ITEM NO. 7

STAFF REPORT *EL CORAZON STANDING COMMITTEE*

DATE: December 10, 2013

TO: Chairman and Members of the El Corazon Standing Committee and Economic Development Commission

FROM: City Manager's Office

SUBJECT: **NEGOTIATION AGREEMENT WITH SWIMMING HALL OF FAME PARTNERS, INC.**

SYNOPSIS

Staff recommends that the El Corazon Standing Committee requests that the City Council approve a Negotiation Agreement (NA) with Swimming Hall of Fame Partners, Inc. (SHOFP), as the developer, to negotiate a potential Development and Disposition Agreement (DDA) for the development of a recreational component of El Corazon, and authorization for staff to negotiate a Development and Disposition Agreement with the developer.

BACKGROUND

At the August 31, 2011, City Council meeting, the City Council unanimously approved the selection of The Sudberry Properties/Soccer Field of Dreams as the developer of El Corazon. At the meeting, staff was also authorized to negotiate and prepare an Exclusive Negotiation Agreement (ENA) with The Sudberry Properties/Soccer Field of Dreams for the purpose of entering into a Development and Disposition Agreement for the development of El Corazon.

Staff has been approached by the SHOFP in regards to the development of an aquatics complex, along with a major hotel with water park on a portion of El Corazon. The concept development would be consistent with the El Corazon Specific Plan.

ANALYSIS

The purpose for entering into an NA with SHOFP is to provide assurances to SHOFP that the City will not enter into discussions with another developer while the parties negotiate a Development and Disposition Agreement for the development of El Corazon.

As currently proposed by SHOFP, the development would consist of the following components:

1. 400-suite convention hotel with meeting rooms, auditorium and theater;
2. 30-acre water park with room for expansion, including parking;
3. World-class aquatic facilities, to include 70 meter competition pool with moveable bulkheads, 25m x 25m competition stadium, therapy/teaching pool and adequate parking;
4. Dry land training/sports therapy facility to be operated in cooperation with reputable sport medicine/therapy group;
5. Museum and library building of approximately 15,000 sq. ft. of exhibition space to include: museum/store/pro shop of approximately 2,000 sq. ft., storage area of approximately 2,000 sq. ft., offices and classrooms of approximately 2,000 sq. ft., all with adequate parking;
6. 100+/- dormitories for athletes and coaches to accommodate long-term training for water polo, synchronized swimming and diving, beach volleyball and triathlon training;
7. 6 beach volleyball courts for instruction and one championship court with permanent seating for 500 and accommodation for additional seating, as needed;
8. Office and meeting space for USA beach volleyball events;
9. Office and meeting space for USA triathlon events;
10. Loop road and trails (app. 2 ½ – 3 ½ miles) as per the El Corazon Master Plan, to be used for triathlon training.

