the covenants, conditions, restrictions and agreements, including, without limitation, all covenants running with the land of the Property, expressly set forth in or incorporated in the within Quitclaim Deed.

**ASSOCIATION**

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

By:   
Jules Briskin  
President

By:   
Name: David Wilson  
Secretary

**[ALL SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego }

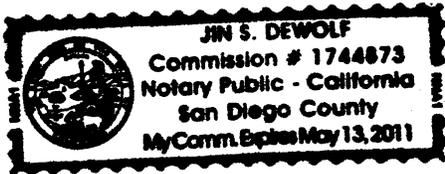
On 6/28/08 before me, Jin S. DeWolf, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jules Briskin & 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 Jin S. DeWolf  
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: Quitclaim

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

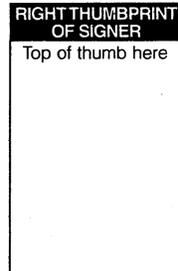
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



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: \_\_\_\_\_

**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. 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.

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.

# 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'**  
 1.208 ACRES MORE OR LESS GROSS  
 (SUBJECT TO CONDOMINIUM PLAN FOR  
 OCEANSIDE MARINA TOWERS REC.  
 10/31/1974 AS F/P NO. 74-289770)

AT & SF R.R.  
N 12°29'10" W 378.25'

NEW LOT  
LINE  
Δ=37°25'23"  
R=95.00'  
L=62.05'

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

APN  
143-010-16

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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

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

<b>LOT LINE ADJUSTMENT</b>	
DATE: JAN. 30, 2007	

**EXHIBIT "D"**

**FORM OF NOTICE OF AGREEMENT**

**[Attached behind this cover page]**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
)  
)  
)  
)  
)  
)  
)  
)  
)

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Space Above Line For Use By Recorder  
Recordation of this Document Exempt from Recording Fees  
(Government Code Section 27383)

**CITY OF OCEANSIDE**

**Notice of Agreement**

Real Property Purchase and Sale Agreement  
(Marina Towers Condominium Property)

**TO ALL INTERESTED PERSONS PLEASE TAKE NOTICE** that as of July 16, 2008, Oceanside Marina Towers Association, a California non-profit mutual benefit corporation (the "Association"), and the City of Oceanside, a California municipal corporation (the "City"), entered into an agreement entitled "Real Property Purchase and Sale Agreement (Marina Towers Condominium Property)" (the "Agreement"). A copy of the Agreement is on file with the City Clerk and is available for inspection and copying by interested persons as a public record of the City at the City Clerk's office located at 300 North Coast Highway, Oceanside, California 92054, during the regular business hours of the City.

The Agreement affects the real property described in Exhibit "A" attached to this Notice of Agreement (the "Property"). The meaning of defined terms, indicated by initial capitalization, used in this Notice of Agreement shall be the same as the meaning ascribed to such terms in the Agreement.

PLEASE TAKE FURTHER NOTICE that the Agreement contains certain covenants running with the land of the Property and other agreements between the Association and the City affecting the Property, including, without limitation, all of the following (all section references are to the Agreement):

Section 2.10 of the Agreement provides:

**Section 2.10 Access Easement Agreement.** The Association and its Members shall continue to have rights of access for ingress, egress and utilities over the Public Parking Lot located within the Adjacent Property, as provided in Exhibit "G".

The Access Easement Agreement shall be recorded concurrently with this Notice of Agreement.

Section 4.1 of the Agreement provides:

**Section 4.1 Association Covenant to Undertake Facade Improvements.** The Association covenants to and for the mutual benefit of the City and the Association that the Association shall commence and complete up to \$500,000 worth of the construction and installation of Facade Improvements on the Property within seven (7) years after Close of Escrow, in conformity with the terms and conditions of this Agreement, and all applicable ordinances, building codes, laws, regulations, orders and conditions of each Governmental Agency.

THIS NOTICE OF AGREEMENT is dated as of \_\_\_\_\_, 20\_\_\_\_, and has been signed on behalf of the Association and the City by and through the signatures of their authorized representative(s) set forth below. This Notice of Agreement may be signed in counterparts and when fully signed each counterpart shall be deemed to be one original instrument.

CITY:

CITY OF OCEANSIDE, a California municipal corporation

By: \_\_\_\_\_  
Jim Wood  
City Mayor

ATTEST:

\_\_\_\_\_  
Barbara Riegel Wayne  
City Clerk

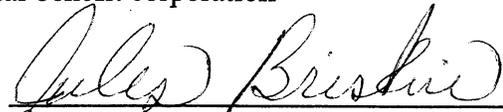
APPROVED AS TO FORM:

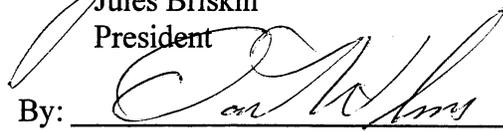
Oceanside City Attorney

\_\_\_\_\_  
John Mullen

ASSOCIATION:

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

By:   
Jules Briskin  
President

By:   
Name: David Wilson  
Secretary

**[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego

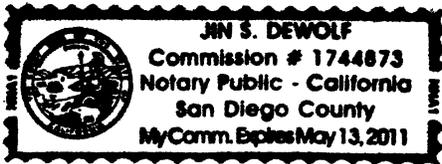
On 6/28/08 before me, Jin S. Dewolf, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jules Briskin & 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.



Place Notary Seal Above

Signature Jin S. Dewolf  
Signature of Notary Public

**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: Notice of Agreement

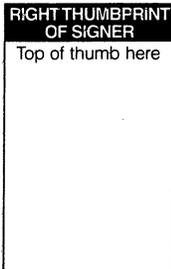
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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: \_\_\_\_\_

EXHIBIT "A"  
TO  
NOTICE OF AGREEMENT

**Property Legal Description**

**[To be attached behind this cover page]**

EXHIBIT "A" TO NOTICE OF AGREEMENT

**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. 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

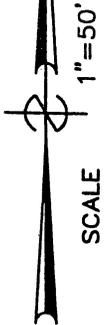
THENCE ALONG SAID EASTERLY LINE NORTH 12°29'10" WEST 378.25 FEET TO THE POINT OF BEGINNING.

