

RECORDED ATTACHMENT
ITEM NO. C.6
DATE: Jan. 25, 2011

Recording Requested By:
COUNTY OF CONTRA COSTA

Return to: COUNTY OF CONTRA COSTA
Public Works Department / Watershed Program
255 Glacier Drive
Martinez, CA 94553

Document Title

COUNTY OF CONTRA COSTA

COVENANT RUNNING WITH THE LAND,
STORMWATER MANAGEMENT FACILITIES OPERATION
AND MAINTENANCE AGREEMENT, AND RIGHT OF ENTRY

PROJECT: County File #LP08-2044 (Walgreens Bay Point)

OWNERS NAME(S): AVE Bay Point Limited Partnership and
AVE Bay Point Dunn Limited Partnership

ASSESSOR'S PARCEL NUMBER(S): 096-031-009, 096-031-020, 096-031-021

**COVENANT RUNNING WITH THE LAND,
STORMWATER MANAGEMENT FACILITIES
OPERATION AND MAINTENANCE AGREEMENT,
AND RIGHT OF ENTRY**

This Covenant Running with the Land, Stormwater Management Facilities Operation and Maintenance Agreement and Right of Entry ("Agreement") is made and entered into this 16 day of December, 2010, by and between AVE Bay Point Limited Partnership, a California limited partnership, and AVE Bay Point Dunn Limited Partnership, a California limited partnership (hereinafter referred to collectively as "Property Owner") and the County of Contra Costa, a political subdivision of the State of California ("County").

RECITALS

This Agreement is made and entered into with reference to the following facts:

- A.** The Property Owner owns fee title to the Property and intends to develop it in a manner that will create at least ten thousand (10,000) square feet of impervious surfaces. Due to the amount of impervious surfaces created, the development is subject to the requirements of the NPDES permit.
- B.** The County operates and maintains Broadway Avenue and Willow Pass Road. The storm drains associated with these streets receive stormwater from the Property, and the County is required to ensure that stormwater runoff from the Property into said storm drains meets the requirements of its NPDES Permit.
- C.** The NPDES permit requires the County to condition approval of the development on the implementation, by the Property Owner, of treatment measures to reduce stormwater pollutant discharges.
- D.** The Ordinance sets forth procedures for carrying out the NPDES Permit's conditions. The Ordinance requires the Property Owner to submit a Stormwater Control Plan and an Operations and Maintenance Plan to the County for approval, and to implement the plans upon approval.

DEFINITIONS

The following terms used in this Agreement have the meanings specified below:

County Engineer: The term "**County Engineer**" means the Public Works Director for the County or his/her designee.

Maintain: The term "**maintain**" or "**maintained**" or "**maintenance**" means taking all actions reasonably necessary to keep the Stormwater Facilities in compliance with the

Stormwater Control and Operation and Maintenance Plans, which actions include but are not limited to, regular inspections, painting, cleaning, refinishing, repairing, replacing and reconstructing the Stormwater Facilities, and in the case of landscaping, plant replacement, mulch replacement, irrigating, trimming, mowing, and fertilizing the landscaping. The term also includes activities described in the Operation and Maintenance Plan, annual inspection and reporting, and the payment of any applicable County fees.

NPDES Permit: The term "**NPDES Permit**" means National Pollutant Discharge Elimination System (NPDES) Permit No. CAS612008 (issued by the San Francisco Regional Water Quality Control Board), any amendments to the permit, and any subsequent superseding permits.

Operation and Maintenance Plan: The term "**Operation and Maintenance Plan**" means the Stormwater Control Operation and Maintenance Plan prepared by Nolte Associates and deemed consistent with the Ordinance by the County on November 3, 2010, which may be subsequently modified from time to time with the County Engineer's prior written approval as provided herein. The Operation and Maintenance Plan and any approved amendments thereto are on file at the County Public Works Department.

