

**Attachment 1**

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

CITY OF COSTA MESA  
Attention - City Clerk  
P.O. BOX 1200  
COSTA MESA, CALIFORNIA 92628-1200

**MAIL TAX STATEMENTS TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EASEMENT AGREEMENT**

This Agreement is made and entered into as of July \_\_, 2006, by and between the CITY OF COSTA MESA, a Municipal corporation ("Grantee") and MAKAR BAYNORTH COSTA MESA LLC, a Delaware limited liability company ("Grantor").

**RECITALS**

A. Grantor is the owner of that certain real property situated in the City of Costa Mesa, County of Orange, State of California, which property is legally described on Exhibit A attached hereto (the "Makar Property").

B. Grantor desires to grant to Grantee, for street purposes, a perpetual, non-exclusive easement and right of way on, over and across a portion of the Makar Property, which portion is more particularly depicted on Exhibit B attached hereto (the "Easement Property").

C. The parties wish to establish such right of way with respect to the Easement Property for the non-exclusive use and benefit of Grantee and Grantee's agents, employees, guests and invitees.

**ARTICLE I.**

**DESCRIPTION OF EASEMENT**

**1.1 Grant of Easement.**

Grantor hereby grants and conveys to Grantee a perpetual, non-exclusive easement and right of way (the "Easement") on, over and across the Easement Property only for use in connection with a proposed traffic circle at the intersection of Avenue of the Arts and Town Center Drive, and not for any highway or freeway purposes or other purposes, all as more particularly shown on Exhibit B.

**ARTICLE II.**

**INSTALLATION; MAINTENANCE OF EASEMENT PROPERTY**

**2.1 General Obligation to Install and Maintain.**

(a) Grantee shall perform or cause to be performed, at its sole cost and expense, any and all construction activities to install the traffic circle as shown on Exhibit B, and, thereafter, all maintenance, repair or replacement (including, without limitation, any damage or destruction to the Easement Property) work reasonably required to keep the Easement Property (including any pavement on such Easement Property) in good, safe and attractive condition and in compliance with all applicable

local state and federal laws, rules and regulations. Grantee's obligations hereunder shall include but not be limited to maintenance and repair or replacement of all paving, curbing, shrubbery, lawns and trees located on the Easement Property, lien free and in a good and workmanlike manner.

(b) Grantor shall have no obligation with respect to construction, maintenance or repair of the Easement Property.

(c) Except as provided in Section 2.1 and as shown on Exhibit B, the Grantee shall not install any additional landscaping, improvements, buildings, appurtenances or any other structure on the Easement Property without the express written consent of Grantor, it being acknowledged that the grant hereunder shall be only for those roadway purposes described in Section 1.1 above. No use or maintenance of the Easement by Grantee may impede or interfere with the right of Grantor or its agents, employees, guests and invitees to have vehicular and pedestrian access over and across the Easement and ingress and egress to and from the Makar Property, and Grantee shall not suffer or permit any such actions to be undertaken by any person with respect to the Easement Property or the Easement.

(d) Grantee shall indemnify, defend and hold Grantor harmless from and against any and all loss, cost, liability and expense arising out of (i) Grantee's activities on the Easement Property in connection with the performance of any construction, maintenance, replacement or repair work, including, without limitation, any loss, cost, liability or expense on the Makar Property which arises from Grantee's activities or use of the Easement Property, (ii) Grantor's failure to perform its obligations under subsection (a) above, or (iii) the activities of Grantee or any other person arising out of or related to the Easement or the Easement Property. Nothing herein shall be deemed to require Grantee to defend or indemnify Grantor, to the extent that any loss, costs, liability, or expense arise out of Grantor's or its agents, officers, or employee's negligent or intentional conduct.

### ARTICLE III.

#### RESERVATION OF RIGHTS

Grantor hereby reserves for itself, its agents, employees, guests, invitees and its successors and assigns, the right to use the Easement Property for any purposes which do not unreasonably interfere with the Grantee's use and enjoyment of the Easement granted pursuant to this Agreement.

### ARTICLE IV.

#### MISCELLANEOUS

4.1 No Representations or Warranties. Grantor disclaims the making of any representations or warranties, express or implied, regarding the adequacy of the Easement Property for the purposes contemplated by this Agreement. Grantee specifically acknowledges that it is not relying upon any statements, representations or warranties made by Grantor or anyone acting on Grantor's behalf concerning the Easement Property.

4.2 Entire Agreement. This Agreement, together with the exhibits attached, contains the entire understanding between Grantor and Grantee with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are replaced in total by this Agreement and the exhibits attached.

4.3 Time. Time is of the essence in the performance of the parties' respective obligations contained in this Agreement.

4.4 Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, shall run with the land and be binding upon and inure to the successors, assigns, tenants and personal representatives of Grantor. Notwithstanding anything to the contrary herein, the Easement is personal to Grantee and may not be transferred or assigned to any private entity without the

prior written consent of Grantor, in Grantor's sole and absolute discretion.

4.5 Attorneys' Fees. In the event any dispute between Grantor and Grantee should result in litigation with respect to the subject matter of this Agreement, the prevailing party shall be reimbursed for all reasonable costs, including, without limitation, reasonable attorneys' fees.

4.6 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

**IN WITNESS WHEREOF**, Grantor and Grantee have executed this Agreement as of the day and year first written above.

**GRANTOR:**

MAKAR BAYNORTH COSTA MESA LLC,  
a Delaware limited liability company

By: MAKAR OC Hotel, LLC  
a Delaware Limited Liability Company  
Its Managing Member

By: Makar Properties, LLC  
a Delaware Limited Liability Company  
Managing Member

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

**GRANTEE:**

THE CITY OF COSTA MESA, a Municipal Corporation

By: \_\_\_\_\_  
Allan Mansoor, Mayor

Attest:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



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

WITNESS my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public in and for said State

**EXHIBIT A**

MAKAR PROPERTY

**EXHIBIT B**

EASEMENT PROPERTY