

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: 12/18/2006	Department ID Number: PW 06-081

**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: *Robert F. Beardsley*
ROBERT F. BEARDSLEY, PE, DIRECTOR OF PUBLIC WORKS

SUBJECT: Approve Maintenance Agreement for Traffic Signal at Beachmont Plaza

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

Statement of Issue: The development conditions for Beachmont Plaza Shopping Center require the developer, Brookhurst & Adams, LLC, to fund annual maintenance of the traffic signal located adjacent to the center on Brookhurst Street. The proposed agreement establishes covenants for the maintenance and annual reimbursement.

Funding Source: Revenue in the amount of \$9,860 will be deposited into the Infrastructure Fund, Miscellaneous Reimbursables, for Traffic Signal Maintenance, 31400314.48550.10085304. The amount will be adjusted annually per the Engineering News Record Construction Cost Index (ENR CCI), and budgeted for maintenance as necessary.

Recommended Action: Motion to:
Approve and authorize the Mayor and City Clerk to execute the Agreement containing covenants affecting real property concerning maintenance of public improvements (Beachmont Plaza Shopping Center).

Alternative Action(s): Do not approve the agreement.

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REQUEST FOR CITY COUNCIL ACTION

MEETING DATE: 12/18/2006

DEPARTMENT ID NUMBER: PW 06-081

Analysis: As a condition of development, the owners of Beachmont Plaza Shopping Center are required to fund operation and maintenance costs for the traffic signal on Brookhurst Street that serves the center. The traffic signal was supported by Public Works only after insistence by the developer that a full access driveway was imperative to the success of the center. The traffic signal only serves the interest of the property and does not provide any other significant public benefit. The developer supported an arrangement where the signal would be allowed if maintenance of the signal were funded by the center.

The city will operate, maintain, repair and replace the signal as required. The reimbursement amount has been established at \$9,860 for the first year. Annually thereafter, the amount will be adjusted per the ENR CCI available in August. The city will notify Brookhurst & Adams, LLC of the amount due by September 1.

Should the traffic signal be permanently removed, the city will return funds in excess of those actually required for operation and maintenance. It is unlikely the signal will be removed in the foreseeable future. The annual obligation will be passed to the new owners should the property be sold.

Public Works Commission Action: Not required

Environmental Status: Not applicable.

Attachment(s):

City Clerk's Page Number	No.	Description
3	1.	Agreement containing covenants affecting real property concerning maintenance of public improvements (Beachmont Plaza Shopping Center). 5 copies

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ATTACHMENT #1

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BUSINESS PROPERTIES
DEVELOPMENT COMPANY

17631 FITCH
IRVINE, CALIFORNIA 92614-6021
(949) 474-8900
FAX (949) 474-8936
cb_bp@pacbell.net

September 12, 2006

Travis Hopkins, City Engineer
PUBLIC WORKS
City of Huntington Beach
2000 Main St.
Huntington Beach, CA 92648

Re: CUP No. 01-51/EPA No. 02-09/TPM No. 2003-137
NEC Brookhurst & Adams
Huntington Beach, CA

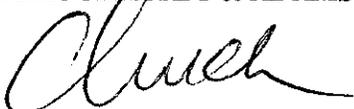
Dear Mr. Hopkins:

Transmitted are five (5) originally executed Maintenance Agreement for the traffic signal for subject project.

Please have two (2) fully executed copies returned to me.

If you have any questions as to the above information please do not hesitate to contact me at (949)474-8900 ext. 314 at via e-mail at the address listed above.

Very truly yours
BUSINESS PROPERTIES
for BROOKHURST & ADAMS, LLC



Charles G. Ball

cc: L. C. Smull, BROOKHURST & ADAMS, LLC
Bruce A. Cowgill, BROOKHURST & ADAMS, LLC
Jeffrey M. Oderman, Esq, Rutan & Tucker
Leonie Mulvihill, Deputy City Attorney
Jeff Guth, Ralphs

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RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF HUNTINGTON BEACH
P.O. Box 190
2000 Main Street
Huntington Beach, CA 92648
Attn: City Clerk

FOR RECORDER'S USE ONLY

**AGREEMENT CONTAINING COVENANTS AFFECTING
REAL PROPERTY CONCERNING MAINTENANCE
OF PUBLIC IMPROVEMENTS
(Beachmont Plaza Shopping Center)**

 **ORIGINAL**

This AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY CONCERNING MAINTENANCE OF PUBLIC IMPROVEMENTS (the "Agreement") is dated for reference purposes as of the 14th day of August, 2006, and is made and entered into by and between the CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("City"), and BROOKHURST & ADAMS, LLC, a California limited liability company ("Owner"). City and Owner are sometimes hereinafter individually referred to as a "Party" and collectively as the "Parties."

RECITALS:

A. Owner is the owner in fee of that certain real property located in the City of Huntington Beach, County of Orange, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Owner's Property"). The Owner's Property is a portion of the commercial retail shopping center commonly known as the "Beachmont Plaza Shopping Center."