Ordinance: The term "**Ordinance**" means Division 1014 of Title 10 of the Contra Costa County Code (Stormwater Management and Discharge Control), as may be amended from time to time.

Property: The term "**Property**" means that real property identified by the Contra Costa County Assessor as Assessor's Parcel Number(s) 096-031-009, 096-031-010, and 096-031-021, which is more particularly described in Exhibit A attached hereto and incorporated herein.

Property Owner: The term "**Property Owner**" means AVE Bay Point Limited Partnership and AVE Bay Point Dunn Limited Partnership and all heirs, successors, executors, administrators and assigns of any interest in the Property.

Stormwater Control Plan: The term "**Stormwater Control Plan**" means the Stormwater Control Plan prepared by Nolte Associates and deemed consistent with the Ordinance by the County on November 3, 2010, which may be subsequently modified from time to time with the County Engineer's prior written approval as provided herein. The Stormwater Control Plan and any approved amendments thereto are on file at the County Public Works Department.

Stormwater Facilities: The term "**Stormwater Facilities**" means the permanent stormwater management facilities and appurtenant design features located and constructed on the Property, as described by the Stormwater Control Plan, and as shown in Exhibit A to the Stormwater Control Plan, which is on file with the County Public Works Department.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Property Owner agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner represents and warrants that the Stormwater Facilities have been constructed and installed in accordance with the Stormwater Control Plan. No portion of the Stormwater Facilities may be altered in any manner that is inconsistent with the Stormwater Control Plan without the prior written consent of the County Engineer. The Property Owner shall maintain the Stormwater Facilities in first class operating condition, in accordance with the Stormwater Control Plan and the Operations and Maintenance Plan, and in compliance with all applicable federal, state, and local laws and regulations, as they may be amended from time to time.

The County may require the Property Owner to amend the Stormwater Control Plan and/or the Operation and Maintenance Plan whenever the County reasonably deems amendments necessary to maintain compliance with the NPDES Permit. All amendments proposed by the Property Owner are subject to the prior written approval of the County Engineer. Whenever the Property Owner requests amendments to the Stormwater Control Plan and/or the Operation and Maintenance Plan, the Property Owner shall reimburse the County for all staff time spent reviewing and taking any action with respect to such requests, whether or not the County Engineer approves the proposed amendments. All approved amendments to the Stormwater Control Plan and the Operation and Maintenance Plan will be kept on file at the County Public Works Department. The Property Owner shall comply with all requirements of the Stormwater Control Plan and the Operation and Maintenance Plan, and any amendments thereto.

The Property Owner shall engage a landscape contractor or other licensed professional to undertake the following maintenance activities on the Property, if the Property Owner or the County Engineer deems such activities to be necessary for plan compliance, unless the Property Owner receives prior written approval of an alternative method from the County Engineer.

1. Diagnosis and correction of Stormwater Facilities malfunctions that cannot be corrected through routine maintenance,
2. Application of fertilizer and/or pest control products,
3. Repair of private drainage system (including rain gutters, downspouts, area drains, risers, inlets, outlets, overflows, clean-outs, connectors, earthen (vegetated) and/or concrete conveyance swales, check dam/retaining walls, and catch basins),
4. Maintenance of irrigation system that may affect stormwater reaching Stormwater Facilities,

5. Modification of site topography through grading, paving, pavement maintenance, or other activities that may affect stormwater reaching Stormwater Facilities,
6. Subdrain cleaning/replacement (including perforated drain pipe),
7. Replacement of engineered soil and mulch,
8. Replacement of energy dissipation rock.

The County Engineer may, at any time, with reasonable cause, revoke approval of an alternate method for the maintenance of the Stormwater Facilities, and require Property Owner to hire a landscape contractor or other licensed professional to undertake any of the activities mentioned in this section.