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.

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.

# 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'  
1.200 ACRES MORE OR LESS GROSS  
(SUBJECT TO CONDOMINIUM PLAN FOR  
OCEANSIDE MARINA TOWERS REC.  
10/31/1974 AS F/P NO. 74-269774)

AT & SF R.R.  
N 12°29'10" W 378.25'

NEW LOT  
LINE  
L=37'25".23"  
R=95.00'  
L=62.05'

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

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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

<b>LOT LINE ADJUSTMENT</b>	
DATE: JAN. 30, 2007	

**EXHIBIT "E"**

**FORM OF CITY/DISTRICT LEASE TERMINATION AGREEMENT**

**[Attached behind this cover page]**

**EXHIBIT "E" -FORM OF CITY/DISTRICT LEASE TERMINATION AGREEMENT**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

MAIL TAX STATEMENTS TO:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

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

**PARTIAL LEASE TERMINATION AGREEMENT**

**(Marina Towers Condominium Property: City/District Lease)**

THIS PARTIAL LEASE TERMINATION 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"), and the CITY OF OCEANSIDE, a California municipal corporation (the "City"), as of July 16, 2008 (the "Effective Date"). The District and the City are sometimes referred to in this Agreement, each individually, as a "Party," or, collectively, as the "Parties." The District and the City 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 Dive 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 Harbour 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 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 and the City have determined that the transactions described in the Purchase Agreement are mutually beneficial to each of them and, therefore, the District and the City mutually desire to enter into this Agreement to terminate 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 AND THE CITY 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 Termination. The District and the City hereby mutually terminate 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 or 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 termination.

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

4. Releases of Liability.

(a) The District, 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 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

City/District Lease, the leasehold estate created by the City/District Lease or the Property, as of the Effective Date.

(b) The City, 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 City 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 City/District Lease, the leasehold estate created by the City/District Lease or the Property, as of the Effective Date.

(c) 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  
District Representative

\_\_\_\_\_  
Initials of Authorized  
City Representative

(d) Each Party 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) Each Party 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. Each Party 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) Each Party 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) Each Party 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) Each Party 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 any Party.

5. Reciprocal Indemnity.

(a) The District agrees to indemnify, defend, and hold harmless the City, its officers, directors, employees and agents (individually, an "City Indemnitee" and collectively, the "City 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 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, its agents, contractors or employees relating to the City/District Lease or the Property.

(b) The City 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 City, its agents, contractors or employees relating to the City/District Lease or the Property.

(c) The indemnity and defense obligations of the District and the City 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 an 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 or the City, as applicable (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 Surrender. The District surrenders 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 City accepts this surrender and the Property, as of the Effective Date.

7. Representation of No Assignment. The District represents and warrants that the District has made no assignment, sublease, transfer, or other disposition of the City/District Lease, any interest in the City/District Lease, or any demand, obligation, liability, or cause of action arising out of the City/District 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 benefited 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 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.

**[Signatures on following page]**

IN WITNESS WHEREOF, the District and the City execute this Lease Termination 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.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_  
Barbara Reigel Wayne  
City Clerk

Approved as to form:

\_\_\_\_\_  
Legal Counsel

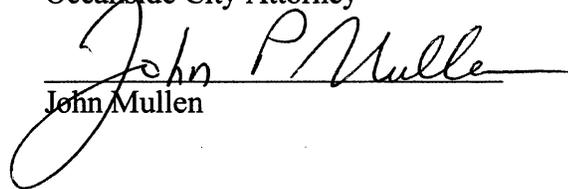
CITY OF OCEANSIDE, a California municipal corporation

By: \_\_\_\_\_  
Jim Wood  
City Mayor

Attest: \_\_\_\_\_  
Barbara Reigel Wayne  
City Clerk

Approved as to form:

Oceanside City Attorney

  
John Mullen

**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. 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

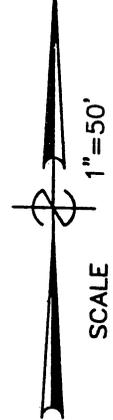
THENCE ALONG SAID EASTERLY LINE NORTH 12°29'10" WEST 378.25 FEET TO THE POINT OF BEGINNING.

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.

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.

# 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'**  
1.208 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'

NEW LOT  
LINE  
Δ=37°25'23"  
R=95.00'  
L=62.05'

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

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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 "F"**

**FORM OF DISTRICT/ASSOCIATION LEASE TERMINATION AGREEMENT**

**[Attached behind this cover page]**

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 TERMINATION AGREEMENT**

**(Marina Towers Condominium Property: District/Association Lease)**

THIS LEASE TERMINATION AGREEMENT (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 Harbour 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 interests 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 \_\_\_\_\_, 20\_\_\_\_, 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 terminate the District/Association Lease 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 Termination. The District and the Association hereby mutually terminate the District/Association Lease in its entirety and neither the District nor the Association shall have any 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 termination of the District/Association Lease.

3. Estoppels. The Association acknowledges and agrees that, as of the date of this Agreement, that the District has performed each and every one of the District’ obligations under the District/Association Lease and no performance of the City 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.

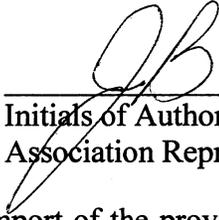
(a) The District, on behalf of itself, its successors and assigns, releases and discharges the Association, its officers, directors, employees and agents from any and all debts, claims, demands, liabilities, obligations, causes of action and rights, including attorney’s fees and court costs, whether known or unknown, that the District 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 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.

(c) 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  
District Representative

  
\_\_\_\_\_  
Initials of Authorized  
Association Representative

(d) Each Party 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) Each Party 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. Each Party 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) Each Party 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) Each Party 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) Each Party 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 any Party.