B. City owns and controls the public right-of-way within Brookhurst Street adjacent to the westerly boundary of Owner's Property and the balance of the Beachmont Plaza Shopping Center.

C. On June 12, 2002, City's Zoning Administrator approved Conditional Use Permit No. 01-51 and Variance No. 01-13 authorizing Owner to redevelop the portion of Beachmont Plaza situated on the Owner's Property. In conjunction with that redevelopment project, Owner proposed to City that Owner be permitted to construct/install certain traffic signal improvements at Owner's expense in City's Brookhurst Street right-of-way adjacent to Beachmont Plaza (herein, the "Traffic Signal Improvements"). The Traffic Signal Improvements are more particularly described in Exhibit "B" attached hereto and incorporated herein by this reference. Pursuant to Condition No. 7(g) of Conditional Use Permit No. 01-51, City authorized Owner to construct/install the Traffic Signal Improvements conditional and contingent upon Owner's



agreement to reimburse City for its costs incurred for the maintenance and operation of the Traffic Signal Improvements, as provided herein.

D. City and Owner desire to enter into this Agreement to memorialize City's and Owner's respective rights and obligations with regard to maintenance and operation of the Traffic Signal Improvements.

COVENANTS:

Based upon the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which is acknowledged by City and Owner, the Parties agree as follows:

1. City Ownership of Traffic Signal Improvements. The Parties acknowledge and agree that the Traffic Signal Improvements shall at all times be and remain public improvements and that Owner shall have no ownership interest therein. Subject to Owner's obligations set forth in Section 2 of this Agreement, City shall have the same rights and obligations with regard to the use, operation, maintenance, repair, and replacement of the Traffic Signal Improvements that City would have in the absence of this Agreement. Except as expressly set forth herein, nothing in this Agreement is intended to impose upon City any special duty or obligation to Owner with respect to the use, operation, maintenance, repair, or replacement of the Traffic Signal Improvements or to waive or release any rights, claims, defenses, or immunities that City would have with respect to said improvements in the absence of this Agreement.

2. Owner Obligation to Reimburse City for City's Maintenance and Operation Costs Pertaining to the Traffic Signal Improvements. Owner shall reimburse City for all of City's actual and reasonable out-of-pocket costs incurred to maintain and operate the Traffic Signal Improvements, including without limitation City's cost for the electricity required to operate the Traffic Signal Improvements, its cost for replacement, and all of its other maintenance and operating costs pertaining to the Traffic Signal Improvements. The Parties agree that beginning October 1, 2006, and on or before each October 1 thereafter during the term of this Agreement, Owner shall pay to City an amount referred to herein as the "Annual Reimbursement Amount" to reimburse City for all of the out-of-pocket costs incurred by City to maintain and operate the Traffic Signal Improvements during the fiscal year commencing on the date of payment. The Parties agree that the Annual Reimbursement Amount due on or before October 1, 2006, shall be the sum of Nine Thousand Eight Hundred Sixty Dollars (\$9,860.00) and that said amount shall be adjusted for the payment due on October 1, 2007, and annually thereafter by the percentage equal to the percentage change in the construction cost index for the preceding year, as determined by the Engineering News Record, published by McGraw Hill. City shall annually notify Owner in writing of the amount of the adjusted Annual Reimbursement Amount no later than thirty (30) days prior to the date Owner's payment is due (i.e., on or before September 1). Receipt by the City of payment by Owner of the Annual Reimbursement Amount (plus any additional charge that may be owing in the event of late payment, as provided in Section 4 of this Agreement) shall be conclusively determined to be complete satisfaction of the obligations imposed on Owner by this Agreement.

3. Covenants Run With the Land; Term. The covenants in this Agreement burden and benefit both Owner's Property and City's adjacent Brookhurst Street right-of-way and are

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intended to run with the land within the meaning of Civil Code Section 1468. This Agreement shall become effective as of the date it is recorded against Owner's Property in the Official Records of the Orange County Recorder and thereafter shall remain effective in perpetuity; provided, however, that this Agreement shall automatically terminate if City permanently removes and does not replace the Traffic Signal Improvements. Upon termination of this Agreement, neither Party shall have any further rights or obligations to the other Party; provided, however, that both Parties shall remain responsible for performance of any obligations arising prior to the date of termination. In the event of termination of this Agreement, City agrees upon Owner's request and at no cost to City to cooperate with Owner in the recordation against Owner's Property of such document as may be prepared by Owner and approved as to form by City's attorney confirming the termination of this Agreement.