SECTION 2

Inspection by Property Owner: The Property Owner shall conduct, at a minimum, annual inspections of the Stormwater Facilities, and shall submit a Stormwater Facility Operation and Maintenance Certification Form, which will be provided annually to the Property Owner by the County, to the County Engineer within 30 days after completion of the inspection or by the date indicated on the form. In the event that the County reasonably determines that the information submitted is insufficient to determine that the Property Owner is complying with the terms of this Agreement, the County may require additional information from either the Property Owner or an appropriate licensed contractor.

SECTION 3

Right of Entry and Stormwater Facilities Inspection by the County: The Property Owner hereby grants to the County, its authorized agents and employees, and other agencies/districts with a legitimate interest in the Stormwater Facilities such as the Contra Costa Flood Control and Water Conservation District, the Contra Costa Mosquito and Vector Control District, the Contra Costa County Consolidated Fire Protection District, the Regional Water Quality Control Board, a right of entry upon the Property to inspect the Stormwater Facilities. The County and all other entities shall endeavor to provide reasonable notice to the Property Owner before entering the Property, and such entry shall be conducted in such a manner as to reasonably minimize interference with any business being conducted on the Property.

SECTION 4

Failure to Perform Required Stormwater Facilities Repairs or Maintenance by the Property Owner: If the Property Owner fails to maintain the Stormwater Facilities in good working order and in accordance with the approved Operation and Maintenance Plan and the Ordinance, the County, upon providing reasonable prior written notice pursuant to Section 8 of this Agreement, may enter the Property to perform any work of maintenance or repair on the Stormwater Facilities. The County is under no obligation to

maintain or repair the Stormwater Facilities, and this Agreement may not be construed to impose any such obligation on the County. If the County, under this section, performs any work of maintenance or repair on the Stormwater Facilities, such action shall not be deemed or construed as an exercise of dominion and control by the County over the Stormwater Facilities or the Property. To the contrary, the Property Owner shall remain, at all times, obligated to maintain the Stormwater Facilities in accordance with the Stormwater Control Plan and the Operation and Maintenance Plan. The Property Owner shall reimburse the County for all maintenance and repair costs incurred by the County with respect to the Stormwater Facilities, including administrative costs. The County will provide the Property Owner with an itemized invoice of the County's costs and the Property Owner will have 30 days to pay the invoice. In addition, the County may recover the cost of any code enforcement or nuisance abatement actions caused by the Property Owner's failure to maintain the Stormwater Facilities through special assessment against the Property that may be collected in accordance with applicable law. This section does not prohibit the County from pursuing other legal recourse against the Property Owner.

If the Property Owner fails to maintain the Stormwater Facilities in accordance with the Operation and Maintenance Plan and the Ordinance, the Property Owner shall be responsible for payment of, or reimbursement to the County for, any fines that may be levied against the County by the Regional Water Quality Control Board or any other regulatory agency to the extent that the fines result from the Property Owner's failure to maintain the Stormwater Facilities. The County may recover such costs from the Property Owner in the same manner as provided in the preceding paragraph of this section.

SECTION 5

Indemnity: The Property Owner agrees to defend, indemnify, save, and hold harmless the County, its governing board, officers, agents, and employees from any and all demands, losses, claims, costs, suits, liabilities, and expenses for any property damage, personal injury, or death arising directly or indirectly from or connected with the design, construction, use, operation or maintenance of the Stormwater Facilities by the Property Owner or the presence or existence of the Stormwater Facilities on the Property, except for claims, costs, or liabilities resulting from the sole negligence or sole willful misconduct of the County. The Property Owner's obligations under this section shall include the payment of penalties, fines, attorneys' fees, experts' fees, costs, and litigation expenses, as well as liability for the release or existence of any hazardous materials on, under, or in the Property. If any action or proceeding is brought against any of the indemnitees, the Property Owner shall reimburse the indemnitees for any expenditures, including reasonable attorneys' fees and costs, incurred by the indemnitees and, if requested by any of the indemnitees, shall defend the action or proceeding at the Property Owner's sole expense with counsel reasonably acceptable to the indemnitees.

