

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: February 7, 2005	Department ID Number: ED 05-02

CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION

SUBMITTED TO: HONORABLE MAYOR/CHAIRPERSON AND CITY COUNCIL/
REDEVELOPMENT AGENCY MEMBERS

SUBMITTED BY: *Penelope Culbreth Graft*
PENELOPE CULBRETH-GRAFT, DPA, City Administrator/Executive
Director

PREPARED BY: DAVID C. BIGGS, Director Of Economic Development/Deputy
Executive Director

PAUL EMERY, Acting Director Of Public Works *PE*

SUBJECT: **Approve Conveyance of Waterfront Degraded Wetlands Parcel
and License and Maintenance Agreement with HB Wetlands
Conservancy**

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CITY CLERK
HUNTINGTON BEACH, CA
2005 JAN 5 A 11:28

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

Statement of Issue: The Redevelopment Agency currently holds title to a 1.002-acre degraded wetlands parcel as part of the Waterfront site that needs to be conveyed to the City. Under City ownership, there is a need to provide for the long-term maintenance and management of the degraded wetlands and adjacent 2.415-acre City owned buffer parcel. The recommended actions address both of these issues.

Funding Source: The HB Wetlands Conservancy will assume costs associated with maintenance of the degraded wetlands. The City will pass through funds from the adjacent homeowners association intended for maintenance of the buffer parcel to the HB Wetlands Conservancy. As such, there is no fiscal impact on the City.

Recommended Action: Motion To:

Redevelopment Agency

1. Authorize the Agency Chairperson and Agency Clerk to execute a deed from the Agency to the City for the Degraded Wetlands Area and send to the County for recordation after the City Clerk has affixed the acceptance certificate of the City.

E-3

REQUEST FOR ACTION

MEETING DATE: February 7, 2005

DEPARTMENT ID NUMBER:ED 05-02

City Council

1. Authorize acceptance of the Deed by the City for the Degraded Wetlands Area; and,
2. Approve and Authorize the Mayor to Execute a License and Maintenance Agreement by and between Huntington Beach Wetlands Conservancy and the City of Huntington Beach Relating to the Degraded Wetlands Area and the Buffer Area.

Alternative Action(s):

Do not approve the License and Maintenance Agreement and have the City manage and maintain the Degraded Wetlands Area and the Buffer Area.

Analysis: The Redevelopment Agency currently holds title to the 1.002-acre Degraded Wetlands Area that is part of the Waterfront site. The Huntington Beach Wetlands Conservancy is currently managing this degraded wetlands on an interim basis under the terms of a License Agreement entered into in May of 2001. A condition of approval for the adjacent Waterfront residential project was the creation of a 2.415-parcel to serve as a buffer to the degraded wetlands. This Buffer Area has been improved by the developer with a state-of-the-art storm water treatment system and has been conveyed to the City. The Waterfront residential Homeowners Association will pay the City up to \$30,000 annually for Buffer Area maintenance.

On November 18, 2002, the City Council authorized a credit to the Redevelopment Agency against debt for the un-developable portion of the Waterfront site that consisted of the Degraded Wetlands Area and the associated Buffer Area. At that time, it was anticipated that the Redevelopment Agency might have been able to sell the Degraded Wetlands Area for mitigation credits. If unsuccessful in selling the Degraded Wetlands Area for mitigation credits, the property was to be conveyed to the City. A copy of the November 18, 2002, Request for Council/Redevelopment Agency Action is attached (Attachment 1) for reference.

Staff has explored opportunities to sell the Degraded Wetlands Area for mitigation credits and has been unsuccessful. The small size of the parcel and its isolated location has resulted in entities which might otherwise purchase mitigation credits being uninterested in this parcel. As such, it is timely for the Redevelopment Agency to convey the Degraded Wetlands Area to the City.

On August 11, 2003, the Council/Redevelopment Agency Board adopted an H-Item (Attachment 2), which directed staff to prepare an agreement with the Huntington Beach Wetlands Conservancy regarding the Degraded Wetlands Area. City staff has determined that the City should retain fee ownership of the Degraded Wetlands Area. This option could allow the City to have a wetlands parcel which could be used in the future for mitigation credit for a local project if necessary. With the Degraded Wetlands Area and the Buffer Area to be under City ownership, staff has identified a means by which the management and maintenance of these areas can be assumed by the Huntington Beach Wetlands

REQUEST FOR ACTION

MEETING DATE: February 7, 2005

DEPARTMENT ID NUMBER: ED 05-02

Conservancy. The Huntington Beach Wetlands Conservancy is a local 501(c)3 non-profit corporation which has acquired, restored and operates other wetlands in Huntington Beach.

The proposed License and Maintenance Agreement with the Huntington Beach Wetlands Conservancy is for a 20-year term. The License and Maintenance Agreement outlines the Conservancy obligations in regard to the Degraded Wetlands Area and the Buffer Area. The Agreement also provides for the restoration of the Degraded Wetlands by the Conservancy within one year from the effective date of the Agreement. The Conservancy will not be compensated for its activities related to the Degraded Wetlands. The Conservancy will be compensated for its activities associated with the maintenance of the Buffer Area. The City shall pass through its annual funding from the Waterfront residential Homeowners Association for Buffer Area maintenance to reimburse the Conservancy for its actual costs. The City will be retaining certain obligations in regard to the Buffer Area related to the effective operation of the storm water treatment system.

Environmental Status: Not applicable.

Attachment(s):

City Clerk's Page Number	No.	Description
4	1.	RCA ED 02-36. <i>with Attachments</i>
9	2.	August 11, 2003 H-Item. <i>with Attachments</i>
69	3.	Grant Deed.
77	4.	License and Maintenance Agreement.

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RCA ED 02-36

ATTACHMENT 1

E-3.4

11/20 1 - D. B. 1999 - Econ Dev.

Council/Agency Meeting Held: <u>11-16-02</u>	RECEIVED  City Clerk's Signature NOV 20 2002
Deferred/Continued to: _____ <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Conditionally Approved <input type="checkbox"/> Denied	
Council Meeting Date: November 18, 2002	Department ID Number: _____ DEPARTMENT OF ECONOMIC DEVELOPMENT

**CITY OF HUNTINGTON BEACH
REQUEST FOR CITY COUNCIL/REDEVELOPMENT AGENCY ACTION**

SUBMITTED TO: HONORABLE MAYOR/CHAIRMAN AND CITY COUNCIL/AGENCY MEMBERS

SUBMITTED BY: RAY SILVER, City Administrator/Executive Director *RS*

PREPARED BY: DAVID C. BIGGS, Director of Economic Development/Deputy Executive Director *DCB*

SUBJECT: Approve Credit for Debt Repayment for Lot AA and Lot BB for Acquisition Costs for the Waterfront Parcel

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

Statement of Issue: The Redevelopment Agency is requesting that the City approve a credit for a debt repayment for its acquisition costs associated a portion of the Waterfront project, specifically the Restricted Wetlands (Lot AA) and the buffer area (Lot BB). Mayer Financial LLP is conveying Lot AA to the Redevelopment Agency and Lot BB to the City. The amount of debt repayment is the proportionate share of the principal and accrued interest charged by the City since the 44-acre property was transferred by the City in 1988. City Council's approval will reduce the Agency's debt to the City for these costs.

Funding Source: No actual monetary cost; the amount of debt owned to the City by the Redevelopment Agency will be reduced.

Recommended Action:

Move to:

1. Approve the debt repayment of \$3,556,003 (principal & interest accrued as of October 2002) from the Redevelopment Agency to the City and any additional amount accrued to date for the Agency's acquisition costs associated with Lots AA & BB of Tentative Tract Map 15549.

Alternative Action(s):

1. Do not approve the debt repayment.

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 HUNTINGTON BEACH, CA
 2002 NOV 12 P 1:56

E-3.5

E-13

REQUEST FOR CITY/REDEVELOPMENT AGENCY ACTION

MEETING DATE: November 18, 2002

DEPARTMENT ID NUMBER: ED-02-36

Analysis: The Redevelopment Agency is requesting that the City approve a credit for the debt repayment of its acquisition costs associated with a portion of the Waterfront project, specifically the Restricted Wetlands (Lot AA) and the buffer area (Lot BB).

A portion of the property, 1.002 acres, originally scheduled to be developed with single-family homes by Mayer Financial, L.P. is subject to a conservation easement resulting from the November 20, 2000 settlement between the Coastal Commission, the Redevelopment Agency and Mayer. Mayer is required to reconvey this parcel (Lot AA of TTM 15549) to the Redevelopment Agency pursuant to the Second Implementation Agreement to the Amended and Restated Development Agreement, dated February 5, 2001. In May 2001, a License Agreement between Mayer, the Agency, and the Huntington Beach Wetlands Conservancy was approved to permit the Conservancy access to the restricted wetlands for maintenance of this area. With Mayer's reconveyance of the parcel to the Agency, Mayer will no longer be responsible for the maintenance. The Agency will extend the License Agreement with the Conservancy to continue the wetland maintenance.

As part of the City's conditions of approval for the residential project, an additional 2.415 acres of land (Lot BB of TTM 15549) will be conveyed to the City with the recordation of Tract Map to serve as a buffer area between the wetland portion and the Waterfront residential development. The Homeowners Association will pay \$30,000 annually to the City for the buffer area maintenance.

In 1988, the Agency acquired the 44 acres from the City for the Waterfront project. At that time, a debt of \$22,400,000 was charged to the Agency and interest has accrued to \$23,389,912 as of October 2002. When the City accepts ownership of Lot BB of TTM 15549, the City will need to credit the Agency for the proportionate share of the acquisition costs for Lot BB as debt repayment. In regard to Lot AA, the Redevelopment Agency will endeavor to sell the parcel for wetlands mitigation credits. However, if the Agency is unsuccessful, Lot AA will be conveyed to the City. As such, it is appropriate to authorize a credit for this parcel against Agency debt and accrued interest. If the Agency succeeds in selling the parcel, then the General Fund would be the beneficiary of the net proceeds.

Parcel	Acres	Proportion of 44 acres	Value as of October 2002
Agency Lot AA (restricted wetland)	1.002	2.28%	\$1,042,761
City Lot BB (buffer area)	2.415	5.49%	\$2,513,242
Total:	3.417	7.77%	\$3,556,003

Environmental Status: Not Applicable

Attachment(s):

City Clerk's Page Number	No.	Description
	1	Tentative Tract Map 15549 - Exhibit

E-36

Tentative Tract Map 15549 - Exhibit

ATTACHMENT #1

TO RCA ED 02-36

E-3?

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H-Item on August 11, 2003

ATTACHMENT 2

E-3.9



CITY OF HUNTINGTON BEACH

City Council Interoffice Communication

HUNTINGTON BEACH, CA

2003 AUG 11 P 2:45

To: Honorable Mayor Pro Tem and City Council Members
From: Connie Boardman, Mayor *CB*
Date: August 11, 2003
Subject: *H-ITEM FOR AUGUST 18, 2003, CITY COUNCIL MEETING –
LITTLE SHELL WETLAND SITE*

STATEMENT OF ISSUE:

The Redevelopment Agency currently owns the one-acre parcel of land known as Little Shell, plus a buffer area around the wetland. The Huntington Beach Wetlands Conservancy has responsibility for the interim maintenance and management of the wetland under an agreement with the Agency. In the past, the Redevelopment Agency directed staff to try to sell the wetland to a third party that could use it for mitigation credit. Staff has explored the possibility of selling the wetland to a third party with no success (see attached memo for more background). Neither the City nor the Agency is in the position to maintain the wetland. There is currently a conservation easement on this property.

The Huntington Beach Wetlands Conservancy has expressed an interest in being the party to which the Agency could convey the wetland to, or to enter into a license agreement with to maintain the wetland area. Please see the attached memo for information from staff on these alternatives. Since past action by the Agency has been to attempt to sell the wetland for mitigation credit, Agency action is needed to move forward in this alternative direction.

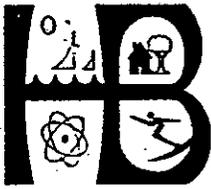
RECOMMENDED ACTION:

Direct staff to prepare an agreement with the Huntington Beach Wetlands Conservancy under which the Conservancy will either be granted title to the wetland in exchange for the restoration and perpetual maintenance of the area, or enter into a license agreement with the Huntington Beach Wetlands Conservancy for the restoration operation and maintenance of the area.

xc: Ray Silver, City Administrator
Bill Workman, Asst. City Administrator
Clay Martin, Director of Administrative Services
Connie Brockway, City Clerk
Jennifer McGrath, City Attorney

E-310

H-3b



CITY OF HUNTINGTON BEACH
InterOffice Communication
Economic Development Department

TO: Ray Silver, City Administrator

FROM: David C. Biggs, Director of Economic Development
Robert Beardsley, Director of Public Works

DATE: August 11, 2003

SUBJECT: Waterfront Site Degraded Wetlands

The purpose of this memorandum is to outline a possible scenario for the disposition of the degraded wetlands on the Waterfront site. It will also address the longer-term management issues with the related Buffer area.

Background

The Redevelopment Agency currently holds title to an approximately 1-acre parcel of land known as the Waterfront Degraded Wetlands. There is a conservation easement recorded on this irregularly shaped parcel. The Huntington Beach Wetlands Conservancy has responsibility for the interim maintenance and management of this Degraded Wetlands under an agreement with the Redevelopment Agency. Prior Redevelopment Agency direction has been for staff to endeavor to sell this parcel to a third party which may utilize it for mitigation credit. Ultimately, the Redevelopment Agency would like to see this degraded wetlands restored by a third party purchaser or another party. Neither the City nor the Redevelopment Agency is in the position to ultimately own or operate wetlands.

The City currently holds title to an approximately 2.45 acre parcel surrounding the Degraded wetlands which is designed to be a buffer for the Degraded Wetlands and will be used for an urban run-off treatment system. The improvements to the Buffer Parcel are being made by the developers of the adjacent Waterfront residential community. The developer anticipates starting its work on the improvements to the Buffer Parcel in August or September. There may be some opportunity to facilitate the removal of the invasive, non-native species from the Degraded Wetlands in association with the developer work on the Buffer Parcel. However, timing is an issue. Once these improvements are completed and turned over to the City, the City or a third party contractor will use funds provided by the developer to maintain this area.

H-3b.2

E-3.11

The homeowners association for the Waterfront Residential will be responsible for providing annual funding to the City for the maintenance of the Buffer Parcel. The Public Works Department anticipated having a third party maintain this area and prefer that the City continue to own the Buffer Parcel.

Current Status/Issues

Staff in Economic Development and Public Works have explored the possibility of selling the Degraded Wetlands to a third party agency for mitigation credit. The Port of Long Beach, California Coastal Conservancy, and CalTrans have all been contacted. We have determined that while degraded wetlands can sell for anywhere between \$33,000 to \$150,000 per acre given its mitigation value, this small stand-alone parcel of 1 acre with little mitigation value is not likely to be of interest to any of these prospective purchasers.

Redevelopment law permits the Redevelopment Agency to sell or convey a parcel for purposes of redevelopment, and wetlands restoration would be considered redevelopment. The Agency can select a purchaser and convey the property for no consideration in exchange for a commitment to restore and maintain the Degraded Wetlands. The Redevelopment Agency would need to conduct a public hearing at which it would approve this conveyance pursuant to Health & Safety Code Section 33431.

Another alternative for the Degraded Wetlands would be for it to be conveyed by the Redevelopment Agency to the City. The City would then retain fee ownership and could license the use of the parcel to a third party for restoration, operation and maintenance. This option could also allow the City to have a wetlands parcel which could be used in the future for mitigation credit for a local project if necessary.

The City is not able to convey the Buffer Parcel without declaring it surplus and following the surplus property procedure. With the encumbrance represented by the water quality system and associated issues, the City may be unable to make the findings to declare the property surplus. In addition, there has been an easement granted for the acceptance of the adjacent residential community's storm water onto this parcel and into the water quality system. Also, it is unclear if the terms under which the property was dedicated to the City would preclude its sale as well. Also, the surplus property procedures would not necessarily result in the property being purchased by the same party as the Degraded Wetlands.

As such, the Public Works Department is recommending that the City maintain ownership of the Buffer Parcel. Elements of the Buffer Parcel maintenance related to the water quality system may be best performed directly by the City. However, we would propose that the City enter into a License Agreement with a third-party for partial maintenance of the Buffer Parcel with terms that the third party would operate the Buffer Area. This would include a provision whereby a portion of the funds from the Waterfront Residential would be passed through to the third party for use in the maintenance of only the Buffer Parcel.

E-3.12

H-36.3

The third party entity to which the Degraded Wetlands would be conveyed or licensed and the Buffer Parcel licensed could be the same entity. This would simplify oversight of the Degraded Wetlands and the Buffer Parcel improvements as a single system. In addition, access to the Degraded Wetlands is best taken from the Buffer Parcel.

The Huntington Beach Wetlands Conservancy, which is the interim manager of the Degraded Wetlands, has expressed an interest in being the third -party entity to which the Degraded Wetlands is conveyed or licensed and the licensee for the Buffer Parcel. In addition, this local 501(c)3 non-profit corporation has acquired and restored other wetlands in Huntington Beach.

Recommendations

Since there is little likelihood that the Redevelopment Agency will be able to sell the Degraded Wetlands the following recommendation will facilitate the ultimate restoration of the Degraded Wetlands in a timely manner:

Degraded Wetlands Parcel --

- The Redevelopment Agency will convey the parcel to the City and the City will then enter into a License Agreement with the Huntington Beach Wetlands Conservancy for the restoration, operation and maintenance of the area, or

Alternatively,

- The Redevelopment Agency will prepare an Agreement with the Huntington Beach Wetlands Conservancy under which the Conservancy will be granted title to the Degraded Wetlands in exchange for the restoration and perpetual maintenance of the area.

Buffer Parcel

- The City will prepare a License Agreement with the Huntington Beach Wetlands Conservancy for the Buffer Parcel which will also require the Wetlands Conservancy to maintain the Buffer Parcel as the City's authorized agent under the terms of the Buffer Area Maintenance Agreement with Mayer Financial, LP.

H-3b.4

E-3.13

Prior to us pursuing these alternatives related to the Degraded Wetlands and the Buffer Parcel, it would be appropriate for the City Council/Redevelopment Agency Board to provide direction to staff to no longer pursue the sale of the Degraded Wetlands to a third party for mitigation credit. Please feel free to contact either of us if you require any additional information.