5. Reciprocal Indemnity.

(a) The District agrees to indemnify, defend, and hold harmless the Association, its officers, directors, employees and agents (individually, an "Association Indemnitee" and collectively, the "Association 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 Association 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, its agents, contractors or employees relating to the District/Association Lease or the Property.

(b) 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.

(c) The indemnity and defense obligations of the District and 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 an Association Indemnitee or a District Indemnitee (each an "Indemnitee") is entitled to defense or indemnification under this Paragraph 5 (each, an "Indemnification Claim"), the District or the Association, as applicable (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. District/Association Lease Surrender. The Association surrenders all rights in, to, or under the District/Association Lease and the leasehold estate created, as of the Effective Date, and the District accepts this surrender and the Property.

7. Representation of No Assignment. The Association represents and warrants that the Association 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 benefited 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 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. Contingency. This Agreement is contingent upon the Close of Escrow under the Purchase Agreement.

**[Signatures on following page]**

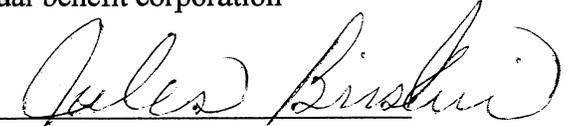
IN WITNESS WHEREOF, the District and the Association execute this Lease Termination Agreement (Marina Towers Condominium Property: District/Association Lease), as follows:

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Attest: \_\_\_\_\_

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

By:   
Jules Briskin  
President  
By:   
David Wilson  
Secretary

Approved as to form:

  
Legal Counsel

**[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego }

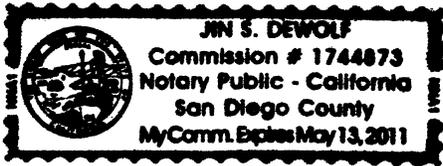
On 6/28/08 before me, Jin SddWolf, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jules Briskin & 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.



Place Notary Seal Above

Signature [Handwritten Signature]  
Signature of Notary Public

**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: Lease Termination Agreement

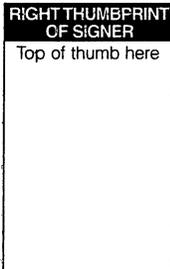
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

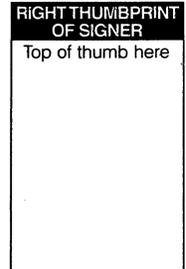
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



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: \_\_\_\_\_

**EXHIBIT "G"**

**FORM OF ACCESS EASEMENT AND  
MAINTENANCE LICENSE AGREEMENT**

**[Attached behind this cover page]**

**EXHIBIT "G" -FORM OF ACCESS EASEMENT AND  
MAINTENANCE LICENSE 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

**CITY OF OCEANSIDE**

**ACCESS EASEMENT AND MAINTENANCE LICENSE AGREEMENT**

**(Marina Towers Condominium Property)**

THIS ACCESS EASEMENT AND MAINTENANCE LICENSE AGREEMENT (Marina Towers Condominium Property) (this "Easement Agreement") is dated as of \_\_\_\_\_, 2008, for reference purposes only, 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, its 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 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 License.** So long as the Association maintains the Adjacent Property, as provided in Section 4.1, the residents and guests of Marina Towers shall continue to have the same rights to park within the Adjacent Property as they currently enjoy. (These rights are also currently available to the general public). Should the City impose a seventy-two (72) hour parking limit for a public parking space within the public parking lot in the future, then the Association, residents and guests will be subject to and abide by that restriction.

**Section 2.6 Termination of License to Park.** 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 parking license, 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. As long as the Property is used for residential purposes, and the owner(s) continue to maintain and insure the Adjacent Property, The owners and occupants of the Property shall continue to enjoy the parking license rights as provided in Section 2.5, unless in default of their obligations hereunder, which default remains uncured after sixty (60) days, as provided in Section 7.2.

**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, however, the Parking License shall only be terminated pursuant to Section 7.4.

**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 Termination of Parking License.** Upon the occurrence of an Event of Default by the Association, the City may terminate the parking license upon sixty (60) calendar days advance written notice to the Association. In the event of such termination, the Association shall no longer be responsible for the maintenance obligations provided for in Section 4.1.

**Section 7.5 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. 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, 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.

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: \_\_\_\_\_  
Jules Briskin  
President

By: \_\_\_\_\_  
Name: David Wilson  
Secretary

**[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego }

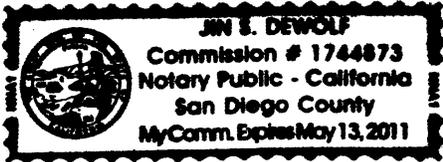
On 6/28/08 before me, Jim S Dewolf, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jules Briskin & 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.



Place Notary Seal Above

Signature [Signature]  
Signature of Notary Public

**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: Access Easement

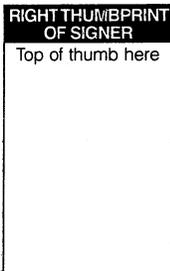
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

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: \_\_\_\_\_

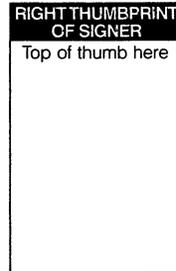


Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_

\_\_\_\_\_

**EXHIBIT "A"**

**PROPERTY LEGAL DESCRIPTION**

**[To Be Inserted]**

APPLICANT: City of Oceanside

**CERTIFICATE OF COMPLIANCE**  
CONTINUATION**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. 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'**  
 1.700 ACRES MORE OR LESS GROSS  
 (SUBJECT TO CONDOMINIUM PLAN FOR  
 OCEANSIDE MARINA TOWERS INC.  
 10/31/1974 AS F/P NO. 74-289774)

AT & SF R.R.  
N 12°29'10" W 378.25'

NEW LOT  
LINE  
L=37'25".23"  
R=95.00'  
L=62.05'

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

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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"**