SECTION 6

Covenant Running with the Land: The provisions of this Agreement constitute a covenant running with the land that shall bind Property Owner and all of Property Owner's agents, representatives, heirs, assigns, and all other successors in ownership of the Property. Said covenant shall inure to the benefit of and be enforceable by the County, and its successors and assigns in ownership of each and every part of Broadway Avenue and Willow Pass Road and the associated storm drains.

SECTION 7

Severability: Invalidity of any one of the provisions of this Agreement shall in no way affect any other provisions and all other provisions shall remain in full force and effect.

SECTION 8

Notices: All notices herein required in writing shall be delivered by person or sent by registered mail, postage pre-paid.

Notices required to be given to the County shall be addressed as follows:

Contra Costa County Public Works Department
Attention: County Watershed Program
255 Glacier Drive
Martinez, CA 94553

Notices required to be given to the Property Owner shall be addressed as follows:

Name/Corporate Entity: C/O Aventine Development Corporation
Attention (Name, Position): Chad A. Hagle, CEO
Street Address: 4685 Mac Arthur Court, Suite 375
City, State: Newport Beach, CA 92660
Telephone Number: 949-660-1293

Any party may change its address or contact person by notice in writing to the other party, and thereafter, notices shall be addressed and transmitted to the new address and/or new contact person.


SECTION 9

Effective Date and Amendment: This Agreement is effective upon the date of execution as stated at the beginning of this Agreement. This Agreement shall not be

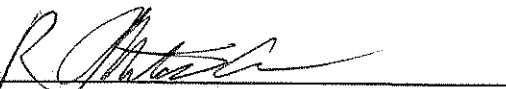
modified except by written instrument executed by the County and the Property Owner. Such amendment shall be effective upon the date of execution and shall be recorded.

County

Contra Costa County, a political subdivision of the State of California

By: 
Chair of the Board of Supervisors
or Designee

Recommended for Approval:

By: 

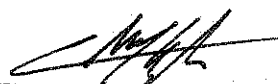
Approved as to Form:
Sharon L. Anderson,
County Counsel


By: 
Deputy County Counsel

Property Owner

AVE Bay Point Limited Partnership,
a California limited partnership


By: AVE Bay Devco, Inc.,
a California corporation
Its: General Partner

By: 
Name: Chad A. Hagle
Title: President

By: 
Name: Sue Clark
Title: Secretary

AVE Bay Point Dunn Limited Partnership,
a California limited partnership

By: AVE Bay Devco Dunn, Inc.,
a California corporation
Its: General Partner

By: 
Name: Damon J. Dunn
Title: President

By: 
Name: Sue Clark
Title: Secretary

Attachments: Acknowledgments
Exhibit A

ALL PURPOSE ACKNOWLEDGMENT

State of California)
) s.s.
County of ORANGE)

On DECEMBER 16, 2010, before me,
JUDI LOWENTHAL, NOTARY PUBLIC, personally appeared
CHAD A. HAGLE AND SUE CLARK

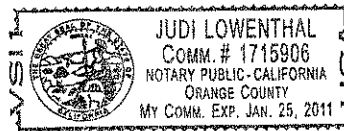
_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~ are subscribed to the within instrument and acknowledged to me that ~~he~~ ~~she~~ they executed the same in his ~~her~~ their authorized capacity(ies), and that by his ~~her~~ their signature(s) on 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 is true and correct.

WITNESS my hand and official seal.

(SEAL)

Judi Lowenthal
Signature of Notary Public



CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

✓ Individual(s)
____ Corporate Officer(s) Titles PRESIDENT and SECRETARY
____ Partner(s) _____ Limited _____ General
____ Attorney-in-Fact
____ Trustee(s)
____ Guardian/Conservator
____ Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document COVENANT...
Number of pages: 10 Date of document: 12/16/10
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

ALL PURPOSE ACKNOWLEDGMENT

State of California)
County of Los Angeles) s.s.

