

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: 7/16/2007	Department ID Number: PL07-15

**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, DPA, City Administrator

PREPARED BY: SCOTT HESS, Director of Planning *Scott Hess*

SUBJECT: ADOPT RESOLUTIONS AND ORDINANCE TO ACCEPT
MODIFICATIONS TO LOCAL COASTAL PROGRAM AMENDMENT
NO. 2-06 APPROVED BY THE CALIFORNIA COASTAL COMMISSION
AND AMEND THE LOCAL COASTAL PROGRAM ACCORDINGLY

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

Statement of Issue: Transmitted for your consideration are two resolutions and an ordinance relative to Local Coastal Program Amendment (LCPA) 2-06 for the purpose of: 1) accepting California Coastal Commission's approved modifications to the LCPA, 2) approving revisions to the Local Coastal Program Coastal Element and 3) approving modifications to the Downtown Specific Plan SP 5 (Districts 7 & 9) and Zoning and Subdivision Ordinance Chapters 203 (Definitions), 204 (Use Classifications) and 211 (Commercial Districts). The latter two actions are required to formally adopt the changes suggested by the Coastal Commission for the LCPA. Staff recommends the City Council approve the request because the modifications do not change the intent of the City Council's previous approval of the Coastal Element.

Funding Source: Not Applicable

Recommended Action: Motion to:

1. " Adopt Resolution No. 2007-42 (ATTACHMENT NO. 1), a resolution of the City Council of the City of Huntington Beach, California, which acknowledges receipt of the Coastal Commission action and accepts and agrees to Local Coastal Program Amendment No. 2-06 as modified, and forward to the California Coastal Commission,"
2. " Adopt Resolution No. 2007-43 (ATTACHMENT NO. 2), a resolution of the City Council of the City of Huntington Beach amending the Local Coastal Program by amending the Coastal Element," and

E-2

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 7/16/2007

DEPARTMENT ID NUMBER: PL07-15

3. Adopt Ordinance No. 3774 (ATTACHMENT NO. 3), an ordinance of the City of Huntington Beach amending the Huntington Beach Zoning and Subdivision Ordinance by amending Specific Plan 5 (Downtown Specific Plan) and Chapters 203 (Definitions), 204 (Use Classifications), and 211 (Commercial Districts) thereof to conform LCP Amendment No. 2-06 to Modifications made by the California Coastal Commission."

Alternative Action(s):

The City Council may take the following alternative action(s):

"Continue the Modifications to Local Coastal Program Amendment No. 2-06 and direct staff accordingly."

Analysis:

A. PROJECT PROPOSAL:

Applicant: Shawn Milbern, The Robert Mayer Corporation, 660 Newport Center Drive, Suite 1050, Newport Beach, CA 92660.

Location: Downtown Specific Plan, District Nos. 7 and 9 (North side of Pacific Coast Highway between First Street and Beach Blvd.)

Local Coastal Program Amendment No. 2-06 is being brought to the City Council for acceptance of the California Coastal Commission's suggested modifications to the Local Coastal Program as they pertain to the allowance of timeshares, condominium hotels and fractional interest units within the Coastal Zone, and specifically within the Waterfront and Pacific City master planned areas. All of the modifications are presented in the approval letter from the Coastal Commission (Attachment No. 4).

The process for approving the modifications involves two resolutions and an ordinance in order to: 1) accept and agree to the California Coastal Commission's suggested modifications, and 2) to approve and incorporate the Coastal Commission's modifications into our Local Coastal Program (Coastal Element and Implementing Ordinances).

Upon transmittal of Attachments No. 1 through 3 to the Coastal Commission, the Executive Director of the Commission will determine if the City has complied with the Commission's action. The LCPA for the Coastal Element is not effectively certified until such determination is made.

B. BACKGROUND:

The City Council approved General Plan Amendment No. 03-03, Local Coastal Program Amendment No. 03-02 and Zoning Text Amendment No. 03-03 on March 21, 2005. These

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 7/16/2007

DEPARTMENT ID NUMBER: PL07-15

were applications submitted by The Robert Mayer Corporation, with concurrence by Makar Properties, to allow for "timeshare" type uses on their respective properties.

The LCPA submittal was forwarded to the California Coastal Commission as Local Coastal Program Amendment 2-06 for review and approval in May 2005. On October 12, 2006 the California Coastal Commission approved Local Coastal Program No. 2-06 with suggested modifications. On April 11, 2007 the Coastal Commission adopted revised findings reflecting the Commission's October action (Attachment No. 4).

Section 13537 of the California Code of Regulations states that the local government must accept and agree to the modifications by resolution within six months of Commission action or the Coastal Commission's approval expires. Recognizing that the six month period, which ended April 10, 2007, would elapse before Coastal Commission staff would even bring the revised findings to the Commission for approval, on March 15, 2007 the Coastal Commission extended the City Council's six month time limit to accept the suggested modifications for a period of one year to April 10, 2008.

C. STAFF ANALYSIS AND RECOMMENDATION

The purpose of the suggested modifications is to maximize public access to coastal resources but still allow private ownership of visitor accommodations. In this regard, the Coastal Commission approved a significant number of modifications that address how the ownership properties (condominium hotel at Waterfront and fractional interest units at Pacific City) must be operated as well as limited the number of total and consecutive days the owners could stay in their units. The modifications also include additional definitions for consistency as well as changes that affect all lodging properties in the Coastal Zone. The more substantive modifications include:

- Added language stating that no existing hotel rooms may be converted to a limited use overnight visitor accommodation (LUOVA) (this is the new category used by the Commission to refer to timeshare, condominium hotel, fractional hotel or other similar use).
- Limits LUOVAs in the Commercial Visitor Districts to only the Pacific City and Waterfront properties.
- Allows Pacific City hotel to have 10 percent of its rooms as fractional interest and limits an owner's duration of stay to 90 days per year, with a maximum of 29 consecutive days.
- Allows Waterfront to have a 100 percent condominium hotel (cannot convert either of the existing hotels) and limits an owner's duration of stay to 90 days per year, with a maximum of 29 consecutive days.
- Requires both Pacific City and Waterfront LUOVA hotels to make rooms not occupied by their individual owners available to the general public.
- Requires both Pacific City and Waterfront developers to pay \$3,000/per LUOVA room to assist in the creation of lower cost overnight visitor accommodations in or near Huntington Beach.

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 7/16/2007

DEPARTMENT ID NUMBER: PL07-15

City staff and the developers of the Pacific City and Waterfront projects have evaluated the suggested modifications approved by the Coastal Commission and are in agreement with them. Staff recommends the City Council approve the suggested modifications from the Coastal Commission because the modifications will meet the intent of the goals and policies of the General Plan and the Certified Local Coastal Program.

Strategic Plan Goal:

L-4 Create an environment that promotes tourism to increase revenues to support community services and transform the city's economy into a destination economy.

The inclusion of ownership units within Districts 7 & 9 of the Downtown Specific Plan will increase the opportunity for more revenue to the City due to the extended duration of stays. Studies have shown that because these types of pre-paid hotel stays, vacationers tend to spend more on dining, services and entertainment at the vacation destinations.

Environmental Status:

The Environmental Assessment Committee reviewed Environmental Assessment No. 03-03 for conformity with the California Environment Quality Act and concluded that all potentially significant effects related to the proposal to allow timeshare type uses were analyzed and adequately addressed in EIR No. 94-1, prepared for the comprehensive update of the General Plan. Therefore, no further review is required.

Attachment(s):

City Clerk's Page Number	No.	Description
5	1.	Resolution No. <u>2007-42</u> , a resolution of the City Council of the City of Huntington Beach City, California, which acknowledges receipt for the Coastal Commission action and accepts and agrees to Local Coastal Program Amendment No. 2-06 as modified
35	2.	Resolution No. <u>2007-43</u> , a resolution of the City Council of the City of Huntington Beach amending the Local Coastal Program by amending the Coastal Element
46	3.	Ordinance No. <u>3774</u> , an ordinance of the City of Huntington Beach amending the Huntington Beach Zoning and Subdivision Ordinance by amending Specific Plan 5 (Downtown Specific Plan) and Chapters 203 (Definitions), 204 (Use Classifications), and 211 (Commercial Districts) thereof to conform LCP Amendment No. 2-06 to Modifications made by the California Coastal Commission.
69	4.	California Coastal Commission letter received and dated July 2, 2007

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ATTACHMENT #1

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RESOLUTION NO 2007-42

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH, CALIFORNIA, WHICH ACKNOWLEDGES RECEIPT OF THE COASTAL COMMISSION ACTION AND ACCEPTS AND AGREES TO LOCAL COASTAL PROGRAM AMENDMENT NO. 2-06 AS MODIFIED

WHEREAS, the California Coastal Commission reviewed and approved Huntington Beach Local Coastal Program Amendment No. 2-06 as modified at the April 11, 2007 Coastal Commission hearing; and

Section 13537 of the Coastal Commission Regulations requires the local government to accept and agree to the modifications by resolution within six (6) months, or certification will expire; and

Upon the City Council action staff will forward Resolution No. 2007-42 for final Coastal Commission certification;

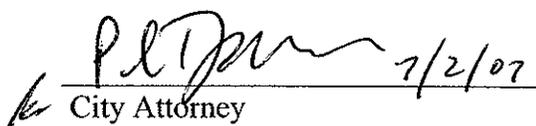
NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

Section 1. The City Council accepts and agrees to the Coastal Commission's approval of Local Coastal Program Amendment 2-06 by modifying Specific Plan 5 (Downtown Specific Plan, Districts 7 & 9), the City of Huntington Beach Zoning and Subdivision Ordinance (Chapters 203, 204 and 211) and the Coastal Element of the certified Local Coastal Program as suggested by the Coastal Commission in the letter dated July 2, 2007, attached hereto as **Exhibit "A"** and incorporated by this reference as though fully set forth herein. Said suggested modifications shall become effective 30 days after adoption of Resolution No. 2007-42 or upon final Coastal Commission certification, whichever occurs latest.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach
at a regular meeting held on the _____ day of _____, _____ 2007.