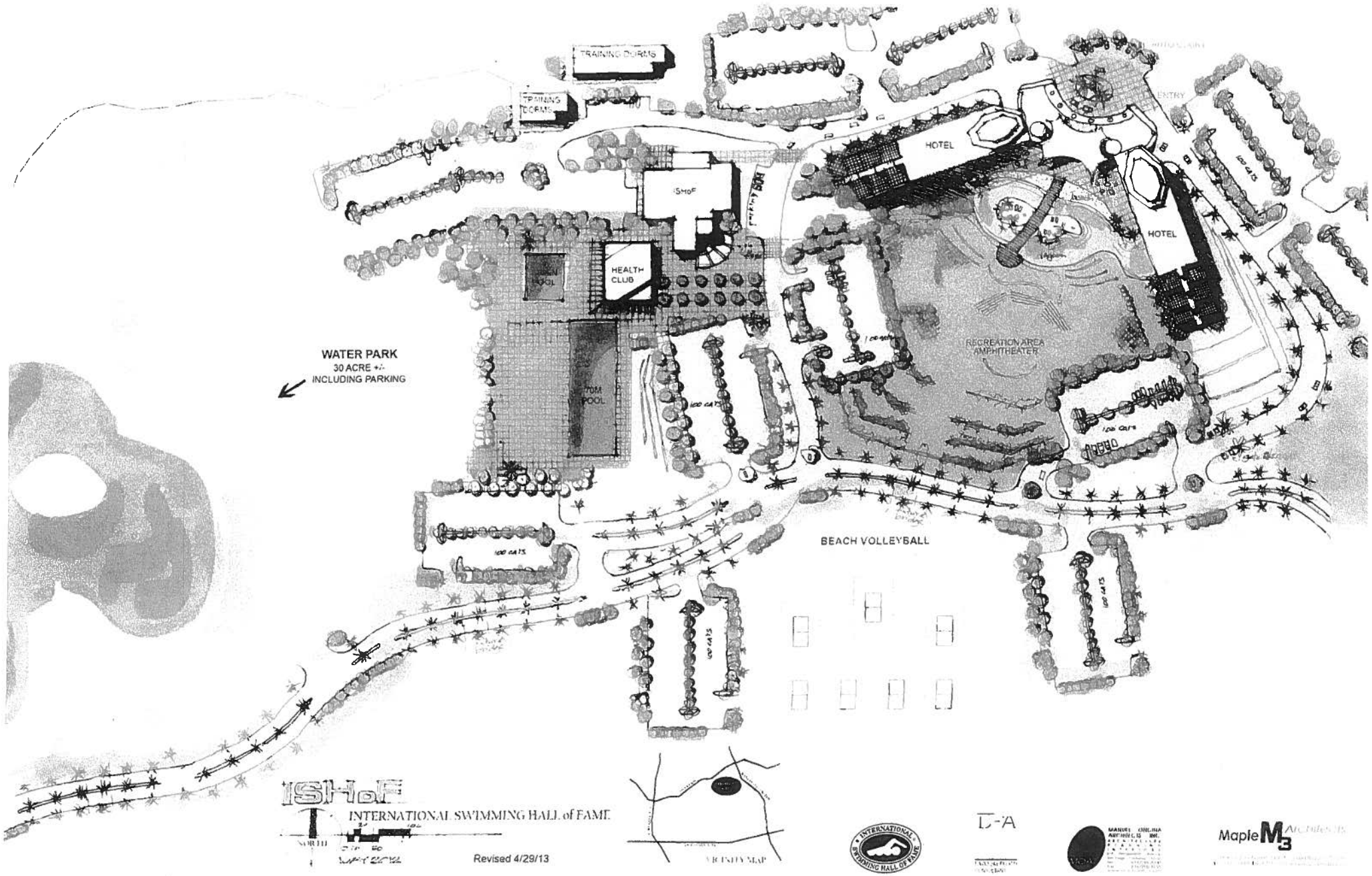
The NA would provide all parties a 180 day negotiation period and the opportunity to develop a formal Development and Disposition Agreement for the development as proposed. The NA also includes Sudberry as a party, as Sudberry does have development rights over the portion of El Corazon subject to this NA.

RECOMMENDATION

Staff recommends that the El Corazon Standing Committee requests that the City Council approve a Negotiation Agreement (NA) with Swimming Hall of Fame Partners, Inc. (SHOFP), as the developer, to negotiate a potential Development and Disposition Agreement (DDA) for the development of a recreational component of El Corazon, and authorization for staff to negotiate a Development and Disposition Agreement with the developer.

Submitted by:

Peter A. Weiss
Consulting Assistant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INTERNATIONAL SWIMMING HALL of FAME
Revised 4/29/13
VICINITY MAP
INTERNATIONAL SWIMMING HALL OF FAME
Maple M3 Architects

