DATE: July 16, 2008

TO: City Council

FROM: Jim Rupp, Assistant City Attorney
Office of the City Attorney

SUBJECT: Correction of Declaration of Covenants, Conditions, Easements and Restrictions Governing the Seabridge Project Located Southwesterly of the Intersection of Wooley Road and Victoria Avenue

RECOMMENDATION

That City Council authorize the Mayor to execute the corrected documents.

DISCUSSION

These declarations of covenants, conditions, easements and restrictions ("CC&Rs") were initially accepted by the City as part of Tract Map 5266, but were inadvertently not recorded simultaneously with their respective tract maps. The CC&Rs are necessary since the tract maps did not include utility, maintenance and access easements necessary for the operation of the private docks that are part of the approved project.

The attached documents allow the approved project to function as planned.

FINANCIAL IMPACT

There is no financial impact to the City.

JR

Attachment #1 - First Amendment To Declaration of Covenants, Conditions, Easements and Restrictions (Tract No. 5266-4)
Attachment #2 - Declaration of Covenants, Conditions, Easements and Restrictions (Tract No. 5266-5)
Attachment #3 - Declaration of Covenants, Conditions, Easements and Restrictions (Private Docks, Tract No. 5266-6)
Correction of Documents for Seabridge Project
July 16, 2008
Page 2

Attachment #4 - Declaration of Covenants, Conditions, Easements and Restrictions (Tract No. 5266-8)
Attachment #5 - Declaration of Covenants, Conditions, Easements and Restrictions (Private Docks, Tract No. 5266-5)

Note: Attachments 2, 4 and 5 are over ten pages in length and have been provided to the City Council. Copies are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk’s Office after 8:00 a.m. on Friday.
FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
(Tract No. 5266-4)

This First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions (Tract No. 5266-4) is made as of this 22 day of July, 2008, by D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation (“Declarant”). For convenience, this Instrument is hereinafter referred to as this “First Amendment”).

RECITALS

A. Declarant has heretofore executed that certain Declaration of Covenants, Conditions, Easements and Restrictions (Tract No. 5266-4) and caused the same to be recorded in the Official Records of Ventura County, California on September 20, 2005 as Instrument No. 20050928-0241683, Official in and for said County (the “Declaration”).

B. The Declaration, in part, provides for the establishment of certain easements defined in the Declaration as the “Access Easements” and “Utility Easements” affecting Lots F and K of Tract No. 5266-4 as per map recorded in Book 154, Pages 33-38 of Maps in the Office of the County Recorder of Ventura County, California (the “Final Map”).

C. Declarant desires to amend the legal descriptions of the lots within said Tract No. 5266-4 subject to the Access Easements and the Utility Easements by adding Lot G to said Lots F and K.

D. Declarant is the owner of said Lots F, G and K subject to the offers of dedication to the City of Oxnard of said Lots on the Final Map.

NOW, THEREFORE, Declarant does hereby amend the Declaration and establish the Access Easements and Utility Easements with respect to said Lot G, as follows:

1. Terms defined in Article 1 of the Declaration when used in this First Amendment shall have the meanings defined in Article 1 of the Declaration; provided that the term “Lot” shall mean of Lots G, F, K and W4 established by the Final Map.
2. The references to “Lots F, K and W4” in Recitals C and D to the Declaration are hereby amended to “Lots F, G, K and W4.”

3. The reference to “Lots F and K” in Recital G to the Declaration is hereby amended to “Lots F, G and K.”

4. The reference to “Lots F and K” in Section 1 of Article 1 of the Declaration is hereby amended to “Lots F, G and K.”

5. The references to “either Lot F or Lot K” in the second and seventh lines of Section 1 of Article 3 of the Declaration are hereby amended to “any of Lots F, G or K.”

6. The references to “either Lot F or Lot K” in the second and seventh lines of Section 1 of Article 4 of the Declaration are hereby amended to “any of Lots F, G or K.”

7. The reference to “Lot F and/or Lot K” in the ninth line of Section 3 of Article 4 of the Declaration is hereby amended to “Lots F, G and/or K.”

8. The reference to “either Lot F or Lot K” in the seventh line of Section 4 of Article 3 of the Declaration is hereby amended to “any of Lots F, G or K.” The reference to “Lots F and K” in the eleventh line of Section 4 of Article 3 of the Declaration is hereby amended to “Lots F, G and K.”