Mayor

APPROVED AS TO FORM:

 7/2/07

City Attorney

INITIATED AND APPROVED:

 7/2/07

Planning Director

EXHIBIT A

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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



July 2, 2007

Scott Hess
Planning Director
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: Huntington Beach LCP Major Amendment No. 2-06 ("Timeshares")

Dear Mr. Hess:

In a letter dated April 24, 2007 we notified you that the California Coastal Commission, at its April 11, 2007 meeting in Santa Barbara, adopted revised findings reflecting the Commission's action of October 12, 2006 approving City of Huntington Beach Local Coastal Program Amendment No. 2-06 with modifications. Local Coastal Program (LCP) Amendment No. 2-06 is reflected in City Council Resolution No. 2005-20. The approved amendment, as modified, would allow limited ownership overnight visitor accommodations within limited areas of the Visitor Serving Commercial land use designation and zoning, under specific circumstances.

The Commission approved the LCP amendment subject to suggested modifications. The April 24, 2007 letter indicated that the suggested modifications as approved by the Coastal Commission were attached. However, the suggested modifications that were attached to that letter did not include changes adopted by the Commission via a March 30, 2007 addendum to the Commission's staff report. Please find attached to this letter the suggested modifications as they were adopted by the Coastal Commission at its April 11, 2007 meeting in Santa Barbara. The April 24, 2007 letter is enclosed for your reference.

Thank you for your cooperation and we look forward to working with you and your staff in the future. Please call Meg Vaughn or myself at (562) 590-5071 if you have any questions regarding the modifications required for effective certification of City of Huntington Beach LCP Amendment No. 2-06.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa Henry".

Teresa Henry
District Manager

cc: Mary Beth Broeren, Principal Planner

HNB LCPC 2-06 psthrg ltr sgmd crtn 7.2.07 mv

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APPENDIX A

HNB LCPA 2-06 Suggested Modifications

Certification of City of Huntington Beach LCP Amendment Request No. 2-06 is subject to the following modifications. Suggested Modifications Nos. 1–13 are modification to the Land Use Plan. Suggested Modifications 14–34 are modifications to the Implementation Plan.

The City's existing language is shown in plain text.

The City's proposed additions are shown in **bold text**.

The City's proposed deletions are shown in ~~strike-out, underlined, italic text~~.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in **~~bold, italic, underlined, strike-out text~~**.

Text added as a result of the Commission's action is shown in **bold, italic, double underline**.

Text removed as a result of the Commission's action is shown in **~~bold, italic, double underline strike-out text~~**.

The more significant changes made as a result of the Commission's action are found on pages 10, 11, 13, 15 – 22.

Note: The numbering used in the suggested modification below may be re-numbered as necessary to conform to the format of the existing certified LCP document.

LAND USE PLAN

SUGGESTED MODIFICATION NO. 1

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 2

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION NO. 2

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION NO. 3

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION NO. 4

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 3

recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 5

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

SUGGESTED MODIFICATION NO. 6

Delete the City's proposed new language to Land Use Plan Policy C 3.2.4 (on page IV-C-108) as follows:

Timeshares may be permitted in the Commercial General District (CG), and, Mixed Use Districts (M, MH, and MV), ~~and Commercial Visitor District (CV) as part of a master plan project,~~ provided that any such project be conditioned as follows: (I-C 1, I-C 2, I-C3, I-C 7)

- a) That at least twenty-five percent of the units within any given facility be permanently reserved for transient overnight accommodations during the summer season (beginning the day before the Memorial Day weekend and ending the day after Labor Day).
- b) That the timeshare facility operate as a hotel including requirements for a centralized reservations system, check-in services, advertising, security, and daily housecleaning.

SUGGESTED MODIFICATION NO. 7

Add the following new Land Use Plan Policy after existing Policy number 3.2.4 and re-number policies accordingly:

Any hotel rooms for which a certificate of occupancy has been issued at

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 4

the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

SUGGESTED MODIFICATION NO. 8

Add the following new Land Use Plan Policy after the new policy above (Suggested Modification No. 7) and re-number policies accordingly:

Within Commercial Visitor Districts (CV) Limited Use Overnight Visitor Accommodations shall be prohibited except for a Fractional Ownership Hotel in Subarea 4C (Pacific City) and a Condominium-Hotel in Subarea 4D (Waterfront) which shall be subject to the specific restrictions on quantity, management, and use of such facilities listed below.

SUGGESTED MODIFICATION NO. 9

Add the following new subset (a) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number policies as necessary):

a. Fractional Ownership Hotel Area 4C

A Fractional Ownership Hotel may be permitted in Area 4C (Pacific City), described in Table C-2, subject to the following requirements as well as those contained in Section 4.9.12 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

A minimum of 90% of the total number of guestrooms (units) within the Fractional Ownership Hotel facility shall be available to the general public as traditional use hotel rooms year-round. A maximum of 10% of the total number of units within the facility may be owned by separate individual entities on a fractional time basis. Fractional interests sold shall not exceed three month (1/4) intervals within any one-year period.

The hotel owner/operator shall retain control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities.

The non-fractional use guestrooms (units) shall be available to the general public on a daily, year-round basis.

The facility shall have an on-site hotel operator to manage rental of all guestrooms/units.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 5

The hotel operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

When an individual owner chooses not to occupy his/her unit, that unit shall be added to the pool of hotel rooms available to the general public.

Fractional time owners shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

SUGGESTED MODIFICATION NO. 10

Add the following new subset (b) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number as necessary):

b. Condominium-Hotel Area 4D

A Condominium-Hotel may be permitted in Subarea 4D (Waterfront), described in Table C-2, subject to the following requirements as well as those contained in Section 4.11.13 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

~~A minimum of 25% of the guestroom/units within the Condominium-Hotel facility shall be retained in ownership by the hotel owner/operator and utilized as traditional hotel units available to the general public on a year-round basis. A maximum of 75% of the guestroom/units within the Condominium-Hotel facility may be subdivided into separate condominiums for sale as individual ownership interests.~~

The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.

The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms units.

The hotel operator shall manage all guestrooms/units as part of the hotel

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 6

inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

Owners of individual units shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

When not occupied by the individual owner, each unit shall be available to the general public in the same manner as the traditional guestrooms/units.

SUGGESTED MODIFICATION NO. 11

Add the following new Land Use Plan Policy after existing Policy number 3.2.1 and re-number policies accordingly:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. On oceanfront, waterfront or nearshore areas or lands designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to off-set the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

SUGGESTED MODIFICATION NO. 12

Modify Table C-1, (on page IV-C-26) as follows:

Commercial General (CG)	Retail commercial, professional offices, eating and drinking establishments, household goods, food sales, drugstores, building materials and supplies, personal services, recreational commercial, hotels/motels, timeshares, overnight accommodations, <u>overnight accommodations</u> , cultural facilities, government offices, educational, health, institutional and similar uses.
Commercial Visitor (CV)	Hotels/motels, <u>timeshares</u> , restaurants, recreation-related retail sales, cultural uses (e.g., museums) and similar uses oriented to coastal and other visitors to

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
 April 2007
 Page 7

	<p>the City.</p> <p><u><i>In Subarea 4C (Pacific City) only, a Fractional Ownership Hotel subject to restrictions may be allowed.</i></u></p> <p><u><i>In Subarea 4D (Waterfront) only, a Condominium-Hotel subject to restrictions may be allowed.</i></u></p> <p>Marine related development such as marinas, retail marine sales, boat rentals, and boat storage which are coastal dependent developments shall have priority over any other type of development (consistent with resource protection) on or near the shoreline.</p>
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SUGGESTED MODIFICATION NO. 13

Modify Table C-2, (on page IV-C-37) as follows (only those portions of the table to be changed are shown):

Subarea	Characteristic	Standards and Principles
4C PCH/First (Lake) Street <u><i>Pacific City</i></u>	Permitted Uses	Category: Commercial Visitor ("CV") Visitor-serving and community-serving commercial uses, restaurants, entertainment hotels/motels, <u><i>timeshares, a Fractional Ownership Hotel</i></u> subject to restrictions, and other uses (as permitted by the "CV" <u><i>and "CG"</i></u> land use categorys).
4D Waterfront	Permitted Uses	Category: "-F7" Hotels/motels, <u><i>timeshares</i></u> supporting visitor-serving commercial

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
 April 2007
 Page 8

		uses (in accordance with Development Agreement), <u>a Condominium-Hotel subject to restrictions.</u>
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IMPLEMENTATION PLAN

SUGGESTED MODIFICATION NO. 14

In the Downtown Specific Plan Section 4.0.04 (Definitions), delete the proposed timeshares definition:

~~Timeshares: Any master planned development wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or on some other a seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to timeshare estate, interval ownership, vacation license, vacation lease, club membership, vacation lease, club membership, timeshare use, condominium/hotel, or uses of a similar nature.~~

Replace with the following timeshare definition:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following definitions to the Downtown Specific Plan Section 4.0.04 (Definitions), in alphabetical order:

SUGGESTED MODIFICATION No. 15

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 9

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION No. 16

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION No. 17

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION No. 18

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 19

Modify the City's proposed addition to Section 4.9.01(b) Permitted Uses, as

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 10

follows:

Timeshare Units Fractional Ownership Hotel pursuant to section 4.9.12

SUGGESTED MODIFICATION NO. 20

Delete proposed Section 4.9.12 of the Downtown Specific Plan and replace with the following Section 4.9.12:

