

Council/Agency Meeting Held: _____	_____ City Clerk's Signature
Deferred/Continued to: _____	
<input type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date:                      3/21/2005	Department ID Number:      PW 05-012

**CITY OF HUNTINGTON BEACH  
REQUEST FOR CITY COUNCIL ACTION**

**SUBMITTED TO:** HONORABLE MAYOR AND CITY COUNCIL MEMBERS

**SUBMITTED BY:** *Penelope Culbreth-Graft*  
PENELOPE CULBRETH-GRAFT, CITY ADMINISTRATOR

**PREPARED BY:** PAUL EMERY, ACTING DIRECTOR OF PUBLIC WORKS

**SUBJECT:**            **Approve Lowe's Landscape License Agreement**

2005 MAR 10 P  
 HUNTINGTON BEACH  
 CITY CLERK  
 PAUL EMERY

**Statement of Issue, Funding Source, Recommended Action, Alternative Action(s), Analysis, Environmental Status, Attachment(s)**

**Statement of Issue:** Conditional Use Permit No. 00-31 requires Lowe's Home Improvement Warehouse (Lowe's), located at 8175 Warner Avenue, to provide a Landscape License Agreement for maintenance of landscaping in the Improvement Area along Warner Avenue and B Street.

**Funding Source:** No funding is required for this action.

**Recommended Action:** Motion to:  
Approve and authorize the Mayor and City Clerk to execute the Landscape License Agreement with the City of Huntington Beach, the Ocean View School District, and Lowe's HIW, Inc.

**Alternative Action(s):** Do not approve the Landscape License Agreement. This action will prevent Lowe's from meeting the City's conditions of development.

*(Continued on next page)*

# REQUEST FOR ACTION

MEETING DATE: 3/21/2005

DEPARTMENT ID NUMBER: PW 05-012

**Analysis:** Lowe's HIW, Inc. is required to provide a Landscape License Agreement to insure continual maintenance of improvements installed within the public right-of-way adjacent to the development. Should Lowe's prematurely terminate the agreement, the improvements must be returned to the condition of the landscaping as it appeared upon final approval of the project.

The Agreement includes the Ocean View School District of Orange County as a party to the Agreement as they are the owners of the parcels. The District would be responsible for maintenance of the improvements should the premises be vacated by the Licensee.

**Public Works Commission Action:** Not required.

**Environmental Status:** Not applicable.

**Attachment(s):**

City Clerk's Page Number	No.	Description
3	1.	Landscape License Agreement (three copies)
18	2.	Insurance Waiver
23	3.	Location Map

E-13.2

# ATTACHMENT 1

E-13.3

LICENSE AGREEMENT BETWEEN  
THE CITY OF HUNTINGTON BEACH, CALIFORNIA,  
OCEAN VIEW SCHOOL DISTRICT OF ORANGE COUNTY AND LOWE'S HIW, INC.  
TO MAINTAIN LANDSCAPING WITHIN CERTAIN PUBLIC RIGHT OF WAY

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2005, by and between the CITY OF HUNTINGTON BEACH, a California municipal corporation, hereinafter referred to as "City," the OCEAN VIEW SCHOOL DISTRICT OF ORANGE COUNTY, herein after referred to as "SCHOOL DISTRICT," and LOWE'S HIW, INC., a Washington corporation, hereinafter referred to as "LICENSEE."

WHEREAS SCHOOL DISTRICT is the owner of the real property located in the City of Huntington Beach, County of Orange, State of California, known as Parcels 1, 2, 3 and 4 of Parcel Map No. 2002-125, more particularly described in Exhibit "A" attached hereto ("Property"); and

WHEREAS, LICENSEE is the lessee from the School District of Parcels 1 and 2 of Parcel Map 2002-125 located in the City of Huntington Beach, County of Orange, State of California and described in Exhibit "A," LICENSEE requested and was required by the Department of Public Works of CITY to provide landscaping and other improvements in the public right-of-way in accordance with plans and specifications submitted by LICENSEE and approved by CITY; and

LICENSEE is implementing plans to develop Parcel 1 as a retail home improvement center and plans to sublease Parcel 2 for other retail or restaurant uses; and

SCHOOL DISTRICT currently intends to utilize parcels 3 and 4 for School District purposes; and

In connection with the development of Parcels 1 and 2 of Parcel Map 2002-125, located in the City of Huntington Beach, County of Orange, State of California, LICENSEE is required by CITY to provide maintenance of landscaping in the area of public right-of-way depicted in attached Exhibit "B," incorporated by this reference (hereinafter referred to as "the Improvement Area"), located in the City of Huntington Beach, pursuant to the terms hereof and in accordance with plans and specifications submitted by LICENSEE and approved by CITY; and

By this agreement, the parties hereto desire to clarify and specifically delineate their respective obligations with respect to the maintenance of the hereinabove described Improvement Area.

NOW, THEREFORE, in consideration of the promises and agreements hereinafter made and exchanged, the parties covenant and agree as follows:

1. GRANT OF LICENSE

Subject to terms and conditions hereinafter set forth, LICENSEE shall have a non-exclusive, revocable license (the "License") to use that certain portion of the Property defined in Paragraph 2 hereof as the "Improvement Area," for landscaping purposes.

