

**DRAFT**

ATTACHMENT 2

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

City of Costa Mesa  
P.O. Box 1200  
Costa Mesa, CA 92628-1200  
Attn: \_\_\_\_\_

\_\_\_\_\_  
(Space Above Line for Recorder's Use)

**DECLARATION OF RESTRICTIONS/CONSERVATION EASEMENT**

THIS DECLARATION OF RESTRICTIONS/CONSERVATION EASEMENT ("Declaration") is made as of the \_\_\_ day of \_\_\_\_\_, 2005 by the City of Costa Mesa, a \_\_\_\_\_ ("Declarant").

**RECITALS**

A. Declarant is the owner of certain real property located in the County of Orange, California, legally described on Exhibit A (the "Conservation Area") attached hereto and incorporated herein by reference. The Conservation Area contains land which is to be preserved in perpetuity and permanently conserved as natural open space as part of, and in conformance with, the 1997 Fairview Park Master Plan, as amended ("Master Plan").

B. The Conservation Area contains approximately 10.35 acres of land within the larger 208-acre Fairview Park in the City of Costa Mesa ("Costa Mesa") and immediately adjacent to Talbert Nature Preserve ("Fairview Park"), owned by the County of Orange ("County"). The Master Plan has as one of its objectives the restoration of the Conservation Area to coastal sage scrub habitat. The County has approved a Natural Communities Conservation Plan for Central/Coastal Orange County which assures the preservation of coastal sage scrub in portions of Talbert Park and which may, in the future, incorporate portions of Fairview Park into its coastal sage scrub habitat preserve system. The City of Dana Point ("Dana Point"), has amended its local coastal program with the California Coastal Commission ("CCC") and, in connection therewith, a conservation park is currently being established on the Dana Point Headlands promontory as part of the larger Dana Point Headlands development project ("Headlands Site"). Conditions associated with that local coastal program amendment require the off-site restoration of coastal sage scrub to help offset impacts to coastal sage scrub habitat on the Headlands Site. Accordingly, Fairview Park, Talbert Nature Preserve and the Headlands Site are collectively referred to herein as the "Benefited Properties." The Benefited Properties are generally described on Exhibit B attached hereto and incorporated herein by reference.

C. The Master Plan calls for the land within the Conservation Area to be restored to coastal sage scrub habitat at some time in the future when Declarant has sufficient funds available to implement such restoration.

D. Pursuant to a Memorandum of Agreement ("MOA") between Declarant and Headlands Reserve, LLC ("HR"), HR has agreed to undertake habitat restoration of the Conservation Area to coastal sage scrub habitat at HR's expense. HR's restoration of the Conservation Area would satisfy a condition in HR's Coastal Development Permit ("CDP") issued by Dana Point for the Headlands Site, provided that Declarant records a Declaration of Restrictions over the Conservation Area.

E. In connection with its approval of the local coastal program amendment for Dana Point, the CCC required that certain legal restrictions functioning as an irrevocable open space conservation restriction/easement be placed on the Conservation Area ensuring that the Conservation Area will be permanently preserved as coastal sage scrub habitat/natural open space.

F. Declarant is willing to place such a perpetual conservation restriction/easement over the Conservation Area in consideration of the benefits to be derived by Declarant under the MOA.

DECLARATION

NOW, THEREFORE, in consideration of the benefits to the Conservation Area and the Benefited Properties deriving from HR's agreement to restore the Conservation Area pursuant to the MOA, Declarant hereby declares that the Conservation Area shall be used and conveyed subject to the following restrictions, which are declared and agreed to be for the benefit of the people of Costa Mesa, Dana Point, the County of Orange, the Benefited Properties and wildlife in the region.

1. The Conservation Area shall not be utilized in any manner inconsistent with the permanent preservation of the Conservation Area as natural open space and the preservation of the restored coastal sage scrub habitat within the Conservation Area. Without limiting the generality of the foregoing, the following activities are expressly prohibited:

A. Development within the Conservation Area for residential, commercial retail or industrial purposes;

B. Development within the Conservation Area for a golf course, ball fields or any other active recreational use that would adversely impact or reduce the coastal sage scrub habitat within the Conservation Area;

C. Use of motor vehicles, except on a temporary basis as may be necessary for activities directed at creating, restoring, enhancing or maintaining coastal sage scrub habitat within the Conservation Area or benefiting regional wildlife species which may utilize the Conservation Area;

- D. Depositing of trash, garbage, refuse, ash, waste material, other offensive or toxic material, or any other material not consistent with maintaining the Conservation Area as natural open space;
- E. Erecting of any building;
- F. Agricultural cultivation or plowing for cultivation.

2. The County and/or Dana Point, acting through any of their respective agencies, shall have the right to enforce each of the terms of this Declaration. If the County and/or Dana Point determine that Declarant is in violation of this Declaration or that a violation is threatened, the County and/or Dana Point shall give written notice to Declarant of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the area resulting from any use or activity inconsistent with the provisions of this Declaration, to restore the portion of the area so injured. If Declarant fails to cure the violation within fifteen (15) days after receipt of notice thereof from the County and/or Dana Point, or fails to begin curing the violation within the fifteen (15) day period under circumstances where the violation cannot reasonably be cured within said period, or fails to continue diligently to cure such violation until finally cured, the County and/or Dana Point may bring any action at law or equity that is appropriate under the circumstances. Notwithstanding the foregoing, if the County and/or Dana Point, in their good faith and reasonable discretion, determine that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Area, the County and/or Dana Point may pursue their remedies under this paragraph without waiting for the expiration of the fifteen (15) day cure period with whatever prior notice to Declarant that is reasonable under the circumstances. The County's and/or Dana Point's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Declaration. Declarant further agrees that the County's and/or Dana Point's remedies at law for any violation of the terms of this Declaration are inadequate and that the County and/or Dana Point shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the County and/or Dana Point may be entitled, including specific performance of the terms of this Declaration, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

3. The County and/or Dana Point shall have the right to access the Conservation Area at reasonable times and upon advance notification to Declarant, as reasonable under the circumstances, to ensure compliance with, or enforce the terms of, this Declaration.

4. The irrevocable open space conservation restrictions/easement set forth in this Declaration shall run with the land for the benefit of the Benefited Properties, the people of Costa Mesa, the County, and Dana Point and shall be binding on all parties having or acquiring any right, title or interest in the Conservation Area or any part thereof.

5. This Declaration and the permitted and proscribed uses hereunder shall not be changed or amended except by instrument approved by both the County and Dana Point and executed by Declarant and recorded in the Official Records of the County.

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IN WITNESS WHEREOF, the undersigned has executed this Declaration as of the date hereinabove provided.

"DECLARANT"

City of Costa Mesa

By: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF CALIFORNIA        )  
  )        ss.  
COUNTY OF \_\_\_\_\_     )

On \_\_\_\_\_ before me, the undersigned notary public,  
personally appeared \_\_\_\_\_

- personally known to me
- proved to me on the basis of satisfactory evidence

to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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EXHIBIT A

DESCRIPTION OF CONSERVATION AREA

Real property in the County of Orange, State of California, described as follows:

2/17/05 3043.5  
H&O: #AKH \GH5021.DOC\11\05 3043.5  
H&O: #21153 v1A

23

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EXHIBIT B

DESCRIPTION OF BENEFITED PROPERTIES

Real property in the County of Orange, State of California, described as follows:

2/17/05 3043.3  
H&O: #AKH vGH5021.DOC/11/05 3043.3  
H&O: #21353 v1A

(34)