4.9.12 Fractional Ownership Hotel: May be permitted and shall be conditioned as follows:

- a) **A minimum of 90% of the total number of hotel guestrooms/units within the Fractional Ownership Hotel facility shall be available as transient hotel rooms. The non-fractional hotel rooms shall be operated as transient overnight visitor accommodations available to the general public on a daily basis, year-round.**
- b) **A maximum of 10% of the total number of guestrooms/units within the Fractional Ownership Hotel facility may be subdivided into separate saleable units each of which can be owned by multiple owners on a fractional time basis. A fractional time basis means that an owner (or owners) receives an exclusive right to the use of an individual unit for a combined period not to exceed the approved time period, which approved time period at the option of the hotel owner/operator may range up to three calendar months, in any one calendar year.**
- c) **The hotel owner/operator retains control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guestroom/units.**
- d) **The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- e) **No portion of the Fractional Ownership Hotel (neither fractional units nor traditional hotel units) may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved hotel units.**
- f) **When an owner of a fractional interest in a unit chooses not to occupy his/her unit for any portion of the time allotted to him/her, that unit shall be available to the general public on the same basis as the traditional hotel units.**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 11

- g) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.
- h) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for any type of hotel facility, the landowner(s) of the property(ies) upon which the existing and/or approved traditional hotel units/rooms (i.e. transient hotel rooms) are or will be developed within District 7 shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction(s) shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s), lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. The deed restriction(s) shall not be removed or changed without approval of an amendment to the LCP by the Coastal Commission and to the underlying coastal development permit. However minor changes that do not conflict with subsection a) and g) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that an amendment is not legally required.
- i) Fractional time owners shall have the right to the use of their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- j) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions), either of which shall include:
1. All the specific restrictions listed in a through i above;
 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 3. A statement that provisions of the Declaration/CC & R's that reflect the requirements of a through i above cannot be changed without approval of an LCP amendment by the

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 12

Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – i) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the Declaration/CC&R's related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.

- k) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- l) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through k) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- m) The hotel owner/operator or any successor-in-interest hotel owner/operator shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of a fractional interest in a unit is jointly and severally liable with the hotel owner/operator for violations of the terms and conditions hereof imposed by the special conditions of the coastal development permit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- n) All documents related to the marketing and sale of the fractional interest units, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:**
 - 1. The owners of a fractional interest in a unit are jointly and severally liable with the hotel owner/operator for any violations of the terms and conditions hereof imposed by the coastal development permit.**
 - 2. The occupancy of the units is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 13

to the general public and that the coastal development permit contains additional restrictions on use and occupancy

- o) The hotel owner/operator and any successor-in-interest hotel owner/operator, and each future owner of a fractional interest in a unit shall obtain, prior to sale of a fractional interest, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.**
- p) The hotel owner/operator and any successor-in-interest hotel owner/operator shall monitor and record hotel occupancy and use by the general public and the owners of a fractional interest in a unit throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through i above. The hotel owner/-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and to the general-public Executive Director of the Coastal Commission upon request and to the auditor required by section q below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.**
- q) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner/operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding notice, recordkeeping, and monitoring of the Fractional Interest Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of fractional interests in a unit during the prior calendar year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general-public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 14

initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

SUGGESTED MODIFICATION NO. 21

Add new Section 4.9.13 as follows:

4.9.13 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 22

Add new Section 4.9.14 as follows:

4.9.14 A coastal development permit application for a Fractional Interest Hotel shall include a plan specifying how the requirements outlined in 4.9.12 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner-operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.9.12 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Interest Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.9.12 and this section including deeds and CC & R's/Declaration shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that no such amendment is legally required.

SUGGESTED MODIFICATION NO. 23

4.9.15 Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Fractional Ownership Hotel.

SUGGESTED MODIFICATION NO. 24

4.9.16 In Lieu Fee Required

- 1. New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be \$50,000 \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times 25% of the total quantity of proposed non-lower-cost and limited use overnight visitor accommodation units.**
- 2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
- 3. ~~The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.~~**

SUGGESTED MODIFICATION NO. 25

Modify the City's proposed addition to Section 4.11.01(b) Permitted Uses as follows:

~~Timeshare Units~~ Condominium-Hotel pursuant to section 4.11.13

SUGGESTED MODIFICATION NO. 26

Delete proposed Section 4.11.13 of the Downtown Specific Plan and replace with the following Section 4.11.13:

4.11.13 Condominium-Hotel: May be permitted and shall be conditioned as follows:

- a) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Condominium-Hotel.**
- b) A maximum of 75% of the total number of guestroom/units may be subdivided into condominiums and sold for individual ownership.**
- b) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.**
- c) The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestroom/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.**
- d) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.**
- e) The hotel operator shall manage all guestroom/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 17

- f) If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.**
- g) All guestroom/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.**
- h) Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.**
- i) All individually owned hotel units shall be rented a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.**
- j) The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- k) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.**
- l) The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.**
- m) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel.**
- n) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(ies) within District 9 upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 18

type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with subsection a) and m) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- o) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in a through m above;
 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 3. A statement that provisions of the CC & Rs/Declaration of Restrictions that reflect the requirements of a through n above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – m) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the C&Rs/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 19

- p) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- q) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- s) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & Rs and similar documents, shall notify buyers of the following:**
- 1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and**
 - 2. The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public per the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy.**
- t) The hotel owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 20

consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.

- u) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through n above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and the general public Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- v) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 21

SUGGESTED MODIFICATION NO. 27

Add new Section 4.11.14, as follows:

4.11.14 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 28

Add new Section 4.11.15, as follows:

4.11.15 A coastal development permit application for a Condominium-Hotel shall include a plan specifying how the requirements outlined in 4.11.13 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.11.13 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium-Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.11.13 and this section including deeds and CC&Rs/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.

SUGGESTED MODIFICATION NO. 29

Add new Section 4.11.16, as follows:

4.11.16 Any hotel rooms for which a certificate of occupancy has been issued in the District at the effective date of adoption of this Section

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 22

(4.11.13) shall not be permitted to be converted to Limited Use Overnight Visitor Accommodations.

SUGGESTED MODIFICATION NO. 30

Add new Section 4.11.17, as follows:

4.11.17 In Lieu Fee Required

1. **New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be ~~\$50,000~~ \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times 25% of the total quantity of proposed non-lower-cost and limited use overnight visitor accommodation units.**
2. **Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
3. **The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.**

Suggested Modification No. 31

In the Zoning and Subdivision Ordinance, in Chapter 211 C Commercial Districts, within Section 211.04 CO, CG, and CV Districts: Land Use Controls, on the allowable uses chart (pages 211-2 through 211-4), on page 211-4, under Quasi Residential, delete timeshares, residential hotels, and single room occupancy as

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 23

uses within the CV district and add the following under Visitor Accommodations, after Hotels, Motels:

	CO	CG	CV	Additional Provisions
Visitor Accommodations				
Bed & Breakfast Inns	PC	PC	PC	(K)
Hotels, Motels	-	PC	PC	(I)
<u>Condominium-Hotel/</u>	-	-	PC	<u>(W) [or lettered as</u>
				<u>appropriate]</u>
<u>Fractional Ownership</u>				
<u>Hotel</u>				
Quasi Residential				
Timeshares	-	PC	PC	(I), (J)
Residential Hotel	-	PC	PC	(J)
Single Room Occupancy		PC	PC	

Suggested Modification No. 32

At the end of section 211.04, Additional Provisions, add new Additional Provision (W) [or lettered as appropriate to conform to the City's format]:

(W) In the CV District, Condominium-Hotels and/or Fractional Interest Hotels are allowed only at the Pacific City (Downtown Specific Plan District 7) and Waterfront (Downtown Specific Plan District 9) sites. Refer to Downtown Specific Plan.

Suggested Modification No. 33

In the Zoning and Subdivision Ordinance, in Chapter 203 Definitions, add the following definitions in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 24

occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 34

Replace existing definition of "timeshare" in Chapter 204 with the following:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following new definitions to Chapter 204:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 25

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ATTACHMENT #2

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RESOLUTION NO. 2007-43

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF HUNTINGTON BEACH AMENDING THE LOCAL COASTAL
PROGRAM BY AMENDING THE COASTAL ELEMENT

WHEREAS, pursuant to State Planning and Zoning Law, the City Council of the City of Huntington Beach has held a public hearing relative to Local Coastal Program Amendment No. 2-06 wherein all information presented at said hearing was carefully considered, and after due consideration of the findings and all evidence presented to the City Council, the City Council found that such amendment to the Coastal Element was proper, and consistent with the Huntington Beach General Plan and Huntington Beach Local Coast Program; and

Pursuant to the California Coastal Act, Local Coastal Program Amendment No. 2-06 was referred to the Coastal Commission for its consideration and certification; and

The Coastal Commission has certified Local Coastal Program Amendment No. 2-06 with suggested modifications; and

The City Council wishes to accept and approve said modification in accordance with the provisions of the California Coastal Act,

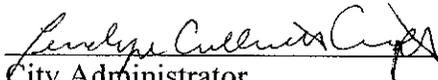
NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

Section 1. The proposed amendment to the Local Coastal Program Amendment No. 2-06 consisting of proposed modifications to the Coastal Element as identified on the attached **Exhibit A** and incorporated by this reference as though fully set forth herein, is hereby adopted and approved.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2007.

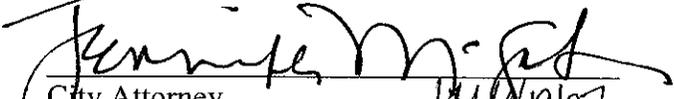
Mayor

REVIEWED AND APPROVED:



City Administrator

APPROVED AS TO FORM:



City Attorney
6.22.07

INITIATED AND APPROVED:



Planning Director
7/2/07

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EXHIBIT A

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APPENDIX A

HNB LCPA 2-06 Suggested Modifications

Certification of City of Huntington Beach LCP Amendment Request No. 2-06 is subject to the following modifications. Suggested Modifications Nos. 1–13 are modification to the Land Use Plan. Suggested Modifications 14–34 are modifications to the Implementation Plan.

The City's existing language is shown in plain text.

The City's proposed additions are shown in **bold text**.