During the term of this License, the LICENSEE agrees to maintain the existing improvements of the area shown in Exhibit "B" and designated thereon as the "Improvement Area" in good and satisfactory condition. Maintenance shall include but not be limited to watering, repairing and/or adjusting irrigation systems when failures occur, fertilizing, cultivating, edging, performing general planting and trimming or other corrective gardening, spraying grass and plants with both insecticides and herbicides, and generally keeping the landscaped area in clean, safe and attractive condition, taking into consideration normal growth of the landscape materials and a continuation of the aesthetic quality of the area. The growth of all plant materials shall not be allowed to grow, nor irrigation be allowed spray across or onto any bicycle path, pedestrian walk or street right-of-way from the edge of the curb/gutter to the center of the street as designated on Exhibit "B." The Improvement Area shall be free from weeds, debris and harmful insects at all times. All such gardening and maintenance practices so performed shall conform to the best maintenance practices and to the Arboricultural and Landscape Standards Specification, issued by the CITY's Department of Public Works. LICENSEE agrees to perform all necessary irrigation in the area depicted on Exhibit "C." LICENSEE shall supply, maintain or repair as needed all equipment required to adequately irrigate the area.

LICENSEE agrees to maintain and keep the Improvement Area in good condition and repair, free and clear of litter and debris and free from any objectionable noises, odors or nuisances and to comply with all health and police regulations, in all respects at all times. LICENSEE agrees to dispose of litter and debris only in receptacles designated by CITY.

2. LOCATION

The Improvement Area shall be that portion of the Property labeled Exhibit "B" attached hereto and made a part of hereof by this reference.

3. PLANS AND SPECIFICATIONS

LICENSEE shall perform at LICENSEE's sole cost and expense any and all refurbishing to the Improvement Area as necessary to bring the Improvement Area into an operating condition, all in accordance with plans submitted by LICENSEE to CITY, which plans shall be subject to the prior written approval of CITY. No changes, modifications or alterations may be made to the Improvement Area with the prior written consent of CITY.

4. DAMAGE TO IMPROVEMENT AREA

In the event any damage is caused to any pathway, sidewalk, curb, street or utility as a result of the installation of the landscaped material installed and/or maintenance of the Improvement Area, LICENSEE or its successors and assigns agree to repair same at their own expense. In the event that damage is caused by the acts of any person to any portion of the landscaped area or in the event any equipment is broken or breaks or is destroyed or in the event vegetation rots or dies, said equipment or vegetation shall be replaced or restored within ten days of LICENSEE's discovery of the breakage or destruction. Stolen items will be considered destroyed for purposes of this section.

5. MECHANICS' LEIN

LICENSEE agrees not to suffer any mechanics' lien to be filed against the Improvement Area by reason of any work, labor, services or material performed at or furnished to the Improvement Area, to CITY or anyone holding the Improvement Area through or under the Agreement. Nothing in this agreement shall be construed as a consent on the part of the CITY to subject the CITY's estate in the Improvement Area to any mechanics' liens or liability under the mechanics' lien laws of the State of California.

6. ASSIGNMENT

The License herein granted is personal to LICENSEE and is non-assignable. Any attempt to assign the License automatically terminates this License. Other than the License granted hereunder, LICENSEE hereby expressly waives any claim to or interest or estate of any kind or extent whatsoever in the Improvement Area arising out of the License or out of LICENSEE's use or occupancy of the Improvement Area, whether now existing or arising at any future time. This

License is appurtenant to the Property and may not be separately assigned apart from the Property or the interests therein.

7. TERM

The term of this License shall be perpetual, provided that CITY may at any time terminate this License upon thirty (30) days written notice to LICENSEE. In the event of any such termination, LICENSEE and its successors and assigns shall be obligated to restore the improvements, including the plantings and irrigation systems, to their condition at the time of the original installation and to satisfy all CITY requirements pertinent to restoration of the Improvement Area. In the event of a termination, LICENSEE or its successors in interest shall be required to disconnect the water and electrical supply source from the Property and to construct and reconnect a new water and electrical supply source to the Improvement Area irrigation system to the satisfaction of CITY.

LICENSEE and CITY shall each have the right to terminate this License Agreement at any time upon ninety (90) days prior written notice delivered to the other parties.

Upon the expiration or earlier termination of the License, LICENSEE shall quit and surrender the Improvement Area with all improvements thereon.

8. APPLICABLE LAW

LICENSEE shall, at its sole cost and expense, faithfully observe in the use and occupation of the Improvement Area all municipal ordinances, and all state and federal statutes now in force and which may hereafter be in force, and shall fully comply, at its sole expense, with all regulations, orders, and other requirements issued or made pursuant to any such ordinances and statutes. All building permits, business licenses and other applicable permits and licenses shall be secured and paid for by LICENSEE.

9. UTILITIES

LICENSEE shall bear the expense of electricity and any other utility necessary to the operation of the License Area pursuant to this License. LICENSEE shall be solely responsible for using such utilities in a safe and hazardless manner, complying in all respects with applicable codes and ordinances.

10. WORKERS' COMPENSATION INSURANCE

Pursuant to *California Labor Code* §1861, LICENSEE or its successors or assigns acknowledges awareness of Section 3700 *et seq.* of said code, which requires every employer to

be insured against liability for workers' compensation; LICENSEE covenants that it will comply with such provisions prior to commencing performance of the work hereunder.

LICENSEE shall maintain such Worker's Compensation Insurance in an amount as required by statute and Employers' Liability Insurance with the following limits: \$500,000 for bodily injury per accident; \$500,000 per employee for disease and \$500,000 policy limit for disease. All insurance required herein shall be underwritten with companies with an A.M. Best rating of A-/VIII or higher.

11. INSURANCE

LICENSEE or its successors and assigns shall carry at all times incident hereto, on all operations to be performed hereunder, in the public right of way as contemplated herein, commercial general liability insurance, including coverage for bodily injury, property damage, products/completed operations, and blanket contractual liability with minimum limits of \$1,000,000 per occurrence and automobile liability insurance with a combined single limit of \$1,000,000. All insurance shall be underwritten by insurance companies with an A.M. Best rating of A-/VIII or higher for all operations, subcontract work, contractual obligations, product or completed operations and all owned vehicles and non-owned vehicles. Said insurance policies shall name the SCHOOL DISTRICT and CITY, their officers, agents and employees as Additional Insureds. LICENSEE shall subscribe for and maintain said insurance policies in full force and effect during the term of this Agreement.