9. The reference to “Lots F, K or W4” in the third line of Section 1 of Article 7 of the Declaration is hereby amended to “Lots F, G, K or W4.”


11. The effective date of the amendments to the Declaration provided for in Sections 1-10 above shall be the date that this First Amendment executed by Declarant with the attached Consent by City executed by the City of Oxnard is recorded in the Official Records of Ventura County, California. Except as expressly amended by said Sections 1-10 above, the Declaration shall continue in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this First Amendment as of the day and year first above written.

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation

By: [Signature]

Its: William Mayer, Vice Pres.

“Declarant”

ATTACHMENT #1
PAGE 2 OF 4
CONSENT BY CITY

The undersigned, the City of Oxnard, hereby subordinates the offer of dedication to the City of Lot G on the Final Map of Tract No. 5266-4, as per Map recorded in Book 154, Pages 33-38 of Maps in the Office of County Recorder of Ventura County, California to the First Amendment to Declaration of Covenants, Conditions, Easements and Restrictions to which this Consent is attached.

CITY OF OXNARD,
a municipal corporation of the State of California

By: ________________________
    Dr. Thomas B. Holden, Mayor

ATTEST:

______________________________
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

______________________________
Gary L. Gillig, City Attorney
STATE OF CALIFORNIA

COUNTY OF San Diego ss.

On 7-15-23 before me, Laurie E. Weldon, Notary Public, personally appeared Jill M. Blevins who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. 

Notary Public

[SEAL]

Laurie E. Weldon
Commission # 1648173
Notary Public - California
San Diego County
My Comm. Expires Feb 28, 2010

ATTACHMENT #1
PAGE 4 OF 4
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS
(Private Docks; Tract No. 5266-6)

THIS DECLARATION is made as of this 22nd day of July, 2008, by D.R. Horton Los Angeles Holding Company, Inc., a California corporation ("Declarant"). For convenience, this instrument is hereinafter referred to as this "Declaration."

RECITALS

A. Declarant or the City of Oxnard is the owner of that certain real property in the City of Oxnard, County of Ventura, State of California legally described in the attached Exhibit "A" (the "Property").

B. The Property is subject to the Mandalay Bay Phase IV Specific Plan adopted by the City Council of Oxnard and incorporated into the local coastal zone adopted by the City Council of Oxnard and approved by the California Coastal Commission (the "Specific Plan"); that certain Development Agreement made as of February 4, 2003 (as amended from time to time) by and between the City of Oxnard and a predecessor-in-interest of Declarant (the "Development Agreement"); the conditions to Resolution No. 2002-107 of the Planning Commission of the City of Oxnard recommending approval of Tentative Subdivision Map (PZ00-5-85) of Tract No. 5266 and as adopted by the City Council of Oxnard pursuant to Resolution No. 12310 (the "Tentative Tract Map"), which conditions are hereinafter referred to as the "Tentative Tract Map Conditions"; the certain Seabridge Memorandum of Understanding by and between the County of Ventura acting by and through its Harbor Department Director; the City of Oxnard and a predecessor in interest of Declarant; the conditions to Resolutions No. 12309 of the City Council of the City of Oxnard approving Coastal Development Permit No. 01-5-93 and the conditions to the California Coastal Commission Coastal Development Permit No. A-4-OXN-03-014 dated June 3, 2004 (the "Coastal Permit Conditions"); that certain Site Plan Tract No. 5266 for the Project prepared by Jenson Design & Survey, last revised July 17, 2003 which has been approved by the City of Oxnard (the "Project Site Plan"), as each of the same may from time to time be amended and/or modified (collectively the "Project Permits").

C. It was intended by the Declarant and the City of Oxnard that this Declaration be recorded concurrently with the filing of the Final Map for Tract No. 5266-6. This Declaration and its provisions shall be interpreted and enforced as if this Declaration was recorded concurrently with the filing of the Final Map for Tract No. 5266-6.
D. The Final Map for Tract No. 5266-6 includes offers of dedication by Declarant to the City of Oxnard ("City") for Lot W6.

E. Declarant desires to establish certain in gross assignable private boat dock easements upon those portions of Lot W6 depicted as "Private Boat Dock Easements" on the Final Map for Tract No. 5266-6.