The City's proposed deletions are shown in ~~strike out, underlined, italic text~~.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in **~~bold, italic, underlined, strike out text~~**.

Text added as a result of the Commission's action is shown in **bold, italic, double underline**.

Text removed as a result of the Commission's action is shown in **~~bold, italic, double underline strike out text~~**.

The more significant changes made as a result of the Commission's action are found on pages 10, 11, 13, 15 – 22.

Note: The numbering used in the suggested modification below may be re-numbered as necessary to conform to the format of the existing certified LCP document.

LAND USE PLAN

SUGGESTED MODIFICATION NO. 1

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 2

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION NO. 2

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION NO. 3

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION NO. 4

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 3

recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 5

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

SUGGESTED MODIFICATION NO. 6

Delete the City's proposed new language to Land Use Plan Policy C 3.2.4 (on page IV-C-108) as follows:

Timeshares may be permitted in the Commercial General District (CG), and, Mixed Use Districts (M, MH, and MV), ~~and Commercial Visitor District (CV) as part of a master plan project~~, provided that any such project be conditioned as follows: (I-C 1, I-C 2, I-C3, I-C 7)

- a) That at least twenty-five percent of the units within any given facility be permanently reserved for transient overnight accommodations during the summer season (beginning the day before the Memorial Day weekend and ending the day after Labor Day).
- b) That the timeshare facility operate as a hotel including requirements for a centralized reservations system, check-in services, advertising, security, and daily housecleaning.

SUGGESTED MODIFICATION NO. 7

Add the following new Land Use Plan Policy after existing Policy number 3.2.4 and re-number policies accordingly:

Any hotel rooms for which a certificate of occupancy has been issued at

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 4

the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

SUGGESTED MODIFICATION NO. 8

Add the following new Land Use Plan Policy after the new policy above (Suggested Modification No. 7) and re-number policies accordingly:

Within Commercial Visitor Districts (CV) Limited Use Overnight Visitor Accommodations shall be prohibited except for a Fractional Ownership Hotel in Subarea 4C (Pacific City) and a Condominium-Hotel in Subarea 4D (Waterfront) which shall be subject to the specific restrictions on quantity, management, and use of such facilities listed below.

SUGGESTED MODIFICATION NO. 9

Add the following new subset (a) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number policies as necessary):

a. Fractional Ownership Hotel Area 4C

A Fractional Ownership Hotel may be permitted in Area 4C (Pacific City), described in Table C-2, subject to the following requirements as well as those contained in Section 4.9.12 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

A minimum of 90% of the total number of guestrooms (units) within the Fractional Ownership Hotel facility shall be available to the general public as traditional use hotel rooms year-round. A maximum of 10% of the total number of units within the facility may be owned by separate individual entities on a fractional time basis. Fractional interests sold shall not exceed three month (1/4) intervals within any one-year period.

The hotel owner/operator shall retain control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities.

The non-fractional use guestrooms (units) shall be available to the general public on a daily, year-round basis.

The facility shall have an on-site hotel operator to manage rental of all guestrooms/units.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 5

The hotel operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

When an individual owner chooses not to occupy his/her unit, that unit shall be added to the pool of hotel rooms available to the general public.

Fractional time owners shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

SUGGESTED MODIFICATION NO. 10

Add the following new subset (b) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number as necessary):

b. Condominium-Hotel Area 4D

A Condominium-Hotel may be permitted in Subarea 4D (Waterfront), described in Table C-2, subject to the following requirements as well as those contained in Section 4.11.13 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

~~A minimum of 25% of the guestroom/units within the Condominium-Hotel facility shall be retained in ownership by the hotel owner/operator and utilized as traditional hotel units available to the general public on a year-round basis. A maximum of 75% of the guestroom/units within the Condominium-Hotel facility may be subdivided into separate condominiums for sale as individual ownership interests.~~

The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.

The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms units.

The hotel operator shall manage all guestrooms/units as part of the hotel

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 6

inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

Owners of individual units shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

When not occupied by the individual owner, each unit shall be available to the general public in the same manner as the traditional guestrooms/units.

SUGGESTED MODIFICATION NO. 11

Add the following new Land Use Plan Policy after existing Policy number 3.2.1 and re-number policies accordingly:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. On oceanfront, waterfront or nearshore areas or lands designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to off-set the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

SUGGESTED MODIFICATION NO. 12

Modify Table C-1, (on page IV-C-26) as follows:

Commercial General (CG)	Retail commercial, professional offices, eating and drinking establishments, household goods, food sales, drugstores, building materials and supplies, personal services, recreational commercial, hotels/motels, timeshares, overnight accommodations, overnight accommodations , cultural facilities, government offices, educational, health, institutional and similar uses.
Commercial Visitor (CV)	Hotels/motels, timeshares , restaurants, recreation-related retail sales, cultural uses (e.g., museums) and similar uses oriented to coastal and other visitors to

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 7

	<p>the City.</p> <p><u>In Subarea 4C (Pacific City) only, a Fractional Ownership Hotel subject to restrictions may be allowed.</u></p> <p><u>In Subarea 4D (Waterfront) only, a Condominium-Hotel subject to restrictions may be allowed.</u></p> <p>Marine related development such as marinas, retail marine sales, boat rentals, and boat storage which are coastal dependent developments shall have priority over any other type of development (consistent with resource protection) on or near the shoreline.</p>
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SUGGESTED MODIFICATION NO. 13

Modify Table C-2, (on page IV-C-37) as follows (only those portions of the table to be changed are shown):

Subarea	Characteristic	Standards and Principles
4C PCH/First (Lake) Street <u>Pacific City</u>	Permitted Uses	Category: Commercial Visitor ("CV") Visitor-serving and community-serving commercial uses, restaurants, entertainment hotels/motels, <u>timeshares, a Fractional Ownership Hotel subject to restrictions,</u> and other uses (as permitted by the "CV" <u>and "GG"</u> land use categorys).
4D Waterfront	Permitted Uses	Category: "-F7" Hotels/motels, <u>timeshares</u> supporting visitor-serving commercial

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 8

		uses (in accordance with Development Agreement), <u>a Condominium-Hotel subject to restrictions.</u>
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IMPLEMENTATION PLAN

SUGGESTED MODIFICATION NO. 14

In the Downtown Specific Plan Section 4.0.04 (Definitions), delete the proposed timeshares definition:

~~Timeshares: Any master planned development wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or on some other a seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to timeshare estate, interval ownership, vacation license, vacation lease, club membership, vacation lease, club membership, timeshare use, condominium/hotel, or uses of a similar nature.~~

Replace with the following timeshare definition:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following definitions to the Downtown Specific Plan Section 4.0.04 (Definitions), in alphabetical order:

SUGGESTED MODIFICATION No. 15

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

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ATTACHMENT #3

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH
AMENDING THE HUNTINGTON BEACH ZONING AND SUBDIVISION ORDINANCE
BY AMENDING SPECIFIC PLAN 5 (DOWNTOWN SPECIFIC PLAN) AND
CHAPTERS 203 (DEFINITIONS), 204 (USE CLASSIFICATIONS), AND 211
(COMMERCIAL DISTRICTS) THEREOF TO CONFORM LCP AMENDMENT
NO. 2-06 TO MODIFICATIONS MADE BY THE
CALIFORNIA COASTAL COMMISSION

WHEREAS, pursuant to State Planning and Zoning Law, the City Council of the City of Huntington Beach has held a public hearing relative to Amendment No. 2-06 wherein all information presented at said hearing was carefully considered, and after due consideration of the findings and all evidence presented to the City Council, the City Council found that such amendment to the Specific Plan was proper, and consistent with the Huntington Beach General Plan and Huntington Beach Local Coast Program;

Pursuant to the California Coastal Act, Local Coastal Program Amendment No. 2-06 was referred to the Coastal Commission for its consideration and certification; and

The Coastal Commission has certified Local Coastal Program Amendment No. 2-06 with suggested modifications; and

The City Council wishes to accept and approve said modifications in accordance with the provisions of the California Coastal Act;

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. The proposed amendments to the Downtown Specific Plan (SP 5) and Huntington Beach Zoning and Subdivision Ordinance (Chapters 203, 204 and 211) as identified on the attached **Exhibit A** and incorporated by this reference as though fully set forth herein, and is hereby adopted and approved.

SECTION 2. This ordinance shall become effective 30 days after its adoption.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2007.

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

James M. Park
6.20.07 City Attorney *M. L. 7/20/07*

REVIEWED AND APPROVED:

Lynette Cullum
City Administrator

INITIATED AND APPROVED:

Scott A. ... 7/2/07
Director of Planning

EXHIBIT A

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APPENDIX A

HNB LCPA 2-06 Suggested Modifications

Certification of City of Huntington Beach LCP Amendment Request No. 2-06 is subject to the following modifications. Suggested Modifications Nos. 1–13 are modification to the Land Use Plan. Suggested Modifications 14–34 are modifications to the Implementation Plan.

The City's existing language is shown in plain text.

The City's proposed additions are shown in **bold text**.

The City's proposed deletions are shown in ~~strike out, underlined, italic text~~.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in ~~**bold, italic, underlined, strike out text**~~.

Text added as a result of the Commission's action is shown in **bold, italic, double underline**.

Text removed as a result of the Commission's action is shown in ~~**bold, italic, double underline strike out text**~~.

The more significant changes made as a result of the Commission's action are found on pages 10, 11, 13, 15 – 22.

Note: The numbering used in the suggested modification below may be re-numbered as necessary to conform to the format of the existing certified LCP document.