DCB

xc: Dave Webb, City Engineer
Howard Zelefsky, Director of Planning

Attachments:

1. Parcel Map
2. Open Space/Wetland Preservation and Restoration Deed Restriction
3. Buffer Area Maintenance Reimbursement Agreement
4. Storm Water Acceptance Easement
5. License Agreement for Lot AA - Degraded Wetlands

E-3.14

H-36.5

License Terms Outline

The initial term of the License shall be for 20 years, renewable automatically for 5-year terms thereafter.

The License shall grant the Conservancy the exclusive rights to use, manage and control Lots AA and BB, subject to the:

Open Space/Wetlands Preservation and Restoration Deed Restriction on Lot AA
Grant of Easement and Acceptance of Drainage on Lot BB
Agreement for Buffer Area Maintenance Reimbursement on Lot BB

The Conservancy shall be required to restore at its sole expense the degraded wetlands on Lot AA within 2 years of the granting of the License.

The Conservancy shall operate and maintain Lot AA at its sole expense pursuant to the requirements of the Open Space/Wetlands Preservation and Restoration Deed Restriction.

The Conservancy shall operate and maintain Lot BB, with the exception of the following items which will remain the City's responsibility:

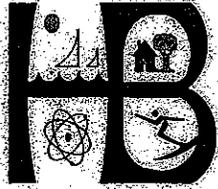
TO BE PROVIDED

The Conservancy shall be reimbursed by the City on an annual basis for undertaking its obligations to operate and maintain Lot BB. The funds for this reimbursement shall be a pass through from the funds provided to the City under the terms of the Agreement for Buffer Area Maintenance Reimbursement. Each year, 90 days prior to the anniversary date of this License, the Conservancy shall submit to the City its budget for the cost to operate and maintain Lot BB. Upon approval by the City of the budget submitted, the Conservancy shall be reimbursed for the approved costs on a quarterly basis in advance.

Any additional operational and maintenance costs undertaken by the Conservancy for Lot BB outside of those required hereunder or those herein defined as remaining the City's responsibility shall be the sole expense of the Conservancy.

The City shall retain rights of access to undertake its maintenance responsibilities on Lot BB.

E-3.15



CITY OF HUNTINGTON BEACH
InterOffice Communication
Economic Development Department

TO: Ray Silver, City Administrator

FROM: David C. Biggs, Director of Economic Development
Robert Beardsley, Director of Public Works

DATE: August 11, 2003

SUBJECT: Waterfront Site Degraded Wetlands

The purpose of this memorandum is to outline a possible scenario for the disposition of the degraded wetlands on the Waterfront site. It will also address the longer-term management issues with the related Buffer area.

Background

The Redevelopment Agency currently holds title to an approximately 1-acre parcel of land known as the Waterfront Degraded Wetlands. There is a conservation easement recorded on this irregularly shaped parcel. The Huntington Beach Wetlands Conservancy has responsibility for the interim maintenance and management of this Degraded Wetlands under an agreement with the Redevelopment Agency. Prior Redevelopment Agency direction has been for staff to endeavor to sell this parcel to a third party which may utilize it for mitigation credit. Ultimately, the Redevelopment Agency would like to see this degraded wetlands restored by a third party purchaser or another party. Neither the City nor the Redevelopment Agency is in the position to ultimately own or operate wetlands.

The City currently holds title to an approximately 2.45 acre parcel surrounding the Degraded wetlands which is designed to be a buffer for the Degraded Wetlands and will be used for an urban run-off treatment system. The improvements to the Buffer Parcel are being made by the developers of the adjacent Waterfront residential community. The developer anticipates starting its work on the improvements to the Buffer Parcel in August or September. There may be some opportunity to facilitate the removal of the invasive, non-native species from the Degraded Wetlands in association with the developer work on the Buffer Parcel. However, timing is an issue. Once these improvements are completed and turned over to the City, the City or a third party contractor will use funds provided by the developer to maintain this area.

E-3.16

The homeowners association for the Waterfront Residential will be responsible for providing annual funding to the City for the maintenance of the Buffer Parcel. The Public Works Department anticipated having a third party maintain this area and prefer that the City continue to own the Buffer Parcel.

Current Status/Issues

Staff in Economic Development and Public Works have explored the possibility of selling the Degraded Wetlands to a third party agency for mitigation credit. The Port of Long Beach, California Coastal Conservancy, and CalTrans have all been contacted. We have determined that while degraded wetlands can sell for anywhere between \$33,000 to \$150,000 per acre given its mitigation value, this small stand-alone parcel of 1 acre with little mitigation value is not likely to be of interest to any of these prospective purchasers.

Redevelopment law permits the Redevelopment Agency to sell or convey a parcel for purposes of redevelopment, and wetlands restoration would be considered redevelopment. The Agency can select a purchaser and convey the property for no consideration in exchange for a commitment to restore and maintain the Degraded Wetlands. The Redevelopment Agency would need to conduct a public hearing at which it would approve this conveyance pursuant to Health & Safety Code Section 33431.

Another alternative for the Degraded Wetlands would be for it to be conveyed by the Redevelopment Agency to the City. The City would then retain fee ownership and could license the use of the parcel to a third party for restoration, operation and maintenance. This option could also allow the City to have a wetlands parcel which could be used in the future for mitigation credit for a local project if necessary.

The City is not able to convey the Buffer Parcel without declaring it surplus and following the surplus property procedure. With the encumbrance represented by the water quality system and associated issues, the City may be unable to make the findings to declare the property surplus. In addition, there has been an easement granted for the acceptance of the adjacent residential community's storm water onto this parcel and into the water quality system. Also, it is unclear if the terms under which the property was dedicated to the City would preclude its sale as well. Also, the surplus property procedures would not necessarily result in the property being purchased by the same party as the Degraded Wetlands.

As such, the Public Works Department is recommending that the City maintain ownership of the Buffer Parcel. Elements of the Buffer Parcel maintenance related to the water quality system may be best performed directly by the City. However, we would propose that the City enter into a License Agreement with a third-party for partial maintenance of the Buffer Parcel with terms that the third party would operate the Buffer Area. This would include a provision whereby a portion of the funds from the Waterfront Residential would be passed through to the third party for use in the maintenance of only the Buffer Parcel.

E-3.17

The third party entity to which the Degraded Wetlands would be conveyed or licensed and the Buffer Parcel licensed could be the same entity. This would simplify oversight of the Degraded Wetlands and the Buffer Parcel improvements as a single system. In addition, access to the Degraded Wetlands is best taken from the Buffer Parcel.

The Huntington Beach Wetlands Conservancy, which is the interim manager of the Degraded Wetlands, has expressed an interest in being the third -party entity to which the Degraded Wetlands is conveyed or licensed and the licensee for the Buffer Parcel. In addition, this local 501(c)3 non-profit corporation has acquired and restored other wetlands in Huntington Beach.

Recommendations

Since there is little likelihood that the Redevelopment Agency will be able to sell the Degraded Wetlands the following recommendation will facilitate the ultimate restoration of the Degraded Wetlands in a timely manner:

Degraded Wetlands Parcel –

- The Redevelopment Agency will convey the parcel to the City and the City will then enter into a License Agreement with the Huntington Beach Wetlands Conservancy for the restoration, operation and maintenance of the area, or

Alternatively,

- The Redevelopment Agency will prepare an Agreement with the Huntington Beach Wetlands Conservancy under which the Conservancy will be granted title to the Degraded Wetlands in exchange for the restoration and perpetual maintenance of the area.

Buffer Parcel

- The City will prepare a License Agreement with the Huntington Beach Wetlands Conservancy for the Buffer Parcel which will also require the Wetlands Conservancy to maintain the Buffer Parcel as the City's authorized agent under the terms of the Buffer Area Maintenance Agreement with Mayer Financial, LP.

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Prior to us pursuing these alternatives related to the Degraded Wetlands and the Buffer Parcel, it would be appropriate for the City Council/Redevelopment Agency Board to provide direction to staff to no longer pursue the sale of the Degraded Wetlands to a third party for mitigation credit. Please feel free to contact either of us if you require any additional information.

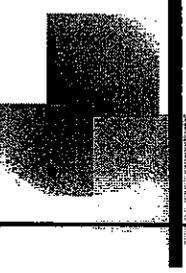
DCB

xc: Dave Webb, City Engineer
Howard Zelefsky, Director of Planning

Attachments:

1. Parcel Map
2. Open Space/Wetland Preservation and Restoration Deed Restriction
3. Buffer Area Maintenance Reimbursement Agreement
4. Storm Water Acceptance Easement
5. License Agreement for Lot AA - Degraded Wetlands

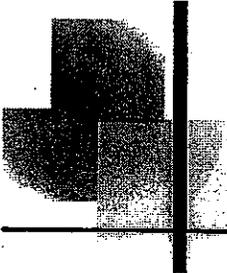
E-3.19



Attachment 1

Part of Attachment 2
of E-3 for 2/7/05 Meeting

E-3.20



Attachment 2

E-3.22

RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE COMPANY

Recorded in Official Records, County of Orange
Gary L. Granville, Clerk-Recorder

RETURN TO:
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219
Attn: Legal Division



NO FEE

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**OPEN SPACE / WETLAND PRESERVATION AND
RESTORATION DEED RESTRICTION**

I. WHEREAS, the City of Huntington Beach Redevelopment Agency, hereinafter referred to as the "Owner," is the record owner of the real property in the City of Huntington Beach, County of Orange, State of California, which is described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property"); and

II. WHEREAS, Mayer Financial, L.P., is the Developer of the Property and the assignee of all right, title and interest of the Robert L. Mayer Trust in the Property. The Robert Mayer Corporation is, and at various times has been, the agent and representative of Mayer Financial, L.P., and the Robert L. Mayer Trust. The Robert Mayer Corporation, Mayer Financial, L.P., and Robert L. Mayer Trust are hereinafter collectively referred to as "Mayer."

III. WHEREAS, the California Coastal Commission, hereinafter referred to as the "Commission," is acting on behalf of the People of the State of California; and

IV. WHEREAS, the subject property is located within the coastal zone as defined in Section 30103 of Division 20 of the California Public Resources Code, hereinafter referred to as the "California Coastal Act of 1976" (the "Act"); and

V. WHEREAS, the Property includes an area (the "Degraded Wetland Area") within which there is an existing .696-acre degraded wetland located generally 1000 feet inland of the northwest corner of Pacific Coast Highway and Beach Boulevard. The Degraded Wetland Area is delineated generally on Exhibit "B" attached hereto and

///

168006726

RICHARDS, WATSON & GERSHON
Attorneys at Law

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THIS INSTRUMENT FILED FOR RECORD BY
FIRST AMERICAN TITLE INSURANCE COMPANY AS AN
ACCOMMODATION ONLY. IT HAS NOT BEEN EXAMINED AS TO
ITS EXECUTION OR AS TO ITS EFFECT UPON THE TITLE

E-3.23'

1 incorporated herein by this reference and described specifically on Exhibit "C" attached
2 hereto and incorporated herein by this reference.

3 VI. WHEREAS, on April 11, 2000, the Commission approved, with
4 conditions, Coastal Development Permit No. A-5-HNB-99-275, an application filed by
5 the Robert L. Mayer Trust c/o the Robert Mayer Corporation and the Agency to fill the
6 Degraded Wetland Area in conjunction with the implementation of a wetland and riparian
7 woodland habitat restoration project at the Shipley Nature Center in the City of
8 Huntington Beach.

9 VII. WHEREAS, on September 13, 2000, the Commission adopted
10 Revised Findings to support its decision to approve Coastal Development Permit
11 No. A-5-HNB-99-275, finding that the development, as conditioned, is consistent with
12 the certified City of Huntington Beach Local Coastal Program.

13 VIII. WHEREAS, on May 17, 2000, project opponents filed a lawsuit
14 entitled Bolsa Chica Land Trust, et al. v. California Coastal Commission, et al., Orange
15 County Superior Court Case No. 00CC05991, seeking to set aside the Commission's
16 approval of Coastal Development Permit No. A-5-HNB-99-275.

17 IX. WHEREAS, on September 14, 1998, the City of Huntington Beach
18 City Council granted the separate application of the Robert Mayer Corporation and Mayer
19 Financial, L.P., for Coastal Development Permit CDP 97-15, approving, inter alia, the
20 construction of the Grand Resort Hotel and Conference Center, located generally on the
21 north side of Pacific Coast Highway, west of Beach Boulevard and east of Huntington
22 Street, in the City of Huntington Beach.

23 X. WHEREAS, on September 22, 1998, the Commission acknowledged
24 receipt of the City's written Notice of Action on CDP 97-15, thereby commencing a 10
25 working day appeal period.

26 XI. WHEREAS, on October 7, 1998, the Commission wrote the Robert
27 Mayer Corporation and City, informing them that the 10-day appeal period expired on

28 ///

E-3.24₂

1 October 6, 1998, that no appeals were received by the Commission, and that CDP 97-15
2 is therefore final.

3 XII. WHEREAS, pursuant to City of Huntington Beach CDP 97-15,
4 Mayer has undertaken substantial site preparatory work and contends that it has incurred
5 substantial liabilities in preparation for imminent construction of the Grand Coast Resort
6 Hotel and Conference Center.

7 XIII. WHEREAS, on September 12, 2000, the Staff of the Commission
8 issued a written Notice of Suspension to the City, suspending CDP 97-15 pending a
9 further review of the legal adequacy of the City's September 18, 1998 Notice of Action.

10 XIV. WHEREAS, the City, Agency and Mayer contend that said Notice of
11 Action was, and is, legally adequate and not subject to challenge.

12 XV. WHEREAS, on November 29, 2000, to resolve their disputed
13 matters, the Commission, City of Huntington Beach, Agency, and Mayer entered into a
14 Settlement Agreement, attached hereto as Exhibit "D" and incorporated herein by this
15 reference (hereinafter referred to as the "Settlement Agreement").

16 XVI. WHEREAS, Paragraph 1 of the Settlement Agreement provides as
17 follows:

18 Recordation of Open Space/Wetland Preservation and Restoration Deed
19 Restriction. The Agency shall execute and record a Deed Restriction over
20 the Degraded Wetland Area which limits, in perpetuity, the uses of the
21 Degraded Wetland area to natural open space for wetland preservation and
22 restoration uses. The Deed Restriction shall run with the land, binding all
23 successors and assigns, and shall be recorded free of prior liens that the
24 Executive Director of the Commission determines may affect the
25 enforceability of the Deed Restriction. The Deed Restriction shall be
26 substantially in the form attached hereto as Exhibit "D," and shall not be
27 removed or changed without a coastal development permit issued by the
28 Commission. The Deed Restriction shall not become effective unless and
until the Commission issues the Notice required under Paragraph 2, below,
and City of Huntington Beach CDP 97-15 is, and remains, final and not
subject to appeal to the Commission.

29 XVII. WHEREAS, Paragraph 2 of the Settlement Agreement further states
as follows:

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E-3.25

1 Withdrawal of Commission Suspension Notice. Within five (5) days
2 receipt of written proof that the Deed Restriction has been recorded
3 consistent with the terms and conditions of Paragraph 1, above, the
4 Commission, through its Executive Director, shall issue a Notice of
5 Withdrawal of Suspension Notice ("Notice") to the City, with copies to the
6 Agency and the Robert Mayer Corporation, formally withdrawing its
7 September 12, 2000 Notice of Suspension and advising that City of
8 Huntington Beach CDP 97-15 is final and not subject to appeal to the
9 Commission. The Notice shall be substantially in the form attached hereto
10 as Exhibit "E." The Commission shall take no action thereafter
11 inconsistent or in conflict with that Notice.

12 XVIII. WHEREAS, Owner has elected to comply with Paragraph 1 of the
13 Settlement Agreement and to execute this Deed Restriction to enable Owner and Mayer to
14 proceed with the development authorized by City of Huntington Beach CDP 97-15.

15 XIX. WHEREAS, the Parties have entered into the Settlement Agreement
16 without any admission of fault or liability of any kind or of any contention of any of the
17 Parties, but instead to avoid the costs and risks of litigation and to resolve this matter in a
18 manner mutually satisfactory to all of the Parties.

19 NOW, THEREFORE, in consideration of the mutual covenants and
20 agreements set forth in the Settlement Agreement, the Owner hereby irrevocably
21 covenants with the Commission that there be and hereby is created the following
22 restrictions on the use and enjoyment of the Degraded Wetland Area of the Property, to be
23 attached to and become a part of the deed to the Property.

24 1. COVENANT, CONDITION AND RESTRICTION. The
25 undersigned Owner, for itself and for its heirs, assigns and successors in interest,
26 covenants and agrees that:

27 the use of the Degraded Wetland Area as shown on Exhibits B and C,
28 attached hereto and incorporated herein by reference, shall be limited to
natural open space for wetlands preservation and restoration uses. No
development as defined in Public Resources Code section 30106, attached
hereto as Exhibit E and incorporated herein by reference, including but not
limited to removal of trees and other major or native vegetation, grading,
paving, installation of structures such as signs, buildings, etc. shall occur or
be allowed on the Degraded Wetland Area with the exception of the
following subject to applicable governmental regulatory requirements:

- (a) the removal of hazardous substances or conditions or diseased plants
or trees;

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- (b) environmental education uses pursuant to a coastal development permit, if required; and
- (c) wetland restoration uses pursuant to a coastal development permit, if required.

2. **DURATION.** This Deed Restriction shall not become effective unless and until the Commission issues the Notice required under Paragraph 2 of the Settlement Agreement, and City of Huntington Beach CDP 97-15 is, and remains, final and not subject to appeal to the Commission. Once effective, the Deed Restriction shall remain in full force and effect in perpetuity, unless subsequently removed or changed by a Coastal Development Permit issued by the Commission, and thereby confers benefit upon the Property described herein, and shall bind Owner and all its assigns or successors in interest.

3. **RIGHT OF ENTRY.** The Commission or its agent may enter on to the Degraded Wetland area of the Property from Beach Boulevard at times reasonably acceptable to the Owner to ascertain whether the use restrictions set forth above are being observed.

4. **REMEDIES.** Any act, conveyance, contract, or authorization by the Owner, whether written or oral, which uses or would cause to be used or would permit use of the Property contrary to the terms of this Deed Restriction will be deemed a violation and a breach hereof. The Commission and the Owner may pursue any and all available legal and/or equitable remedies to enforce the terms and conditions of this Deed Restriction. In the event of a breach, any forbearance on the part of either party to enforce the terms and provisions hereof shall not be deemed a waiver of enforcement right regarding any subsequent breach.