F. Declarant further desires to establish certain covenants, conditions and restrictions in order to, among other things, satisfy certain requirements of the Project Permits including, without limitation, Conditions 98, 100 and 101 of the Tentative Tract Map Conditions and Conditions 7, 110, and 148 of the Coastal Permit, insofar as said conditions relate to Lot W6.

NOW, THEREFORE, Declarant does hereby establish the covenants, easements and restrictions hereinafter set forth, as follows:

ARTICLE 1

DEFINITIONS

The following terms shall have the following meanings when used in this Declaration:

1.1 Approved Site Plan. The term "Approved Site Plan" shall mean the Project Site Plan as amended, from time to time, with all required governmental approvals; provided that the boundaries of the Lots shown on the Project Site Plan shall be deemed to have been modified to conform to the boundaries of said Lots as shown on the Final Maps Filed of Record.

1.2 City. The term "City" shall mean the City of Oxnard.

1.3 Dock Association. The term "Dock Association" shall mean any non-profit corporation and its successors and assigns formed by the Declarant that will own, operate, manage, repair and maintain the Private Dock Facilities.

1.4 Final Map. The term "Final Map" shall mean the final subdivision tract map for Tract No. 5266-6, which will establish Lot W6.

1.5 Lot. The term "Lot" shall mean each of the Lots established by the Final Maps for Tract No. 5266, as the boundaries of any such Lot may be adjusted, from time to time by lot line adjustment or otherwise. The term "Lot" followed by a letter or a letter and a number shall mean the Lot identified by that letter, or letter and number on a Final Map, as the boundaries of any such Lot may be so adjusted.

1.6 Owner. The term "Owner" shall mean any owner of fee title, including Declarant, to a residential Unit (single family residence, condominium or townhome) established by any Final Map for Tract 5266, and/or condominium plan established thereon.

1.7 Person. The term "Person" shall mean a natural person, a trustee, a corporation, a partnership or other legal entity.

1.8 Private Dock Easements. The term "Private Dock Easements" shall mean non-exclusive in gross private dock easements within the areas located on Lot W6 depicted as
“Private Dock Easement” on the Final Maps for the installation, construction, ownership, use, access, licensing, operation, management, repair and maintenance of the Private Dock Facilities and all purposes incidental thereto.

1.9 Private Dock Facilities. The term “Private Dock Facilities” shall collectively mean all boat slips, boat docks, floating platforms (decks), pilings, gangways, railings, fencing, dock boxes, guide piles, utility service lines, security systems, light fixtures, signage, plantings, if any, cleats, bunker guards and other improvements and/or structures relating to mooring boats to be used for storing and boarding boats, yachts and watercraft and all other purposes incidental thereto, which are constructed within Lot W6 by the Declarant in accordance with the Project Conditions. The Private Dock Facilities shall be for the exclusive use of the Owners and their guests, tenants and invitees, and the Dock Association.

1.10 Project Conditions. The term “Project Conditions” shall mean the “Tentative Tract Map Conditions” and the “Coastal Permit Conditions”, as said terms are defined in Recital B to this Agreement, as said Conditions, from time to time, may be amended, with the required governmental approvals.

1.11 Project Permits. The term “Project Permits” shall have the meaning defined in Recital B to this Declaration, as the Project Permits, from time to time, may be amended, with the required governmental approvals.

1.12 Record, Recording, Recorded, Filed and Recordation. The terms “Record”, “Recording”, “Recorded”, “Filed” and “Recordation” shall mean with respect to any document the recordation or filing of such document in the Office of the Ventura County Recorder.

ARTICLE 2

PRIVATE DOCK FACILITIES EASEMENTS

2.1 Reservation. Declarant hereby excepts and reserves the Private Dock Easements from the offer of dedication of Lot W6 to the City, it being understood that the City shall acquire title to Lot W6 subject to the Private Dock Easements excepted and reserved by Declarant pursuant to this Declaration.

2.2 Operation. The licensing, use, repair, maintenance, management and operation of the Private Dock Facilities constructed by Declarant within the portions of Lot W6, subject to the Private Dock Easements shall be in accordance with the applicable Project Permits and the requirements of this Declaration. The Private Dock Facilities shall be maintained in good condition and repair and in a sightly condition by the Dock Association, ordinary wear and tear excepted.