**ACCESS EASEMENT LEGAL DESCRIPTION**

**EASEMENT AGREEMENT  
EXHIBIT "B" – ADJACENT PROPERTY LEGAL DESCRIPTION**

**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

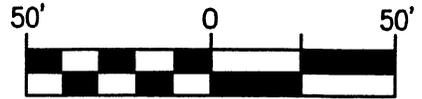
ATTACHED HERETO AND MADE A PART HEREOF THIS LEGAL DESCRIPTION IS A PLAT  
LABELED EXHIBIT "B"

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

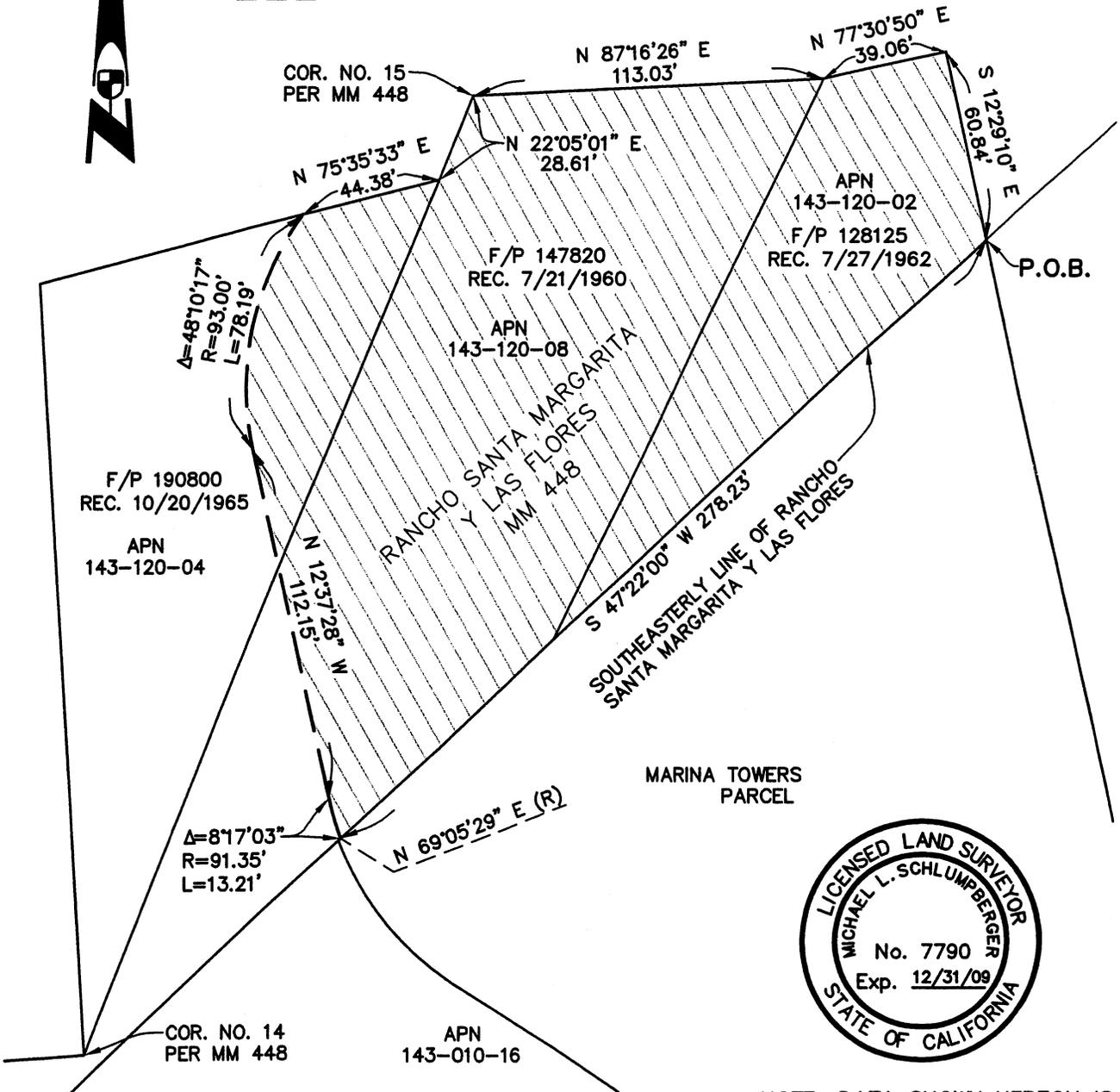
# EXHIBIT "B"



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.