LICENSEE may satisfy any or all insurance requirements hereunder through a program of self-insurance provided that the self-insured retention does not exceed \$3,000,000 and LICENSEE and its parent corporation maintain a combined net worth of at least Two Hundred Million Dollars (\$200,000,000).

An insurance waiver is on file.

12. CERTIFICATES OF INSURANCE

Prior to the Commencement date LICENSEE shall furnish to SCHOOL DISTRICT and CITY certificates of insurance subject to approval of the City Attorney evidencing the insurance coverages as required by this Agreement; said certificates shall provide the name and policy number of each carrier and policy, and shall state that the policy is currently in force and shall provide that insurer shall endeavor to give thirty days written notice to CITY and SCHOOL

DISTRICT of any cancellation or modification. LICENSEE shall maintain the insurance coverages in force until the License is terminated.

The requirement for carrying the insurance coverage shall not derogate from the provisions for indemnification of CITY and SCHOOL DISTRICT by LICENSEE under the Agreement. LICENSEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

13. INDEMNIFICATION AND HOLD HARMLESS

LICENSEE hereby agrees to protect, defend, indemnify and hold and save harmless SCHOOL DISTRICT and CITY, their officers, and employees against any and all liability, claims, judgments, costs and demands, however caused, including those resulting from death or injury to LICENSEE's employees and damage to LICENSEE's property, arising directly or indirectly out of the grant of License herein contained, including those arising from the passive concurrent negligence of CITY, but save and except those which arise out of the active concurrent negligence, sole negligence, or the sole willful misconduct of CITY.

In the event suit is brought by either party to enforce the terms and provisions of this agreement or to secure the performance hereof, each party shall bear its own attorneys' fees.

14. RULES AND REGULATIONS

LICENSEE or its successors or assigns as the case may be, agrees to obey and observe (and cause its officers, employees, contractors, licensees, invitees and all other doing business with LICENSEE to obey and observe) all rules and regulations of general applicability regarding the Property as may be established by CITY at anytime and from time to time during the term of this Agreement.

15. DEFAULT

In the event LICENSEE or its successors and assigns does not maintain the Improvement Area in an adequate manner after receiving notice and opportunity to cure any deficiency in maintenance, CITY shall cause such maintenance to be performed adequately and all costs reasonably incurred shall be assessed to and billed directly to the LICENSEE. Payment shall be due within thirty (30) days of billing.

16. COVENANT

SCHOOL DISTRICT for itself, its successors and assigns, agrees that this Agreement shall be a covenant running with the land, binding upon and inuring to the benefit of the owner

of the Common areas of the Property, as the burdened parcels, and its respective successors in interest, heirs, personal representatives, and inuring to the benefit of the CITY, as the owner of the Improvement Areas, as the benefited parcel.

17. NOTICES

Any notice or special instructions required to be given in writing under this Agreement shall be given either by personal delivery to LICENSEE, SCHOOL DISTRICT (as designated herein), or to CITY as the situation shall warrant, or by enclosing the same in a sealed envelope, postage prepaid, and depositing the same in the United States Postal Service, addressed as follows:

TO CITY:

Director of Public Works  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92647

TO LICENSEE:

Lowe's HIW, Inc.  
Highway 268, East Dock  
North Wilkesboro, NC 28659  
Attn: Property Management (REO)

TO SCHOOL DISTRICT:

Ocean View School District  
of Orange County  
17200 Pinehurst Lane  
Huntington Beach, CA 92647  
Attn: James R. Tarwater

Lowe's HIW, Inc.  
Highway 268, East Dock  
North Wilkesboro, NC 28659  
Attn: Law Department (REO)

18. COOPERATION

LICENSEE shall in good faith cooperate in connection with its respective rights and obligations under this Agreement, including, but not limited to, performing any acts and executing any further documents that may be reasonably necessary to effectuate the purposes of or rights conferred under this Agreement.

19. CAPTIONS AND TERMS

The captions and section numbers appearing in the Agreement are for convenience only and are not a part of the Agreement and do not in any way limit, amplify, define, construe or describe the scope of intent of the terms and provisions of this Agreement, or in any way affect this Agreement.

20. INTERPRETATION

If any provision of this Agreement shall be deemed to be invalid, the remainder of this Agreement shall not be affected thereby. Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

21. RECORDATION

This Agreement shall be recorded with the County Recorder of Orange County, California.

22. ATTORNEY'S FEES

In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The prevailing party shall not be entitled to recover its attorney's fees.

23. ENTIRETY

The foregoing, and the attachments hereto, set forth the entire Agreement between the parties.

[SIGNATURE FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by and through their authorized officers on \_\_\_\_\_, 2005.