SHOFP 2

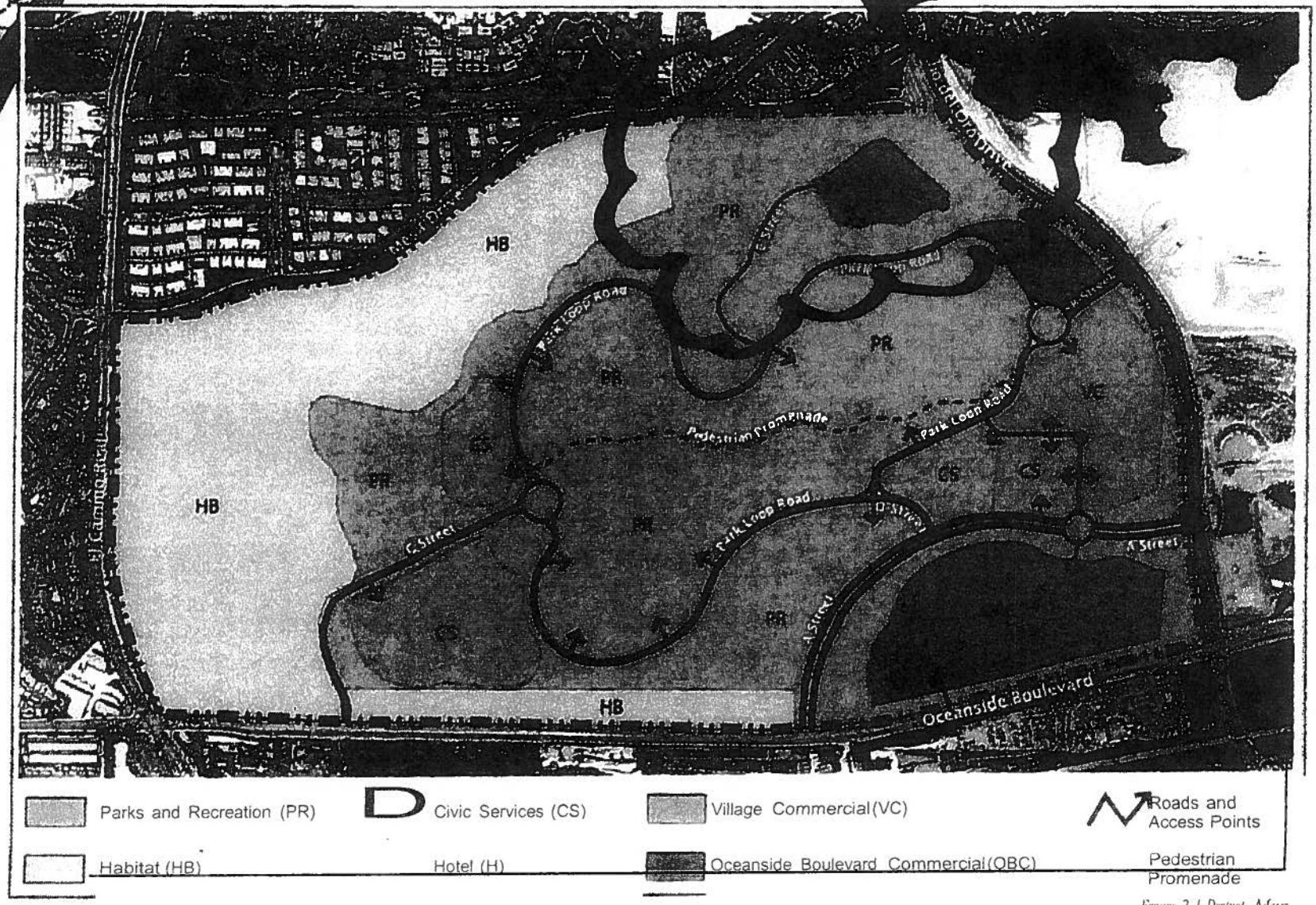

Figure 2.1 Distinct Map

NEGOTIATION AGREEMENT

by and between

THE CITY OF OCEANSIDE AND
INTERNATIONAL SWIMMING HALL OF FAME PARTNERS, Oceanside, INC.

THIS NEGOTIATION AGREEMENT (the "Agreement") is entered into this 30th day of November 2011 ("Effective Date"), by and between the City of Oceanside, a public body, corporate and politic (the "City"), Sudberry Development Inc. ("Sudberry") and INTERNATIONAL SWIMMING HALL OF FAME Swimming Hall of Fame Partners, Oceanside, Inc. (ISHOFSHOFP, INC), a Florida corporation, a California corporation (the "ISOF") (comment—Developer needs to provide documentation to confirm its legal status in California), on the terms and provisions set forth below. The City, Sudberry, and DeveloperSHOFP, Inc. may sometimes be referred to herein individually as "Party" and collectively as "Parties."