5. **TAXES AND ASSESSMENTS.** It is intended that this Deed Restriction is irrevocable and shall constitute an enforceable restriction within the meaning of (a) Article XIII, section 8, of the California Constitution; and (b) section 402.1 of the California Revenue and Taxation Code or successor statute. Furthermore, this Deed Restriction shall be deemed to constitute a servitude upon and burden to the

E-3.27

1 property within the meaning of section 3712(d) of the California Revenue and Taxation
2 Code, or successor statute, which survives a sale of tax-deeded property.

3 6. SEVERABILITY. If any provision of these restrictions is held to
4 be invalid, or for any reason becomes unenforceable, no other provision shall be thereby
5 affected or impaired.

6
7 Dated: 11-29, 2000
8 REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH

9 SIGNED: *Tom Harman*
10 Tom Harman, Chairman Pro Tem
11 PRINT OR TYPE NAME OF ABOVE

12 * * NOTARY ACKNOWLEDGMENT ON THE NEXT PAGE * *

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27 E-328
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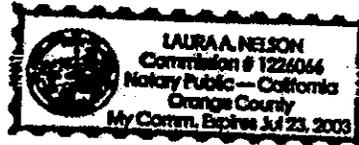
1 STATE OF CALIFORNIA
2 COUNTY OF ORANGE

3 On November 29, 2000 before me, Laura A. Nelson, a Notary Public
4 personally appeared Tom Harman, personally known
5 to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
6 name(s) (s) are subscribed to the within instrument and acknowledged to me that
7 (he) ~~she/they~~ executed the same in (his) ~~her/their~~ authorized capacity(ies), and that by
8 (his) ~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of
9 which the person(s) acted, executed the instrument.

10 WITNESS my hand and official seal.

11
12 Signature

[Handwritten Signature]



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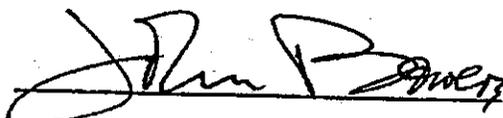
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E-3.29

1 This is to certify that the deed restriction set forth above is hereby
2 acknowledged by the undersigned officer on behalf of the California Coastal Commission
3 pursuant to authority conferred by the California Coastal Commission when it executed
4 the Settlement Agreement attached hereto as Exhibit "D" and the California Coastal
5 Commission consents to recordation thereof by its duly authorized officer.

6
7 Dated: December 15, 2000

8
9
10 
11 John Bowers, Staff Counsel
12 California Coastal Commission

13 STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

15 On 12/15/00 before me, Deborah L. Bove, a Notary Public
16 personally appeared John Bowers, personally known
17 to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
18 name(s) is/are subscribed to the within instrument and acknowledged to me that
19 he/she/they executed the same in his/her/their authorized capacity(ies), and that by
20 his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
21 which the person(s) acted, executed the instrument.

22 WITNESS my hand and official seal.

23 Signature Deborah L. Bove



E-3.30

12063\0003\631622.5

EXHIBIT "A"

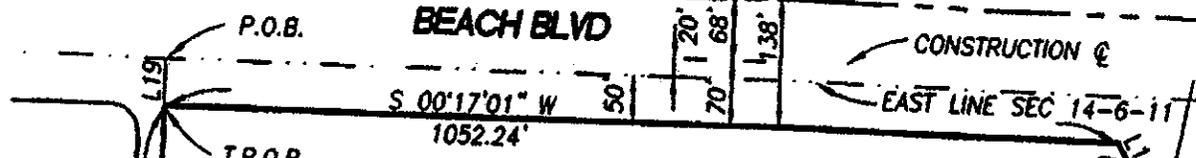
THE PROPERTY – LEGAL DESCRIPTION

12063\0003\633576.1

E-331

EXHIBIT 'A'
the "Property"

PAGE 1 OF 3 PAGES



LINE DATA

NO.	DIRECTION	DISTANCE
L1	S 60°57'59" W	30.03'
L2	S 88°48'52" W	15.08'
L3	N 52°54'04" W	170.18'
L4	N 56°44'15" W	126.00'
L5	N 51°02'09" W	122.87'
L6	N 56°06'20" W	45.02'
L7	N 11°30'02" W	20.77'
L8	N 37°56'06" E	15.58'
L9	N 52°03'54" W	34.00'
L10	S 37°56'06" W	16.76'
L11	N 52°03'54" W	9.00'
L12	N 52°03'54" W	9.00'
L13	N 37°56'06" E	7.28'
L14	N 52°03'54" W	34.00'
L15	S 37°56'06" W	14.96'
L16	S 82°53'34" W	16.47'
L17	N 42°18'11" E	7.52'
L18	N 47°41'18" W	38.85'
L19	N 89°15'39" W	50.00'

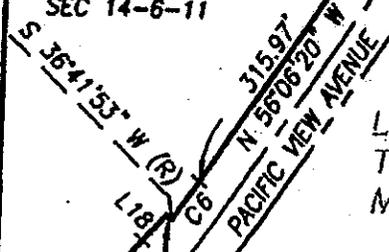
S 33°03'53" W (R)

LOT 1
TR 15535
MMB 790/44-50

TR 9580 MMB 444/29-31
S 89°15'39" E 1658.76'

N 36°24'25" E (R)
R.S. 17/35

N'LY LINE
S1/2 NE1/4
SEC 14-6-11



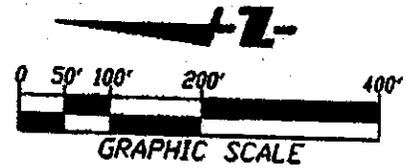
LOT 2
TR 15535
MMB 790/44-50

LOT 3
MMB 628/46-47

R.O.W. DEDICATED PER DOC.
RECORDED SPT. 1, 1995 AS
INS. NO. 95-0364748 O.R.

CURVE DATA

NUMBER	DELTA	RADIUS	LENGTH
C1	16°41'10"	94.00'	27.38'
C2	21°35'54"	1065.00'	401.47'
C3	03°50'11"	1135.00'	76.00'
C4	05°42'06"	1065.00'	105.98'
C5	05°33'16"	1135.00'	110.03'
C6	02°48'13"	1060.00'	51.87'
C7	05°54'17"	2452.00'	252.70'



E-3.3a

EXHIBIT 'A'

PAGE 2 OF 3 PAGES

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA; BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LAS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14 OF MISCELLANEOUS MAPS, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

A PORTION OF THAT LAND SHOWN AS THE DESIGNATED REMAINDER ON MAP THEREOF OF TRACT NO. 15535 RECORDED SEPTEMBER 14, 1999 IN BOOK 790, PAGES 44 THROUGH 50, INCLUSIVE, OF MAPS, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14, PER SAID TRACT NO. 15535; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTH ONE-HALF NORTH 89°15'39" WEST 50.00 FEET TO THE WESTERLY RIGHT OF WAY OF BEACH BOULEVARD AS SHOWN ON SAID TRACT NO. 15535, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE ALONG SAID WESTERLY RIGHT OF WAY SOUTH 00°17'01" WEST 1052.24 FEET TO A POINT ON THE GENERAL NORTHERLY RIGHT OF WAY OF PACIFIC VIEW AVENUE, DEDICATED PER SAID TRACT NO. 15535; THENCE ALONG SAID GENERAL NORTHERLY RIGHT OF WAY, THROUGH THE FOLLOWING COURSES, SOUTH 60°57'59" WEST 30.03 FEET; THENCE SOUTH 88°48'52" WEST 15.08 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 94.00 FEET; THENCE WESTERLY ALONG SAID CURVE 27.38 FEET THROUGH A CENTRAL ANGLE OF 16°41'10" TO THE BEGINNING OF A COMPOUND CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1065.00 FEET, A LINE RADIAL TO SAID POINT BEARS SOUTH 15°30'02" WEST; THENCE NORTHWESTERLY ALONG SAID CURVE 326.48 FEET THROUGH A CENTRAL ANGLE OF 21°35'54"; THENCE CONTINUING ALONG SAID NORTHEASTERLY RIGHT OF WAY THROUGH THE FOLLOWING COURSES; THENCE TANGENT TO SAID CURVE NORTH 52°54'04" WEST 170.18 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1135.00 FEET; THENCE ALONG SAID CURVE 76.00 FEET THROUGH A CENTRAL ANGLE OF 03°50'11"; THENCE TANGENT TO SAID CURVE NORTH 56°44'15" WEST 126.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1065.00 FEET; THENCE ALONG SAID CURVE 105.98 FEET THROUGH A CENTRAL ANGLE OF 05°42'06"; THENCE TANGENT TO SAID CURVE NORTH 51°02'09" WEST 122.87 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1135.00 FEET; THENCE ALONG SAID CURVE 110.03 FEET THROUGH A CENTRAL ANGLE OF 05°33'16"; THENCE TANGENT TO SAID CURVE NORTH 56°06'20" WEST 45.02 FEET; THENCE NORTH 11°30'02" WEST 20.77 FEET; THENCE NORTH 37°56'06" EAST 15.58 FEET; THENCE NORTH 52°03'54" WEST 34.00 FEET; THENCE SOUTH 37°56'06" WEST 16.76 FEET; THENCE NORTH 52°03'54" WEST 18.00 FEET; THENCE NORTH 37°56'06" EAST 7.28 FEET; THENCE NORTH 52°03'54" WEST 34.00 FEET; THENCE SOUTH 37°56'06" WEST 14.96 FEET; THENCE SOUTH 82°53'34" WEST 16.47 FEET; THENCE NORTH 56°06'20" WEST 315.97 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 1060.00 FEET; THENCE ALONG SAID CURVE 51.87 FEET THROUGH A CENTRAL ANGLE OF 02°48'13" TO A POINT ON THE GENERAL NORTHEASTERLY RIGHT OF WAY OF PACIFIC VIEW AVENUE, DEDICATED PER DOCUMENT RECORDED SEPTEMBER 1, 1995, AS INSTRUMENT NUMBER 95-0384748, RECORDS OF THE COUNTY OF ORANGE, A LINE RADIAL TO SAID POINT BEARS SOUTH 36°41'53" WEST; THENCE LEAVING SAID NORTHEASTERLY RIGHT OF WAY PER SAID TRACT NO. 15535 AND CONTINUING ALONG SAID GENERAL NORTHEASTERLY RIGHT OF WAY PER SAID DOCUMENT, THROUGH THE FOLLOWING COURSES; THENCE NORTH 42°18'11" EAST 7.52 FEET; THENCE NORTH 47°41'18" WEST 38.85 FEET TO THE BEGINNING OF A TANGENT

E-3.33

EXHIBIT 'A'

PAGE 3 OF 3 PAGES

CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2452.00 FEET; THENCE ALONG SAID CURVE 252.70 FEET THROUGH A CENTRAL ANGLE OF 05°54'17" TO SAID NORTH LINE OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14; THENCE LEAVING SAID GENERAL NORTHEASTERLY RIGHT OF WAY, ALONG SAID NORTH LINE SOUTH 89°15'39" EAST 1658.76 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS 22.65 +/- ACRES

AS SHOWN ON PAGE 1 OF THIS EXHIBIT "A".

DATED THIS 13th DAY OF November, 2000


JERRY L. USELTON, L.S. 5347
EXP. 12/31/03



E-334

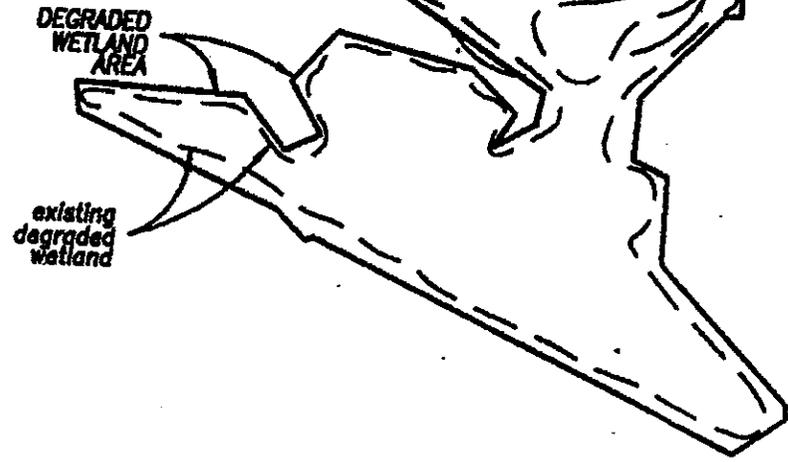
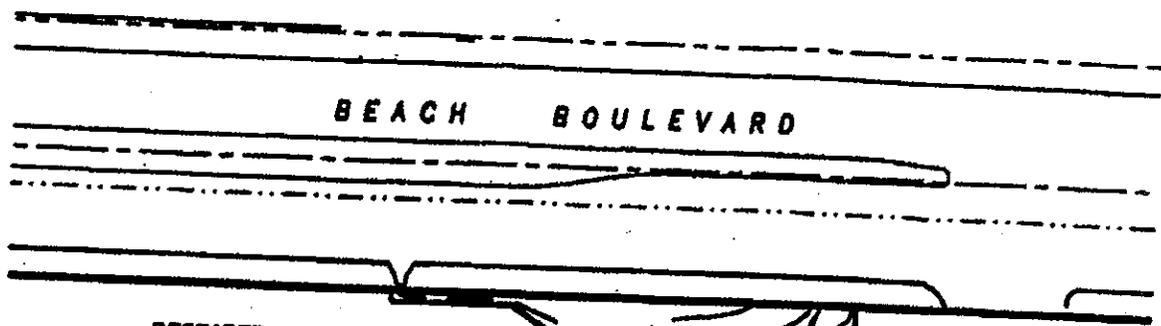
EXHIBIT "B"

DEGRADED WETLAND AREA - GENERAL CONFIGURATION

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E-3.35

EXHIBIT 'B'
PAGE 1 OF 1 PAGES



the "Property"

E-3.36

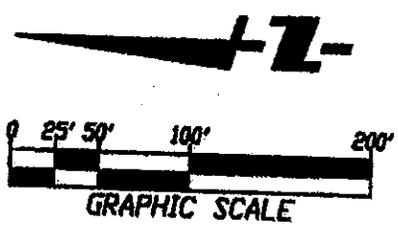


EXHIBIT "C"

DEGRADED WETLAND AREA - LEGAL DESCRIPTION

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E-3.37

EXHIBIT 'C'
PAGE 1 OF 2 PAGES

SUNRISE DRIVE N89°15'39"W
N89°15'39"W 50.00' P.O.B.

LINE DATA

NO.	DIRECTION	DISTANCE
L1	S 00°17'10" W	257.55'
L2	N 87°33'37" W	14.00'
L3	N 01°08'12" E	8.59'
L4	N 45°11'30" W	65.40'
L5	N 85°23'00" W	35.27'
L6	S 24°55'48" W	21.31'
L7	N 87°17'23" W	48.09'
L8	S 47°23'51" W	104.14'
L9	S 84°57'19" W	7.30'
L10	N 35°26'46" W	36.33'
L11	N 25°58'40" E	262.04'
L12	N 22°27'35" W	4.50'
L13	N 46°37'28" E	23.07'
L14	N 24°21'30" E	120.69'
L15	N 85°27'33" E	17.12'
L16	S 02°55'37" W	92.82'
L17	S 52°05'49" W	37.38'
L18	S 25°20'52" E	21.31'
L19	N 60°23'17" E	33.54'
L20	S 48°29'43" E	37.00'
L21	S 13°57'24" W	77.40'
L22	S 44°05'07" W	34.49'
L23	N 56°31'38" W	21.74'
L24	S 29°01'58" E	26.68'
L25	S 78°10'37" E	18.00'
L26	N 33°19'31" E	98.78'
L27	N 00°14'19" E	65.86'
L28	N 89°42'50" E	6.00'

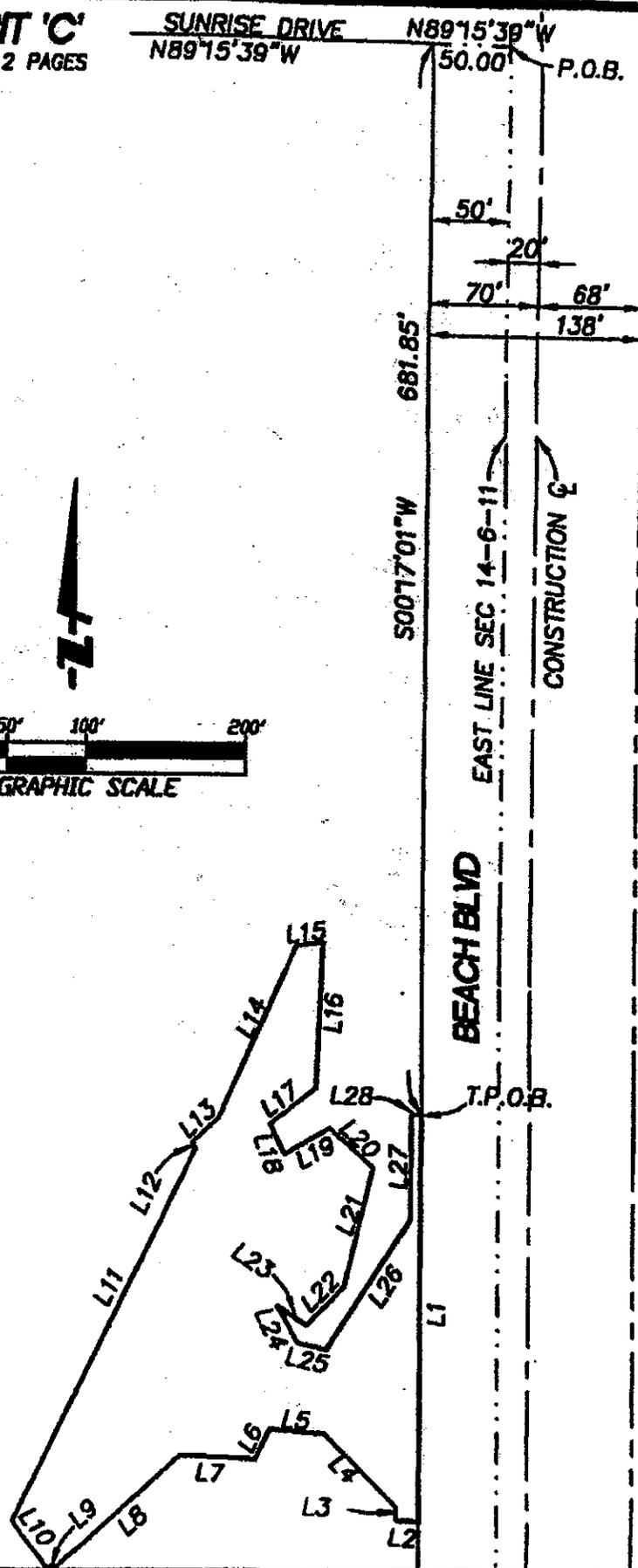
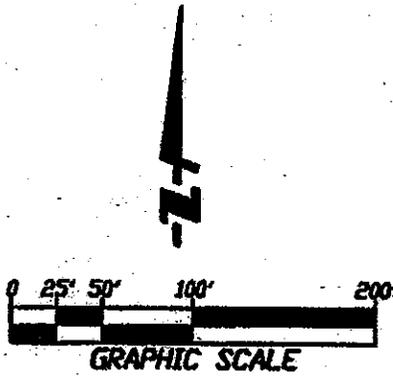


