



TO: Mayor and Councilmembers

FROM: Peter Imhof, Planning and Environmental Review Director

CONTACT: Kathy Allen, Supervising Senior Planner
Travis Lee, Associate Planner

SUBJECT: Proposed Development Agreement for Fairview Business Associates/Torridon at 420, 430, & 490 S Fairview Avenue, APNs 071-130-057, -062, -061; Case No. 21-0002-ORD

RECOMMENDATION:

- A. Consider whether findings can be made to enter into the development agreement; and, if so, then
- B. Introduce and conduct the first reading (by title only) and waive further reading of Ordinance No. 22- ____, entitled "An Ordinance of the City Council of the City of Goleta, California, Approving a Development Agreement setting the term of the final Design Review Board approval of 25 future parking spaces to the term of the Development Agreement and accepting an easement for 35 public parking spaces at 420, 430, & 490 S. Fairview Avenue, Case No. 21-0002-ORD."

PROPERTY OWNER

Fairview Business Associates (FBA) – 420 S. Fairview
Torridon– 430 & 490 S. Fairview
430 South Fairview Ave
Goleta, CA 93117

APPLICANT/AGENT

Eva Turechalk
231 Santa Barbara Shores
Goleta, CA 93117

Yardi Systems
430 South Fairview Ave
Goleta, CA 93117

APPLICANT REQUEST/PROJECT DESCRIPTION

The subject property (APNs 071-130-057, -062, -061) consists of three separate parcels (4.63, 3.72, and 8.32 acres, respectively) located at 420, 430, & 490 S. Fairview Avenue, in the Inland area of the city. The property owners are Fairview Business Associates and Torridon. The tenant of the subject parcel is currently Yardi Systems. The property is zoned Business Park (BP) and the land use designation is Business Park (I-BP).

The property owner proposes a Development Agreement (DA) to dedicate 35 parking spaces for public parking in Old Town in exchange for the City to agree to a term of the final Design Review approval of 25 new parking spaces to be the term of the Development Agreement (20 years). The approval of the design and layout of the 25 new parking spaces requires Design Review Board ("DRB") approval. Pursuant to Goleta Municipal Code section 17.58.100, final DRB approval has a term of three (3) years, with a possible extension of two years by the Director of Planning and Environmental Review.

BACKGROUND:

Site Development History

Fairview Business Associates (FBA) is the owner of the property known as 420 S. Fairview. Torridon is the owner of the property known as 430 S. Fairview and 490 S. Fairview. The property at these addresses, known collectively as the Fairview Business Park (the "Property"), consists of three commercial buildings with a total of approximately 242,000 square feet of floor space situated on 16.67 acres of land.

The County of Santa Barbara ("County") on October 23, 2001, approved a Development Plan for the Property. The Santa Barbara County Board of Supervisors approved Development Plan 98-DP-024 to redevelop the parcels by demolishing existing buildings and constructing 2 two-story buildings and 1 one-story building totaling 134,000 square feet. A Lot Line Adjustment in 2003 and a Lot Split in 2006 created the current lot configuration. The Development Plan permits 25 potential future parking spaces (the "25 Future Spaces"). The Development Plan allowed for deferral of construction of the 25 Future Spaces because it concluded that the as-built parking would be sufficient to serve the site, and the County preferred to keep the landscaping in the area intact, unless or until a need for further parking spaces materialized. The Development Plan required the Owners to obtain a Substantial Conformity Determination ("SCD") approval before the Owners could build the 25 Future Spaces. Fairview Business Associates and Torridon have applied for a SCD, Zoning Clearance, and Design Review Board approval (Case Nos. 21-0002-SCD, 21-0040-ZC, and 21-0015-DRB) for the hardscaping, landscaping, and exterior lighting improvements in conjunction with the 25 Future Spaces.