LICENSEE:  
LOWE'S HIW, INC.,

*W*

CITY OF HUNTINGTON BEACH, a  
municipal corporation of the  
State of California

By: *M.L. Skiles*

MICHAEL L. SKILES  
Print name

ITS: (circle one) Chairman/President/Vice President

\_\_\_\_\_  
Mayor

AND

By: *Thomas E. Maddox*

Thomas E. Maddox  
Print name

ITS: (circle one) Secretary/Chief Financial Officer/Asst. Secretary - Treasurer

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

*Jennifer M. [Signature]*  
*3/5/05* City Attorney  
*1-19-04*

REVIEWED AND APPROVED:

*Lorelyne Cullend [Signature]*  
City Administrator

INITIATED AND APPROVED:

*[Signature]*  
Director of Public Works

SCHOOL DISTRICT:  
OCEAN VIEW SCHOOL DISTRICT  
OF ORANGE COUNTY

By: *James R. Tarwater*

James R. Tarwater, Ed.D.  
Print name

ITS:

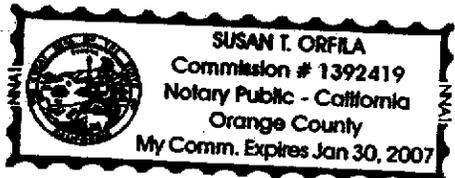
Title: District Superintendent

E-13.12

State of California )  
 )ss.  
County of Orange )

On February 2, 2005, before me, Susan T. Orfila, notary public, personally appeared James R. Tarwater, Ed.D., personally known to me be the person whose name is subscribed to within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Signature Susan T. Orfila

State of California )  
 ) ss.  
County of San Diego

On January 28, 2005, before me, Christine Kawamoto, notary public, personally appeared Michael L. Skiles, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

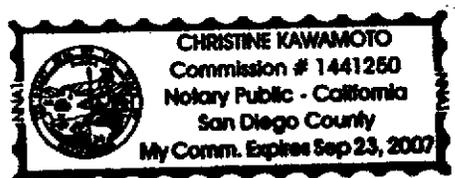


Signature CKawamoto

State of California )  
 ) ss.  
County of San Diego )

On January 28, 2005, before me, Christine Kawamoto, notary public, personally appeared Tom E. Maddox, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