EXHIBIT 'C'
PAGE 2 OF 2 PAGES

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA; BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LOS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THOSE PORTIONS OF THAT LAND DESIGNATED AS REMAINDER ON MAP THEREOF OF TRACT NO. 15535 RECORDED SEPTEMBER 14, 1999 IN BOOK 790, PAGES 44 THROUGH 50, INCLUSIVE, OF MAPS, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14, PER SAID TRACT MAP; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTH ONE-HALF, NORTH 89°15'39" WEST 50.00 FEET TO THE WESTERLY RIGHT OF WAY OF BEACH BOULEVARD AS SHOWN ON SAID TRACT MAP; THENCE ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'01" WEST 681.85 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'10" WEST 257.55 FEET; THENCE, LEAVING SAID WESTERLY RIGHT OF WAY, NORTH 87°33'37" WEST 14.00 FEET; THENCE NORTH 01°08'12" EAST 8.59 FEET; THENCE NORTH 45°11'30" WEST 65.40 FEET; THENCE NORTH 85°23'00" WEST 35.27 FEET; THENCE SOUTH 24°55'48" WEST 21.31 FEET; THENCE NORTH 87°17'23" WEST 48.09 FEET; THENCE SOUTH 47°23'51" WEST 104.14 FEET; THENCE SOUTH 84°57'19" WEST 7.30 FEET; THENCE NORTH 35°26'46" WEST 36.33 FEET; THENCE NORTH 25°58'40" EAST 262.04 FEET; THENCE NORTH 22°27'35" WEST 4.50 FEET; THENCE NORTH 46°37'29" EAST 23.07 FEET; THENCE NORTH 24°21'30" EAST 120.69 FEET; THENCE NORTH 83°27'33" EAST 17.12 FEET; THENCE SOUTH 02°55'37" WEST 92.82 FEET; THENCE SOUTH 52°05'49" WEST 37.38 FEET; THENCE SOUTH 25°20'52" EAST 21.31 FEET; THENCE NORTH 60°23'17" EAST 33.54 FEET; THENCE SOUTH 48°29'43" EAST 37.00 FEET; THENCE SOUTH 13°57'24" WEST 77.40 FEET; THENCE SOUTH 44°05'07" WEST 34.49 FEET; THENCE NORTH 56°31'38" WEST 21.74 FEET; THENCE SOUTH 29°01'58" EAST 26.68 FEET; THENCE SOUTH 78°10'37" EAST 18.00 FEET; THENCE NORTH 33°19'31" EAST 98.78 FEET; THENCE NORTH 00°14'09" EAST 65.86 FEET; THENCE NORTH 89°42'50" EAST 6.00 FEET; TO SAID WESTERLY RIGHT OF WAY AND THE TRUE POINT OF BEGINNING.

CONTAINS 43,651 SQUARE FEET OR 1.002 ACRES OF LAND, MORE OR LESS.

AS SHOWN ON PAGE 1 OF THIS EXHIBIT "C".

DATED THIS 13th DAY OF November, 2000


JERRY L. USELTON, L.S. 5347
EXP. 12/31/03

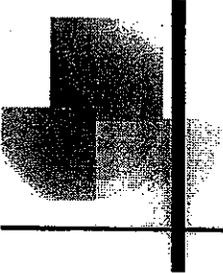


E-339

EXHIBIT "D"
SETTLEMENT AGREEMENT

12063100031633576.1

E-3.40



Attachment 3

E-341

Received from County Recorder 6-4-03
Recorded in Official Records, County of Orange
Tom Daly, Clerk-Recorder

RECORDING REQUESTED BY:)

AND WHEN RECORDED MAIL TO:)

CONNIE BROCKWAY CITY CLERK
CITY OF HUNTINGTON BEACH
http://www.ci.huntington-beach.ca.us
P O BOX 190 - 2000 MAIN STREET
HUNTINGTON BEACH CA 92648

NO FEE
2003000555502 04:30pm 05/14/03
130 11 A12 10
0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

(Space Above for Recorder's Use)

TT
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201

This document is solely for the
official business of the City
of Huntington Beach, as contem-
plated under Government Code
Section 6103 and should be recorded
at the City's expense.

AGREEMENT
(Buffer Area Maintenance Reimbursement)

This Agreement is made and entered into as of the 5th day of January,
2003, by and between MAYER FINANCIAL, L.P., a California limited partnership
("Developer"), and the CITY OF HUNTINGTON BEACH, a municipal corporation ("City"),
with reference to the following:

RECITALS

A. Developer is the owner of that certain real property located in the City of
Huntington Beach, County of Orange, State of California as more particularly described on
Exhibit "A" attached hereto (the "Buffer Area").

B. The Buffer Area is located immediately adjacent to a 184-unit multi-family
residential project being built by PLC/Lyon Waterfront Residential, LLC, a Delaware limited
liability company ("Builder"), which is generally known as "The Waterfront" (the "Project")
and in which a homeowners association (the "HOA") has been or will be formed.

C. On or about March 12, 2002, the Planning Commission of the City issued
its Conditions of Approval of Tentative Tract Map No. 15549 (governing the development
of the Project) which provided, in Section 4(f)(7) thereof, with respect to the maintenance
of the Buffer Area as follows (the "Buffer Area Condition of Approval"):

Once the final design plans have been prepared, an irrevocable trust fund
shall be established with an initial amount of \$30,000 naming the City of
Huntington Beach as Trustee. This fund shall be for the purpose of funding
and paying the cost of maintenance, inspections, maintain vector
countermeasures, cleanup, operation, monitoring, sampling, replacement
planting, plant harvesting, sediment and gross pollutant removal of the
buffer area (Lot BB of TTM No. 15549) as provided by the City and its
agents. The developer, or the Home Owner's Association (HOA) as

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official business of the City
of Huntington Beach, as contem-
plated under Government Code

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successor, shall be responsible for maintaining this fund through payments on a yearly basis. The Covenants, Conditions and Restrictions (CC&R's) for the HOA shall be reviewed and approved by Public Works prior to occupancy of the first unit. This requirement shall be explicitly defined in an agreement with the developer, and in the CC&R's for the HOA, and shall be binding as long as the buffer area is in place. Once adopted, this provision in the agreement or the CC&R's shall not be altered, amended or deleted without prior approval from the City of Huntington Beach Public Works Department.

D. Developer and City now desire to enter into this Agreement for the purpose of satisfying the Buffer Area Condition of Approval.

Now, therefore, in consideration of the above Recitals, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Establishment of Trust Fund. City shall establish a designated separate account (the "Trust Account") in which the Trust Funds (as that term is defined in Section 2 below) shall be (i) held by City as trustee and (ii) disbursed by City only as provided in Section 2 below.

2. Trust Funds. All funds deposited, held and disbursed from the Trust Account (the "Trust Funds") shall be subject to the following:

a. Initial Deposit of Trust Funds. Within thirty (30) days of the execution of this Agreement by Developer and City, Developer shall deliver to City for immediate deposit into the Trust Account the sum of Thirty Thousand and No/100 Dollars (\$30,000.00) (the "Initial Deposit").

b. Interest on Trust Funds. The Trust Account shall be interest bearing at the same rate as is earned on City funds held for investment for periods of not less than ninety (90) days. All interest earned on the Trust Funds shall be (i) promptly reinvested in the Trust Account and (ii) deemed to be Trust Funds.

c. City Services/Use of Trust Funds. City (or its authorized agent) shall provide the following services with respect to the Trust Account and the Buffer Area (the "Permitted Services") and is entitled to make periodic disbursements of Trust Funds from the Trust Account in payment only of such Permitted Services:

(1) Maintenance. City shall operate and maintain the Buffer Area in a clean condition (including maintaining appropriate vector countermeasures, plant harvesting, sediment and gross pollutant removal) on an "as needed" for proper operation basis;

(2) Inspections. City shall monitor and inspect (including taking and analyzing Buffer Area soil samples) the Buffer Area on a reasonable basis [not to exceed four (4) site inspections/samplings per year];

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(3) Repair. City shall replace damaged planting within the Buffer Area on an "as needed" for proper operation basis; and

(4) City shall provide the administrative and reporting services more particularly described in Section 2(d) below.

d. Administration; Annual Accounting. During the term of this Agreement, City shall (i) administer the Trust Account and (ii) deliver to Developer on or before the anniversary of the date of this Agreement each year a detailed accounting [supported by copies of invoices for any expenditure in excess of One Thousand and No/100 Dollars (\$1,000.00)] of all disbursements from the Trust Account during such year. Costs reasonably incurred by City in performing such administrative duties and providing such reports shall be subject to reimbursement to City from the Trust Funds; provided, however, that such costs shall not exceed an aggregate of five percent (5%) of the actual costs reasonably incurred by City in performing the Permitted Services with respect to the Buffer Area for the year in question.

e. Reimbursement of Trust Funds. Developer shall cause the Trust Account to be reimbursed for Trust Funds expended by City on the following basis:

(1) Annual Reimbursement. Reimbursement shall be made on an annual basis by delivery to City of a check in the amount of the reimbursement within ninety (90) days of receipt by Developer from City of the Accounting.

(2) Amount of Reimbursement. Subject to the provisions of Section 2(e)(3) below, the amount to be so reimbursed shall be such amount as is necessary to bring the Trust Account balance up to Thirty Thousand and No/100 Dollars (\$30,000.00).

(3) Adjustment of Reimbursement of Trust Funds Amount. If during the term of this Agreement the aggregate costs incurred by City in providing the Permitted Services with respect to the Buffer Area in any given year (the "Annual Aggregate Costs") exceed the sum of Thirty Thousand and No/100 Dollars (\$30,000.00), the amount to be reimbursed pursuant to Section 2(e)(2) above with respect to such year shall be equal to the lesser of (i) such Annual Aggregate Costs or (ii) Thirty Thousand and No/100 Dollars (\$30,000.00) adjusted as provided below to reflect the percentage increase, if any, in the CPI (as defined below) during the preceding year. For purposes of calculating the percentage increase in the CPI for any given year, the CPI published for the month of January of the year immediately preceding the year in question and the CPI published for the month of January of the year in question shall be used. In no event shall the percentage increase in the amount of the reimbursement be greater than five percent (5%) in any year. As used herein, the term "CPI" shall mean the Consumer Price Index for all Urban Consumers, All Items, Long Beach Average, as published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the CPI shall cease to exist, then such other index generally recognized as a successor index thereto, as agreed upon by City and Developer, shall be used in lieu thereof. City shall make the foregoing adjustments and shall give written notice to Developer of the adjusted amount to be so reimbursed, together with its reasonably detailed calculations thereof, no later than thirty (30) days prior to the date the reimbursement is due hereunder.

f. Accidental Damages/Improvements to Buffer Area.

Notwithstanding anything to the contrary, Trust Funds shall not be used by City for repair or improvements that are a result of accidental damage or pollution to the Buffer Area unless such accidental damage or pollution is caused by, or results directly from, an action or omission committed by Developer, Builder, the HOA or the owners of residences within the Project.

3. No Duty of Maintain. Except as provided herein for payment and/or reimbursement of the Trust Funds, Developer shall have no duty to maintain the Buffer Area.

4. Indemnification by City. City hereby agrees to indemnify, protect, defend and hold Developer harmless from any claim, loss, damage, liability, lien, cost and/or expense (including attorneys' fees and court costs) arising out of or in any way related to the performance or failure of performance by City (or its authorized agent) of any Permitted Services or use of the Trust Funds except in accordance with the provisions of this Agreement.

5. Notices. All notices required to be given under this Agreement shall be in writing and shall be transmitted either by personal hand delivery or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if hand delivered, and forty-eight (48) hours after dispatch, if mailed in accordance with the above. Notices to the respective parties shall be sent to the following addresses unless written notice of a change of address has been given pursuant hereto:

If to City: City of Huntington Beach
 2000 Main Street
 Huntington Beach, CA 92648
 Attn: Director of Public Works

If to Developer: Mayer Financial, L.P.
 c/o The Robert Mayer Corporation
 Suite 1050
 660 Newport Center Drive
 Newport Beach, CA 92660
 Attn: Larry Brose

6. Successors and Assigns This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Developer shall be entitled to assign this Agreement, or any interest therein, to the HOA or Builder (in which case Builder shall be entitled to subsequently assign its interest herein to the HOA) by one (1) or more written assignment(s) recorded in the Official Records of Orange County, whereupon Developer (or Builder in the case of any subsequent assignment by Builder to the HOA) shall be automatically released from any further obligations hereunder.

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7. Counterparts and Facsimile Signature. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which collectively shall constitute but one and the same instrument. If this Agreement is so executed by one (1) or more parties in counterpart, the pages bearing the signatures of such parties may be transmitted to the other parties by way of facsimile, which transmission shall be deemed the same as delivery hereunder of original signatures.

8. Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by the laws of the State of California, with venue in the County of Orange, State of California.

9. Severability. In the event that any provision of this Agreement, or the application thereof to any person or under any circumstance, is determined to be invalid or unlawful, or unenforceable to any extent, then to such extent, such provision shall be deemed severed from this Agreement. However, the application of such provision to any other persons or entities or under any other circumstance other than those as to which it is determined to be invalid, unlawful or unenforceable is valid, lawful and enforceable, and every remaining provision of this Agreement shall continue in full force and effect.

10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no other oral or written agreements between the parties concerning the subject matter of this Agreement.

11. Further Assurances. Each of the parties hereto hereby agrees to execute such further documents or instruments as may be necessary or appropriate to carry out the intention of this Agreement.

12. Exhibits. All exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

13. Yearly Time Periods. Unless otherwise set forth herein, each "year" or "yearly" period referred to herein shall be deemed to commence on the day and month upon which this Agreement is dated.

[Balance of this page intentionally left blank]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

DEVELOPER: MAYER FINANCIAL, L.P.,
a California limited partnership

By: RLM Management Inc.,
a California corporation as
its General Partner

By: *Robert Mayer*
Its: Chairman/President

By: *[Signature]*
Its: SECRET

CITY: THE CITY OF HUNTINGTON BEACH,
a municipal corporation

By: *Connie Boardman*
Its: MAYOR

By: *Connie Boardman*
Its: City Clerk 5/9/03

[Signature]
City Administrator

[Signature]
City Attorney

[Signature]
Director of Public Works

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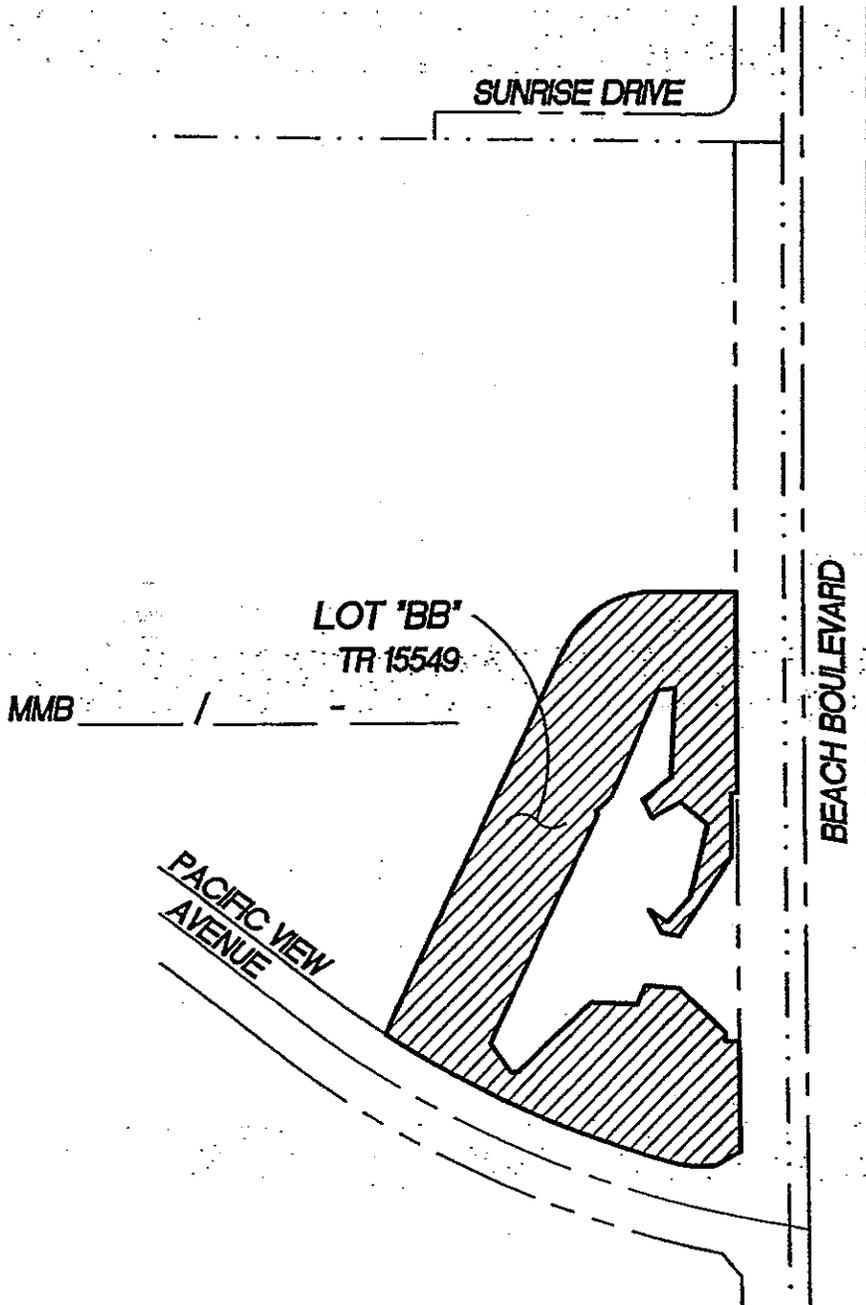
EXHIBIT "A"
THE BUFFER AREA

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA; BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LAS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14 OF MISCELLANEOUS MAPS, RECORDS OF THE COUNTY OF ORANGE.