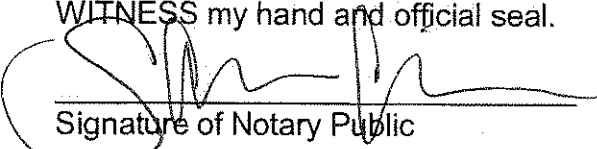
On Dec. 20 2010, before me,
Sandra Cisneros, personally appeared
Damon J. Dunn

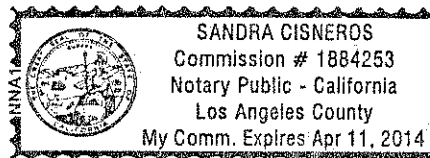
_____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) 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 is true and correct.

WITNESS my hand and official seal.

(SEAL)


Signature of Notary Public



CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

____ Individual(s)
____ Corporate Officer(s) Titles _____ and _____
____ Partner(s) _____ Limited _____ General
____ Attorney-in-Fact
____ Trustee(s)
____ Guardian/Conservator
✓ Other : President

Signer is representing: Self

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document Covenant Running w/ the Land, stormwater management facilities operation & maintenance agreement & Right of Entry
Number of pages: 11 Date of document: 12/20/10
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A

Legal description (APN#s 096-031-009, 096-031-020, 096-031-021)

[attached]

EXHIBIT A

Legal Description of the Property

All that certain real property situated in the County of Contra Costa, State of California, described as follows:

Unincorporated Area

Lots 1, 2, 4, and the South half of the West 198.87 feet of Lot 5, Block A, Map of Poinsettia Land Company, West Pittsburg, Tract Unit No. 1, filed June 8, 1926, Map Book 19, Page 506, Contra Costa County Records.

Excepting therefrom:

That portion of Lot 4, Block A, Granted in the deed to Forrest Gieg et ux, recorded September 3, 1942, in Book 684 of Maps page 109, Contra Costa County Records.

Also Excepting therefrom

That portion contained in the deed to Contra Costa County, recorded March 2, 1992 in Book 17274, page 324, Instrument No. 92-48016

Assessor's Parcel Numbers: 096-031-009, 096-031-020 and
096-031-021

AVE BAY DEVCO, INC.,
a California corporation

**RESOLUTION OF THE BOARD OF DIRECTORS
BY WRITTEN CONSENT TO ACTION
WITHOUT A MEETING
("Board Resolution")**

The undersigned, being the sole Director of AVE Bay Devco, Inc., a California corporation (the "**Corporation**"), hereby takes the following actions and adopts the following preambles and resolutions by signing his written consent hereto pursuant to Section 307(b) of the California Corporations Code and in lieu of a meeting:

1. Appointment of Secretary.

RESOLVED, that effective as of October 25, 2010, Chad A. Hagle has resigned as Secretary of the Corporation.

FURTHER RESOLVED, that effective as of October 25, 2010, Sue Clark is hereby appointed to the office of Secretary of the Corporation, to serve, subject to the provisions of the Bylaws of the Corporation, until her successor is duly appointed and qualified.

2. Appointment of Assistant Secretary.

RESOLVED, that effective as of October 25, 2010, Lauren Wooding has resigned as Assistant Secretary of the Corporation.

FURTHER RESOLVED, that effective as of October 25, 2010, Mary Marko is hereby appointed to the office of Assistant Secretary of the Corporation, to serve, subject to the provisions of the Bylaws of the Corporation, until her successor is duly appointed and qualified.

3. Confirmation of Current Officers.

WHEREAS, for purposes of maintaining clear records of the Corporation, the Director of the Corporation desires to set forth in this Board Resolution the names of each current officer of the Corporation and the office held by each officer.