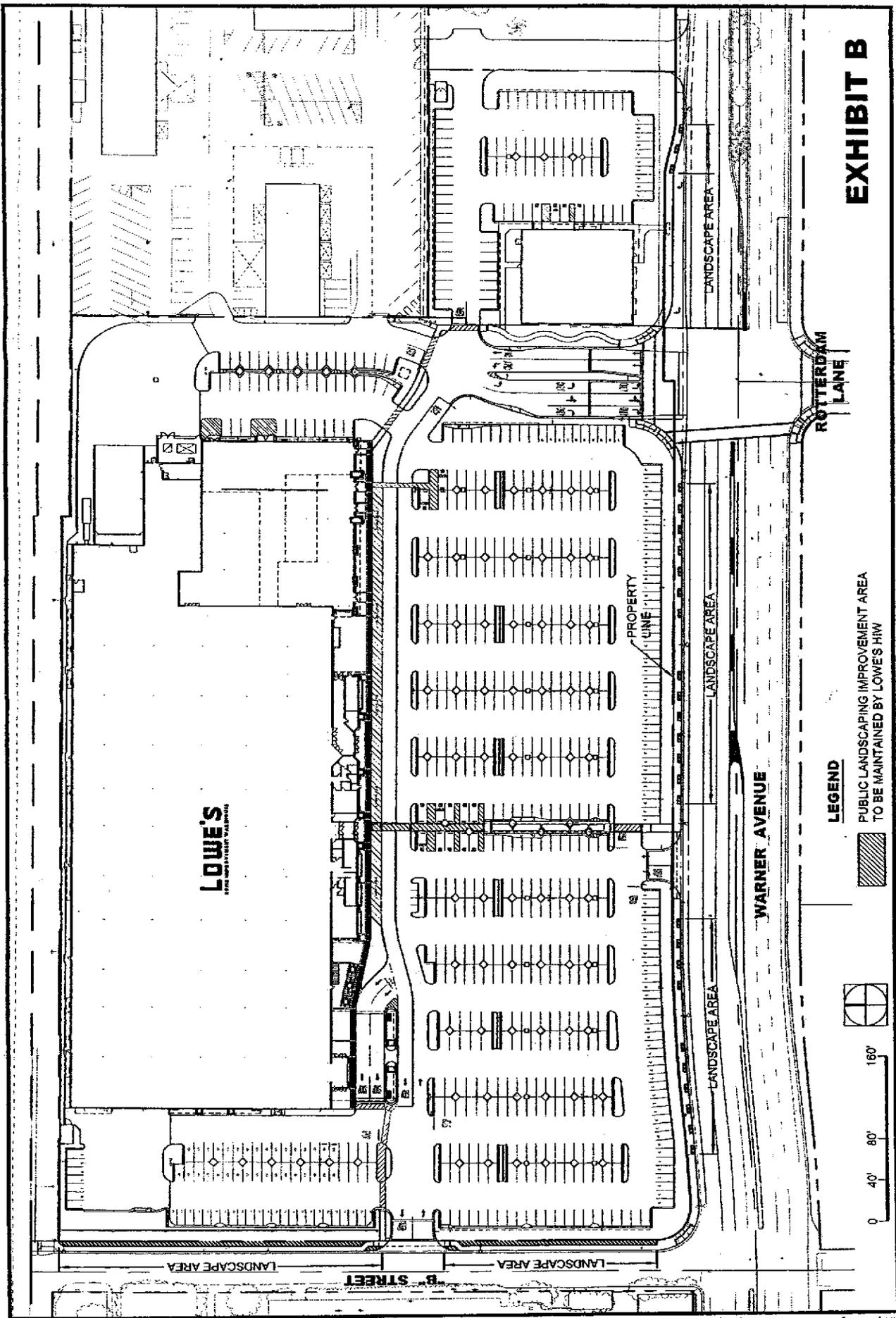


Signature CKawamoto

E-13.14



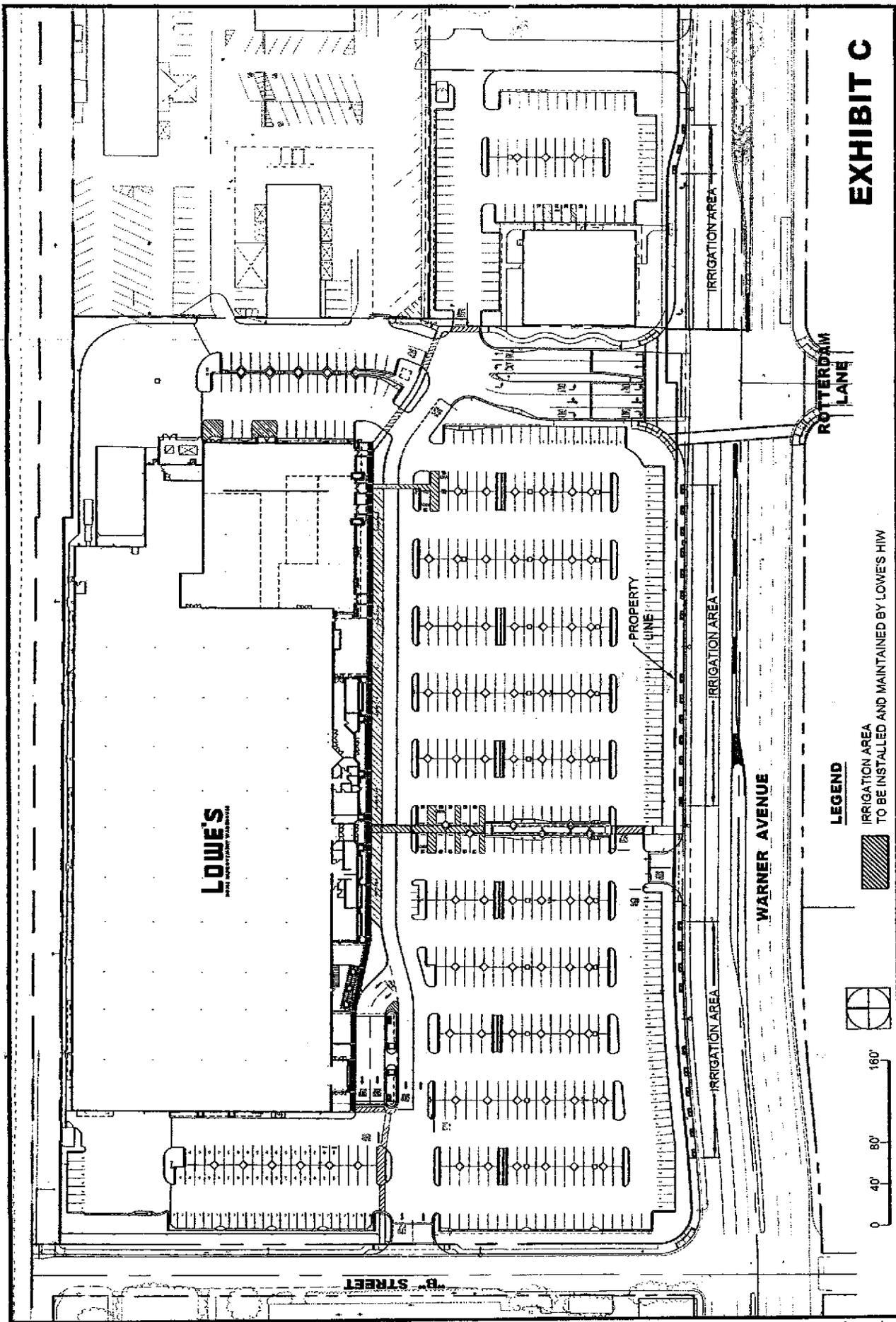
E-13.16



**EXHIBIT B**

Plan 00110046/03110 Public Landscaping Dec 10, 2004 - 1:48pm

# EXHIBIT C



**LEGEND**  
IRRIGATION AREA  
TO BE INSTALLED AND MAINTAINED BY LOWE'S HIW



0 40' 80' 160'

E-13.17

**INTENTIONALLY  
LEFT  
BLANK**

**ATTACHMENT 2**



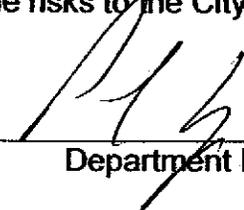
# INSURANCE AND INDEMNIFICATION WAIVER MODIFICATION REQUEST

RECEIVED

JAN 19 2005

City of Huntington Beach  
City Attorney's Office

- Requested by: Christi Mendoza, Risk Management
- Date: January 19, 2005
- Name of contractor/permittee: Lowe's Companies Inc.
- Description of work to be performed: Landscape License
- Value and length of contract: Not applicable; perpetual
- Waiver/modification request: \$3,000,000 general liability deductible and endorsement
- Reason for request and why it should be granted: Unable to comply with the city's zero deductible and additional insured endorsement requirements  
*based on financial data support*
- Identify the risks to the City in approving this waiver/modification: None.

*KE*  \_\_\_\_\_ *1/19/05* \_\_\_\_\_  
 Department Head Signature Date:

### APPROVALS

Approvals must be obtained in the order listed on this form. Two approvals are required for a request to be granted. Approval from the City Administrator's Office is only required if Risk Management and the City Attorney's Office disagree.

1. Risk Management

Approved  Denied

  
Signature

*1/19/05*  
Date

2. City Attorney's Office

Approved  Denied

  
Signature

*1/21/05*  
Date

3. City Administrator's Office

Approved  Denied

  
Signature

*3-8-05*  
Date

If approved, the completed waiver/modification request is to be submitted to the City Attorney's Office along with the contract for approval. Once the contract has been approved, this form is to be filed with the Risk Management Division of Administrative Services.