LOT BB AS SHOWN ON THE MAP OF TRACT NO. 15549, RECORDED IN BOOK _____, PAGES _____ THROUGH _____, INCLUSIVE, OF MAPS, RECORDS OF THE COUNTY OF ORANGE.

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EXHIBIT 'A'
THE BUFFER AREA



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FUSCOE ENGINEERING SAN DIEGO INC.
6390 GREENWICH DR. STE. 170
SAN DIEGO, CA 92122
PHONE (858) 554-1500

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On May 9, 2003 before me, Kelly Louise Mandic
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Connie Boardman + Connie Brockway
Name(s) of Signer(s)

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.

Kelly Louise Mandic
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

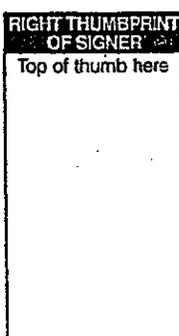
Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

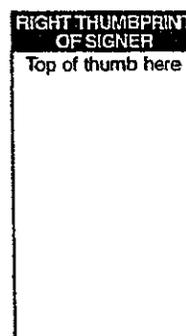
- Individual
- Corporate Officer
Title(s): _____
- Partner — Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

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



Signer Is Representing: _____

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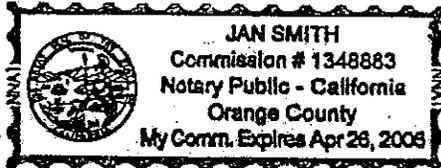
STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On March 18, 2003, before me, Jan Smith, Notary Public, personally appeared ROBERT L. MAYER ~~and~~

~~_____~~, personally known to me ~~(or proven 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]



Signature

A handwritten signature in cursive script that reads "Jan Smith".

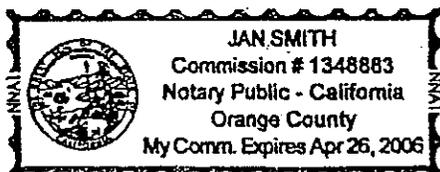
STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On April 11, 2003, before me, Jan Smith, Notary Public, personally appeared ROBERT L. MAYER, JR. ~~and~~

~~_____~~, personally known to me ~~(or proven 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]



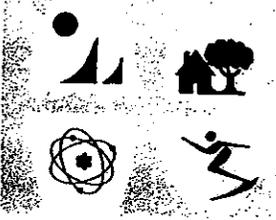
Signature

A handwritten signature in cursive script that reads "Jan Smith".

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Attachment 4

E-3.5a



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF ECONOMIC DEVELOPMENT

January 6, 2003

Director 714/536-5582
FAX 714/375-5087

Redevelopment 714/536-5582
Housing 714/536-5542

Mr. Gary Gorman
Huntington Beach Wetlands Conservancy
P.O. Box 5903
Huntington Beach, CA 92615

RE: Extension of the License Agreement for Lot AA (Degraded Wetlands, Waterfront Project)

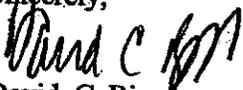
The License Agreement by and between Mayer Financial, L.P., the Huntington Beach Wetlands Conservancy (Conservancy), and the Redevelopment Agency of the City of Huntington Beach (Agency), approved on May 5, 2001, automatically terminates when Mayer conveys Lot AA (Degraded Wetland) to the Agency. The quitclaim deed transferring the parcel to the Agency was recorded on December 20, 2002.

According to Section 3.5 of the agreement, with the written approval of the Agency, the term of the License Agreement with the Conservancy may be extended for a specified period acknowledging that Mayer is automatically released from any and all obligations for the maintenance, restoration or preservation of the Degraded Wetland Area.

This letter authorizes the extension of the License Agreement with the Conservancy to June 30, 2003. By the Chairman of Huntington Beach Wetland Conservancy signing below, the License Agreement will be extended; thereafter, the Agency may provide additional written approvals to extend the License Agreement with the concurrence of the Conservancy.

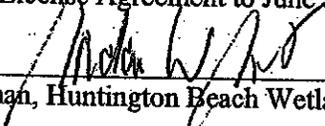
After the Chairman signs, please return the original signed copy of this letter to the above address. Should you have any questions, please call Carol Runzel, Assistant Project Manager, at (714) 536-5224.

Sincerely,


David C. Biggs
Deputy Executive Director

cc: City Council/Agency Board
Ray Silver, City Administrator/Executive Director

The Huntington Beach Wetlands Conservancy hereby accepts extending the term of the aforementioned License Agreement to June 30, 2003.

Signed: 
Chairman, Huntington Beach Wetlands Conservancy

Dated: 1-20-03

(Gordon W. Smith)
Chairman

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**LICENSE AGREEMENT BY AND BETWEEN MAYER FINANCIAL, L.P.,
HUNTINGTON BEACH WETLANDS CONSERVANCY, AND THE
REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH RELATING
TO THE DEGRADED WETLAND AREA**

ARTICLE 1

PARTIES AND DATE

This License Agreement ("Agreement") is entered into as of May 7, 2001, by and between MAYER FINANCIAL, L.P., a California limited partnership ("Mayer"); HUNTINGTON BEACH WETLANDS CONSERVANCY, a California non-profit corporation ("Conservancy"); and the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body corporate and politic ("Agency").

ARTICLE 2

RECITALS

2.1 Mayer is the fee owner of that certain real property located in Huntington Beach, California, and described in the attached Exhibit "A" ("Degraded Wetland Area") and incorporated herein by this reference, and owns such property subject to the terms and conditions in the Deed Restriction and easement described in Section 2.2, below.

2.2 Agency has expressly reserved for itself a perpetual, non-exclusive easement on, over and across the Degraded Wetland Area ("Conservation Easement") pursuant to a Grant Deed recorded on or about the date of this Agreement which Grant Deed conveys certain Agency property (including the Degraded Wetland Area) to Mayer. The Conservation Easement was reserved by Agency for those purposes set forth in that certain Open Space/Wetland Preservation and Restoration Deed Restriction recorded against the Degraded Wetland Area on December 19, 2000 as Instrument No. 20000689468 in the Orange County Recorder's Office ("Deed Restriction"), under which Agency is a beneficiary. The Deed Restriction was recorded pursuant to that certain Settlement Agreement entered into on or about November 29, 2000 by and between the City of Huntington Beach ("City"), the California Coastal Commission ("Commission"), the Agency, Mayer, and Mayer related entities (the "Settlement Agreement"). The easement reserved in the Grant Deed by Agency constitutes a "conservation easement" in favor of Agency pursuant to California Civil Code Section 815.1. The terms, conditions and restrictions in the Grant Deed and Deed Restriction are incorporated herein by reference.

2.3 Conservancy has been selected to maintain the Degraded Wetland Area and ensure that the use of the Degraded Wetland Area is in compliance with the Deed Restriction until such time as fee ownership of the Degraded Wetland Area is conveyed back to the Agency by Mayer pursuant to that certain Amended and Restated Disposition and Development

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Agreement entered into by and between Agency and Mayer on September 14, 1998, as amended by the First Implementation Agreement to Amended and Restated Disposition and Development Agreement (the "First Implementation Agreement") entered into on or about May 15, 2000, and the Second Implementation Agreement to Amended and Restated Disposition and Development Agreement (the "Second Implementation Agreement") entered into on or about February 5, 2001 (collectively, the "DDA"). Nothing contained in this Agreement shall change the rights or obligations of the respective parties under the DDA.

2.4 Mayer and Agency desire to give Conservancy permission to gain access to the Degraded Wetland Area, and Conservancy desires to obtain permission to gain access to the Degraded Wetland Area, for purposes related to the performance of Conservancy's duties under this Agreement, the Deed Restriction and the Conservation Easement.

ARTICLE 3

TERMS

3.1 Permitted Uses. Mayer and Agency hereby grant to Conservancy (including Conservancy's employees, consultants, subconsultants, representatives, and agents) a temporary, nonexclusive right to enter onto the Degraded Wetland Area for the purposes described below relating to interim maintenance of the Degraded Wetland Area, in accordance at all times with the requirements of the Deed Restriction, the Conservation Easement and the Settlement Agreement (collectively, the "Permitted Uses"):

- a. Maintain the Degraded Wetland Area by removing accumulated trash and debris from the Degraded Wetland Area, and take any and all other steps required by the Deed Restriction for maintenance of the Degraded Wetland Area.
- b. Inspect the Degraded Wetland Area on a regular basis and report promptly to Agency and Mayer any condition causing or likely to cause significant damage or destruction to the Degraded Wetland Area.
- c. Comply with all other requirements of the Deed Restriction, Conservation Easement, and Settlement Agreement.

With the exception of the Permitted Uses described in this Agreement and other uses first approved in writing by Mayer and Agency, Conservancy shall not be authorized to use the Degraded Wetland Area for any other purpose whatsoever. Without limiting the foregoing, in no event may the Conservancy place any signs, placards or related items on or around the Degraded Wetland Area on a permanent or temporary basis without the prior express written consent of the Agency and Mayer. Additionally, the express written consent of the Agency and Mayer (which consent shall be in the Agency's and Mayer's sole and absolute discretion) shall be obtained prior to the Conservancy (i) allowing the entry of any person to the Degraded Wetland Area except those direct representatives of the Conservancy who enter for the specific purposes of performing the Conservancy's obligations hereunder, (ii) planting any plant materials, performing any restoration or alteration of any nature whatsoever to the Degraded Wetland Area

E-3.55

or surrounding property, (iii) filing each and any specific permit application with any governmental agency regarding the Degraded Wetland Area or surrounding property, (iv) seeking each and any specific grant or loan or engaging in any other specific fund raising effort for the Degraded Wetland Area, or (v) making any use thereof other than for the uses specifically prescribed in this Agreement. Conservancy shall use the Degraded Wetland Area at reasonable times and in a reasonable manner. Nothing herein shall constitute a grant of any real property interest in the Degraded Wetland Area to the Conservancy other than the limited license.

3.2 Compliance with Laws. The Conservancy shall comply with all federal, state and local laws, statutes and ordinances in connection with Conservancy's entry on the Degraded Wetland Area and performance under this Agreement.

3.3 Effective Date. The effective date of this Agreement shall be the date set forth above in Article 1 of this Agreement ("Effective Date").

3.4 Term. This Agreement shall be effective for the entire period during which Mayer holds fee title to the Degraded Wetland Area, and shall expire upon Mayer's conveyance of fee title to the Degraded Wetland Area to Agency pursuant to the DDA, but in no event shall this Agreement be effective for longer than twenty (20) months from the Effective Date ("Term"), unless earlier terminated or extended pursuant to this Agreement. Upon the expiration of the Term, no additional instrument, consent or action by either party shall be required to terminate this Agreement. With the prior written approval of the Agency, the Term referred to in this Section 3.4 may be extended for a specified period, provided, however, that upon reconveyance of fee title to the Degraded Wetland Area to the Agency and concurrent termination of this Agreement, Mayer shall be automatically released from any and all obligations for the maintenance, restoration or preservation of the Degraded Wetland Area.

3.5 Compensation. Neither Agency nor Mayer shall be required to pay Conservancy any monetary compensation for Conservancy's performance under this Agreement.

3.6 Condition of Licensed Property. Upon the expiration or termination of this Agreement, Conservancy shall cause the Degraded Wetland Area to be left in the same condition as the Degraded Wetland Area was in prior to Conservancy's entry onto the Degraded Wetland Area, subject to any changes to the condition of the Degraded Wetland Area that are required or necessary in order to satisfy or comply with the Deed Restriction. Conservancy shall, at its sole cost and expense, repair or cause to be repaired any damage to the Degraded Wetland Area caused by Conservancy to the Degraded Wetland Area. Conservancy acknowledges that on the Effective Date of this Agreement that Mayer is and shall be engaged in significant construction activity adjacent to the Degraded Wetland Area for an extended period of time. Nothing in this Agreement shall be construed as a limitation upon such construction activity or an obligation of Mayer or Agency to restore or otherwise improve the existing condition of the Degraded Wetland Area in any manner.

3.7 Vector Control. Orange County Vector Control shall be permitted to enter the Degraded Wetland Area for vector control purposes as it deems necessary.

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3.8 Entry by Mayer and Agency. Nothing in this Agreement shall be construed to restrict or prevent Mayer and Agency, and their respective agents, consultants and assigns, entry to the Degraded Wetland Area.

3.9 Adjacent Property. Conservancy acknowledges that Mayer intends to seek various governmental permits regarding the development of property adjacent to the Degraded Wetland Area and the establishment of a suitable buffer zone between the Degraded Wetland Area and such development.

3.10 Hazardous Materials. Conservancy shall not store or use or consent to the storage or use of any Hazardous Materials on the Degraded Wetland Area at any time during the Term. As used in this Agreement, "Hazardous Materials," means any substance, material or waste which is or becomes regulated by the United States government, the State of California, or any local or other governmental authority, including, without limitation, any material, substance or waste which is (i) defined as a "hazardous waste", "acutely hazardous waste", "restricted hazardous waste", or "extremely hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140, of the California Health and Safety Code; (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code; (iii) defined as a "hazardous material", "hazardous substance", or "hazardous waste" under Section 25501 of the California Health and Safety Code; (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code; (v) petroleum; (vi) asbestos; (vii) a polychlorinated biphenyl; (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20; (ix) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317); (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Section 6903); (xi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601); or (xii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements either requires special handling in its use, transportation, generation, collection, storage, treatment or disposal, or is defined as "hazardous" or is harmful to the environment or capable of posing a risk of injury to public health and safety.

3.11 No Encumbrances. Conservancy shall keep the Degraded Wetland Area free from all encumbrances and liens of any kind during the Term of this Agreement. Conservancy shall promptly pay and discharge all demands for payment relating to Conservancy's entry on and investigation of the Degraded Wetland Area and take all other steps to avoid the assertion of claims of lien against the Degraded Wetland Area. In the event a claim of lien is recorded by reason of Conservancy's or its agents' entry on the Degraded Wetland Area, Conservancy, within twenty (20) days from the date of such recordation, shall either (i) record or deliver a surety bond sufficient to release such claim or lien in accordance with applicable law; or (ii) provide Mayer and Agency with such other assurance as Mayer and Agency may require for the payment of the claim or lien.

E-3.57

3.12 Insurance.

3.12.1 Conservancy shall obtain, at its sole cost and expense, and keep in full force and effect, during the Term, the following insurance policies:

(a) General Liability Insurance with a minimum coverage limit per occurrence of not less than \$1,000,000. A "Claims made" designation is only acceptable for professional or pollution liability insurance.

(b) Workers' Compensation Insurance in an amount and form sufficient to meet all applicable governmental requirements, with a minimum coverage of at least \$100,000 for bodily injury per disease or accident per occurrence.

3.12.2 Mayer and the Agency and City and their agents, officers and employees shall be named as the "Certificate Holder" and as additional insureds for each insurance policy required herein. Each such policy shall contain a provision that: (a) for all claims, accidents, injuries and damages occurring in or about the Degraded Wetland Area, provides primary coverage without contribution from any other insurance carried by or for the benefit of Mayer and/or Agency, (b) the policy shall not be cancelled and the amount thereof shall not be reduced unless thirty (30) days' written notice shall have been given to Mayer and Agency by certified mail, return receipt requested, which notice shall contain the policy number and the names of the insured and additional insureds, except that the policy shall not be cancelled for non-payment of premiums unless ten (10) days' written notice shall have been given to Mayer and Agency in the manner set forth herein. All insurance required to be carried by Conservancy pursuant to the terms of this Agreement shall be effected under valid and enforceable policies issued by reputable and independent insurers licensed in the State of California with a current A.M. Best's rating of no less than A:VII.

3.12.3 Prior to entry onto the Degraded Wetland Area, Conservancy shall deliver to Mayer and Agency appropriate certificates of insurance evidencing the insurance required to be carried pursuant to this Section 3.12.

3.12.4 Conservancy agrees to indemnify, defend, protect and hold Mayer and the Agency and the Degraded Wetland Area free and harmless from any and all loss, liability, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising directly or indirectly from the exercise of said license. Such undertaking of indemnity shall survive the termination of this Agreement for any reason.

3.13 Default.

3.13.1 Failure or delay by any party to perform any term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default complained of. The defaulting party must cure, correct or remedy such failure or delay within ten (10) days after receipt of such written notice of default. Failure or delay in giving such notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Delays by any party in asserting any of its rights and remedies shall not deprive any party of its right to institute

E-3.58

and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

3.13.2 Any notice of default that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.

3.13.3 In the event a default is not cured by the defaulting party within the time set forth in this Section 3.13, then the non-defaulting party may terminate this Agreement in writing.

3.14 Termination. Notwithstanding Section 3.13, this Agreement may be terminated in writing by any party in its sole and absolute discretion upon thirty (30) days' prior written notice to the other parties.

3.15 Attorneys' Fees. In any action between any of the parties seeking enforcement or interpretation of any of the terms and provisions of this Agreement or a declaration as to the meaning hereof, or in connection with the Degraded Wetland Area, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs; reasonable attorneys' fees and reasonable fees of expert witnesses.

3.16 Assignments. This Agreement may not be assigned by Conservancy without the prior written consent of Mayer and Agency which consent may be withheld in Mayer's or Agency's sole discretion.

3.17 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.

3.18 Amendments. No provision of this Agreement may be amended or added to except by an Agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

3.19 Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.

3.20 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.

E-3.59

3.21 Authority to Enter Into Agreement. The individual(s) executing this Agreement on behalf of each party is (are) authorized to execute this Agreement on behalf of said party. Each party has taken all actions required by law to approve the execution of this Agreement.

3.22 Representatives. The following individuals shall be designated as representatives of the parties hereto. Larry Brose is designated as Mayer's representative; Gary Gorman is designated as the Conservancy's representative; and Gustavo A. Duran is designated as the representative of the Agency. Any of the parties may change such designated representatives by giving the other party written notice of such change.