<b>MARINA TOWERS EASEMENT</b>	
VESTING: THE CITY OF OCEANSIDE, A MUNICIPAL CORPORATION	
DATE: JAN. 29, 2008	

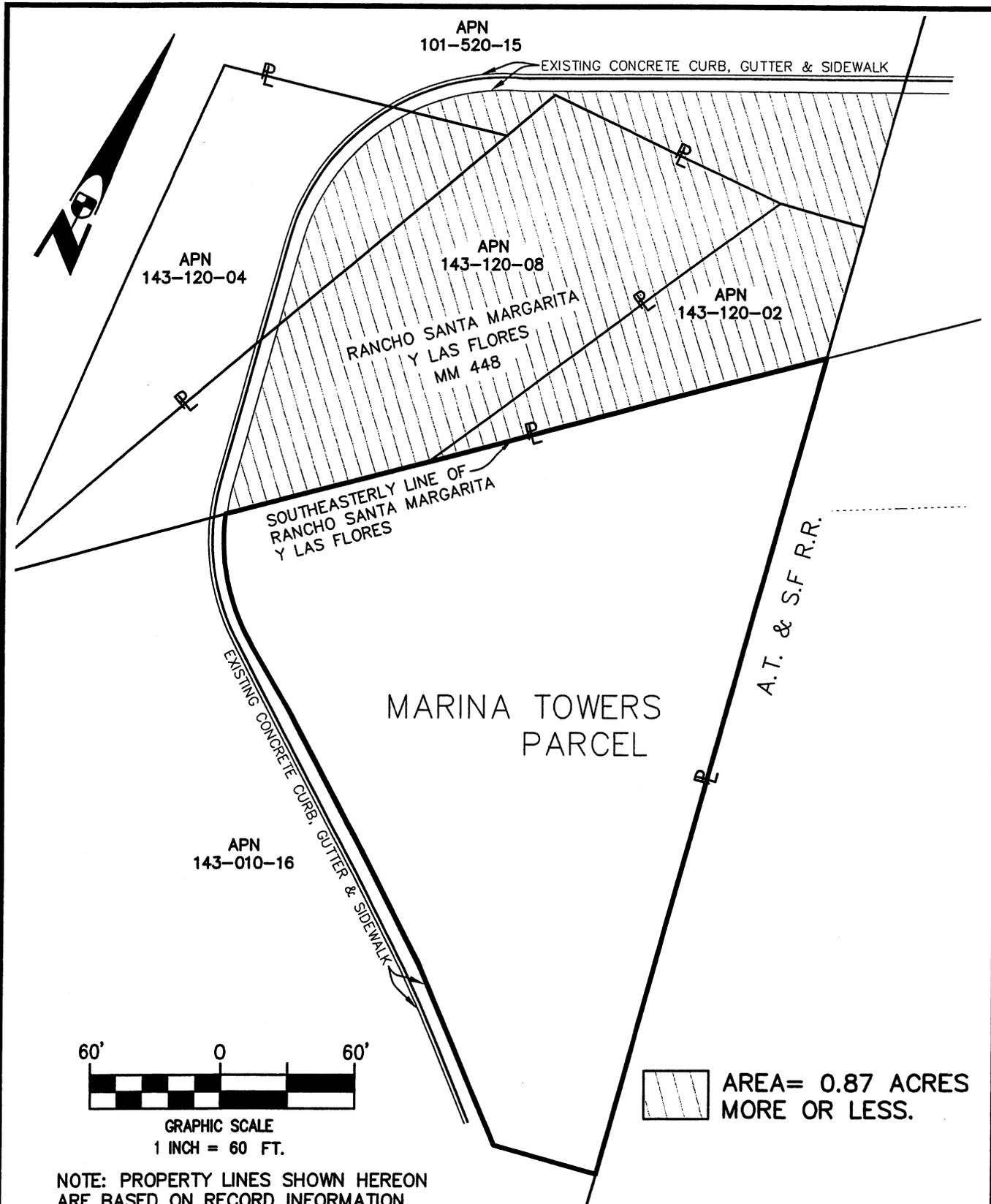
**Right-Of-Way Engineering Services, Inc.**  
Land Surveying  
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056  
(760) 732-1366 FAX (760) 732-1367  
FILE NAME: Marina Towers Esmt Plat.dwg

**EXHIBIT "C"**

**ADJACENT PROPERTY**

**[To Be Inserted]**

EXHIBIT "C"



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

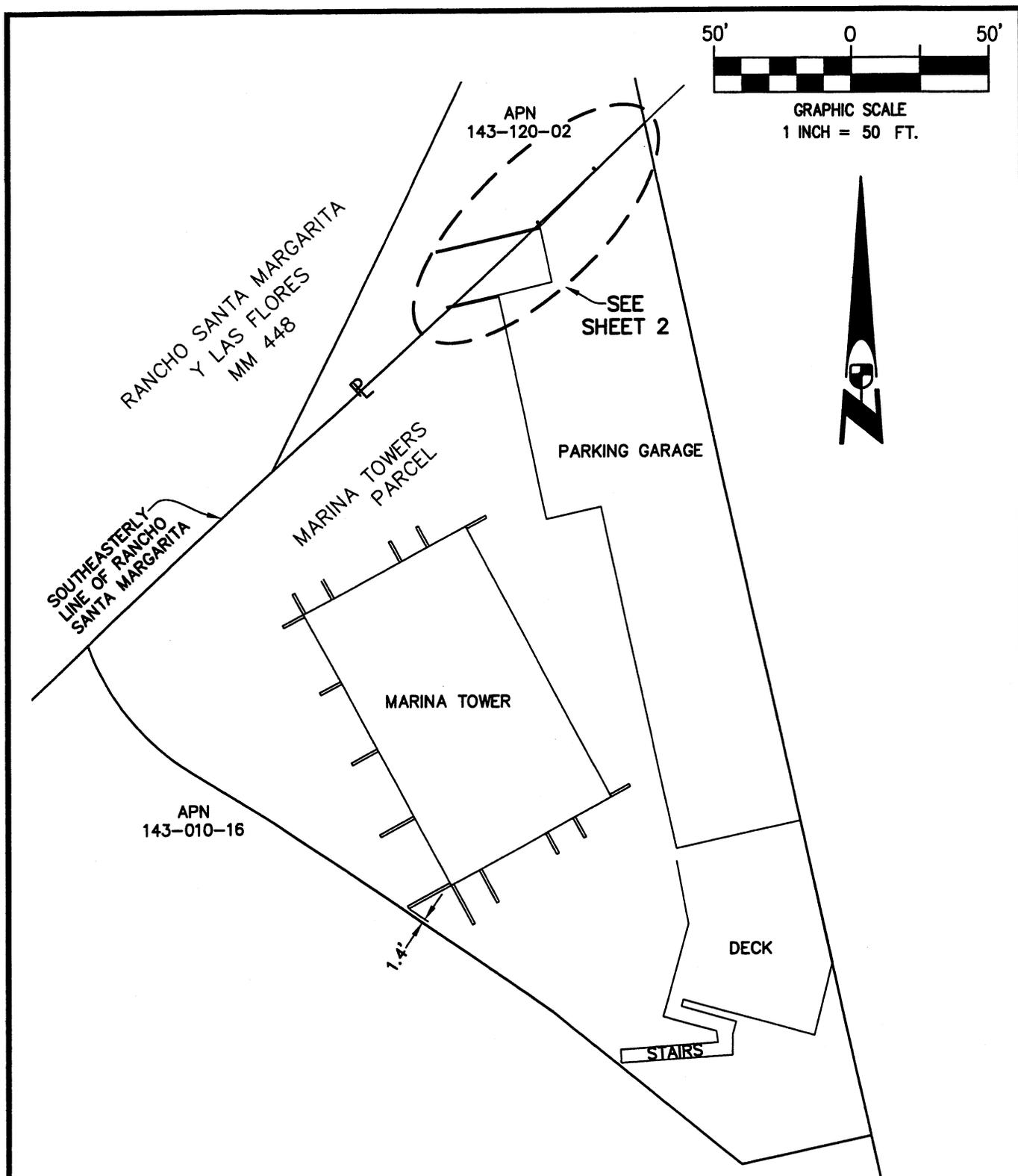
**Right-Of-Way Engineering Services, Inc.**  
 Land Surveying  
 4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056  
 (760) 732-1366 FAX (760) 732-1367  
 FILE NAME: Marina Towers Adjacent Property Plat.dwg