E-13.19

# MARSH

CERTIFICATE NUMBER  
ATL-000862479-06

PRODUCER  
MARSH  
100 M. TRYON STREET, SUITE 3200  
CHARLOTTE, NC 28202  
FAX (704) 374-8500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER OTHER THAN THOSE PROVIDED IN THE POLICY. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES DESCRIBED HEREIN.

COMPANIES AFFORDING COVERAGE

- COMPANY A AMERICAN HOME ASSURANCE COMPANY
- COMPANY B NATIONAL UNION FIRE INSURANCE COMPANY
- COMPANY C
- COMPANY D

67095-CASUA-ONLY-04-05

INSURED  
LOWE'S COMPANIES INC.  
AND SUBSIDIARIES  
P O BOX 1000  
MOORESVILLE, NC 28116

THIS IS TO CERTIFY THAT POLICIES OF INSURANCE DESCRIBED HEREIN HAVE BEEN ISSUED TO THE INSURED NAMED HEREIN FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THE CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND EXCLUSIONS OF SUCH POLICIES AS OF THE DATE SHOWN ANY HAVE BEEN REDUCED BY PAID CLAIMS.

CD LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B	<input checked="" type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> OWNERS & CONTRACTORS PROTECT <input checked="" type="checkbox"/> Subject to Self-Insured Retention <input type="checkbox"/> AUTOMOBILE LIABILITY	BE2978006 <i>2 SIR</i>	04/01/04	04/01/05	GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 PERSONAL & ADV INJURY \$ EACH OCCURRENCE \$ 5,000,000 FIRE DAMAGE (Any one fire) \$ MED EXP (Any one person) \$ COMBINED SINGLE LIMIT \$ 3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
A A A A	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	CA5188883 (AOS) CA5188885 (TX) CA5188908 (VA) CA5188884 (MA)	04/01/04 04/01/04 04/01/04 04/01/04	04/01/05 04/01/05 04/01/05 04/01/05	AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$ EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO	APPROVED AS TO FORM			AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$ EACH OCCURRENCE \$ AGGREGATE \$
	<input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> UMBRELLA FORM <input type="checkbox"/> OTHER THAN UMBRELLA FORM	JENNIFER McGRATH, Ciba Attorney by <i>[Signature]</i> 3/19/05 PER WAIVER			EACH ACCIDENT \$ AGGREGATE \$ EACH OCCURRENCE \$ AGGREGATE \$
A A	<input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS LIABILITY <input type="checkbox"/> THE PROPRIETOR PARTNER/EXECUTIVE OFFICERS ARE: <input type="checkbox"/> INCL <input type="checkbox"/> ENCL	WCS212383 WCS212384 (CA)	04/01/04 04/01/04	04/01/05 04/01/05	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER EL EACH ACCIDENT \$ 2,000,000 EL DISEASE-POLICY LIMIT \$ 2,000,000 EL DISEASE-EACH EMPLOYEE \$ 2,000,000
B A	<input type="checkbox"/> EXCESS WORKERS' COMP	XWC3757347 XWC3757348 (TX)	04/01/04 04/01/04	04/01/05 04/01/05	WC: STATUTORY EL: \$2,000,000

DESCRIPTION OF OPERATION/LOCATION/INDUSTRY/SPECIAL ITEMS  
 Re: Lowe's Store # - Huntington Beach, CA. "General Liability" and "Automobile Liability" headings include Owner and the City of Huntington Beach, and their respective officers, officials, employees, agents and volunteers as additional insured, as their interest may appear, if required by written contract, subject to the terms and conditions of the policies.

City of Huntington Beach  
 Attn: Director of Public Works  
 200 Main Street  
 Huntington Beach, CA 92648

SHOULD ANY OF THE POLICIES DESCRIBED HEREIN BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING AFFORDING COVERAGE WILL PROVIDE 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED HEREIN BY REGISTERED MAIL AND SHALL BE RESPONSIBLE TO PAY SUCH NOTICE TO THE POLICYHOLDER AND TO THE POLICYHOLDER'S ATTORNEY, OR TO THE POLICYHOLDER'S ATTORNEY, OR TO THE POLICYHOLDER'S ATTORNEY, OR TO THE POLICYHOLDER'S ATTORNEY.

By: Dana Bentley

*[Signature]*

VALID AS OF: 08/17/04

DATE (MM/DD/YY)  
06/17/04

PRODUCER

MARSH  
100 N. TRYON STREET, SUITE 3200  
CHARLOTTE, NC 28202  
FAX (704) 374-5500

COMPANIES AFFORDING COVERAGE

COMPANY  
E

COMPANY  
F

COMPANY  
G

COMPANY  
H

47096-CASUA-ONLY-04-05

INSURED

LOWE'S COMPANIES INC.  
AND SUBSIDIARIES  
P O BOX 1000  
MOORESVILLE, NC 28115

ADDITIONAL INFORMATION:

Policies referenced on page one under the "General Liability" and "Automobile Liability" headings include the certificate holder as additional insured, as their interest may appear, if required by written contract, subject to the terms and conditions of the policies.