3.23 Counterparts. This Agreement may be executed in counterparts and when so executed, each such counterpart will constitute an original document and such counterparts will constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement.

"Mayer"
MAYER FINANCIAL, L.P.,
a California limited partnership

By: RLM Management, Inc.,
a California corporation,
Its General Partner

Date: April 19, 2001

By: Robert L. Mayer
Robert L. Mayer, President

"Conservancy"
HUNTINGTON BEACH WETLANDS
CONSERVANCY,
a California non-profit corporation

Date: April 19, 2001

By: Gordon W. Smith
Gordon W. Smith, Chairman

E-3.60

"Agency"
REDEVELOPMENT AGENCY OF THE
CITY OF HUNTINGTON BEACH,
a public body, corporate and politic

Dated: 05-09, 2001

By: Sam Julien Houston
Chairman

ATTEST:

Connie Brockway
Agency Clerk

APPROVED AS TO FORM:

Scott Field
Agency General Counsel

REVIEWED AND APPROVED:

Ray Silver
Ray Silver, Executive Director

INITIATED AND APPROVED:

David C. Biggs
David Biggs, Deputy Executive Director

APPROVED AS TO FORM:

Murray O. Kane
Kane, Ballmer & Berkman
Agency Special Counsel

Hb\WAClosingParcelA-B\License5

E-3.61

EXHIBIT "A"

LEGAL DESCRIPTION OF DEGRADED WETLAND AREA

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LOS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14, RECORDS OF THE COUNTY OF ORANGE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

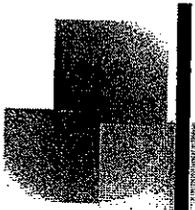
THOSE PORTIONS OF THAT LAND DESIGNATED AS REMAINDER ON MAP THEREOF OF TRACT NO. 15535 RECORDED SEPTEMBER 14, 1999 IN BOOK 790, PAGES 44 THROUGH 50, INCLUSIVE, OF MISCELLANEOUS MAPS, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14, PER SAID TRACT NO. 15535; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTH ONE-HALF, NORTH 89°15'39" WEST 50.00 FEET TO THE WESTERLY RIGHT OF WAY OF BEACH BOULEVARD AS SHOWN ON SAID TRACT NO. 15535; THENCE ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'01" WEST 681.85 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'10" WEST 257.55 FEET; THENCE, LEAVING SAID WESTERLY RIGHT OF WAY, NORTH 87°33'37" WEST 14.00 FEET; THENCE NORTH 01°08'12" EAST 8.59 FEET; THENCE NORTH 45°11'30" WEST 65.40 FEET; THENCE NORTH 85°23'00" WEST 35.27 FEET; THENCE SOUTH 24°55'48" WEST 21.31 FEET; THENCE NORTH 87°17'23" WEST 48.09 FEET; THENCE SOUTH 47°23'51" WEST 104.14 FEET; THENCE SOUTH 84°57'19" WEST 7.30 FEET; THENCE NORTH 35°26'46" WEST 36.33 FEET; THENCE NORTH 25°58'40" EAST 262.04 FEET; THENCE NORTH 22°27'35" WEST 4.50 FEET; THENCE NORTH 46°37'29" EAST 23.07 FEET; THENCE NORTH 24°21'30" EAST 120.69 FEET; THENCE NORTH 83°27'33" EAST 17.12 FEET; THENCE SOUTH 02°55'37" WEST 92.82 FEET; THENCE SOUTH 52°05'49" WEST 37.38 FEET; THENCE SOUTH 25°20'52" EAST 21.31 FEET; THENCE NORTH 60°23'17" EAST 33.54 FEET; THENCE SOUTH 48°29'43" EAST 37.00 FEET; THENCE SOUTH 13°57'24" WEST 77.40 FEET; THENCE SOUTH 44°05'07" WEST 34.49 FEET; THENCE NORTH 56°31'38" WEST 21.74 FEET; THENCE SOUTH 29°01'58" EAST 26.68 FEET; THENCE SOUTH 78°10'37" EAST 18.00 FEET; THENCE NORTH 33°19'31" EAST 98.78 FEET; THENCE NORTH 00°14'09" EAST 65.86 FEET; THENCE NORTH 89°42'50" EAST 6.00 FEET; TO SAID WESTERLY RIGHT OF WAY AND THE TRUE POINT OF BEGINNING.

CONTAINS 43,651 SQUARE FEET OR 1.002 ACRES OF LAND, MORE LESS OR LESS.

E-3.62

EXHIBIT "A"
TO LICENSE AGREEMENT



Attachment 5

E-3.63

WHEN RECORDED MAIL TO:

City Clerk
City of Huntington Beach
2000 Main Street
Huntington Beach, CA 92648

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DOCUMENTARY TRANSFER TAX IS \$ [NO TAX DUE]
.....Computed on the consideration or value of property conveyed, OR
.....Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

Jeanette M. Grant
Signature of Declarant or Agent determining tax - Firm Name

GRANT OF EASEMENT AND ACCEPTANCE OF DRAINAGE

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

THE CITY OF HUNTINGTON BEACH, a municipal corporation of the State of California ("Grantor")

hereby GRANT(S) AND CONVEYS to

PLC/LYON WATERFRONT RESIDENTIAL LLC, a Delaware limited liability company ("Grantee"),

an easement appurtenant over that certain real property located in the City of Huntington Beach, County of Orange, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Easement Area"), for the purposes set forth below. The easement herein granted is for the benefit of the Grantee's adjacent property described in Exhibit "B" attached hereto and incorporated herein by this reference (the "Benefited Property"), which Benefited Property will be developed and improved as a single family attached residential community. The easement herein granted is for the purpose of accepting surface water runoff, sheet flow, and water discharge from various drainage pipes, culverts and other drainage improvements situated on the Benefited Property which are designed and intended to direct and discharge surface water from the Benefited Property on to the Easement Area. Grantor hereby consents to such drainage and deposit of water onto the Easement Area and agrees to accept same in perpetuity for the benefit of the Benefited Property.

Dated Aug. 4, 2003

STATE OF CALIFORNIA
COUNTY OF ORANGE

On August 4th, 2003
before me, Kelly Louise Mandic
personally appeared Connie Boardman
+ Connie Brockway

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.

E-3.64

WITNESS my hand and official seal.

Signature Kelly Louise Mandic

1066 017963-0002

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

Connie Boardman
Mayor

ATTEST:

Connie Brockway
City Clerk

APPROVED AS TO FORM:

Jeanette M. Grant 7/14/03
City Attorney
11/17/03 16-17-03

(This area for official notarial seal)

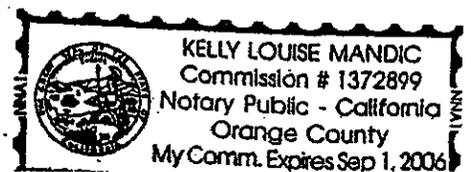


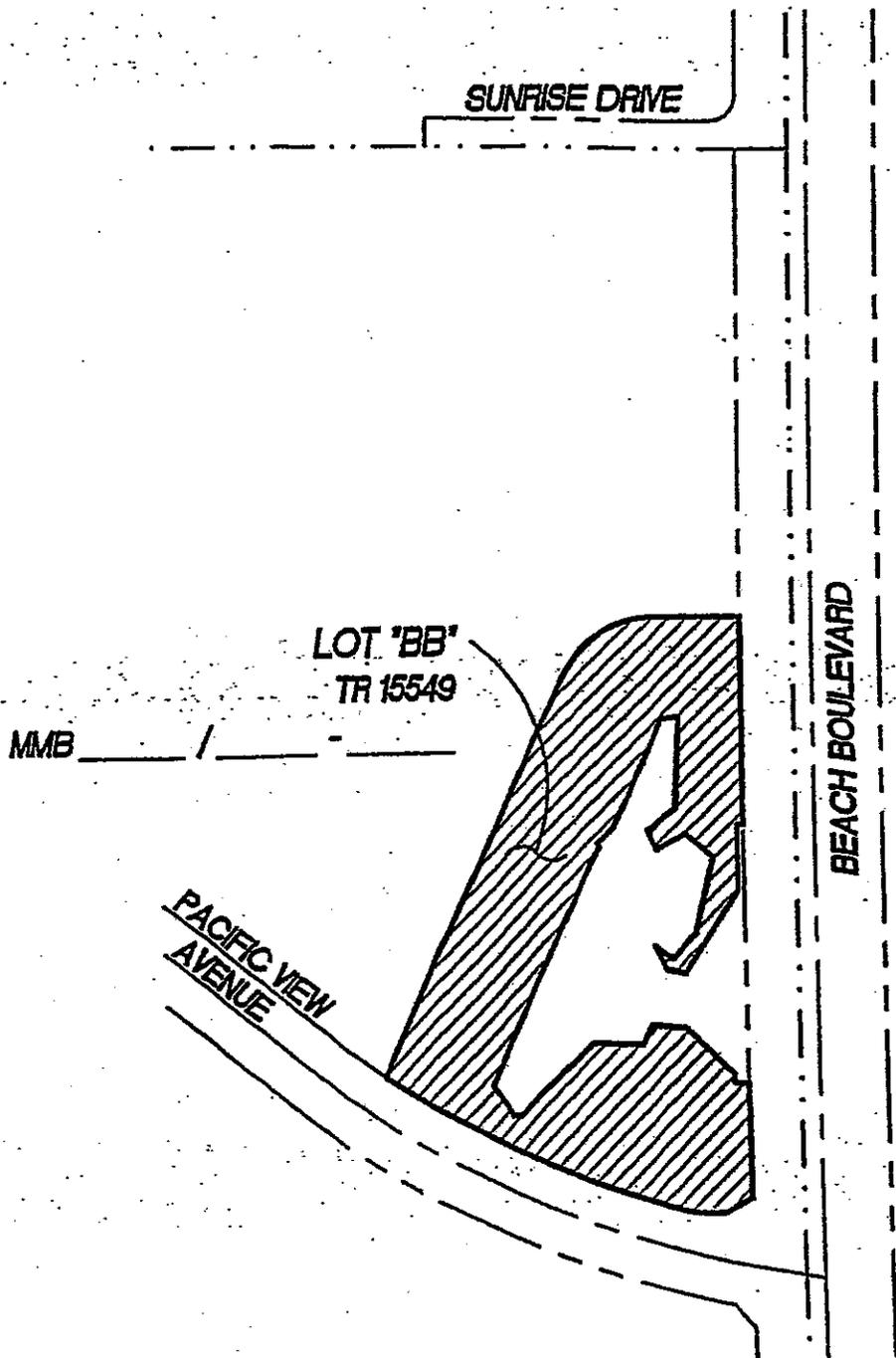
EXHIBIT "A"

LEGAL DESCRIPTION OF EASEMENT AREA

That certain real property located in the City of Huntington Beach, County of Orange, State of California, described as follows:

E-3.65

EXHIBIT 'A'
THE EASEMENT AREA



MMB
-17
E-3.66



FUSCOE ENGINEERING SAN DIEGO INC.
6390 GREENWICH DR. STE. 170
SAN DIEGO, CA 92106

EXHIBIT "B"
THE BENEFITTED PROPERTY

THIS LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA; BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LAS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14 OF MISCELLANEOUS MAPS, RECORDS OF THE COUNTY OF ORANGE.

BEING ALL OF THE LAND AS SHOWN ON THE MAP OF TRACT NO. 15549, RECORDED IN 842, PAGES 28 THROUGH 44, INCLUSIVE, OF MAPS, RECORDS OF THE COUNTY OF ORANGE.

EXCEPTING THEREFROM ALL OF LOTS "AA" AND "BB" OF SAID MAP.

E-3.67

EXHIBIT 'B'

THE BENEFITED PROPERTY

BEACH BLVD

LOT 'AA'

LOT 'BB'

TR 15549

MMB

TR 0580 MMB 444/20-31

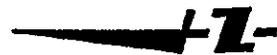
R.S. 17/35

LOT 1
TR 15535
MMB 790/44-50

PACIFIC VIEW AVENUE

TWIN DOLPHIN

LOT 2
TR 15535
MMB 790/44-50



GRAPHIC SCALE

E-3.68

Grant Deed

ATTACHMENT 3

E-3.69

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Recording Requested by
and When Recorded Return to:

JOAN FLYNN CITY CLERK
CITY OF HUNTINGTON BEACH
P.O. BOX 190 -- 2000 MAIN STREET
HUNTINGTON BEACH CA 92648

Space Above This Line For Recorder's Use

Exempt From Documentary Transfer Tax Per Revenue And Taxation Code Section 11922

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the REDEVELOPMENT AGENCY OF THE CITY OF HUNTINGTON BEACH, a public body, corporate and politic ("Grantor"), hereby grants to the CITY OF HUNTINGTON BEACH, a California municipal corporation ("Grantee"), the real property located in the City of Huntington Beach, County of Orange, State of California, which is described in the attached Exhibit A incorporated herein by this reference.

"GRANTOR"

REDEVELOPMENT AGENCY OF THE
CITY OF HUNTINGTON BEACH

Dated as of: _____, 2005

By: _____
Jill Hardy
Chairman

ATTEST:

APPROVED AS TO FORM:

Joan Flynn
Agency Clerk

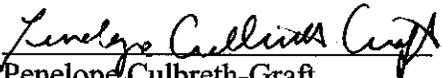
Jennifer McGrath

Jennifer McGrath
Agency General Counsel
LHM113105

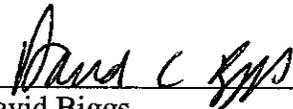
K:\CG\HB\WF\Lots AA and BB\Deed(AgencytoCity).doc

E-3.70

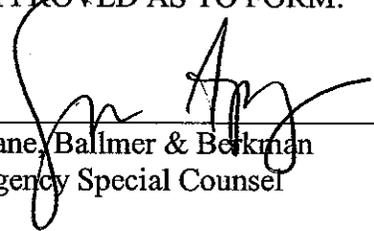
REVIEWED AND APPROVED:


Penelope Culbreth-Graft
Executive Director

INITIATED AND APPROVED:


David Biggs
Deputy Executive Director

APPROVED AS TO FORM:


Kane Ballmer & Berkman
Agency Special Counsel

E-3.71

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Grant Deed dated as of _____, 200__ from the Redevelopment Agency of the City of Huntington Beach to the City of Huntington Beach is hereby accepted by order of the City Council of the City of Huntington Beach on August 11, 2003 and the City of Huntington Beach consents to recordation thereof by its duly authorized officer.

“GRANTEE”

CITY OF HUNTINGTON BEACH

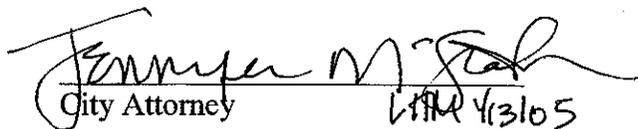
Date: _____

By: _____
Jill Hardy
Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk


City Attorney LHM 4/3/05

E-3.7a

STATE OF CALIFORNIA)
) ss.
)
COUNTY OF)

On _____, before me, _____,
a Notary Public in and for said state, personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be the person
whose name is subscribed to the within instrument and acknowledged to me that he/she executed
the same in his/her authorized capacity, and that by his/her signature on the instrument, the
person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public in and for said State

(SEAL)

E-3.73

EXHIBIT A

Legal Description – Degraded Wetland Area

[behind this page]

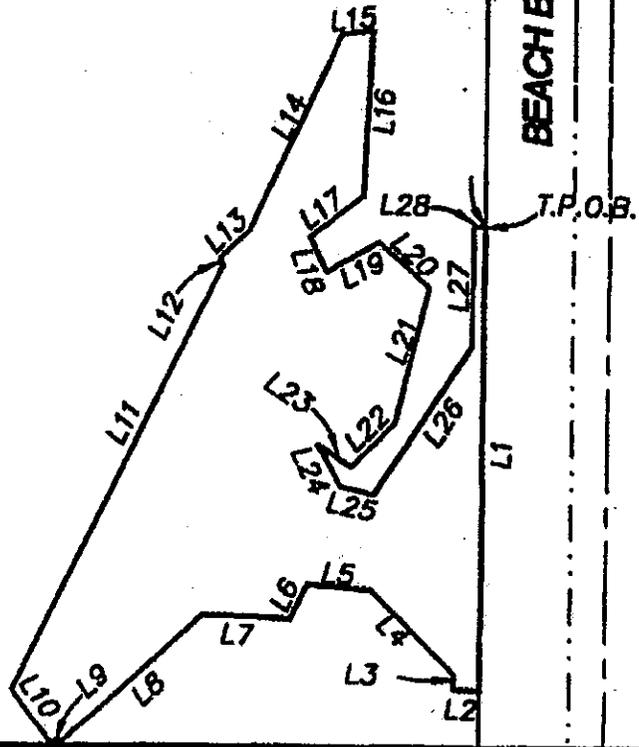
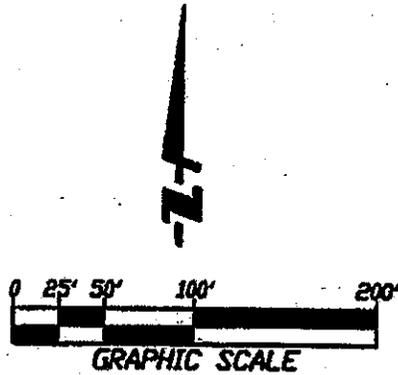
E-3.74

EXHIBIT 'C'
PAGE 1 OF 2 PAGES

SUNRISE DRIVE N89°15'39"W
N89°15'39"W 50.00' P.O.B.