LAND USE PLAN

SUGGESTED MODIFICATION NO. 1

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 8

		uses (in accordance with Development Agreement), <u>a Condominium-Hotel subject to restrictions.</u>
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IMPLEMENTATION PLAN

SUGGESTED MODIFICATION NO. 14

In the Downtown Specific Plan Section 4.0.04 (Definitions), delete the proposed timeshares definition:

~~Timeshares: Any master planned development wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or on some other a seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to timeshare estate, interval ownership, vacation license, vacation lease, club membership, vacation lease, club membership, timeshare use, condominium/hotel, or uses of a similar nature.~~

Replace with the following timeshare definition:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following definitions to the Downtown Specific Plan Section 4.0.04 (Definitions), in alphabetical order:

SUGGESTED MODIFICATION No. 15

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 9

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION No. 16

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION No. 17

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION No. 18

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 19

Modify the City's proposed addition to Section 4.9.01(b) Permitted Uses, as

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 10

follows:

Timeshare Units Fractional Ownership Hotel pursuant to section 4.9.12

SUGGESTED MODIFICATION NO. 20

Delete proposed Section 4.9.12 of the Downtown Specific Plan and replace with the following Section 4.9.12:

4.9.12 Fractional Ownership Hotel: May be permitted and shall be conditioned as follows:

- a) **A minimum of 90% of the total number of hotel guestrooms/units within the Fractional Ownership Hotel facility shall be available as transient hotel rooms. The non-fractional hotel rooms shall be operated as transient overnight visitor accommodations available to the general public on a daily basis, year-round.**
- b) **A maximum of 10% of the total number of guestrooms/units within the Fractional Ownership Hotel facility may be subdivided into separate saleable units each of which can be owned by multiple owners on a fractional time basis. A fractional time basis means that an owner (or owners) receives an exclusive right to the use of an individual unit for a combined period not to exceed the approved time period, which approved time period at the option of the hotel owner/operator may range up to three calendar months, in any one calendar year.**
- c) **The hotel owner/operator retains control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guestroom/units.**
- d) **The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- e) **No portion of the Fractional Ownership Hotel (neither fractional units nor traditional hotel units) may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved hotel units.**
- f) **When an owner of a fractional interest in a unit chooses not to occupy his/her unit for any portion of the time allotted to him/her, that unit shall be available to the general public on the same basis as the traditional hotel units.**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 11

- g) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.
- h) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for any type of hotel facility, the landowner(s) of the property(ies) upon which the existing and/or approved traditional hotel units/rooms (i.e. transient hotel rooms) are or will be developed within District 7 shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction(s) shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s), lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. The deed restriction(s) shall not be removed or changed without approval of an amendment to the LCP by the Coastal Commission and to the underlying coastal development permit. However minor changes that do not conflict with subsection a) and g) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that an amendment is not legally required.
- i) Fractional time owners shall have the right to the use of their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- j) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions), either of which shall include:
1. All the specific restrictions listed in a through i above;
 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 3. A statement that provisions of the Declaration/CC & R's that reflect the requirements of a through i above cannot be changed without approval of an LCP amendment by the

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 12

Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – i) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the Declaration/CC&R's related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.

- k) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- l) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through k) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- m) The hotel owner/operator or any successor-in-interest hotel owner/operator shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of a fractional interest in a unit is jointly and severally liable with the hotel owner/operator for violations of the terms and conditions hereof imposed by the special conditions of the coastal development permit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- n) All documents related to the marketing and sale of the fractional interest units, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:**
 - 1. The owners of a fractional interest in a unit are jointly and severally liable with the hotel owner/operator for any violations of the terms and conditions hereof imposed by the coastal development permit.**
 - 2. The occupancy of the units is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 13

- to the general public and that the coastal development permit contains additional restrictions on use and occupancy**
- o) The hotel owner/operator and any successor-in-interest hotel owner/operator, and each future owner of a fractional interest in a unit shall obtain, prior to sale of a fractional interest, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.**
- p) The hotel owner/operator and any successor-in-interest hotel owner/operator shall monitor and record hotel occupancy and use by the general public and the owners of a fractional interest in a unit throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through i above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and to the general public Executive Director of the Coastal Commission upon request and to the auditor required by section q below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.**
- q) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner/operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding notice, recordkeeping, and monitoring of the Fractional Interest Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of fractional interests in a unit during the prior calendar year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 14

Initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

SUGGESTED MODIFICATION NO. 21

Add new Section 4.9.13 as follows:

4.9.13 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 22

Add new Section 4.9.14 as follows:

4.9.14 A coastal development permit application for a Fractional Interest Hotel shall include a plan specifying how the requirements outlined in 4.9.12 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner-operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.9.12 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Interest Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.9.12 and this section including deeds and CC & R's/Declaration shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that no such amendment is legally required.

SUGGESTED MODIFICATION NO. 23

4.9.15 Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Fractional Ownership Hotel.

SUGGESTED MODIFICATION NO. 24

4.9.16 In Lieu Fee Required

- 1. New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be ~~\$50,000~~ \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times ~~25%~~ of the total quantity of proposed non-lower-cost and limited use overnight visitor accommodation units.**
- 2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
- 3. ~~The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.~~**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 16

SUGGESTED MODIFICATION NO. 25

Modify the City's proposed addition to Section 4.11.01(b) Permitted Uses as follows:

~~Timeshare Units~~ **Condominium-Hotel** pursuant to section 4.11.13

SUGGESTED MODIFICATION NO. 26

Delete proposed Section 4.11.13 of the Downtown Specific Plan and replace with the following Section 4.11.13:

4.11.13 Condominium-Hotel: May be permitted and shall be conditioned as follows:

- a) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Condominium-Hotel.**
- b) A maximum of 75% of the total number of guestroom/units may be subdivided into condominiums and sold for individual ownership.**
- b) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.**
- c) The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestroom/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.**
- d) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.**
- e) The hotel operator shall manage all guestroom/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 17

- f) If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.**
- g) All guestroom/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.**
- h) Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.**
- i) All individually owned hotel units shall be rented a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.**
- j) The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- k) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.**
- l) The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.**
- m) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel.**
- n) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(ies) within District 9 upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 18

type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with subsection a) and m) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- o) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:
1. All the specific restrictions listed in a through m above;
 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 3. A statement that provisions of the CC & Rs/Declaration of Restrictions that reflect the requirements of a through n above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – m) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the C&Rs/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 19

- p) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- q) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- s) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & Rs and similar documents, shall notify buyers of the following:**
- 1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and**
 - 2. The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public per the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy.**
- t) The hotel owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 20

consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.

- u) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through n above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and the general public Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.**
- v) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 21

SUGGESTED MODIFICATION NO. 27

Add new Section 4.11.14, as follows:

4.11.14 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 28

Add new Section 4.11.15, as follows:

4.11.15 A coastal development permit application for a Condominium-Hotel shall include a plan specifying how the requirements outlined in 4.11.13 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.11.13 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium-Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.11.13 and this section including deeds and CC&Rs/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.

SUGGESTED MODIFICATION NO. 29

Add new Section 4.11.16, as follows:

4.11.16 Any hotel rooms for which a certificate of occupancy has been issued in the District at the effective date of adoption of this Section

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 22

(4.11.13) shall not be permitted to be converted to Limited Use Overnight Visitor Accommodations.

SUGGESTED MODIFICATION NO. 30

Add new Section 4.11.17, as follows:

4.11.17 In Lieu Fee Required

- 1. New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be ~~\$50,000~~ \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times 25% of the total quantity of proposed non-lower cost and limited use overnight visitor accommodation units.**
- 2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
- 3. The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.**

Suggested Modification No. 31

In the Zoning and Subdivision Ordinance, in Chapter 211 C Commercial Districts, within Section 211.04 CO, CG, and CV Districts: Land Use Controls, on the allowable uses chart (pages 211-2 through 211-4), on page 211-4, under Quasi Residential, delete timeshares, residential hotels, and single room occupancy as

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 23

uses within the CV district and add the following under Visitor Accommodations, after Hotels, Motels:

	CO	CG	CV	Additional Provisions
Visitor Accommodations				
Bed & Breakfast Inns	PC	PC	PC	(K)
Hotels, Motels	-	PC	PC	(I)
<u>Condominium-Hotel/</u>	-	-	PC	<u>(W) [or lettered as appropriate]</u>
 <u>Fractional Ownership</u>				
<u>Hotel</u>				
Quasi Residential				
Timeshares	-	PC	PC	(I), (J)
Residential Hotel	-	PC	PC	(J)
Single Room Occupancy		PC	PC	

Suggested Modification No. 32

At the end of section 211.04, Additional Provisions, add new Additional Provision (W) [or lettered as appropriate to conform to the City's format]:

(W) In the CV District, Condominium-Hotels and/or Fractional Interest Hotels are allowed only at the Pacific City (Downtown Specific Plan District 7) and Waterfront (Downtown Specific Plan District 9) sites. Refer to Downtown Specific Plan.

Suggested Modification No. 33

In the Zoning and Subdivision Ordinance, in Chapter 203 Definitions, add the following definitions in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 24

occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 34

Replace existing definition of "timeshare" in Chapter 204 with the following:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following new definitions to Chapter 204:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 25

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ATTACHMENT #4

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CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



July 2, 2007

Scott Hess
Planning Director
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

Re: Huntington Beach LCP Major Amendment No. 2-06 ("Timeshares")

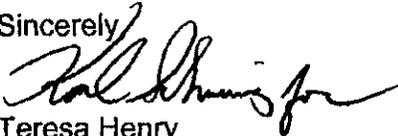
Dear Mr. Hess:

In a letter dated April 24, 2007 we notified you that the California Coastal Commission, at its April 11, 2007 meeting in Santa Barbara, adopted revised findings reflecting the Commission's action of October 12, 2006 approving City of Huntington Beach Local Coastal Program Amendment No. 2-06 with modifications. Local Coastal Program (LCP) Amendment No. 2-06 is reflected in City Council Resolution No. 2005-20. The approved amendment, as modified, would allow limited ownership overnight visitor accommodations within limited areas of the Visitor Serving Commercial land use designation and zoning, under specific circumstances.