**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.

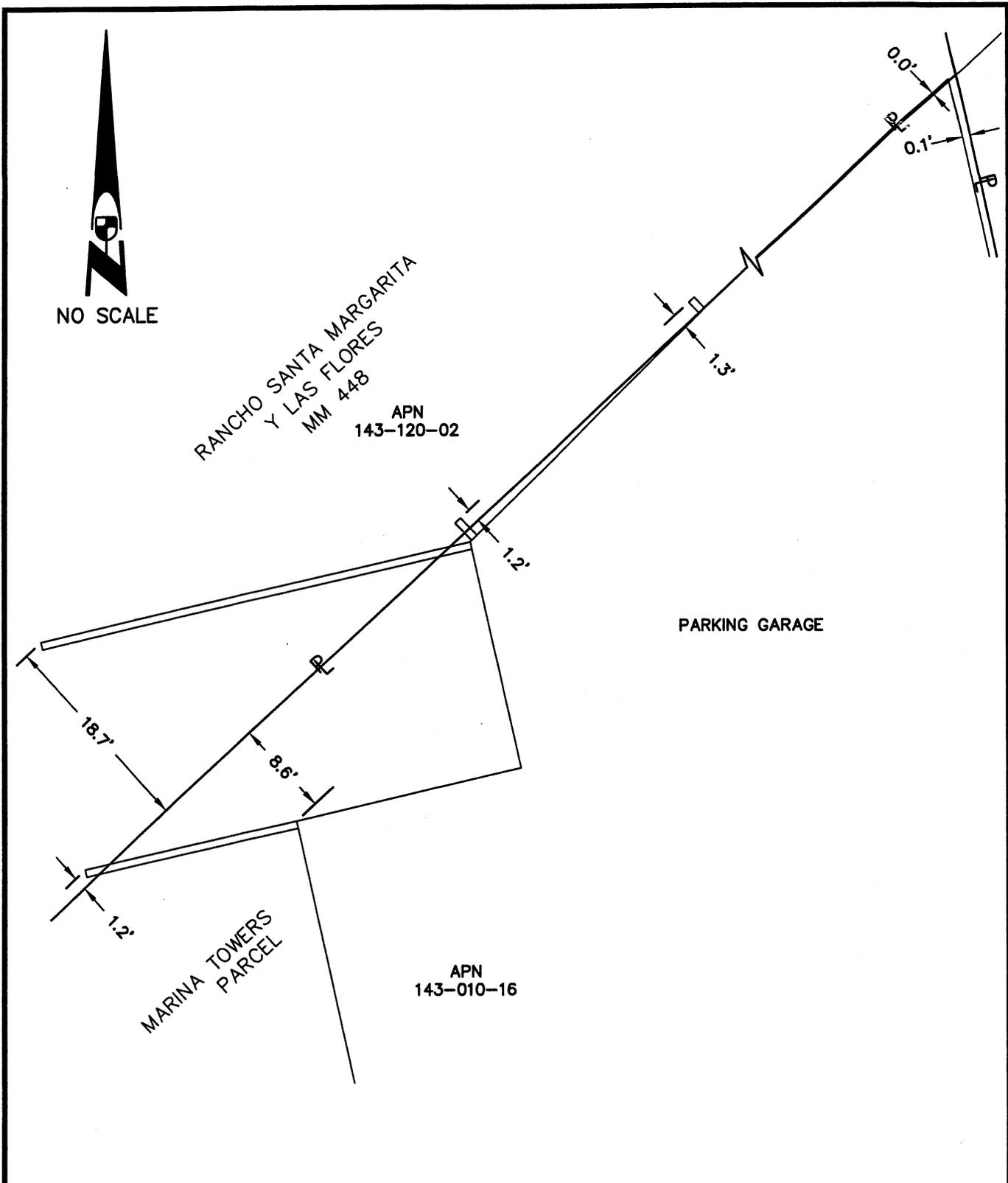
**Right-Of-Way Engineering Services, Inc.**  
Land Surveying  
4167 Avenida de la Plata Ste. 114 · Oceanside, CA 92056  
(760) 732-1366 FAX (760) 732-1367  
FILE NAME: Marina Towers Encroachment Plat.dwg

**MARINA TOWERS ENCROACHMENTS AND NON-CONFORMING SETBACKS**

DATE: JAN. 29, 2008

SHEET 1 OF 2

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 2 OF 2

**EXHIBIT "H"**

**FORM OF ASSOCIATION OFFICIAL ACTION**

**[Attached behind this cover page]**

**EXHIBIT "H" FORM OF ASSOCIATION OFFICIAL ACTION**

EXHIBIT "H"

Action Without Meeting By  
UNANIMOUS WRITTEN CONSENT  
of the Board of Directors of  
OCEANSIDE MARINA TOWERS ASSOCIATION

As provided for in Corp. Code 7211(b), the undersigned directors of the Oceanside Marina Towers Association, unanimously consent to the following action of the Board of Directors in the absence of a meeting.