LINE DATA

NO.	DIRECTION	DISTANCE
L1	S 00°17'10" W	257.55'
L2	N 87°33'37" W	14.00'
L3	N 01°08'12" E	8.59'
L4	N 45°11'30" W	65.40'
L5	N 85°23'00" W	35.27'
L6	S 24°55'48" W	21.31'
L7	N 87°17'23" W	48.09'
L8	S 47°23'51" W	104.14'
L9	S 84°57'18" W	7.30'
L10	N 35°26'46" W	36.33'
L11	N 25°58'40" E	262.04'
L12	N 22°27'35" W	4.50'
L13	N 46°37'29" E	23.07'
L14	N 24°21'30" E	120.69'
L15	N 83°27'33" E	17.12'
L16	S 02°55'37" W	92.82'
L17	S 52°05'49" W	37.38'
L18	S 25°20'52" E	21.31'
L19	N 60°23'17" E	33.54'
L20	S 48°28'43" E	37.00'
L21	S 13°57'24" W	77.40'
L22	S 44°05'07" W	34.49'
L23	N 56°31'38" W	21.74'
L24	S 29°01'58" E	26.68'
L25	S 78°10'37" E	18.00'
L26	N 33°19'31" E	98.78'
L27	N 00°14'19" E	65.86'
L28	N 89°42'50" E	6.00'



E-3.75

EXHIBIT 'C'
PAGE 2 OF 2 PAGES

THE LAND DESCRIBED HEREIN IS SITUATED IN THE CITY OF HUNTINGTON BEACH, COUNTY OF ORANGE, STATE OF CALIFORNIA; BEING A PORTION OF SECTION 14, TOWNSHIP 6 SOUTH, RANGE 11 WEST OF THE RANCHO LOS BOLSAS, AS PER MAP RECORDED IN BOOK 51, PAGE 14, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

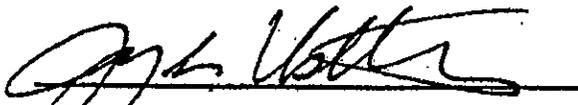
THOSE PORTIONS OF THAT LAND DESIGNATED AS REMAINDER ON MAP THEREOF OF TRACT NO. 15535 RECORDED SEPTEMBER 14, 1999 IN BOOK 790, PAGES 44 THROUGH 50, INCLUSIVE, OF MAPS, RECORDS OF THE COUNTY OF ORANGE. MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH ONE-HALF OF THE NORTHEAST ONE-QUARTER OF SAID SECTION 14, PER SAID TRACT MAP; THENCE ALONG THE NORTHERLY LINE OF SAID SOUTH ONE-HALF, NORTH 89°15'39" WEST 50.00 FEET TO THE WESTERLY RIGHT OF WAY OF BEACH BOULEVARD AS SHOWN ON SAID TRACT MAP; THENCE ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'01" WEST 681.85 FEET TO THE TRUE POINT OF BEGINNING; THENCE, CONTINUING ALONG SAID WESTERLY RIGHT OF WAY, SOUTH 00°17'10" WEST 257.55 FEET; THENCE, LEAVING SAID WESTERLY RIGHT OF WAY, NORTH 87°33'37" WEST 14.00 FEET; THENCE NORTH 01°08'12" EAST 8.59 FEET; THENCE NORTH 45°11'30" WEST 65.40 FEET; THENCE NORTH 85°23'00" WEST 35.27 FEET; THENCE SOUTH 24°55'48" WEST 21.31 FEET; THENCE NORTH 87°17'23" WEST 48.09 FEET; THENCE SOUTH 47°23'51" WEST 104.14 FEET; THENCE SOUTH 84°57'19" WEST 7.30 FEET; THENCE NORTH 35°26'46" WEST 36.33 FEET; THENCE NORTH 25°58'40" EAST 262.04 FEET; THENCE NORTH 22°27'35" WEST 4.50 FEET; THENCE NORTH 46°37'29" EAST 23.07 FEET; THENCE NORTH 24°21'30" EAST 120.69 FEET; THENCE NORTH 83°27'33" EAST 17.12 FEET; THENCE SOUTH 02°55'37" WEST 92.82 FEET; THENCE SOUTH 52°05'49" WEST 37.38 FEET; THENCE SOUTH 25°20'52" EAST 21.31 FEET; THENCE NORTH 60°23'17" EAST 33.54 FEET; THENCE SOUTH 48°29'43" EAST 37.00 FEET; THENCE SOUTH 13°57'24" WEST 77.40 FEET; THENCE SOUTH 44°05'07" WEST 34.49 FEET; THENCE NORTH 56°31'38" WEST 21.74 FEET; THENCE SOUTH 29°01'58" EAST 26.68 FEET; THENCE SOUTH 78°10'37" EAST 18.00 FEET; THENCE NORTH 33°19'31" EAST 98.78 FEET; THENCE NORTH 00°14'09" EAST 65.86 FEET; THENCE NORTH 89°42'50" EAST 6.00 FEET; TO SAID WESTERLY RIGHT OF WAY AND THE TRUE POINT OF BEGINNING.

CONTAINS 43,651 SQUARE FEET OR 1.002 ACRES OF LAND, MORE OR LESS.

AS SHOWN ON PAGE 1 OF THIS EXHIBIT "C".

DATED THIS 13th DAY OF November, 2000


JERRY L. USELTON, L.S. 5347
(EXP. 12/31/03)



E-376

License & Maintenance Agreement

ATTACHMENT 4

E-3.77

**LICENSE AND MAINTENANCE AGREEMENT
BY AND BETWEEN
HUNTINGTON BEACH WETLANDS CONSERVANCY
AND THE CITY OF HUNTINGTON BEACH
RELATING TO THE DEGRADED WETLAND AREA AND THE BUFFER AREA**

ARTICLE 1

PARTIES AND DATE

This License and Maintenance Agreement ("Agreement") is entered into as of the _____ day of _____, 200____, by and between the HUNTINGTON BEACH WETLANDS CONSERVANCY, a California non-profit corporation ("Conservancy") and the CITY OF HUNTINGTON BEACH, a California municipal corporation ("City").

ARTICLE 2

RECITALS

- 2.1 The Redevelopment Agency of the City of Huntington Beach ("Agency") intends to convey to the City fee simple ownership of that certain real property located in Huntington Beach, California, and legally described in the attached Exhibit A ("Degraded Wetland Area") and incorporated herein by this reference. Such property is subject to the terms and conditions in the Deed Restriction and easement described in Section 2.2, below.
- 2.2 The Agency has expressly reserved for itself a perpetual, non-exclusive easement on, over and across the Degraded Wetland Area ("Conservation Easement") pursuant to a Grant Deed recorded on April 18, 2001 as Instrument No. 200110232774 in the Orange County Recorder's Office, which Grant Deed conveyed certain Agency property to Mayer Financial, L.P., a California limited partnership ("Mayer"). The Conservation Easement was reserved by Agency for those purposes set forth in that certain Open Space/Wetland Preservation and Restoration Deed Restriction recorded against the Degraded Wetland Area on December 19, 2000 as Instrument No. 20000689468 in the Orange County Recorder's Office ("Deed Restriction"), under which Agency is a beneficiary. The Deed Restriction was recorded pursuant to that certain Settlement Agreement entered into on or about November 29, 2000 by and between the City, the California Coastal Commission ("Commission"), the Agency, Mayer, and Mayer related entities (the "Settlement Agreement"). The easement reserved in the Grant Deed by Agency constitutes a "conservation easement" in favor of Agency pursuant to California Civil Code Section 815.1. The terms, conditions and restrictions in the Grant Deed, Deed Restriction, and Settlement Agreement are incorporated herein by reference.
- 2.3 City is also the fee owner of that certain real property located in the City of Huntington Beach, California, and legally described in the attached Exhibit A ("Buffer Area") and

E-3.78

incorporated herein by this reference. In connection with the Buffer Area, City has entered into that certain agreement entitled "Agreement (Buffer Area Maintenance Reimbursement)" by and between the City and Mayer dated as of May 5, 2003 ("Buffer Area Agreement"). Mayer and the City entered into the Buffer Area Agreement to provide for the maintenance of the Buffer Area. The terms, conditions and restrictions in the Buffer Area Agreement are incorporated herein by reference.

- 2.4 The City granted to PLC/Lyon Waterfront Residential, LLC, a Delaware limited liability company, a drainage easement over the Buffer Area pursuant to that certain Grant of Easement and Acceptance of Drainage recorded on August 22, 2003 as Instrument No. 2003001019944 in the Orange County Recorder's Office, and re-recorded on October 3, 2003 as Instrument No. 2003001215987 in the Orange County Recorder's Office ("Grant of Easement"). The terms, conditions and restrictions in the Grant of Easement are incorporated herein by reference.
- 2.5 Conservancy desires to maintain the Degraded Wetland Area and Buffer Area and ensure that the use of the Degraded Wetland Area is in compliance with the Deed Restriction, Grant Deed and Settlement Agreement and that the Buffer Area is maintained in compliance with the Buffer Area Agreement and Grant of Easement.
- 2.6 City desires to give Conservancy permission to gain access to the Degraded Wetland Area and Buffer Area, and Conservancy desires to obtain permission to gain access to the Degraded Wetland Area and Buffer Area, for purposes related to the performance of Conservancy's duties under this Agreement.

ARTICLE 3

TERMS

3.1 Degraded Wetland Area

3.1.1 Conservancy's Obligations. Conservancy hereby agrees to satisfy all of the following obligations relating to the Degraded Wetland Area, in accordance at all times with the requirements of the Deed Restriction, the Conservation Easement and the Settlement Agreement (collectively, the "Degraded Wetland Area Obligations"):

- a. Maintain the Degraded Wetland Area by removing accumulated trash and debris from the Degraded Wetland Area, and take any and all other steps required by the Deed Restriction for maintenance of the Degraded Wetland Area.
- b. Inspect the Degraded Wetland Area on a regular basis and report promptly to the City of Huntington Beach Public Works Department Director

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("Director") or the Director's designee any condition causing or likely to cause significant damage or destruction to the Degraded Wetland Area.

- c. Restore and maintain the Degraded Wetland Area as described in Section 3.1.4.
- d. Conduct necessary activities for vector and pest surveillance and control.
- e. Inspect inlets, outlets, points of diversion, along fence lines, and other areas where material accumulates with a minimum inspection frequency of once every 6 months. Remove all accumulated material, trash and debris.
- f. Comply with all other requirements of the Deed Restriction, Conservation Easement, and Settlement Agreement.

3.1.2 License. City hereby grants to Conservancy (including Conservancy's employees, consultants, subconsultants, representatives, and agents) a nonexclusive right to enter onto the Degraded Wetland Area for the purpose of satisfying the Degraded Wetland Area Obligations, in accordance at all times with the requirements of the Deed Restriction, the Conservation Easement and the Settlement Agreement (collectively, the "Degraded Wetland Area Permitted Uses"). Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) right to enter onto the Degraded Wetland Area shall at all times be subject to the terms and conditions of this Agreement, the Deed Restriction, the Conservation Easement and the Settlement Agreement.

3.1.3 No Other Use by Conservancy. With the exception of the Degraded Wetland Area Permitted Uses (3.1.2) described in this Agreement and other uses first approved in writing by City, Conservancy shall not be authorized to use the Degraded Wetland Area for any other purpose whatsoever. Without limiting the foregoing, in no event may the Conservancy place any signs, placards or related items on or around the Degraded Wetland Area on a permanent or temporary basis without the prior express written consent of the City. Additionally, the express written consent of the City (which consent shall be in the City's sole and absolute discretion) shall be obtained prior to the Conservancy: (a) allowing the entry of any person to the Degraded Wetland Area except those direct representatives of the Conservancy who enter for the specific purposes of performing the Conservancy's obligations hereunder, (b) except as required by this Agreement, planting any plant materials, performing any restoration or alteration of any nature whatsoever to the Degraded Wetland Area or surrounding property, (c) filing each and any specific permit application with any governmental agency regarding the Degraded Wetland Area or surrounding property, (d) seeking each and any specific grant or loan or engaging in any other

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specific fund raising effort for the Degraded Wetland Area, (e) modifying the Degraded Wetland Area design (i.e. berm removal, grading changes, weir locations, etc.), or (f) making any use thereof other than for the uses specifically prescribed in this Agreement. Conservancy shall use the Degraded Wetland Area at reasonable times and in a reasonable manner. Nothing herein shall constitute a grant of any real property interest in the Degraded Wetland Area to the Conservancy other than the limited license.

3.1.4 Restoration of Degraded Wetland Area. Within one (1) year following the Effective Date, Conservancy hereby agrees that it shall complete restoration of the Degraded Wetland Area as follows: removal of all non-native, invasive plant species and accumulated trash and debris.

3.1.5 Compensation. City shall not be required to pay Conservancy any monetary compensation for Conservancy's performance under this Agreement as it pertains to the Degraded Wetland Area, including, without limitation, the restoration of the Degraded Wetland Area described in Section 3.1.4.

3.2 Buffer Area.

3.2.1 Conservancy's Obligations. Conservancy hereby agrees to satisfy all of the following obligations relating to the Buffer Area, in accordance at all times with the requirements of the Buffer Area Agreement and Grant of Easement, and, to the extent applicable, the Deed Restriction, the Conservation Easement and the Settlement Agreement (collectively, the "Buffer Area Obligations"):

- a. Operate and maintain the Buffer Area in its original and designed form as a water quality vegetative treatment best management practice associated with the Waterfront Residential Development's Water Quality Management Plan.
- b. Maintain the Buffer Area in a condition (including maintaining appropriate vector countermeasures, plant harvesting, and gross pollutant removal) on an "as needed" basis for proper operation and maintenance as directed from time to time by the Director or the Director's designee.
- c. Inspect inlets, outlets, points of diversion, along fence lines, and other areas where material accumulates with a minimum inspection frequency of once every 6 months. A mandatory inspection shall be conducted during the late Summer or early Fall with a designated representative from the City to prevent possible clogging during a rain event.
- d. Replace damaged planting within the Buffer Area on an "as needed" basis as directed from time to time by the Director or the Director's designee.

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- e. Inspect the Buffer Area drainage course on a regular basis to maintain designed flow path. Promptly report to Director or the Director's designee any condition causing or likely to cause significant damage or destruction to the Buffer Area treatment design.

3.2.2. License. City hereby grants to Conservancy (including Conservancy's employees, consultants, subconsultants, representatives, and agents) a nonexclusive right to enter onto the Buffer Area for the purpose of satisfying the Buffer Area Obligations and, to the extent applicable, providing access to the Degraded Wetland Area in order to satisfy the Degraded Wetland Area Obligations, in accordance at all times with the requirements of the Buffer Area Agreement and Grant of Easement, and, to the extent applicable, the Deed Restriction, the Conservation Easement and the Settlement Agreement (collectively, the "Buffer Area Permitted Uses"). Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) right to enter onto the Buffer Area shall at all times be subject to the terms and conditions of this Agreement, the Buffer Area Agreement and Grant of Easement, and, to the extent applicable, the Deed Restriction, the Conservation Easement and the Settlement Agreement.

3.2.3. No Other Use by Conservancy. With the exception of the Buffer Area Permitted Uses (3.2.2) described in this Agreement and other uses first approved in writing by City, Conservancy shall not be authorized to use the Buffer Area for any other purpose whatsoever. Without limiting the foregoing, in no event may the Conservancy place any signs, placards or related items on or around the Buffer Area on a permanent or temporary basis without the prior express written consent of the City. Additionally, the express written consent of the City (which consent shall be in the City's sole and absolute discretion) shall be obtained prior to the Conservancy: (a) allowing the entry of any person to the Buffer Area except those direct representatives of the Conservancy who enter for the specific purposes of performing the Conservancy's obligations hereunder, (b) except as required by this Agreement, planting any plant materials, performing any restoration or alteration of any nature whatsoever to the Buffer Area or surrounding property, (c) filing each and any specific permit application with any governmental agency regarding the Buffer Area or surrounding property, (d) seeking each and any specific grant or loan or engaging in any other specific fund raising effort for the Buffer Area, (e) modifying the Buffer Area design (i.e. berm removal, grading changes, weir locations, etc.) or (f) making any use thereof other than for the uses specifically prescribed in this Agreement. Conservancy shall use the Buffer Area at reasonable times and in a reasonable manner. Nothing herein shall constitute a grant of any real property interest in the Buffer Area to the Conservancy other than the limited license.

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3.2.4 City's Obligations. City hereby agrees to satisfy all of the following obligations relating to the Buffer Area (collectively, the "City Buffer Area Obligations"):

- a. De-silting and sediment removal activities associated with the treatment pools and flow channels.
- b. Sampling, testing and water quality monitoring associated with best management practice effectiveness assessment.
- c. Flow monitoring.
- d. Weir adjustments.
- e. Maintenance of pipe conduits and culverts leading into and out of Buffer Area.
- f. Cleaning/maintenance of "CDS" pre-treatment devices.

3.2.5 City's Right of Access. Without limiting the generality of any provision of this Agreement, including, without limitation, Section 3.8, below, the City shall have at all times a right of access to the Buffer Area for the purpose of satisfying the City Buffer Area Obligations.

3.2.6 Compensation. Subject to all of the terms and conditions of this Section 3.2.6, City hereby agrees to reimburse Conservancy in arrears on no greater than a quarterly basis for Conservancy's satisfaction of the Buffer Area Obligations pursuant to this Agreement as follows.

- a. The City's obligation to reimburse Conservancy for Conservancy's satisfaction of the Buffer Area Obligations shall be a special and limited obligation of the City payable to Conservancy solely from the sources of funds expressly identified in this Section 3.2.6.
- b. The City shall have no obligation to reimburse any amounts to Conservancy pursuant to this Section 3.2.6 except as follows:
 - i. The obligations of the City under this Agreement shall be special and limited obligations payable solely from Trust Funds (as defined in the Buffer Area Agreement). In the extent and to the extent no Trust Funds are available, Conservancy hereby agrees that the City shall be relieved of its obligation to reimburse Conservancy hereunder. The Buffer Area Agreement contains limitations on how the Trust Funds may be used. Therefore, "available" as used in this Section 3.2.6 means both that Trust Funds exist and that the Buffer Area Agreement permits the use of

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the Trust Funds for the Buffer Area Obligations for which Conservancy is seeking reimbursement. The City shall notify Conservancy within ten (10) business days following receipt of any bill from Conservancy if no Trust Funds are available to pay such bill. The City shall additionally notify Conservancy within thirty (30) business days if the City becomes aware that there are no Trust Funds available to pay future billings.