RECITALS

1. In 1994, the City acquired the approximate 465-acre former sand mining site known as El Corazon, located south of Mesa Drive, east of El Camino Real, west of Rancho del Oro Drive and north of Oceanside Boulevard.

2. The El Corazon site presently includes some existing development, such as a senior center opened in 2009, a green waste composting facility, and reclamation activities with a mine tailings pond.

3. Following a multi-year public planning effort, the City Council adopted the El Corazon Specific Plan ("Specific Plan") and certified a Final Environmental Impact Report ("EIR"). The Specific Plan and EIR contemplate the development of park and recreational uses, commercial uses, a hotel and civic services.

4. On January 2, 2013, the City Council approved a disposition and development agreement (El Corazon DDA) with Sudberry Development Inc. (Sudberry) for the development of the commercial area and the balance of the recreational area of the El Corazon property, as those terms are defined in the El Corazon DDA. The DDA grants Sudberry the right to develop approximately sixty (60) acres of the commercial portion of El Corazon as provided for in the DDA;

5. The El Corazon DDA also grants Sudberry the right to develop the "balance of the recreational area," as that term is defined in the DDA, for an initial period of up to twelve (12) years. However, the City also has the right to develop the balance of the recreational area with Sudberry retaining a right of first refusal;

6. ISHOFSHOFP, INC has approached the City with a proposal to develop the balance of the recreational area with a state of the art swimming complex and ancillary development. ISHOFSHOFP, INC's proposal may include property within the balance of the recreational area and portions of the commercial area of the El Corazon DDA;

7. The purpose of this negotiation agreement is to allow ISHOFSHOFP, INC, Sudberry, and the City to devote the necessary resources to study and assess the feasibility of the ISHOFSHOFP, INC proposal and to potentially develop an agreement to implement ISHOFSHOFP, INC's proposal to be consistent with the El Corazon Specfic Plan. Sudberry consents to discussions between ISHOFSHOFP, INC and the City related to a potential lease to implement the ISHOFSHOFP, INC proposal. Sudberry waives and hereby releases the City from any claim for breach of contract, breach of the implied covenant of good faith and fair dealing or any other cause of action, whether in law or equity, arising from negotiations between ISHOFSHOFP, INC and the City covering the commercial property subject to the El Corazon DDA.

8. Any agreement between the City and ISHOFSHOFP, INC shall be subject to approval by the City Council in its sole discretion. Moreover, to the extent any agreement with ISHOFSHOFP, INC

requires an amendment to the El Corazon DDA, such approval shall be in the sole discretion of Sudberry and the City Council. By entering into this Agreement, Sudberry does not waive any of its rights to develop the El Corazon property in a manner consistent with the El Corazon DDA. Neither Sudberry nor the City shall be responsible for any costs incurred by SHOFP, Inc pursuant to this Agreement.

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

I. Negotiation

A. Good Faith Negotiations

The City, Subderry, and ISHOF (collectively, the "Parties") agree for the period set forth below in Section I.B to negotiate diligently and in good faith to prepare a Disposition and Development Agreement ("DDA") with respect to that area in the Specific Plan area which is shown on the Site Map attached hereto as Exhibit "A," hereinafter referred to as the "Project Site." The obligation to negotiate in good faith requires the respective Parties to communicate with each other with respect to those issues for which agreement has not been reached and in such communication, to follow reasonable negotiation procedures, including meetings, telephone conversations, and correspondence. The Parties understand that final accord on any or all issues may not be reached. Nothing herein shall obligate the City to approve or execute a DDA. The City expressly reserves its discretion to approve or reject the terms of a future DDA.

The City anticipates that following execution of this Agreement, and through the period of negotiation and preparation of the DDA, the City, as well as certain consultants and attorneys for the City, will devote substantial time and effort in reviewing documents, proposals, plans, and meeting with the ISHOFSHOFP, INC, each other, and other necessary third parties. The City acknowledges that the ISHOFSHOFP, INC will also expend substantial time and resources hereunder and the Parties are willing to engage in these activities subject to the terms and conditions set forth in this Agreement.