*No written contract w/ city*

City of Huntington Beach  
Attn: Director of Public Works  
200 Main Street  
Huntington Beach, CA 92648

MARSH USA INC. BY

Diana Bentley

*Diana Bentley*

E-13.21

# Financial Highlights\*

IN MILLIONS, EXCEPT PER SHARE DATA

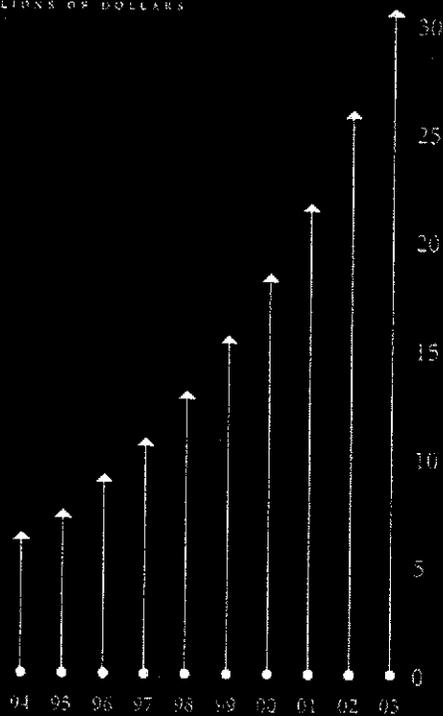
	Increase over '02	Fiscal '03	Fiscal '02
Net Sales	18.1%	\$ 30,838	\$ 26,112
Gross Margin	71bps**	31.15%	30.44%
Pre-tax Earnings	28.2%	\$ 2,998	\$ 2,339
Earnings from Continuing Operations	27.6%	\$ 1,862	\$ 1,459
Earnings from Discontinued Operations, Net of Tax		\$ 15	\$ 12
Net Earnings	27.6%	\$ 1,877	\$ 1,471
<b>Earnings Per Share</b>			
Basic (Continuing Operations)		\$ 2.37	\$ 1.87
(Discontinued Operations)		\$ 0.02	\$ 0.02
Basic Earnings Per Share	26.5%	\$ 2.39	\$ 1.89
Diluted (Continuing Operations)		\$ 2.32	\$ 1.83
(Discontinued Operations)		\$ 0.02	\$ 0.02
Diluted Earnings Per Share	26.5%	\$ 2.34	\$ 1.85
Cash Dividends Per Share	29.4%	\$ 0.110	\$ 0.085

\* Amounts herein have been adjusted to reflect the 26 Contractor Yard locations sold in 2003 as a discontinued operation.