In addition, the developer of Fairview Business Park dedicated 35 parking spaces along Carson Avenue (the "35 Spaces") to the Redevelopment Agency for the City of Goleta ("Goleta RDA") for future public use. All assets and property of the Goleta RDA, including the 35 spaces, have subsequently vested in the Successor Agency for the City of Goleta ("Successor Agency"). The 35 Spaces have never been used because they were offered to the Goleta RDA in 2008, but were not accepted by the Goleta RDA or the Successor Agency. Neither entity has taken any action on the offer to dedicate.

In order to effectuate the public benefit of the original project, which was to provide more public parking in Old Town Goleta, the Successor Agency Board will convene and consider an action to reject the original offer to dedicate to the Goleta RDA. If the Successor Agency rejects the offer to dedicate, FBA and Torridon have agreed to offer

the 35 public parking spaces in an easement to the City, The City Council's action on the Development Agreement would include acceptance of the public parking easement for 35 spaces.

Ekwill Street and Fowler Road Capital Improvement Project Background (CIP #9002)

This Development Agreement is a part of a larger settlement of an eminent domain case that resulted in dedication of property for the Ekwill Street and Fowler Extension Project. It has been a long-term project of the City to construct the Ekwill Street and Fowler Road Extension project. This CIP would construct Ekwill Street across Goleta Old Town from Kellogg Avenue to Fairview Avenue and extend existing South Kellogg Avenue (to be renamed Fowler Road) from its terminus to existing Technology Drive. The new streets will be two lane roads and include Class II bike lanes and sidewalks/parkways.

The project also includes three roundabouts: two at the Hollister Avenue/State Route 217 Interchange, and one at the intersection of Pine Avenue and Ekwill Street. The project will improve traffic flow on Hollister Avenue and provide a new east/west corridor in Old Town as the existing roadway system within Old Town has inadequate east-west circulation both north and south of Hollister Avenue and lacks direct access into the southern portions of Old Town. This project will relieve regional congestion, improve traffic circulation in Goleta Old Town, improve access within Goleta Old Town and to the Airport, and provide enhanced bicycle and pedestrian access.

The property that will be separately dedicated by the property owners amounts to 2,962 square feet of property in fee, 1,226 square feet in permanent drainage easement, and 10,881 square feet in temporary construction easements. The property in fee eliminates 10 of the existing parking stalls on the Fairview Business Park property. The elimination of these 10 spaces was part of the basis for the property owners' desire to build the 25 parking spaces that were entitled in its 2001 approvals. The property owners do not yet know whether they need to build the 25 spaces but wanted to initiate the process now so that they could exercise that option to build in the next 20 years, if the need arises.

Current Proposal/Development Agreement

The Planning and Environmental Review (PER) Department received an application for a Development Agreement (DA) on June 14, 2021 and deemed the application complete for processing on January 11, 2022.

DAs are a device that allows a project applicant to pursue development with vested rights in exchange for public benefits. California Government Code Section 65864 authorizes the adoption of DAs to recognize the lack of certainty for development projects and reliance on existing rules and regulations can reduce that burden. Government Code Section 65865 provides standards for agencies to implement in processing DAs.

Consistent with the Government Code sections reference above, Section 17.65 provides for the process and findings for the City to review DAs. If approved, a DA creates a contract between the City and developer that identifies for a specified time the rules,

regulations, and policies that are applicable to a particular development that will not change. Such agreements must benefit the City in accordance with findings (Section 17.65.040.C).

DAs may set forth specific public improvements unique to a given site or case that would be guaranteed in exchange for other allowances specific to timing, policy, and ordinance consistency. The DA must also demonstrate that it is consistent with the City's General Plan, will be compatible with uses authorized in the Municipal Code, will provide substantial public benefit, will be non-detrimental to the public health, safety, and general welfare of surrounding neighborhoods, and that it complies with the California Environmental Quality Act.

Design Review Board (DRB)

On February 8, 2022, the DRB reviewed the site design and associated changes for the 25 future parking spaces improvements. The DRB found the proposed project acceptable and granted Conceptual and Preliminary approval at the meeting. A copy of the DRB minutes is provided as Attachment 2.