RESOLUTION OF BOARD OF DIRECTORS OF  
OCEANSIDE MARINA TOWERS ASSOCIATION

WHEREAS, the Corporation is about to enter into a "Real Property Purchase and Sale Agreement (Marina Towers Condominium Property)" (the "Agreement") with the City of Oceanside, California (the "City"), to purchase that certain real property generally located at 1200 Harbor Drive North, City of Oceanside, California, and more specifically described in the Agreement (the "Property"); and

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

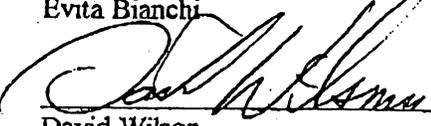
NOW, THEREFORE, BE IT RESOLVED that this Corporation execute the Agreement and all documents previously presented to, reviewed, and approved by the Board of Directors of this Corporation and consummate the purchase of the Property.

RESOLVED, FURTHER, that the officers of this Corporation acting alone be, and they hereby are, authorized, empowered, and directed on behalf of this Corporation to execute and deliver the Agreement and all other documents to be executed in connection with it, and to take all actions that may be necessary to conclude the transaction contemplated by these documents. Those officers are the following: President: Jules Briskin; Secretary: David Wilson

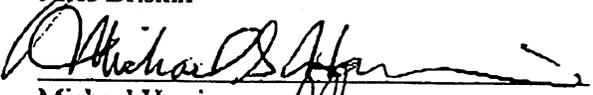
The authority conferred by this resolution shall be considered retroactive, and any and all acts authorized in this resolution that were performed before the passage of this resolution are approved and ratified. The authority conferred by this resolution shall continue in full force and effect until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

Signatures of directors:

  
\_\_\_\_\_  
Evita Bianchi

  
\_\_\_\_\_  
David Wilson

  
\_\_\_\_\_  
Jules Briskin

  
\_\_\_\_\_  
Michael Harris

  
\_\_\_\_\_  
George Kapiloff

Dated: June 28, 2008

EXHIBIT "H"

**RESOLUTION OF BOARD OF DIRECTORS OF  
OCEANSIDE MARINA TOWERS ASSOCIATION**

At a duly noticed and held meeting of the board of directors of Oceanside Marina Towers Association, a California non-profit mutual benefit corporation (the "Corporation"), held on June 28, 2008, at which meeting all directors were in attendance, the following resolutions were unanimously adopted:

**RESOLUTIONS OF BOARD OF DIRECTORS OF  
OCEANSIDE MARINA TOWERS ASSOCIATION**

**WHEREAS**, the Corporation is about to enter into a "Real Property Purchase and Sale Agreement (Marina Towers Condominium Property)" (the "Agreement") with the City of Oceanside, California (the "City), to purchase that certain real property generally located at 1200 Harbor Drive North, City of Oceanside, California, and more specifically described in the Agreement (the "Property"); and

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

**NOW, THEREFORE, BE IT RESOLVED** that this Corporation execute the Agreement and all documents previously presented to, reviewed, and approved by the Board of Directors of this Corporation and consummate the purchase of the Property.

**RESOLVED, FURTHER**, that the officers of this Corporation acting alone be, and they hereby are, authorized, empowered, and directed on behalf of this Corporation to execute and deliver the Agreement and all other documents to be executed in connection with it, and to take all actions that may be necessary to conclude the transaction contemplated by these documents. Those officers are the following: President: Jules Briskin; Secretary: David Wilson.

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

**CERTIFICATION:**

The undersigned, being the duly elected and acting Secretary of the Oceanside Marina Towers Association, hereby certifies that the foregoing resolutions were duly adopted by the board of directors of the at a duly noticed and held meeting of the Board of Directors and that said resolutions have not been amended or rescinded and are presently in full force and effect.

Date: 6-28-08



David Wilson, Secretary

**EXHIBIT "I"**

**FORM OF RIGHT OF FIRST OFFER AGREEMENT**

**[Attached behind this cover page]**

**EXHIBIT "I" FORM OF RIGHT OF FIRST OFFER 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

**RIGHT OF FIRST OFFER AGREEMENT**

This Right of First Offer Agreement ("Agreement") is made as of July 16, 2008, by and between OCEANSIDE MARINA TOWERS ASSOCIATION, a California non-profit mutual benefit corporation ("Grantor"), and the CITY OF OCEANSIDE, a California municipal corporation ("Grantee"), with reference to the following recited facts (each, a "Recital"):

**Recitals**

A. Grantor is the owner of that certain real property specifically described in Exhibit "A" attached to this Agreement and incorporated into this Agreement by this reference ("Real Property") and the improvements constructed on the Real Property ("Improvements"), more commonly known as 1200 Harbor Drive North, Oceanside, California 92054.

B. Grantor desires to grant to Grantee, and Grantee desires to obtain from Grantor, a right of first offer to purchase the Real Property and the Improvements, together with all rights of Grantor to adjoining streets, rights of way, easements, all other appurtenant rights, and all personal property on the Real Property belonging to Grantor (collectively, "Property") on the terms and conditions in this Agreement.

C. This Agreement is not intended to and shall not be construed to apply to the sale or mortgage of individual condominium units.

FOR GOOD AND VALUABLE CONSIDERATION the receipt and sufficiency of which are acknowledged, the Grantor and the Grantee agree, as follows:

**1. Right of First Offer.**

- a. Grantor shall not sell or agree to a "bulk" sale of the Property without first offering the Property to Grantee. The word "sell" shall include any transfer, conveyance, assignment, lease, hypothecation, or pledge of all or any portion of or interest in the Property (except as noted in Recital C).



consummate the purchase of the Property pursuant to the terms and conditions of the Second Offer, the agreement to purchase the Property together with this Agreement shall be terminated.