2.3 Tentative Tract Map Condition 98. The Private Dock Easements shall be subject to the right of the City and of any public maintenance district, community facilities district or other public agency having the right to maintain and repair the seawalls for the waterways upon and/or adjacent to Lot W6 to require the Declarant and/or Dock Association at no cost or expense to the City, to remove and reinstall or rebuild portions of the Private Dock Facilities within the Private Dock Easements in the event and to the extent that such removal is necessary for inspection, maintenance, repair or replacement of the said seawalls.
2.4 Tentative Tract Map Condition No. 100. Any docks, ramps or other structures constructed upon or in connection with the use of the Private Dock Easements shall not impose any load on the adjacent sea wall in excess of the applicable load approved by the City Engineer pursuant to Tentative Tract Map Condition No. 100.

2.5 Assignment of Private Dock Easements. The Private Dock Easements shall be freely assignable by Declarant to any Owner or the Dock Association, but may only be used for the installation, construction, ownership, access, operation, management, repair and maintenance of the Private Dock Facilities on Lot W6 in accordance with the applicable Project Permits. Without limiting the foregoing, Declarant at any time may unilaterally transfer ownership of the Private Dock Facilities, and assign the Private Dock Easements to the Dock Association. Upon such a transfer and assignment, the Dock Association shall be solely responsible for the maintenance, repair, management and operation of the Private Dock Facilities.

2.6 Establishment of License Rights. Declarant, as the holder of the Private Dock Easements, shall be entitled to assign to any Owner (and no other Person), (a) an exclusive license to use a specific boat slip or boat dock located within the Private Dock Facilities; and (b) a corresponding non-exclusive license over the Private Dock Facilities for purposes of ingress and egress to and from the boat slip or boat dock allocated to such Owner ("License"). Declarant at any time may unilaterally transfer its rights to issue Licenses for the use of boat slips and boat docks within the Private Dock Facilities to a Dock Association. Upon such a transfer of the License rights, the Dock Association shall be solely responsible for keeping records of the Owners that hold a License.

ARTICLE 3

MISCELLANEOUS

3.1 Enforcement/Release. Declarant hereby declares that the Property shall be held, conveyed, encumbered, leased and used subject to the terms and provisions of this Declaration and to the Private Dock Easements. Any assignment, conveyance or other transfer of the Property shall be subject to the terms and provisions of this Declaration and to the Private Dock Easements to the extent applicable thereto and all of the covenants, conditions and restrictions set forth in this Declaration shall run with the land and be enforceable as equitable servitudes and shall be binding upon and benefit the successive owners of fee title in and to the Lots making up the Property and the owners of the Private Dock Easements. The restrictions on the use and transfer of the Private Dock Easements provided for in Article 2 above and the restrictions in this Article 3 are for the benefit of and may be enforced by the City both prior to and following its acceptance of any of the offers of dedication for the Lots making up the Property on the Final Maps. In the event that the fee owner of any Lot making up the Property including, without limitation, Declarant, transfers the ownership of said Lot including, without limitation, the transfer of ownership resulting from the City’s acceptance of any of the offers of dedication on the Final Maps, the transferring owner shall be released from any obligations pursuant to this Declaration relating to the Lot so transferred accruing and to be performed from and after the date of such transfer, but shall continue to be liable for any such obligations having accrued and to have been performed prior to the date of said transfer. Notwithstanding anything herein to the contrary, upon any assignment, conveyance or transfer by Declarant, or any successor in interest to the Dock Association, an Owner or any third party approved by the City, the assigning or transferring party shall be released from any obligations pursuant to this Declaration accruing
and to be performed from and after the date of such transfer or assignment, but shall continue to be liable for any such obligations having accrued and to have been performed prior to the date of such transfer or assignment. A breach of this Declaration shall not entitle any such fee owner or the owner of any Private Dock Easement to terminate this Declaration.

