

RESOLUTION NUMBER R-288960

ADOPTED ON JULY 14, 1997

WHEREAS, Westshaw owns certain real property located within Subarea V of the North City Future Urbanizing Area ("NCFUA") of the City of San Diego (see attached Exhibit A for legal description); and

WHEREAS, on March 26, 1996, the voters of the City of San Diego approved Proposition "C" (Prop "C") which authorized The City of San Diego to issue a Conditional Use Permit ("CUP") for the development of a 300-unit resort/hotel ("The Hotel") on Westshaw's property contingent upon the establishment of a financing or funding mechanism for the acquisition of public open space lands; and

WHEREAS, The Hotel authorized pursuant to Prop "C" is contingent upon, and subject to, certain conditions which would create significant public benefits to the City in the form of a stream of funds to be provided over a period of approximately ten (10) years after The Hotel is completed totaling \$6.3 million. Such funds are to be utilized exclusively for the acquisition of public open space lands essential to the viability of the habitat system within or in the vicinity of the NCFUA (Proposition "C" Obligation). Such funds could also be used to support bonds for such acquisition; and

WHEREAS, on December 10, 1996, by Resolution No. R-288199, the City approved Resource Protection Ordinance/Conditional Use Permit/Planned Residential Development (RPO/CUP/PRD) Permit No. 89-1296 (the "Permits"), also referred to as the Bougainvillea Project; and

WHEREAS, the CUP portion of the Permits authorized the development of The Hotel on approximately 30 acres of Westshaw's property (see attached Exhibit B - Locational Map); and

WHEREAS, Conditions 19a and 19b of the Permits require satisfaction by Westshaw of certain mitigation requirements including: the permanent preservation of off-site biological resources or in the alternative a mitigation payment of \$1,950,000 paid up front; and

WHEREAS, Condition 54 of the Permits requires that prior to the issuance of any building permit for development of The Hotel, that Westshaw enter into an agreement with the City to assure compliance with the Proposition "C" Obligation; and

WHEREAS, on December 10, 1996, the City Council adopted Resolution No. R-288200 which directed the City Manager to return to the City Council for a noticed public hearing to consider the execution of an agreement between the City and Westshaw which would address issues concerning implementation of the resort/hotel lodging facility portion of the Bougainvillea Project and which agreement would set forth the terms and conditions relating to the collection, credit, and deferment of Proposition "C" Open Space Acquisition Funds; and

WHEREAS, the purpose of the agreement is to satisfy Conditions 19a, 19b, and 54 of the Permits, and to assure compliance with the Proposition "C" Obligation; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the City Manager be and he is hereby authorized and empowered to execute, for and on behalf of said City, the Agreement Relating to Implementation of Proposition "C" (the "Agreement") with Westshaw Associates, an Arizona general partnership, for the implementation of the hotel portion of the Bougainvillea Project (CUP No. 89-1296), under the terms and conditions set forth in the Agreement on file in the office of the City Clerk as Document No. RR-288960.

BE IT FURTHER RESOLVED, that the above-mentioned Agreement shall contain language to assure that:

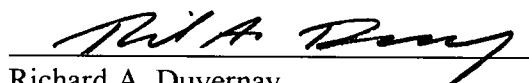
1. Westshaw agrees to provide the City with either cash, a Bond, Letter of Credit, Certificate of Deposit, or other surety acceptable to the Community and Economic Development Manager in the amount of \$1,950,000 to satisfy Westshaw's mitigation requirements pursuant to Conditions 19a and 19b of the Permits.

2. For purposes of satisfying Westshaw's Proposition "C" Obligation pursuant to Condition 54 of the CUP, all rooms or units of the 300-suite resort/hotel lodging facility on the project site (as described in Condition 2.b. of the CUP) shall be treated as rented transient occupied hotel rooms within the meaning of Chapter III, Article 5, Division 1, of the San Diego Municipal Code, the Transient Occupancy Tax regulation. In addition, all rooms or units of the 300-suite resort/hotel lodging facility (as described in Condition 2.b. of the CUP) shall be treated as rooms subject to the \$10 per room per night fee as described in paragraph 6 of the Agreement Relating to Implementation of Proposition C.

3. The payment of the \$6.3 million in satisfaction of Westshaw's Proposition "C" Obligation shall be payable over a ten (10) year period and due no later than thirteen (13) years after the first Certificate of Occupancy is issued for the Hotel.

APPROVED: CASEY GWINN, City Attorney

By



Richard A. Duvernay
Deputy City Attorney

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