B. Period of Negotiations

The Negotiation Period shall commence upon the date the City approves

and executes this Agreement following execution by the ISHOFSHOFP, INC and Sudberry (the "Effective Date") and continue for one hundred eighty (180) days. The Negotiation Period shall commence no earlier than January 6, 2014. The Parties agree to negotiate in good faith and conduct due diligence activities during the Negotiation Period.

If a final DDA has not been approved by the Parties by the expiration of the Negotiation Period, then this Agreement shall automatically terminate. Provided, however, in the event of circumstances beyond the reasonable control of either Party, so long as the Parties are negotiating diligently and in good faith, either of the Parties can request, in writing, an additional sixty (60) day extension of the Negotiation Period. Any other extension beyond the Negotiation Period must be approved by the City Council at a public meeting.

II. TERMS TO BE NEGOTIATED

A. City, ISHOFSHOFP, INC, and Sudberry shall meet regularly with each other in order to negotiate a proposed DDA to include, without limitation, the following provisions:

1. 400 suite convention hotel with meeting rooms, auditorium and theater;
2. 30 acre water park with room for expansion, including parking;
3. World-class aquatic facilities, to include 70 meter competition pool with moveable bulkheads, 25m x 25m competition stadium, therapy/teaching pool and adequate parking;
4. Dry land training/sports therapy facility to be operated in cooperation with reputable sport medicine/therapy group;
5. Museum and library building of approximately 15,000 sq. ft. of exhibition space to include: museum/store/pro shop of approximately 2,000 sq. ft., storage area of approximately 2,000 sq. ft., offices and classrooms of approximately 2,000 sq. ft., all with adequate parking;
6. 100+/- dormitories for athletes and coaches to accommodate long-term training for water polo, synchronized swimming and diving, beach volleyball and triathlon training;
7. 6 beach volleyball courts for instruction and one championship

court with permanent seating for 500 and accommodation for additional seating, as needed;

8. Office and meeting space for USA beach volleyball events;
9. Office and meeting space for USA triathlon events
10. Loop road and trails (app. 2 ½ – 3 ½ miles) as per the El Corazon Master Plan, to be used for triathlon training.

B. The Parties will negotiate in good faith to establish a timeline/schedule for construction of the foregoing and all matters related (i.e. environmental, financing, entitlements, etc.).

1. A schedule of performance encompassing appropriate and necessary legal, administrative and financial benchmarks to be met by the appropriate Party and specific deadlines.

2. The performance guarantees, good faith deposits, and liquidated damages to be required, if applicable.

3. The rights and remedies of the Parties upon termination DDA.

C. ISHOFSHOFP, INC will prepare and submit a fiscal feasibility report for the portions of the development based on current market conditions. ISHOFSHOFP, INC will also submit to the appropriate agency (as required by law and as negotia ed between the parties) a market feasibility study for the development to be followed by a detailed pro forma after preconditions for the development have been met by ISHOFSHOFP, INC and approved by the City.

1. ISHOFAT its sole cost, SHOFP, INC will provide the City with documentation demonstrating that it has and/or will obtain the necessary financing for prosecution of the development to its conclusion, such documentation to include an equity financing plan.

2. Necessary Debt and Equity Financing: ISHOFSHOFP, INC shall

submit evidence to City including financial structure and preliminary commitments, demonstrating it can and will obtain the necessary debt and equity financing in an amount sufficient to pay for development of Project Site.

3. City Right to Additional Information: City reserves the right, during the term of this Agreement to request reasonable additional information and data from ISHOFSHOFP, INC necessary for review and evaluation of the proposed project. ISHOFSHOFP, INC agrees to provide such additional information or data in a timely manner. All information regarding the ISHOFSHOFP, INC business practices shall remain confidential to the extent allowed by law.

D. ISHOFSHOFP, INC will provide City with any other information and details with regard to the foregoing matters as requested.

E. Neither Sudberry nor Tthe City will not be responsible for any costs related to this Agreement. development

III. LIMITATION ON REMEDIES FOR BREACH OR DEFAULT OF THE AGREEMENT

A. The Parties would have agreed to any part of this Agreement if such party were to be liable to any other party for any amount of monetary damages. Accordingly, the parties acknowledge and agree that the exclusive remedy upon breach or default of the other party to negotiate in good faith as set forth in this Agreement, is to terminate this Agreement.