The Commission approved the LCP amendment subject to suggested modifications. The April 24, 2007 letter indicated that the suggested modifications as approved by the Coastal Commission were attached. However, the suggested modifications that were attached to that letter did not include changes adopted by the Commission via a March 30, 2007 addendum to the Commission's staff report. Please find attached to this letter the suggested modifications as they were adopted by the Coastal Commission at its April 11, 2007 meeting in Santa Barbara. The April 24, 2007 letter is enclosed for your reference.

Thank you for your cooperation and we look forward to working with you and your staff in the future. Please call Meg Vaughn or myself at (562) 590-5071 if you have any questions regarding the modifications required for effective certification of City of Huntington Beach LCP Amendment No. 2-06.

Sincerely,


Teresa Henry
District Manager

cc: Mary Beth Broeren, Principal Planner

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APPENDIX A

HNB LCPA 2-06 Suggested Modifications

Certification of City of Huntington Beach LCP Amendment Request No. 2-06 is subject to the following modifications. Suggested Modifications Nos. 1–13 are modification to the Land Use Plan. Suggested Modifications 14–34 are modifications to the Implementation Plan.

The City's existing language is shown in plain text.

The City's proposed additions are shown in **bold text**.

The City's proposed deletions are shown in ~~*strike-out, underlined, italic text*~~.

The Commission's suggested additions are shown in ***bold, italic, underlined text***.

The Commission's suggested deletions are shown in ~~***bold, italic, underlined, strike-out text***~~.

Text added as a result of the Commission's action is shown in ***bold, italic, double underline***.

Text removed as a result of the Commission's action is shown in ~~***bold, italic, double underline strike-out text***~~.

The more significant changes made as a result of the Commission's action are found on pages 10, 11, 13, 15 – 22.

Note: The numbering used in the suggested modification below may be re-numbered as necessary to conform to the format of the existing certified LCP document.

LAND USE PLAN

SUGGESTED MODIFICATION NO. 1

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 2

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION NO. 2

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION NO. 3

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION NO. 4

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 3

recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 5

Add the following definition to the Glossary, Huntington Beach General Plan, which is found at the end of the certified Land Use Plan, pages IV-C-146 through IV-C-155, in alphabetical order:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

SUGGESTED MODIFICATION NO. 6

Delete the City's proposed new language to Land Use Plan Policy C 3.2.4 (on page IV-C-108) as follows:

Timeshares may be permitted in the Commercial General District (CG), and, Mixed Use Districts (M, MH, and MV), ~~and Commercial Visitor District (CV) as part of a master plan project~~, provided that any such project be conditioned as follows: (I-C 1, I-C 2, I-C3, I-C 7)

- a) That at least twenty-five percent of the units within any given facility be permanently reserved for transient overnight accommodations during the summer season (beginning the day before the Memorial Day weekend and ending the day after Labor Day).
- b) That the timeshare facility operate as a hotel including requirements for a centralized reservations system, check-in services, advertising, security, and daily housecleaning.

SUGGESTED MODIFICATION NO. 7

Add the following new Land Use Plan Policy after existing Policy number 3.2.4 and re-number policies accordingly:

Any hotel rooms for which a certificate of occupancy has been issued at

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Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 4

the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

SUGGESTED MODIFICATION NO. 8

Add the following new Land Use Plan Policy after the new policy above (Suggested Modification No. 7) and re-number policies accordingly:

Within Commercial Visitor Districts (CV) Limited Use Overnight Visitor Accommodations shall be prohibited except for a Fractional Ownership Hotel in Subarea 4C (Pacific City) and a Condominium-Hotel in Subarea 4D (Waterfront) which shall be subject to the specific restrictions on quantity, management, and use of such facilities listed below.

SUGGESTED MODIFICATION NO. 9

Add the following new subset (a) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number policies as necessary):

a. Fractional Ownership Hotel Area 4C

A Fractional Ownership Hotel may be permitted in Area 4C (Pacific City), described in Table C-2, subject to the following requirements as well as those contained in Section 4.9.12 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

A minimum of 90% of the total number of guestrooms (units) within the Fractional Ownership Hotel facility shall be available to the general public as traditional use hotel rooms year-round. A maximum of 10% of the total number of units within the facility may be owned by separate individual entities on a fractional time basis. Fractional interests sold shall not exceed three month (¼) intervals within any one-year period.

The hotel owner/operator shall retain control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities.

The non-fractional use guestrooms (units) shall be available to the general public on a daily, year-round basis.

The facility shall have an on-site hotel operator to manage rental of all guestrooms/units.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 5

The hotel operator shall manage all guestrooms/units as part of the hotel inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

When an individual owner chooses not to occupy his/her unit, that unit shall be added to the pool of hotel rooms available to the general public.

Fractional time owners shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

SUGGESTED MODIFICATION NO. 10

Add the following new subset (b) to the new Land Use Plan Policy added as Suggested Modification No. 8, above (re-number as necessary):

b. Condominium-Hotel Area 4D

A Condominium-Hotel may be permitted in Subarea 4D (Waterfront), described in Table C-2, subject to the following requirements as well as those contained in Section 4.11.13 of the Downtown Specific Plan:

Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.

A minimum of 25% of the guestroom/units within the Condominium-Hotel facility shall be retained in ownership by the hotel owner/operator and utilized as traditional hotel units available to the general public on a year-round basis. A maximum of 75% of the guestroom/units within the Condominium-Hotel facility may be subdivided into separate condominiums for sale as individual ownership interests.

The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.

The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestrooms units.

The hotel operator shall manage all guestrooms/units as part of the hotel

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 6

inventory, which management shall include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests and owners.

Owners of individual units shall have limited rights to use their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.

When not occupied by the individual owner, each unit shall be available to the general public in the same manner as the traditional guestrooms/units.

SUGGESTED MODIFICATION NO. 11

Add the following new Land Use Plan Policy after existing Policy number 3.2.1 and re-number policies accordingly:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. On oceanfront, waterfront or nearshore areas or lands designated for visitor uses and recreational facilities, an assessment of the availability of lower cost visitor uses shall be completed at the time of discretionary review and an in-lieu fee in an amount necessary to off-set the lack of the preferred lower cost facilities in or near Huntington Beach shall be imposed.

SUGGESTED MODIFICATION NO. 12

Modify Table C-1, (on page IV-C-26) as follows:

Commercial General (CG)	Retail commercial, professional offices, eating and drinking establishments, household goods, food sales, drugstores, building materials and supplies, personal services, recreational commercial, hotels/motels, timeshares, overnight accommodations, overnight accommodations , cultural facilities, government offices, educational, health, institutional and similar uses.
Commercial Visitor (CV)	Hotels/motels, timeshares , restaurants, recreation-related retail sales, cultural uses (e.g., museums) and similar uses oriented to coastal and other visitors to

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 7

	<p>the City.</p> <p><u>In Subarea 4C (Pacific City) only, a Fractional Ownership Hotel subject to restrictions may be allowed.</u></p> <p><u>In Subarea 4D (Waterfront) only, a Condominium-Hotel subject to restrictions may be allowed.</u></p> <p>Marine related development such as marinas, retail marine sales, boat rentals, and boat storage which are coastal dependent developments shall have priority over any other type of development (consistent with resource protection) on or near the shoreline.</p>
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SUGGESTED MODIFICATION NO. 13

Modify Table C-2, (on page IV-C-37) as follows (only those portions of the table to be changed are shown):

Subarea	Characteristic	Standards and Principles
4C PCH/First (Lake) Street <u>Pacific City</u>	Permitted Uses	Category: Commercial Visitor ("CV") Visitor-serving and community-serving commercial uses, restaurants, entertainment hotels/motels, <u>timeshares, a Fractional Ownership Hotel subject to restrictions,</u> and other uses (as permitted by the "CV" <u>and "CG"</u> land use categorys).
4D Waterfront	Permitted Uses	Category: "-F7" Hotels/motels, <u>timeshares</u> supporting visitor-serving commercial

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
 April 2007
 Page 8

		uses (in accordance with Development Agreement), a <u>Condominium-Hotel</u> <u>subject to restrictions.</u>
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IMPLEMENTATION PLAN

SUGGESTED MODIFICATION NO. 14

In the Downtown Specific Plan Section 4.0.04 (Definitions), delete the proposed timeshares definition:

~~**Timeshares: Any master planned development wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of real property, annually or on some other a seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the project has been divided and shall include, but not be limited to timeshare estate, interval ownership, vacation license, vacation lease, club membership, vacation lease, club membership, timeshare use, condominium/hotel, or uses of a similar nature.**~~

Replace with the following timeshare definition:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following definitions to the Downtown Specific Plan Section 4.0.04 (Definitions), in alphabetical order:

SUGGESTED MODIFICATION No. 15

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 9

condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

SUGGESTED MODIFICATION No. 16

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

SUGGESTED MODIFICATION No. 17

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

SUGGESTED MODIFICATION No. 18

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 19

Modify the City's proposed addition to Section 4.9.01(b) Permitted Uses, as

E2 . 79

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 10

follows:

~~Timeshare Units~~ Fractional Ownership Hotel pursuant to section 4.9.12

SUGGESTED MODIFICATION NO. 20

Delete proposed Section 4.9.12 of the Downtown Specific Plan and replace with the following Section 4.9.12:

4.9.12 Fractional Ownership Hotel: May be permitted and shall be conditioned as follows:

- a) **A minimum of 90% of the total number of hotel guestrooms/units within the Fractional Ownership Hotel facility shall be available as transient hotel rooms. The non-fractional hotel rooms shall be operated as transient overnight visitor accommodations available to the general public on a daily basis, year-round.**
- b) **A maximum of 10% of the total number of guestrooms/units within the Fractional Ownership Hotel facility may be subdivided into separate saleable units each of which can be owned by multiple owners on a fractional time basis. A fractional time basis means that an owner (or owners) receives an exclusive right to the use of an individual unit for a combined period not to exceed the approved time period, which approved time period at the option of the hotel owner/operator may range up to three calendar months, in any one calendar year.**
- c) **The hotel owner/operator retains control and ownership of all land, structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guestroom/units.**
- d) **The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- e) **No portion of the Fractional Ownership Hotel (neither fractional units nor traditional hotel units) may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved hotel units.**
- f) **When an owner of a fractional interest in a unit chooses not to occupy his/her unit for any portion of the time allotted to him/her, that unit shall be available to the general public on the same basis as the traditional hotel units.**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 11

- g) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Limited Use Overnight Visitor Accommodation.
- h) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for any type of hotel facility, the landowner(s) of the property(ies) upon which the existing and/or approved traditional hotel units/rooms (i.e. transient hotel rooms) are or will be developed within District 7 shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of traditional hotel units/rooms to any other type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction(s) shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s), lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. The deed restriction(s) shall not be removed or changed without approval of an amendment to the LCP by the Coastal Commission and to the underlying coastal development permit. However minor changes that do not conflict with subsection a) and g) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that an amendment is not legally required.
- i) Fractional time owners shall have the right to the use of their units including a maximum use of 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.
- j) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions), either of which shall include:
1. All the specific restrictions listed in a through i above;
 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;
 3. A statement that provisions of the Declaration/CC & R's that reflect the requirements of a through i above cannot be changed without approval of an LCP amendment by the

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 12

Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – i) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the Declaration/CC&R's related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.