- g. If Grantor does not complete the sale of the Property to a third party pursuant to an agreement that was the subject of a First Offer or a Second Offer, then all rights and obligations of the Grantor and Grantee under this Agreement shall remain in full force and effect and the next proposed transaction for Grantor to sell the Property shall require a First Offer from Grantor to Grantee and, if applicable, a Second Offer.

2. **Consideration.** The consideration for this Agreement is the sale of the Real Property to Grantor by Grantee pursuant to the terms and conditions of that certain Real Property Purchase and Sale Agreement (Marina Towers Condominium Property), dated July 16, 2008, by and between Grantor and Grantee (the "Purchase Agreement").

3. **Term.** Grantee's right of first offer shall begin with the date of this Agreement and continue until terminated pursuant to Paragraph 4.

4. **Termination.** This Agreement shall automatically terminate on the first of the following events to occur: (i) Grantee rejects a First Offer or a Second Offer and Grantor subsequently completes a sale of the Property to a third party pursuant to the terms of such First Offer or Second Offer; (ii) the Grantee's failure to consummate the First Offer and/or the Second Offer; and (iii) the purchase of the Property by Grantee from Grantor.

5. **Litigation Costs.** If any legal action or any other proceeding, including an arbitration or action for declaratory relief, is brought for the enforcement of this Agreement or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs incurred in that action or proceeding, in addition to any other relief to which the prevailing party may be entitled. "Prevailing party" shall include without limitation (i) a party dismissing an action in exchange for sums allegedly due; (ii) a party receiving performance from the other party of an alleged breach of covenant or a desired remedy where the performance is substantially equal to the relief sought in an action; or (iii) the prevailing party as determined by a court of law. Reasonable attorney fees and costs, in reference to Grantee, shall include the salaries, benefits and costs of attorneys employed in the office of the City Attorney for the City of Oceanside, California.

6. **Assignment.** Grantee's rights and obligations under this Agreement shall not be assigned without Grantor's prior written consent, and any assignment without consent shall be void.

7. **Successors and Assigns.** Subject to the restrictions on assignment, this Agreement shall inure to the benefit of and be binding on the parties and their respective successors, heirs, and assigns.

**8. Notices, Demands and Communications Between the Parties.**

- a. Any and all notices, demands or communications submitted by any party to another party pursuant to or as required by this Agreement shall be proper, if in writing and dispatched by messenger for immediate personal delivery, by a nationally recognized overnight delivery service with recipient's signature as proof of delivery to the principal office of the City or the Association, as applicable, as designated in sub-section Section 8.3(b). Such written notices, demands or communications may be sent in the same manner to such other addresses as either party may from time to time designate. Any such notice, demand or communication shall be deemed to be received by the addressee on the day that it is delivered by a nationally recognized overnight delivery service.
- b. The following are the authorized addresses for the submission of notices, demands or communications to the Parties:

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

To the Association Manager:  
Cal West Management & Sales, Inc.  
2185 Faraday Avenue, Suite 140  
Carlsbad, CA 92008  
Attn: Signe Osteen

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

With courtesy copy to:  
City of Oceanside  
300 North Coast Highway  
Oceanside, California 92054  
Attention: City Attorney

**9. Counterpart or Duplicate Originals.** This Agreement may be signed in counterpart originals, and any signed counterpart original shall be equivalent to a signed original for all purposes.

**10. Time of Essence.** Time is of the essence of each and every term and condition of this Agreement.

11. **Recordation.** This Agreement may be recorded at Grantee's option, and Grantor, at the request of Grantee, shall deliver to Grantee a signed and acknowledged original of this Agreement for recordation.

12. **Exhibits.** All Exhibits referred to in this Agreement are incorporated into this Agreement by reference.

13. **Captions.** Captions and headings in this Agreement, including the title of this Agreement, are for convenience of reference only and are not to be considered in construing this Agreement.

14. **Entire Agreement.** This Agreement, the Exhibits attached to this Agreement and the Purchase Agreement contain the entire agreement of the parties regarding the subject matter of this Agreement, and supersede any prior agreements or understandings of the parties, whether written or oral, regarding the subject matter of this Agreement.

15. **Modification and Amendment.** This Agreement may not be modified or amended except in a writing signed by both Grantor and Grantee.

16. **Governing Law.** This Agreement shall be governed by California law, without regard to its conflicts of laws principles.

17. **Incorporation of Recitals.** The Recitals preceding this Agreement are true and correct and are incorporated into this Agreement in their entirety by this reference.

**[Signatures on following page]**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of San Diego }

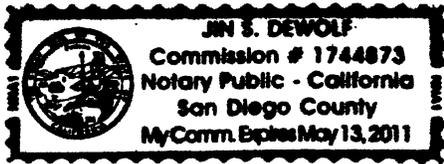
On 6/28/08 before me, Jim S. Dewolf, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Jules Briskin & 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.



Place Notary Seal Above

Signature Jim S. Dewolf  
Signature of Notary Public

**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: Right of First Offer

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: \_\_\_\_\_

**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: \_\_\_\_\_

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement by and through the signatures of their authorized representative(s), as set forth 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: \_\_\_\_\_  
Jules Briskin  
President

By: \_\_\_\_\_  
Name: David Wilson  
Secretary

**[ASSOCIATION SIGNATURES MUST BE NOTARY ACKNOWLEDGED]**

EXHIBIT "A"

**Property Legal Description**

**[To Be Inserted]**

APPLICANT: City of Oceanside

**CERTIFICATE OF COMPLIANCE**

**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. 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'  
1.200 ACRES MORE OR LESS GROSS  
(SUBJECT TO CONDEMINUM 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'

NEW LOT  
LINE  
d=37.2523'  
R=95.00'  
L=62.05'

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

APN  
143-010-16

NEW PARCEL 'B'

S 55°44'13" E 123.67'

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

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

<b>LOT LINE ADJUSTMENT</b>	
DATE: JAN. 30, 2007	

**EXHIBIT "J"**

**ESCROW HOLDER'S GENERAL ESCROW INSTRUCTIONS**

[To be inserted]