3.2 **Lender Protection.** A breach of any of the terms, covenants, conditions or restrictions of this Declaration shall not defeat or render invalid the lien of any deed of trust or mortgage made in good faith and for value, but each such term, condition, covenant or restriction shall be binding upon and effective against any person who acquires title to any interest in the Property by foreclosure, trustee’s sale or otherwise. The lien or charge of any deed of trust or mortgage encumbering Declarant’s fee interests in and to any of the Lots making up the Property shall be subject to the offers of dedication of said Lots on the Final Maps, but shall encumber any of the Private Dock Easements excepted and reserved from said offers of dedication as to any such Lot, to the extent said Private Dock Easements become effective upon the City’s acceptance of the applicable offer or offers of dedication.

3.3 **Duration.** The covenants, restrictions and easements of this Agreement shall run with and bind the Property for a term of sixty-five (65) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years each, unless an instrument in writing, signed by the Declarant, the Dock Association, the fee owners of each of the Lots making up the Property and, if not then such an owner, by the City has been Recorded within the six (6) month period immediately preceding or the six (6) month period immediately following the beginning of any such successive period of ten (10) years, agreeing to terminate this Agreement.

3.4 **Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration shall be strictly limited to and for the purposes herein expressed.

3.5 **Condemnation.** In the event of condemnation by any duly constituted authority for a public or quasi-public use of all or any part of the Property subject to the Private Dock Easements (an “Easement Area”), that portion of the award attributable to the value of any land and improvements within the Easement Area so taken shall be payable only to the fee owner or owners of the Easement Area so taken, subject, however, to the terms of any lease, license or other contractual agreement entered into by the fee owner or owners.

3.6 **Attorneys’ Fees.** If a legal action be commenced to enforce or to declare the affect of any provision of this Declaration, the prevailing party shall be entitled to reasonable attorneys’ fees and costs.

3.7 **Time of the Essence.** Time is of the essence.

3.8 **Governing Law.** This Declaration shall be governed by the laws of the State of California.

3.9 **Inconsistency with Approvals.** In the event of a conflict between any of the terms and provisions of this Declaration and the Oxnard City Code, the Coastal Permit Conditions or the Tentative Tract Map Conditions, the Oxnard City Code, the Coastal Permit Conditions or the Tentative Tract Map Conditions, as applicable, shall control.
3.10 **Headings and Language.** The captions at the beginning of each Section and Article of this Declaration are not part of and in no manner or way define, limit, amplify, change, or alter any term, covenant, or provision of this Declaration. For the purposes of this Declaration, the neuter gender includes the feminine or masculine, and the singular number includes the plural.

3.11 **Severability.** If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions thereof shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first hereinabove written.

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation

By: [Signature]

Its: **Vice President**

“Declarant”
CONSENT BY CITY

The terms "City", "Declarant", "Declaration", "Private Dock Easements", "Final Maps", "Lots" and "Property" shall have the meaning defined in the Declaration of Covenants, Conditions, Easements and Restrictions to which this Consent is attached.

The undersigned, the City of Oxnard, acknowledges and agrees that the offers of dedication to the City on the Final Maps for each of the Lots making up the Property shall be subject to the terms, covenants, exceptions and reservations provided for in the Declaration and that the City’s title to each of the Lots making up the Property following the City’s acceptance of the offer of dedication of each such Lot on the Final Maps shall be subject to the Private Dock Easements applicable to such Lot.

CITY OF OXNARD,
a municipal corporation of the State of California

By:________________________________________
Dr. Thomas B. Holden, Mayor

ATTEST:

________________________________________
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

________________________________________
Gary L. Gillig, City Attorney
STATE OF CALIFORNIA )
COUNTY OF San Diego ) ss.

On 7-15-08, before me, Laurie E. Weldon, Notary Public, personally appeared William [redacted], who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]

Laurie E. Weldon
Notary Public

STATE OF CALIFORNIA )
COUNTY OF ) ss.

On 7-15-08, before me, [redacted], Notary Public, personally appeared [redacted], who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[SEAL]
EXHIBIT “A”

LEGAL DESCRIPTION OF THE PROPERTY

ALL THAT CERTAIN LAND SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF VENTURA, CITY OF OXNARD, DESCRIBED AS FOLLOWS:

LOT W6 OF TRACT NO. 5266-6, AS SHOWN ON A SUBDIVISION MAP RECORDED IN BOOK 155 AT PAGES 31 AND 32 OF MISCELLANEOUS RECORDS (MAPS), IN THE OFFICE OF THE VENTURA COUNTY RECORDER.