- k) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- l) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through k) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- m) The hotel owner/operator or any successor-in-interest hotel owner/operator shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of a fractional interest in a unit is jointly and severally liable with the hotel owner/operator for violations of the terms and conditions hereof imposed by the special conditions of the coastal development permit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- n) All documents related to the marketing and sale of the fractional interest units, including marketing materials, sales contracts, deeds, CC & R's and similar documents, shall notify buyers of the following:**
 - 1. The owners of a fractional interest in a unit are jointly and severally liable with the hotel owner/operator for any violations of the terms and conditions hereof imposed by the coastal development permit.**
 - 2. The occupancy of the units is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 13

to the general public and that the coastal development permit contains additional restrictions on use and occupancy

- o) The hotel owner/operator and any successor-in-interest hotel owner/operator, and each future owner of a fractional interest in a unit shall obtain, prior to sale of a fractional interest, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.**
- p) The hotel owner/operator and any successor-in-interest hotel owner/operator shall monitor and record hotel occupancy and use by the general public and the owners of a fractional interest in a unit throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through l above. The hotel owner/operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and to the general public Executive Director of the Coastal Commission upon request and to the auditor required by section q below. Within 30 days of commencing hotel operations, the hotel owner/operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.**
- q) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner/operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding notice, recordkeeping, and monitoring of the Fractional Interest Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of fractional interests in a unit during the prior calendar year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the**

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 14

Initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

SUGGESTED MODIFICATION NO. 21

Add new Section 4.9.13 as follows:

4.9.13 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 22

Add new Section 4.9.14 as follows:

4.9.14 A coastal development permit application for a Fractional Interest Hotel shall include a plan specifying how the requirements outlined in 4.9.12 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner-operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.9.12 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Fractional Interest Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.9.12 and this section including deeds and CC & R's/Declaration shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that no such amendment is legally required.

SUGGESTED MODIFICATION NO. 23

4.9.15 Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Fractional Ownership Hotel.

SUGGESTED MODIFICATION NO. 24

4.9.16 In Lieu Fee Required

- 1. New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be ~~\$50,000~~ \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times 25% of the total quantity of proposed non-lower-cost and limited use overnight visitor accommodation units.**
- 2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
- 3. ~~The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.~~**

SUGGESTED MODIFICATION NO. 25

Modify the City's proposed addition to Section 4.11.01(b) Permitted Uses as follows:

~~Timeshare Units~~ Condominium-Hotel pursuant to section 4.11.13

SUGGESTED MODIFICATION NO. 26

Delete proposed Section 4.11.13 of the Downtown Specific Plan and replace with the following Section 4.11.13:

4.11.13 Condominium-Hotel: May be permitted and shall be conditioned as follows:

- a) Any hotel rooms for which a certificate of occupancy has been issued at the effective date of adoption of this Section shall not be permitted to be converted to a Condominium-Hotel.**
- b) A maximum of 75% of the total number of guestroom/units may be subdivided into condominiums and sold for individual ownership.**
- b) The hotel owner/operator shall retain control and ownership of all structures, recreational amenities, meeting space, restaurants, "back of house" and other non-guest unit facilities. When the Condominium-Hotel is located on land owned by the City, the hotel owner/operator shall be a leaseholder of the land upon which the Condominium-Hotel exists.**
- c) The Condominium-Hotel facility shall have an on-site hotel operator to manage rental/booking of all guestroom/units. Whenever any individually owned hotel unit is not occupied by its owner(s), that unit shall be available for hotel rental by the general public on the same basis as a traditional hotel room.**
- d) The hotel operator shall market and advertise all rooms to the general public. Unit owners may also independently market and advertise their units but all booking of reservations shall be made by and through the hotel operator.**
- e) The hotel operator shall manage all guestroom/units as part of the hotel inventory, which management will include the booking of reservations, mandatory front desk check-in and check-out, maintenance, cleaning services and preparing units for use by guests/owners, a service for which the hotel operator may charge the unit owner a reasonable fee.**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 17

- f) If the hotel operator is not serving as the rental agent for an individually owned unit, then the hotel operator shall nevertheless have the right, working through the individually owned units' owners or their designated agents, to book any unoccupied room to fulfill demand, at a rate similar to comparable accommodations in the hotel. The owner or an owner's rental agent may not withhold units from use. In all circumstances, the hotel operator shall have full access to the condominiums' reservation and booking schedule so that the operator can fulfill its booking and management obligations hereunder.**
- g) All guestroom/unit keys shall be electronic and created by the hotel operator upon each new occupancy to control the use of the individually owned units.**
- h) Unit owners shall not discourage rental of their unit or create disincentives meant to discourage rental of their unit.**
- i) All individually owned hotel units shall be rented a rate similar to that charged by the hotel operator for the traditional hotel rooms of a similar class or amenity level.**
- j) The hotel operator shall maintain records of usage by owners and renters and rates charged for all units, and shall be responsible for reporting Transient Occupancy Taxes based on records of use for all units, a service for which the hotel operator may charge the unit owner a reasonable fee.**
- k) Each individually owned hotel unit shall be used by its owner(s) (no matter how many owners there are) for not more than 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period.**
- l) The use period limitations identified in (k) above, shall be unaffected by multiple owners or the sale of a unit to a new owner during the calendar year, meaning that all such owners of any given unit shall be collectively subject to the use restriction as if they were a single, continuous owner.**
- m) No portion of the Condominium-Hotel may be converted to full-time occupancy condominium or any other type of Limited Use Overnight Visitor Accommodations or other project that differs from the approved Condominium-Hotel.**
- n) Prior to issuance of a building permit and in conjunction with approval of a coastal development permit for the Condominium-Hotel, the landowner(s) of the property(ies) within District 9 upon which the traditional units/rooms (i.e. transient hotel rooms) are developed shall execute and record a deed restriction(s), subject to the review and approval of the Planning Director and the Executive Director of the Coastal Commission, which prohibits the conversion of those traditional hotel units/rooms to any other**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 18

type of ownership (e.g. limited use overnight visitor accommodations). The deed restriction shall be submitted for review and approval of the Planning Director and the Executive Director of the Coastal Commission prior to action on the coastal development permit. The deed restriction shall run with the land, shall be executed and consented to by the existing lessee(s) of the affected property(ies) and shall be binding on the landowner(s) and lessee(s), and on all successors and assigns of the landowner(s) and lessee(s), including without limitation any future lienholders. This deed restriction(s) shall not be removed or changed without approval of an amendment to the underlying coastal development permit and approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with subsection a) and m) above may be processed as an amendment to the coastal development permit only, unless it is determined by the Director of Planning and the Executive Director of the Coastal Commission that such an amendment is not legally required.

- o) The hotel owner/operator shall be required to submit, prior to issuance of a coastal development permit, for the review and approval of the Director of Planning, a Declaration of Restrictions or CC & R's (Covenants, Conditions & Restrictions) either of which shall include:**
- 1. All the specific restrictions listed in a through m above;**
 - 2. Acknowledgement that these same restrictions are independently imposed as condition requirements of the coastal development permit;**
 - 3. A statement that provisions of the CC & Rs/Declaration of Restrictions that reflect the requirements of a through n above cannot be changed without approval of an LCP amendment by the Coastal Commission and subsequent coastal development permit amendment. However, minor changes that do not conflict with a) – m) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required. If there is a section of the C&Rs/Declaration of Restrictions related to amendments, and the statement provided pursuant to this paragraph is not in that section, then the section on amendments shall cross-reference this statement and clearly indicate that it controls over any contradictory statements in the section of the Declaration/CC&R's on amendments.**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 19

- p) The CC & R's or Declaration of Restrictions described above shall be recorded against all individual property titles simultaneously with the recordation of the condominium airspace map.**
- q) The provisions of the CC & R's or Declaration of Restrictions described above shall not be changed without approval of an amendment to the LCP by the Coastal Commission. However minor changes that do not conflict with a) through p) above may be processed as an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.**
- r) The hotel owner/operator or any successor-in-interest shall maintain the legal ability to ensure compliance with the terms and conditions stated above at all times in perpetuity and shall be responsible in all respects for ensuring that all parties subject to these restrictions comply with the restrictions. Each owner of an individual guest room/condominium unit is jointly and severally liable with the hotel owner-operator for any and all violations of the terms and conditions imposed by the special conditions of the coastal development permit with respect to the use of that owner's unit. Violations of the coastal development permit can result in penalties pursuant to Public Resources Code Section 30820.**
- s) All documents related to the marketing and sale of the condominium interests, including marketing materials, sales contracts, deeds, CC & Rs and similar documents, shall notify buyers of the following:**
- 1. Each owner of any individual hotel unit is jointly and severally liable with the hotel owner-operator for any violations of the terms and conditions of the coastal development permit with respect to the use of that owner's unit; and**
 - 2. The occupancy of the units by owner(s) is restricted to 90 days per calendar year with a maximum of 29 consecutive days of use during any 60 day period, and when not in use by the owner, the unit shall be made available for rental by the hotel operator to the general public per the terms of the coastal development permit and that the coastal development permit contains additional restrictions on use and occupancy.**
- t) The hotel owner/operator and any successor-in-interest hotel owner and operator, and each future individual unit owner shall obtain, prior to sale of individual units, a written acknowledgement from the buyer that occupancy by the owner is limited to 90 days per calendar year with a maximum of 29**

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 20

consecutive days of use during any 60 day period, that the unit must be available for rental by the hotel operator to the general public when not occupied by the owner, and that there are further restrictions on use and occupancy in the coastal development permit and the CC & R's or Declaration of Restrictions.