- ii. The following conditions precedent to each payment hereunder shall be satisfied:
 - (A) Conservancy shall have submitted to the Director its annual estimated Budget as described in subsection iii., below, and the Director or the Director's designee shall have pre-approved in writing (e-mail acceptance may be granted) the Budget;
 - (B) Conservancy shall not be in default as to any of its obligations or any other terms and conditions under this Agreement;
 - (C) This Agreement shall not have been terminated; and
 - (D) Conservancy shall have satisfied the Buffer Area Obligations in accordance with all of the terms and conditions of this Agreement for all of the prior years.
- iii. (A) Except as set forth in subsection B., below, for the first partial plus first full calendar year's budget, no later than October 1st of each and every year during the term of this Agreement, Conservancy hereby agrees to submit to the Director a budget detailing the reasonably estimated costs necessary for the Conservancy to satisfy the Buffer Area Obligations for the following calendar year, together with such documentation or information as may be reasonably requested by the Director or the Director's designee (collectively, the "Budget"). Conservancy hereby agrees that each Budget shall contain sufficient documentation and information to permit the City to satisfy the City's annual accounting obligations under Section 2.d of the Buffer Area Agreement. The Budget shall be subject to the written approval (e-mail acceptance may be granted) of the Director or the Director's designee. Upon written approval of the Budget (or any portion thereof) for any given calendar year, subject to all of the terms and conditions of

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this Agreement, including, without limitation, subsection i., above, the City shall reimburse the costs contained in the approved Budget on a quarterly basis in arrears to Conservancy in the following quarter, or as otherwise agreed upon in writing in advance by both parties. (For illustrative purposes only, if the Effective Date is October 15, 2005, the first full calendar year's Budget would be due on October 1, 2006 for the following calendar year covering the period January 1, 2007 through December 31, 2007. Assuming the Budget was approved by the Director, the City would make quarterly payments to Conservancy in quarters 2, 3 and 4 of calendar year 2007 and quarter 1 of calendar year 2008 for costs and expenses incurred in quarters 1, 2, 3, and 4 of calendar year 2007.)

- (B) For the first partial plus first full calendar year, within thirty (30) days following the Effective Date, Conservancy hereby agrees to submit to the Director an estimated Budget for the remainder of the first partial plus first full calendar year. The Budget shall be subject to the written approval (e-mail acceptance may be granted) of the Director or the Director's designee. Upon written approval of the Budget (or any portion thereof) for the first partial plus first full calendar year, subject to all of the terms and conditions of this Agreement, including, without limitation, subsection i., above, the City shall reimburse the costs contained in the approved Budget on a quarterly basis in arrears to Conservancy in the following quarter, or as otherwise agreed upon in writing in advance by both parties. (For illustrative purposes only, if the Effective Date is October 15, 2005, the first partial calendar year's Budget would be due on November 15, 2005 for the remainder of the calendar year covering the period October 15, 2005 through December 31, 2005 plus the first full calendar year covering the period January 1, 2006 through December 31, 2006. Assuming the Budget was approved by the Director, the City would make quarterly payments to Conservancy in quarter 1, 2, 3, and 4 of calendar year 2006 and quarter 1 of calendar year 2007 for costs and expenses incurred in partial quarter 4 of calendar year 2005 and quarters 1, 2, 3, and 4 calendar year 2006.)
- (C) By March 30th of each and every year during the term of this Agreement, Conservancy hereby agrees to prepare and provide to the Director an annual accounting of actual costs

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incurred by Conservancy to satisfy the Buffer Area Obligations for the prior calendar year. (For illustrative purposes only, if the Effective Date is October 15, 2005, the first accounting would be due on March 30, 2006 covering the period October 15, 2005 to December 31, 2005, the second accounting would be due on March 30, 2007 covering the period January 1, 2006 to December 31, 2006, and so on.) Based on actual costs incurred, as determined by the accounting, Conservancy shall submit a bill to the Director. Any bill (or portion thereof) approved by the Director shall be paid, subject to all of the terms and conditions of this Agreement, including, without limitation, subsection i., above, by the City to Conservancy on a quarterly basis.

- iv. In the event the City reimburses Conservancy, which reimbursement (or portion thereof) the City was not obligated to make hereunder, Conservancy hereby agrees to refund any such reimbursement (or portion thereof) to the City within ten (10) days following the reimbursement. For illustrative purposes only, Conservancy might be obligated to refund the City a reimbursement (or portion thereof) if the City makes a double reimbursement or over-reimbursement to Conservancy or some or all of the conditions set forth in Section ii., above, have not been satisfied.
- v. Conservancy hereby agrees that it shall not expend any monies reimbursed to Conservancy pursuant to this Agreement for any purpose other than to satisfy the Buffer Area Obligations.
- vi. Conservancy hereby agrees that the City shall have the right at all reasonable times to inspect, copy and audit Conservancy's books and records pertaining to this Agreement. In the event an audit discloses an overbilling against the City in excess of the greater of: (X) five percent (5%) of the then current approved Budget or (Y) \$500.00, Conservancy hereby agrees that it shall, within thirty (30) days following written request therefore, reimburse the City for the reasonable cost of such audit plus the amount which has been overbilled. In the event an audit discloses an overbilling against the City in an amount less than the greater of: (X) five percent (5%) of the then current approved Budget or (Y) \$500.00, Conservancy hereby agrees that it shall, within thirty (30) days following written request therefore, reimburse the City for the amount which has been overbilled

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- vii. Each reimbursement payment from City to the Conservancy shall be consideration for the satisfaction by Conservancy on a quarterly basis of the Buffer Area Obligations, such that the City's obligation hereunder to reimburse Conservancy shall be limited to each quarterly installment if and as it falls due for each quarter. Conservancy hereby acknowledges and agrees that the City shall not be liable for any amount in excess of the amount due in any given quarter or calendar year.
- viii. Conservancy hereby agrees to pay, at its sole cost and expense, any and all additional costs, fees, charges and/or expenses which are incurred by Conservancy or a third party pertaining to the Buffer Area which are not contained within an approved Budget and/or which are not pre-approved in writing by the Director or the Director's designee.
- ix. Prior to being incurred, all costs and expenses must be pre-approved in writing by the Director or the Director's designee (e-mail acceptance may be granted) and all costs and expenses are limited to maintenance and oversight of the Buffer Area. Any cost or expense not pre-approved in writing by the Director or the Director's designee shall not be subject to reimbursement hereunder. Director's approval of the annual Budget shall satisfy this condition for all expenses included in the annual Budget.

3.3 Compliance with Laws. Conservancy hereby agrees to comply, and to cause its employees, consultants, subconsultants, representatives, and agents to comply, with all federal, state and local laws, statutes and ordinances in connection with Conservancy's entry and all activities on the Degraded Wetland Area and Buffer Area and performance under this Agreement. It is the responsibility of the Conservancy to ensure all activities associated with or on the Degraded Wetland Area and Buffer Area comply with all applicable local, regional and federal regulations, including, but not limited to, rules and regulations associated with the U.S. Army Corps of Engineers, Santa Ana Water Quality Control Board, Fish & Wildlife Services and the Department of Fish & Game.

3.4 Effective Date. The effective date of this Agreement shall be the date set forth above in Article 1 of this Agreement ("Effective Date").

3.5 Term. The term of this Agreement shall commence on the Effective Date and shall end on the completion of the twentieth (20th) full calendar year after the Effective Date ("Original Term Expiration"), unless earlier terminated or extended pursuant to this Agreement. Upon the Original Term Expiration, the term of this Agreement shall automatically renew for subsequent additional five (5) calendar year periods (each an "Additional Term") unless either party hereunder provides written notice to the other party at least thirty (30) days prior to the Original Term Expiration or the expiration of

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then Additional Term. Upon the expiration of the term, no additional instrument, consent or action by either party shall be required to terminate this Agreement. A "calendar year" shall mean the twelve (12) month period starting January 1st and ending December 31st.

- 3.6 Condition of Licensed Property. Upon the expiration or termination of this Agreement, Conservancy hereby agrees that it shall cause the Degraded Wetland Area and Buffer Area to be left in the same condition as the Degraded Wetland Area and Buffer Area were in prior to Conservancy's entry onto the Degraded Wetland Area and Buffer Area, subject to any changes to the condition of the Degraded Wetland Area or the Buffer Area that are required by this Agreement. Conservancy hereby agrees that it shall, at its sole cost and expense, repair, or cause to be repaired, any damage to the Degraded Wetland Area or Buffer Area caused by Conservancy (including Conservancy's employees, consultants, subconsultants, representatives, and agents). Conservancy acknowledges that as of the Effective Date of this Agreement that significant construction activity will be on-going adjacent to the Degraded Wetland Area and Buffer Area for an extended period of time. Nothing in this Agreement shall be construed as a limitation upon such construction activity or an obligation of City to restore or otherwise improve the existing condition of the Degraded Wetland Area or Buffer Area in any manner.
- 3.7 Vector Control. Orange County Vector Control shall be permitted to enter the Degraded Wetland Area or Buffer Area for vector control purposes as it deems necessary.
- 3.8 Entry by City. Nothing in this Agreement shall be construed to restrict or prevent City and its agents, consultants and assigns, entry to the Degraded Wetland Area and Buffer Area.
- 3.9 Hazardous Materials. Conservancy hereby agrees that it shall not store or use, or consent to the storage or use of, any Hazardous Materials on the Degraded Wetland Area or Buffer Area at any time during the term of this Agreement, other than herbicides, pesticides and insecticides approved by a wetland biologist to protect and required to maintain the Degraded Wetland Area and Buffer Area in accordance with the requirements outlined herein and the incidental use of gasoline an/or oil to power small gardening and maintenance equipment. As used in this Agreement, "Hazardous Materials," means:
- a. a "Hazardous Substance" as defined by Section 9601 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 *et seq.* or as "Hazardous Waste" as defined by Section 6903 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 *et seq.*;
 - b. an "Extremely Hazardous Waste," a "Hazardous Waste," or a "Restricted Hazardous Waste," as defined by The Hazardous Waste Control Law under §§25115, 25117 or 25122.7 of the California Health and Safety Code, or is listed or identified pursuant to §25140 of the California Health and Safety Code;

- c. a "Hazardous Material," "Hazardous Substance," "Hazardous Waste," or "Toxic Air Contaminant" as defined by the California Hazardous Substance Account Act, laws pertaining to the underground storage of hazardous substances, hazardous materials release response plans, or the California Clean Air Act under §§ 25316, 25281, 25501, 25501.1, 117690 or 39655 of the California Health and Safety Code;
- d. "Oil" or a "Hazardous Substance" listed or identified pursuant to §311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321;
- e. materials, substances and wastes listed or defined as a "Hazardous Waste," "Extremely Hazardous Waste," or an "Acutely Hazardous Waste" pursuant to Chapter 11 of Title 22 of the California Code of Regulations Sections 66261.1 - 66261.126;
- f. materials, substances and wastes listed by the State of California under Proposition 65 Safe Drinking Water and Toxic Enforcement Act of 1986 as a chemical known by the State to cause cancer or reproductive toxicity pursuant to §25249.8 of the California Health and Safety Code;
- g. a material which due to its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, damages or threatens to damage, health, safety, or the environment, or is required by any law or public agency to be remediated, including remediation which such law or government agency requires in order for the property to be put to any lawful purpose;
- h. any material whose presence would require remediation pursuant to the guidelines set forth in the State of California Leaking Underground Fuel Tank Field Manual, whether or not the presence of such material resulted from a leaking underground fuel tank;
- i. asbestos, PCBs, and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. §§2601 *et seq.*;
- j. any radioactive material including, without limitation, any "source material," "special nuclear material," "by-product material," "low-level wastes," "high-level radioactive waste," "spent nuclear fuel" or "transuranic waste," and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act, 42 U.S.C. §§2011 *et seq.*, the Nuclear Waste Policy Act, 42 U.S.C. §§10101 *et seq.*, or pursuant to the California Radiation Control Law, California Health and Safety Code §§114960 *et seq.*;
- k. materials, substances and wastes regulated under the Occupational Safety and Health Act, 29 U.S.C. §§651 *et seq.*, or the California Occupational Safety and Health Act, California Labor Code §§6300 *et seq.*; and/or

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- I. materials, substances and wastes regulated under the Clean Air Act, 42 U.S.C. §§7401 *et seq.* or pursuant to the California Clean Air Act, Sections 3900 *et seq.* of the California Health and Safety Code.

3.10 No Encumbrances. Conservancy hereby agrees to keep the Degraded Wetland Area and Buffer Area free from all encumbrances and liens of any kind during the term of this Agreement. Conservancy hereby agrees to promptly pay and discharge all demands for payment relating to Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) entry on the Degraded Wetland Area and/or Buffer Area and/or Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) performance under this Agreement, and to take all other steps to avoid the assertion of claims of lien against the Degraded Wetland Area and Buffer Area. In the event a claim of lien is recorded by reason of Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) entry on the Degraded Wetland Area and/or Buffer Area and/or Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) performance under this Agreement, Conservancy, within twenty (20) days from the date of such recordation, hereby agrees either (a) to record or to deliver a surety bond sufficient to release such claim or lien in accordance with applicable law; or (b) to provide City with such other assurance as City may require for the payment of the claim or lien.

3.11 Insurance; Indemnification.

3.11.1 Conservancy hereby agrees to obtain, at its sole cost and expense, and keep in full force and effect, during the term of this Agreement, the following insurance policies:

- (a) General Liability Insurance with a minimum coverage limit per occurrence of not less than \$1,000,000. A "Claims made" designation is only acceptable for professional or pollution liability insurance.
- (b) Workers' Compensation Insurance in an amount and form sufficient to meet all applicable governmental requirements, with a minimum coverage of at least \$100,000 for bodily injury per disease or accident per occurrence.

3.11.2 City, Agency and their respective agents, officers and employees shall be named as the "Certificate Holder" and as additional insureds for each insurance policy required herein. Each such policy shall contain a provision that: (a) for all claims, accidents, injuries and damages occurring in or about the Degraded Wetland Area and/or Buffer Area, the policy provides primary coverage without contribution from any other insurance carried by or for the benefit of City and Agency, (b) the policy shall not be cancelled and the amount thereof shall not be

reduced unless thirty (30) days' written notice shall have been given to City by certified mail, return receipt requested, which notice shall contain the policy number and the names of the insured and additional insureds, except that the policy shall not be cancelled for non-payment of premiums unless ten (10) days' written notice shall have been given to City in the manner set forth herein. All insurance required to be carried by Conservancy pursuant to the terms of this Agreement shall be effected under valid and enforceable policies issued by reputable and independent insurers licensed in the State of California with a current A.M. Best's rating of no less than A:VII.

3.11.3 Prior to entry onto the Degraded Wetland Area or Buffer Area, Conservancy agrees that it shall deliver to the Director appropriate certificates of insurance evidencing the insurance required to be carried pursuant to this Section 3.12.

3.11.4 Conservancy hereby agrees to indemnify, defend, protect and hold City, Agency and their respective and its agents, officers, consultants and employees, the Degraded Wetland Area and the Buffer Area free and harmless from any and all loss, liability, claims, damages and expenses (including, but not limited to, reasonable attorneys' fees and costs) arising directly or indirectly from Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) entry on the Degraded Wetland Area and/or Buffer Area and/or Conservancy's (including Conservancy's employees, consultants, subconsultants, representatives, and agents) performance under this Agreement. Such undertaking of indemnity shall survive the expiration or termination of this Agreement for any reason.

3.12 Default.

3.12.1 Failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. The non-defaulting party shall give written notice of default to the defaulting party, specifying the default complained of. The defaulting party must cure, correct or remedy such failure or delay within thirty (30) days after receipt of such written notice of default. Failure or delay in giving such notice of default shall not constitute a waiver of any default, nor shall it change the time of default. Delays by either party in asserting any of its rights and remedies shall not deprive the party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Notices hereunder shall be sent to the following addresses or such other addresses as may be provided in writing by either party to the other party:

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If to City:

City of Huntington Beach
Attn: Director of Public Works
2000 Main Street
Huntington Beach CA 92648
Fax #: (714) 374-1573
Phone #: (714) 536-5437

If to Conservancy:

Huntington Beach Wetlands Conservancy
Attn: Ann McCarthy, Treasurer
9192 Kappa Drive
Huntington Beach, CA. 92646
Fax #: _____
Phone #: (714) 593-5590

- 3.12.2 Any notice of default that is transmitted by electronic facsimile transmission during regular business hours of regular business days followed by delivery of a "hard" copy, shall be deemed delivered upon its transmission; any notice of default that is personally delivered (including by means of professional messenger service, courier service such as United Parcel Service or Federal Express, or by U.S. Postal Service), shall be deemed received on the documented date of receipt; and any notice of default that is sent by registered or certified mail, postage prepaid, return receipt required shall be deemed received on the date of receipt thereof.
- 3.12.3 In the event a default is not cured by the defaulting party within the time set forth in this Section 3.12, then the non-defaulting party may terminate this Agreement in writing.
- 3.13 Termination. Notwithstanding Section 3.12, this Agreement may be terminated in writing by either party in its sole and absolute discretion upon thirty (30) days' prior written notice to the other party.
- 3.14 Attorneys' Fees. In any action between either of the parties seeking enforcement or interpretation of any of the terms and provisions of this Agreement or a declaration as to the meaning hereof, or in connection with the Degraded Wetland Area or Buffer Area, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.
- 3.15 Assignments. This Agreement may not be assigned by Conservancy without the prior written consent of City which consent may be withheld in City's sole discretion.

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- 3.16 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
- 3.17 Amendments. No provision of this Agreement may be amended or added to except by an Agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.
- 3.18 Further Assurances. Each of the parties hereto shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent and agreements of the parties hereto.
- 3.19 Governing Law. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California.
- 3.20 Authority to Enter Into Agreement. The individual(s) executing this Agreement on behalf of each party is (are) authorized to execute this Agreement on behalf of said party. Each party has taken all actions required by law to approve the execution of this Agreement.
- 3.21 Counterparts. This Agreement may be executed in counterparts and when so executed, each such counterpart will constitute an original document and such counterparts will constitute one and the same agreement.

[remainder of page left intentionally blank]

[signatures on following pages]

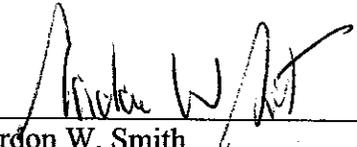
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IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

"Conservancy"

HUNTINGTON BEACH WETLANDS
CONSERVANCY, a California non-profit
corporation

Date: January 6, 2005

By: 
Gordon W. Smith
Chairman

[remaining signature follows on next page]

E-3.94

"City"

CITY OF HUNTINGTON BEACH, a
California municipal corporation

Date: _____, 200

By: _____
Jill Hardy, Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

Jennifer McPeak

City Attorney
1/18/05

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

Penelope Culbreth-Graft

Penelope Culbreth-Graft,
City Administrator

David C Biggs

David Biggs, Director of Economic
Development

Robert Beardsley

Robert Beardsley, Director of Public Works

APPROVED AS TO FORM:

[Signature]

Kane, Ballmer & Berkman
City Special Counsel

E-3.95

EXHIBIT A

LEGAL DESCRIPTION OF DEGRADED WETLAND AREA
AND
LEGAL DESCRIPTION OF BUFFER AREA

[behind this page]

E-3.96