



1 been presented the arbitration was taken under submission. After consideration of the evidence  
2 and oral argument the Arbitrators make the following FINAL AWARD and provide a  
3 STATEMENT OF REASONS for such award. The Statement of Reasons provided herein shall  
4 not be deemed a part of the Award.

5  
6 STATEMENT OF REASONS

7 The parties have submitted a single issue to this panel for determination. The April 21,  
8 2008 Agreement [Agreement] between the parties is attached as Exhibit 1. The parties have  
9 defined the issue for this panel by the following provision on page 3 of the Agreement:

10 "In order to resolve this dispute, the parties agree that the fair  
11 market value of the Property (on a per-acre basis) shall be  
12 determined by arbitration pursuant to this agreement."

13 The evidence produced during this arbitration has produced the following facts.  
14 Makallon Atlanta Huntington Beach LLC [Makar] owns a 31.5 acre site at 21002 Pacific Coast  
15 Highway, between First and Huntington Streets, south of Atlanta Avenue, in Huntington Beach.  
16 On June 7, 2004, the City of Huntington Beach [City] approved Tentative Tract Map No. 16338  
17 [TTM] subdividing the site into three parcels for a mixed unit development. This development  
18 is known as Pacific City. The residential component of Pacific City is a 17.23 acre site. [The  
19 Property] The TTM contained conditions of approval. Condition of approval 11 of the TTM  
20 requires that Makar pay a Park In Lieu Fee [Fee] for the residential portion of Pacific City.  
21 Section 254.08 of the Huntington Beach Zoning and Subdivision Code [Section 254.08] governs  
22 the calculation of the Fee.

23 Section 254.078 requires that an appraisal of the Property be used to determine the fair  
24 market value [FMV] of the Property. The date of value of the Property for the appraisal shall be  
25 within sixty (60) days of the final map, which date is August 30, 2007.

1           On February 21, 2007, the City published a Request for Qualifications to appraise  
2 residential portion of Pacific City. [Exhibit 113] This request contained the following  
3 language:

4           **Scope of Work**

5           The City of Huntington Beach is seeking proposals from residential Real Estate  
6 Appraisers with a rating of MAI or higher ...”

7           The City engaged the services of Mr. John Patrick Laurain to appraise the Property. Mr.  
8 Laurain had obtained the rating of ASA at the time of his testimony but not at the time of his  
9 engagement for the appraisal of the Property. This rating was not the equivalent of the City  
10 requirement of MAI. Mr. Laurain rendered the opinion that the Property had a value of  
11 \$6,000,000.00 per gross acre. Mr. Laurain used the sales comparison approach to render his  
12 opinion.

13           Makar engaged the services of Mr. John Gregory Ellis to appraise the Property. Mr. Ellis  
14 obtained the rating of MAI in 1986. Exhibit 80 provides the requirement for obtaining the rating  
15 of MAI. Mr. Ellis rendered the opinion that the Property had a value of \$3,192,107.00 per acre.  
16 Mr. Ellis employed the sale comparison approach and a version of the income capitalization  
17 approach to render his opinion.

18           As the testimony of these two experts is in conflict, this panel must determine what  
19 weight is given to the respective testimony, opinions and appraisal reports. The California Jury  
20 Instructions Civil provides guidance on weighing the believability of these two experts. The  
21 panel finds that the ultimate opinion of Mr. Ellis is the more credible on the question presented  
22 to the panel for the reasons set forth below.

23           Both experts used the sales comparison approach. Mr. Laurain used a quantitative  
24 approach and Mr. Ellis used a qualitative approach. Recognizing that the subject property is  
25 unique and all sales comparisons are with dissimilar properties the panel finds that the  
26 qualitative analysis used by Mr. Ellis is more persuasive.

27           In addition to using the sales comparison approach Mr. Ellis used a version of the  
28 income capitalization approach. Mr. Ellis testified that significant consideration must be given

1 to the risks associated with owning residential land in a declining market. The market condition  
 2 in a declining market should be considered by any appraiser when valuing the Property. Mr.  
 3 Ellis employed this consideration in reaching his opinion. Mr. Laurain did not. The Property  
 4 must be valued in its' entitled state. Mr. Ellis employed the assessment of the current market  
 5 conditions on the value of entitled land. Market conditions affect the difference in value  
 6 between entitled residential vacant land and unentitled residential vacant land. Based on the  
 7 testimony presented to this panel, the opinion of Mr. Ellis, that the market conditions at the date  
 8 of valuation have negatively impacted the value of entitled residential land, is given great  
 9 weight. Entitled land has a greater value when there is a market for the end product of  
 10 residential dwelling. Developers will essentially wait for the development of the entitled  
 11 residential vacant land until the market conditions improve. The slowing market conditions  
 12 started in mid 2006.

13 This panel finds that the discounted cash flow analysis [DCFA] employed by Mr. Ellis  
 14 was appropriate to address the market conditions that existed at the date of valuation. The time  
 15 line for construction of the residential units on the subject property will be developed and sold in  
 16 four phases. This phasing reflects in part normal construction time frames and market  
 17 conditions. The DCFA reflects the required return on investment capital. This method allows  
 18 for consideration of the overall risk presented to the developer given the time frame for the  
 19 development of the Property. Mr. Ellis' application of the DCFA was not applied to phase 1 of  
 20 the development but did apply to phases 2, 3 and 4.

21 Based on the foregoing the panel adopts the expert opinion of Mr. Ellis of the fair market  
 22 value on a per acre basis of \$3,192,107.00.

23 /  
 24 /  
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 26 /  
 27 /  
 28 /

1 **AWARD**

2 The panel finds that the Property has a fair market value of \$3,192,107.00 per acre.

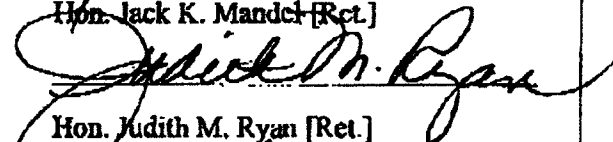
3 **Costs:**

4 The panel finds that Claimant and Respondent shall bear their own attorney fees and  
5 Cost of arbitration pursuant to the Agreement dated April 21, 2008.

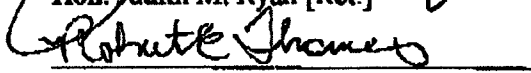
6  
7  
8 Date: July 15, 2008



Hon. Jack K. Mandel [Ret.]



Hon. Judith M. Ryan [Ret.]



Hon. Robert E. Thomas [Ret.]

**PROOF OF SERVICE BY FACSIMILE & U.S. MAIL**

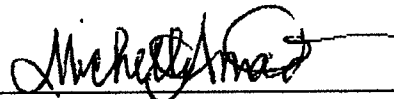
Re: Makar vs. City of Huntington Beach  
Reference No. 1200040499

I, Michelle Amado, not a party to the within action, hereby declare that on July 24, 2008 I served the attached **FINAL AWARD** on the parties in the within action by facsimile and depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at Orange, California, addressed as follows:

K. Erik Friess Esq.  
Nossaman LLP  
18101 Von Karman Ave.  
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Neal Moore  
City of Huntington Beach  
2000 Main St.  
PO Box 190  
Huntington Beach, CA 92648  
Tel: 714-536-5555  
Fax: (714) 374-1590

I declare under penalty of perjury the foregoing to be true and correct. Executed at Orange, California on July 24, 2008.

  
\_\_\_\_\_  
Michelle Amado