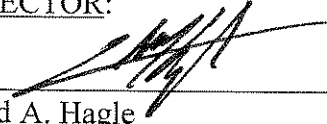
RESOLVED, that as of October 25, 2010, the officers listed below are the holders of the offices of the Corporation set forth next to their names below:

Chad A. Hagle	Chief Executive Officer, Chairman of the Board, President, Chief Operating Officer, and Treasurer
Sue Clark	Secretary
Mary Marko	Assistant Secretary
Lewis E. Miller	Assistant Secretary

The undersigned hereby consents that the actions set forth in the foregoing preambles and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation, effective as of the date hereof, and directs that this Board Resolution be filed with the minutes of the Corporation as part of the permanent records of the Corporation.

This Board Resolution is dated and effective the 25th day of October, 2010.

DIRECTOR:



Chad A. Hagle

AVE BAY DEVCO, INC.

**WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
TO ACTION WITHOUT A MEETING**

The undersigned, being all of the Directors of AVE Bay Devco, Inc., a California corporation (the “**Corporation**”), do hereby take the following actions and adopt the following preambles and resolutions by signing our written consent hereto pursuant to Section 307(b) of the California Corporations Code in lieu of a meeting:

1. Approval of Consent to Annexation Agreement & Maintenance Agreement.

WHEREAS, that certain property located at the northeast corner of Willow Pass Road and North Broadway Avenue, Bay Point, Contra Costa County, California (“**Property**”), is owned by AVE Bay Point Limited Partnership, a California limited partnership, as to an undivided 50% interest (“**Hagle LP**”), and AVE Bay Point Dunn Limited Partnership, a California limited partnership, as to an undivided 50% interest, as tenants in common (collectively, “**TIC**”).

WHEREAS, Corporation is the general partner of Hagle LP.

WHEREAS, Corporation has been asked to execute the following documents on behalf of Hagle LP as the general partner of Hagle LP:

- (i) Consent to, and Ballot in Favor of, Annexation of Real Property to the County of Contra Costa Community Facilities District No. 2007-1 (Stormwater Management Facilities), by TIC, as the owner of the Property, in favor of the annexation of the Property to the County of Contra Costa Community Facilities District No. 2007-1 (“**Annexation Agreement**”); and
- (ii) Covenant Running With the Land, Stormwater Management Facilities, Operation and Maintenance Agreement and Right of Entry between TIC and the County of Contra Costs (“**Maintenance Agreement**”).

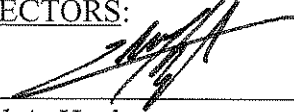
RESOLVED, that the Annexation Agreement and the Maintenance Agreement are hereby approved, and any officer of the Corporation is hereby authorized to execute the Annexation Agreement and/or the Maintenance Agreement on behalf of the Corporation in the Corporation’s capacity as general partner of Hagle LP.

The undersigned hereby consents that the actions set forth in the foregoing preambles and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation, effective as of the date hereof, and direct that this board

resolution be filed with the minutes of the Corporation as part of the permanent records of the Corporation.

This board resolution is dated and effective the 14 th day of December, 2010.

DIRECTORS:



Chad A. Hagle

AVE BAY DEVCO DUNN, INC.,
a California corporation

**RESOLUTION OF THE BOARD OF DIRECTORS
BY WRITTEN CONSENT TO ACTION
WITHOUT A MEETING
("Board Resolution")**

The undersigned, being the sole Director of AVE Bay Devco Dunn, Inc., a California corporation (the "**Corporation**"), hereby takes the following actions and adopts the following preambles and resolutions by signing his written consent hereto pursuant to Section 307(b) of the California Corporations Code and in lieu of a meeting:

1. Appointment of Secretary.

RESOLVED, that effective as of October 25, 2010, Damon J. Dunn has resigned as Secretary of the Corporation.

FURTHER RESOLVED, that effective as of October 25, 2010, Sue Clark is hereby appointed to the office of Secretary of the Corporation, to serve, subject to the provisions of the Bylaws of the Corporation, until her successor is duly appointed and qualified.