4. Return of Annual Reimbursement Amount. The Parties agree that \$8,000 of the initial \$9,860 Annual Reimbursement Amount has been calculated by City as being necessary for a capital repair and replacement reserve for the Traffic Signal Improvements (with said portion of the total Annual Reimbursement Amount to be adjusted annually, as provided in Section 2). The Parties further agree that if City permanently removes and does not replace the Traffic Signal Improvements and this Agreement terminates, as provided in Section 3, Owner may have been required to pay funds to City prior to the termination that City will not have needed for maintenance and operation of the Traffic Signal Improvements. Accordingly, within thirty (30) calendar days of termination of this Agreement pursuant to Section 3, Owner may provide a written request for return of any portion of the Annual Reimbursement Amount in excess of that amount that the City Engineer has in good faith deemed to be necessary to reimburse the City for its costs incurred for maintenance and operation of the Traffic Signal Improvements or any component thereof prior to the date of termination (including, as applicable, any capital repair and replacement expenditures incurred by City prior to the date of termination). Within sixty (60) calendar days of receipt by City of Owner's written request for return of any portion of the Annual Reimbursement Amount, the City Engineer will provide the following in writing: (1) the amount of Annual Reimbursement Amounts received from Owner from the effective date of the Agreement until termination pursuant to Section 3; (2) the City Engineer's good faith estimate of the City's out-of-pocket costs incurred for the maintenance and operation of the Traffic Signal Improvements from the effective date of the Agreement until termination pursuant to Section 3; and, (3) the City Engineer's good faith estimate of the Annual Reimbursement Amount received from Owner from the effective date of this Agreement until termination in excess of that amount City Engineer has in good faith determined to be City's out-of-pocket costs incurred for the maintenance and operation of the Traffic Signal Improvements. The good faith estimates of the City Engineer shall be conclusive and final for the purposes of this Section and for determining whether City will return of the Annual Reimbursement Amount, or any portion thereof, pursuant to this Section 4.

5. Assignment. Nothing in this Agreement shall be deemed to prohibit or restrict Owner's right to sell, convey, lease, encumber, or in any other way transfer or assign Owner's right, title, and interest in or to any portion of the Owner's Property, nor to require Owner to obtain City approval therefor. As used in this Agreement, the term "Owner" shall be deemed to refer to the owner in fee of Owner's Property, as said fee owner may change from time to time. If a transfer of the fee interest in the Owner's Property occurs, the transferor shall not be released from any of the executory obligations set forth in this Agreement from and after the date of the

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

"CITY":

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

APPROVED AS TO FORM:

~~Special Counsel for City~~

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Jennifer M. [Signature]

City Attorney *11/13/06*

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

Penelope Culbertson

City Administrator

[Signature]

Director of Public Works

"OWNER"

BROOKHURST & ADAMS, LLC,
a California limited liability company

By: *[Signature]*

L.C. Smull

Its: Managing Member

By: *Bruce A. Cowgill*

Bruce A. Cowgill

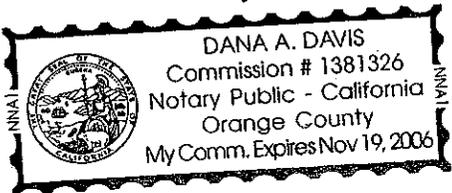
Its: Managing Member

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

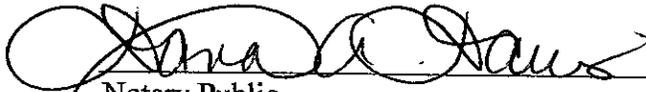
On September 11, 2006, before me, Dana A. Davis, Notary Public,
personally appeared L. C. Smull and Bruce A. Cowgill

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

Witness my hand and official seal.



[SEAL]



Notary Public

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, Notary Public,
personally appeared _____

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

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

On _____, before me, _____, Notary Public,
personally appeared _____

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

Witness my hand and official seal.

Notary Public

[SEAL]

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EXHIBIT "A"

LEGAL DESCRIPTION OF OWNER'S PROPERTY

ALL that certain land situated in the City of Huntington Beach, County of Orange, State of California, described as follows:

PARCEL 1: That portion of the Southwest quarter of Section 5, Township 6 South, Range 10 West, in the Rancho Las Bolsas, as per map recorded in Book 51, page 14 of Miscellaneous Maps, in the office of the County Recorder of said county, described as follows:

BEGINNING at a point in the south line of said Southwest Quarter, North 88° 48' 50" East 556.74 feet from the Southwest corner thereof; thence North 1° 11' 10" West 210.00 feet; thence South 88° 48' 50" West parallel with said South line 261.00 feet; thence South 1° 11' 10" East 210.00 feet to said South line; thence North 88° 48' 50" East along said 'South line 261.00 feet to the POINT OF BEGINNING.

PARCEL 2: Parcel 1 as shown on a map filed in Book 138, pages 1 and 2 of Parcel Maps, in the office of the County Recorder of said county.

PARCEL 3: Parcel 2 as shown on a map filed in Book 5, page 42 of Parcel Maps, in the office of the county Recorder of said county.

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EXHIBIT "B"

TRAFFIC SIGNAL IMPROVEMENTS

The Traffic Signal Improvements are those improvements required for the new traffic signal(s) installed at the main driveway entrance to the Beachmont Plaza Shopping Center Property along Brookhurst Street, as set forth in the City of Huntington Beach Public Works Department Street Improvement Plan, Brookhurst Street, Sheet 7 of 9, approved by the City's Traffic Engineer on February 29, 2006, a copy of which plan sheet is attached hereto.

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