\*\* Basis points

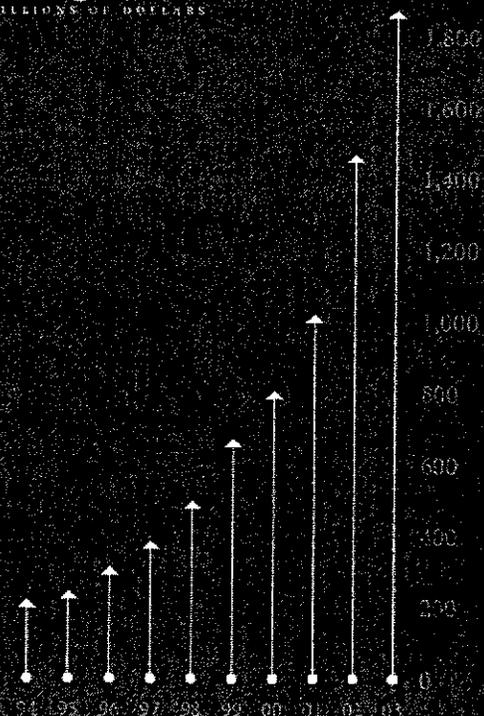
## Sales Growth

IN BILLIONS OF DOLLARS



## Earnings Growth

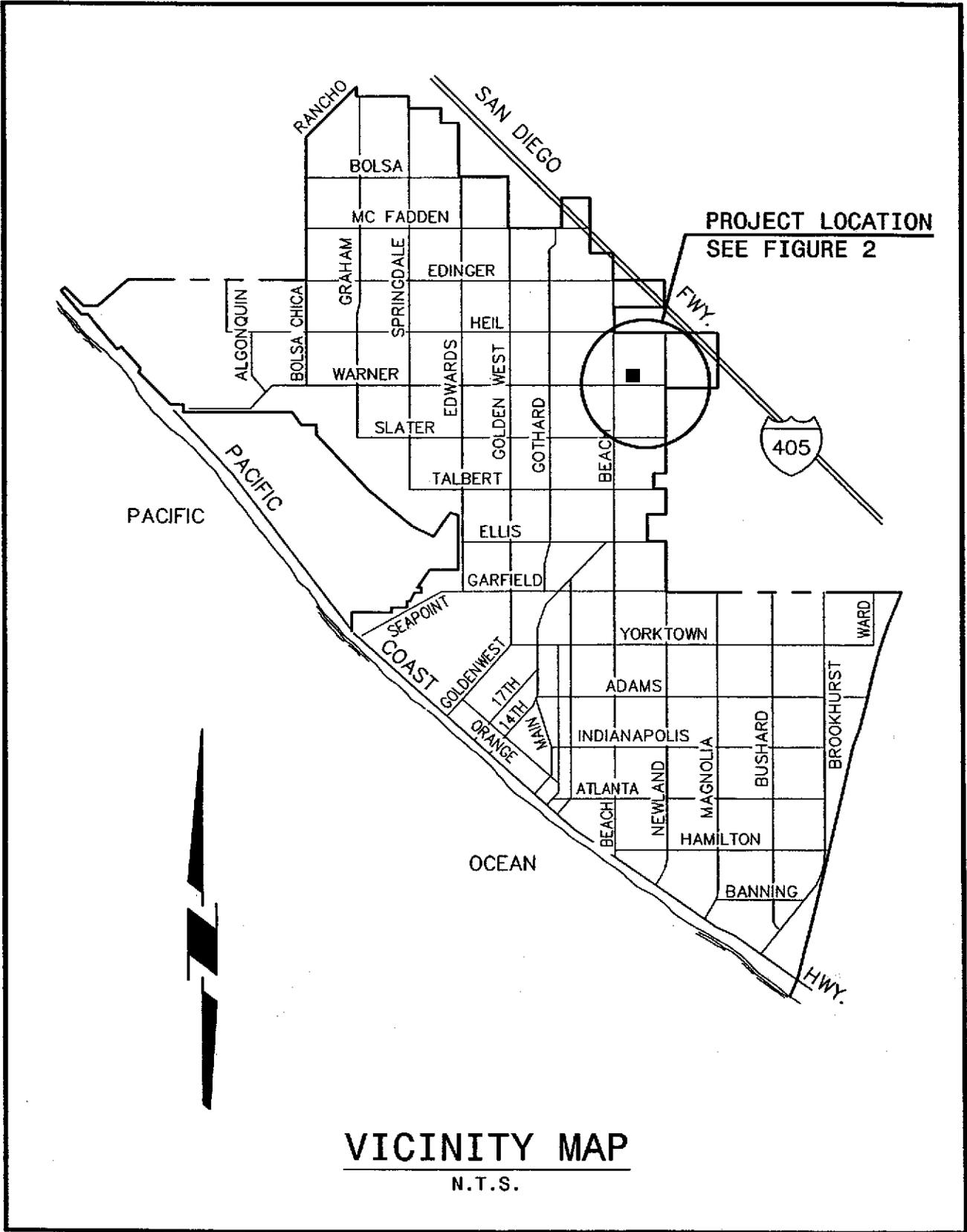
IN MILLIONS OF DOLLARS



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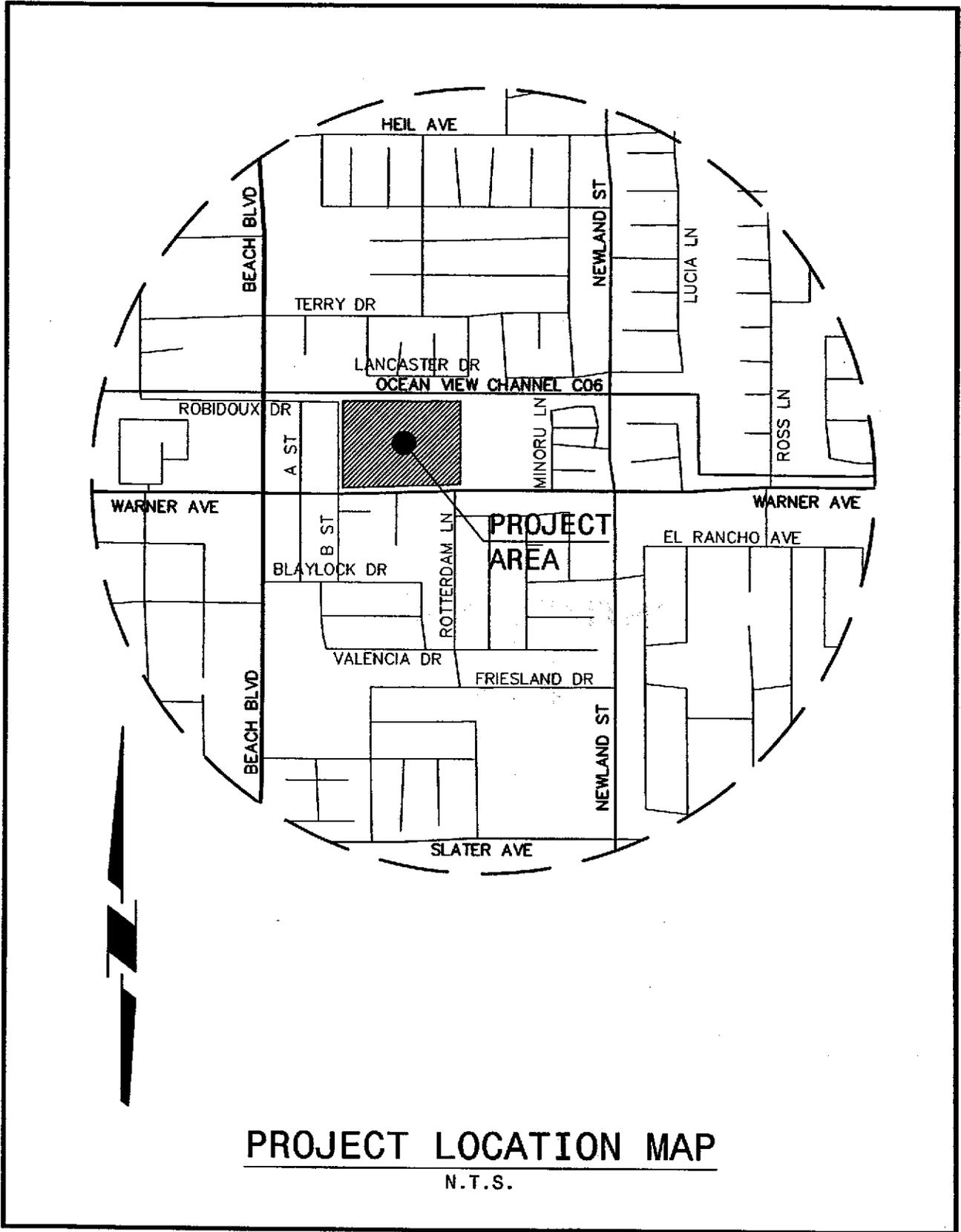
# ATTACHMENT 3

E-13.23



**FIGURE 1**

E-13.24



**PROJECT LOCATION MAP**

N.T.S.

**FIGURE 2**

E-13.25

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