2. Confirmation of Current Officers.

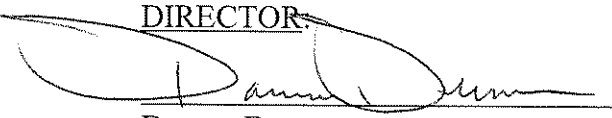
WHEREAS, for purposes of maintaining clear records of the Corporation, the Director of the Corporation desires to set forth in this Board Resolution the names of each current officer of the Corporation and the office held by each officer.

RESOLVED, that as of October 25, 2010, the officers listed below are the holders of the offices of the Corporation set forth next to their names below:

Damon J. Dunn	President, Treasurer, Chief Operating Officer, Chief Executive Officer, and Chairman of the Board
Sue Clark	Secretary

The undersigned hereby consents that the actions set forth in the foregoing preambles and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation, effective as of the date hereof, and directs that this Board Resolution be filed with the minutes of the Corporation as part of the permanent records of the Corporation.

This Board Resolution is dated and effective the 25th day of October, 2010.

DIRECTOR

Damon Dunn

AVE BAY DEVCO DUNN, INC.

**WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
TO ACTION WITHOUT A MEETING**

The undersigned, being all of the Directors of AVE Bay Devco Dunn, Inc., a California corporation (the “**Corporation**”), do hereby take the following actions and adopt the following preambles and resolutions by signing our written consent hereto pursuant to Section 307(b) of the California Corporations Code in lieu of a meeting:

1. Approval of Consent to Annexation Agreement & Maintenance Agreement.

WHEREAS, that certain property located at the northeast corner of Willow Pass Road and North Broadway Avenue, Bay Point, Contra Costa County, California (“**Property**”), is owned by AVE Bay Point Limited Partnership, a California limited partnership, as to an undivided 50% interest, and AVE Bay Point Dunn Limited Partnership, a California limited partnership (“**Dunn LP**”), as to an undivided 50% interest, as tenants in common (collectively, “**TIC**”).

WHEREAS, Corporation is the general partner of Dunn LP.

WHEREAS, Corporation has been asked to execute the following documents on behalf of Dunn LP as the general partner of Dunn LP:

- (i) Consent to, and Ballot in Favor of, Annexation of Real Property to the County of Contra Costa Community Facilities District No. 2007-1 (Stormwater Management Facilities), by TIC, as the owner of the Property, in favor of the annexation of the Property to the County of Contra Costa Community Facilities District No. 2007-1 (“**Annexation Agreement**”); and
- (ii) Covenant Running With the Land, Stormwater Management Facilities, Operation and Maintenance Agreement and Right of Entry between TIC and the County of Contra Costs (“**Maintenance Agreement**”).

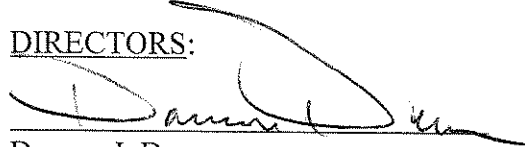
RESOLVED, that the Annexation Agreement and the Maintenance Agreement are hereby approved, and any officer of the Corporation is hereby authorized to execute the Annexation Agreement and/or the Maintenance Agreement on behalf of the Corporation in the Corporation’s capacity as general partner of Dunn LP.

The undersigned hereby consents that the actions set forth in the foregoing preambles and resolutions shall have the same force and effect as if taken at a duly constituted meeting of the Board of Directors of the Corporation, effective as of the date hereof, and direct that this board

resolution be filed with the minutes of the Corporation as part of the permanent records of the Corporation.

This board resolution is dated and effective the 20 th day of December, 2010.

DIRECTORS:

A handwritten signature in dark ink, appearing to read "Damon J. Dunn", is written over a horizontal line.

Damon J. Dunn