B. Each Party acknowledges it is aware of the meaning and legal effect of California Civil Code Section 1542, which provides

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

DEBTOR.

C. Civil Code section 1542 notwithstanding, it is the Parties intention to be bound by the limitation on remedies set forth in this Section and each Party hereby releases any and all claims against the other Parties for monetary damages or other legal or equitable relief, whether or not such released claims were known or unknown to the releasing Parties as of its entry into this Agreement. Each Party hereby waives the benefits of Civil Code section 1542 and all other statutes and judicial decisions (whether state or federal) or similar effect.

_____ _____ _____

Sudberry Initial City Initial ISHOFSHOFP, INC Initial

IV. CITY NOT RESPONSIBLE FOR COSTS

The City is not responsible for any costs associated with the planning and development of the Project Site pursuant to or arising from this Agreement.

V. ASSIGNMENT

City is entering into this Agreement based on the prior experience and qualifications of the ISHOFSHOFP, INC. Therefore, ISHOFSHOFP, INC shall not assign, sell or otherwise transfer any or all of their rights under this Agreement to any party, without the prior written approval of the City, at is sole discretion.

VI. INDEMNITY

ISHOFSHOFP, INC agrees to defend, indemnify and hold harmless the City and each of its elected officials, officers, agents, and employees from any challenge to this Agreement, or any and all of the losses, liabilities, claims or costs, including attorney fees, arising from arising from ISHOFSHOFP, INC's negligent acts, errors, or omissions with respect to its obligations under the Agreement or the Project site, excluding any losses arising from the sole

negligence or the sole willful misconduct of the City. The indemnity obligation shall survive termination of the Agreement.

VII. ENTIRE AGREEMENT

This Agreement represents the entire agreement of the Parties and supersedes all negotiations or previous agreements between the Parties. This Agreement may not be amended unless agreed to in writing and certified by the authorized representatives of the Parties. No amendment may be enforced against the City unless approved by the City Council.

VIII. GOVERNING LAW

This Agreement shall be interpreted and enforced in accordance with the provisions of California law.

IX. NO THIRD PARTY BENEFICIARIES

City, ISHOFSHOFP, INC, and Sudberry expressly acknowledge and agree they do not intend, by their execution of this Agreement to benefit any persons or entities not signatory to this Agreement. No person or entity shall have any rights or causes of action against the City, ISHOFSHOFP, INC or Sudberry arising out of the Parties' entry and/or performance of this Agreement.

X. COUNTERPARTS

This Agreement may be executed in two counterpart originals which, when taken together, shall constitute one instrument.

XI. EFFECTIVE DATE

The Effective Date of this Agreement shall be the date signed by the City following execution by ISHOFSHOFP, INC and Sudberry.

XII. NOTICES

A. Any formal notice, request, approval or other communication to be provided by any Party shall be in writing and dispatched by first class mail, registered or certified mail, postage prepaid, return receipts requested, or by electronic facsimile transmission followed by delivery of a "hard" copy or by personal delivery, to the addresses of the other Parties set forth below. Such written notices, requests approvals of other communication may be sent in the same manner to such other addresses as the Parties may from time to time designate.

B. Any notice that is transmitted be electronic facsimile transmission followed by deliver of a "hard" copy, shall be deemed delivered upon its transmission: any notice personally delivered shall be deemed received on the documented date of receipt; any notice that is sent by registered or certified mail. Postage prepaid, return receipt requested shall be deemed received on the date of receipt.

C. If to City:

City of Oceanside
Attn. City Manager
300 North Coast Highway
Oceanside, CA 92054

With a copy to

John P. Mullen
City Attorney
300 North Coast Highway
Oceanside, CA 92054

D. If to Sudberry:

Sudberry Properties
5465 Morehouse Drive
San Diego, CA 92121

E. If to ISHOFSHOFP, INC:

Address

NOTARY ACKNOWLEDGEMENT OF DEVELOPERS SIGNATURE MUST BE ATTACHED

DRAFT