- u) The hotel owner/operator and any successor-in-interest hotel owner and operator shall monitor and record hotel occupancy and use by the general public and the owners of individual hotel units throughout each year. The monitoring and record keeping shall include specific accounting of owner usage for each individual guestroom/unit. The records shall be sufficient to demonstrate compliance with the restrictions set forth in a through n above. The hotel owner-operator shall also maintain documentation of rates paid for hotel occupancy and of advertising and marketing efforts. All such records shall be maintained for ten years and shall be made available to the City, and the general public Executive Director of the Coastal Commission upon request and to the auditor required by section v below. Within 30 days of commencing hotel operations, the hotel owner-operator shall submit notice to the Director of Planning and to the Executive Director of the California Coastal Commission of commencement of hotel operations.
- v) Within 90 days of the end of the first calendar year of hotel operations, and within 90 days of the end of each succeeding calendar year, the hotel owner-operator shall retain an independent auditing company, approved by the Director of Planning, to perform an audit to evaluate compliance with special conditions of the coastal development permit which are required by this Section regarding occupancy restrictions, notice, recordkeeping, and monitoring of the Condominium-Hotel. The audit shall evaluate compliance by the hotel owner/operator and owners of individual hotel units during the prior one-year period. The hotel owner/operator shall instruct the auditor to prepare a report identifying the auditor's findings, conclusions and the evidence relied upon, and such report shall be submitted to the Director of Planning, for review and approval, and shall be available to the general public Executive Director of the Coastal Commission upon request, within six months after the conclusion of each one year period of hotel operations. After the initial five calendar years, the one-year audit period may be extended to two years upon written approval of the Director of Planning. The Director of Planning may grant such approval if each of the previous audits revealed compliance with all restrictions imposed above.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 21

SUGGESTED MODIFICATION NO. 27

Add new Section 4.11.14, as follows:

4.11.14 If the hotel owner and the hotel operator at any point become separate entities, the hotel owner and the hotel operator shall be jointly and severally responsible for ensuring compliance with the requirements identified above. If the hotel owner and hotel operator become separate entities, they shall be jointly and severally liable for violations of the terms and conditions (restrictions) identified above.

SUGGESTED MODIFICATION NO. 28

Add new Section 4.11.15, as follows:

4.11.15 A coastal development permit application for a Condominium-Hotel shall include a plan specifying how the requirements outlined in 4.11.13 will be implemented. The plan must include, at a minimum, the form of the sale, deed and CC & Rs/Declaration of Restrictions that will be used to satisfy the requirements and the form of the rental program agreement to be entered into between the individual unit owners and the hotel owner/operator. The plan must demonstrate that the applicant will establish mechanisms that provide the hotel operator and any successor-in-interest hotel operator adequate legal authority to implement the requirements of Section 4.11.13 above. An acceptable plan meeting these requirements shall be incorporated into the special conditions of approval of any coastal development permit for a Condominium-Hotel. Any proposed changes to the approved plan and subsequent documents pertaining to compliance with and enforcement of the terms and conditions required by Section 4.11.13 and this section including deeds and CC&Rs/Declaration of Restrictions shall not occur without an amendment to the coastal development permit, unless it is determined by the Director of Planning that an amendment is not legally required.

SUGGESTED MODIFICATION NO. 29

Add new Section 4.11.16, as follows:

4.11.16 Any hotel rooms for which a certificate of occupancy has been issued in the District at the effective date of adoption of this Section

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 22

(4.11.13) shall not be permitted to be converted to Limited Use Overnight Visitor Accommodations.

SUGGESTED MODIFICATION NO. 30

Add new Section 4.11.17, as follows:

4.11.17 In Lieu Fee Required

- 1. New development of overnight accommodations that are not "lower cost" shall be required to pay, as a condition of approval of a coastal development permit, an in-lieu fee to provide significant funding to assist in the creation of a substantial contribution to lower cost overnight visitor accommodations in or near Huntington Beach. The specific dollar amount of the fee shall be ~~\$50,000~~ \$3,000 in 2006 dollars (which shall be adjusted annually to account for inflation i.e. according to increases in the Consumer Price Index – U.S. City Average) times 25% of the total quantity of proposed non-lower-cost and limited use overnight visitor accommodation units.**
- 2. Prior to issuance of the coastal development permit, and upon execution of an appropriate agreement between the City and the designated recipient that assures use of the in-lieu fee for the intended mitigation, the applicant shall transfer the fee to the entity designated in the agreement, which shall be the City of Huntington Beach, the California State Department of Parks and Recreation, Hosteling International USA, or similar public agency and/or non-profit provider of lower cost overnight visitor accommodations. If the in lieu fee, or any portion thereof, is not committed toward a use (i.e. with an effective agreement in place for use toward an identifiable project) within one year of payment of the fee, the in lieu fee shall be made available to be applied toward lower-cost overnight visitor accommodations at Crystal Cove State Park.**
- 3. ~~The specific dollar amount that will define what type(s) of development constitute "lower cost" overnight visitor accommodations will depend on the local and regional supply of overnight visitor accommodations, type and location of proposed development at the time of discretionary review.~~**

Suggested Modification No. 31

In the Zoning and Subdivision Ordinance, in Chapter 211 C Commercial Districts, within Section 211.04 CO, CG, and CV Districts: Land Use Controls, on the allowable uses chart (pages 211-2 through 211-4), on page 211-4, under Quasi Residential, delete timeshares, residential hotels, and single room occupancy as

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 23

uses within the CV district and add the following under Visitor Accommodations, after Hotels, Motels:

	CO	CG	CV	Additional Provisions
Visitor Accommodations				
Bed & Breakfast Inns	PC	PC	PC	(K)
Hotels, Motels	-	PC	PC	(I)
<u>Condominium-Hotel/</u>	-	-	PC	<u>(W)[or lettered as</u>
				<u>appropriate]</u>
<u>Fractional Ownership</u>				
<u>Hotel</u>				
Quasi Residential				
Timeshares	-	PC	PC	(I), (J)
Residential Hotel	-	PC	PC	(J)
Single Room Occupancy		PC	PC	

Suggested Modification No. 32

At the end of section 211.04, Additional Provisions, add new Additional Provision (W) [or lettered as appropriate to conform to the City's format]:

(W) In the CV District, Condominium-Hotels and/or Fractional Interest Hotels are allowed only at the Pacific City (Downtown Specific Plan District 7) and Waterfront (Downtown Specific Plan District 9) sites. Refer to Downtown Specific Plan.

Suggested Modification No. 33

In the Zoning and Subdivision Ordinance, in Chapter 203 Definitions, add the following definitions in alphabetical order:

Hotel Owner/Operator – The entity that owns and operates a hotel. If the hotel operator is separate from the hotel owner both are jointly and severally responsible for ensuring compliance with the requirements described in this LCP and/or recorded against the property, as well as jointly and severally liable for violations of said requirements and restrictions.

Limited Use Overnight Visitor Accommodations – Any hotel, motel, or other similar facility that provides overnight visitor accommodations wherein a purchaser receives the right in perpetuity, for life, or a term of years, to the recurrent, exclusive use or occupancy of a lot, parcel, unit, room(s), or segment of the facility, annually or on some other seasonal or periodic basis, for a period of time that has been or will be allotted from the use or

Appendix A (Suggested Modifications)

HNB LCPA 2-06 Revised Findings

April 2007

Page 24

occupancy periods into which the facility has been divided and shall include, but not be limited to Timeshare, Condominium-Hotel, Fractional Ownership Hotel, or uses of a similar nature.

SUGGESTED MODIFICATION NO. 34

Replace existing definition of "timeshare" in Chapter 204 with the following:

Timeshare – Any arrangement, plan, or similar program, other than an exchange program, whereby a purchaser receives ownership rights in or the right to use accommodations for a period of time less than a full year during any given year, on a recurring basis for more than one year, but not necessarily for consecutive years.

Add the following new definitions to Chapter 204:

Condominium-Hotel – Facility providing overnight visitor accommodations where ownership of at least some of the individual guestrooms (units) within the larger building or complex is in the form of separate condominium ownership interests, as defined in California Civil Code section 1351(f). The primary function of the Condominium-Hotel is to provide overnight transient visitor accommodations within every unit that is available to the general public on a daily basis year-round, while providing both general public availability and limited owner occupancy of those units that are in the form of separate condominium ownership interests.

Fractional Ownership Hotel – Facility providing overnight visitor accommodations where at least some of the guestrooms (units) within the facility are owned separately by multiple owners on a fractional time basis. A fractional time basis means that an owner receives exclusive right to use of the individual unit for a certain quantity of days per year and each unit available for fractional ownership will have multiple owners.

Appendix A (Suggested Modifications)
HNB LCPA 2-06 Revised Findings
April 2007
Page 25

HNB LCPA 2-06 trnshrs RF rvsd sugmods 4.07 mv

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