JURISDICTION

Per Goleta Zoning Ordinance Chapter 17.65, the City Council is the Review Authority on DAs with the Planning Commission making a recommendation prior to the City Council's action on a DA request. DAs are adopted by Ordinance.

As requested by the applicant, the review and action on the DA would precede any further review of Case Nos. 21-0002-SCD, 21-0040-ZC, and 21-0015-DRB. Review of the landscaping, parking, and lighting improvements require review/actions by the Design Review Board and the Substantial Conformity Determination is reviewed and acted upon by the Planning and Environmental Review Director. Since the site's location is outside the Coastal Zone, California Coastal Commission action is not required.

PLANNING COMMISSION REVIEW

In accordance with Chapter 17.65, the Planning Commission conducted a noticed public hearing on the proposed Development Agreement on April 25, 2022. Staff presented the staff report and only the applicant and its representative spoke at the hearing. After reviewing the materials and hearing from the applicant, the Planning Commission, on a 5-0 vote, recommended that the City Council enter into the Development Agreement.

DISCUSSION:

Proposed Development Agreement

The Ordinance of the City Council of the City of Goleta, California, approving a Development Agreement setting the term of the final Design Review Board approval of 25 future parking spaces to the term of the Development Agreement and accepting an

easement for 35 public parking spaces at 420, 430, & 490 S. Fairview Avenue, Case No. 21-0002-ORD is provided in Attachment 1. Exhibit 1 to Attachment 1 provides the proposed Development Agreement. The Agreement would allow the developer to add 25 new spaces in a designated area of the existing parking lot and change the existing landscape, hardscape, and exterior lighting to accommodate those 25 new spaces in accordance with a final approval by the DRB. These changes can occur any time during the term of the Development Agreement, which is set for 20 years. This is a much longer term than a typical DRB approval, which usually has a term of three years with an extension request for up to two years (total of 5 years). In exchange for this longer term DRB approval (20 years), the property owner will dedicate 35 parking spaces in its existing parking lot to be used as public parking spaces in Old Town.

This Development Agreement is part of a larger settlement of an eminent domain action between the City and the property owners. As part of the City's Ekwill Fowler Project, the City needs certain property from the property owners in order to construct future Ekwill Street. In accordance with the eminent domain process, the City filed an action to obtain that property, which requires the City to pay fair market value for the property. The property needed was appraised at approximately \$240,000. As a settlement of that action, the property owner will dedicate the property needed by the City (approximately 2,962 sq. ft. as permanent right-of-way and 1,226 sq. ft. as a permanent drainage easement) on the south side of 490 South Fairview (071-130-062) without remuneration from the City. A settlement agreement between the City and owners of Fairview Business Park effectuates the dedication of this property.

Furthermore, through a separate Substantial Conformity Determination, the City will recognize the parking ratio of the Fairview Business Center at 1:400 (one parking space per 400 square feet), recognize the existing uses on the property, continue to include and count the dedicated 35 spaces as part of the Owners' total parking spaces currently required and during any future land use process, and impose a more updated version of the Transportation Demand Management Plan. These specifications were not clear in the existing Development Plan that was approved by the County in 2001, and the property owners sought to clarify their existing entitlement rights so that future development is not hampered by the ambiguity in the Development Plan.

The current Development Agreement is the vehicle used to effectuate the portion of the settlement that pertained to parking spaces: the property owners wanted a 20-year term on the 25 new spaces and the City wanted the 35 public parking spaces.

The instant action in front of the City Council only pertains to the Development Agreement. Approval of the SCD is done at the Planning Director level. The settlement of the eminent domain case involving the dedication of land from the property owners to the City has been authorized by Council.

The DA findings that must be made are summarized below, per Goleta Zoning Ordinance Section 17.65.040.C, and are included in the Ordinance in Attachment 1:

1. The Development Agreement is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable Specific Plan.

Consistent: Transportation Element Policy 9.6b encourages on-street parking to create a buffer between pedestrians and vehicle traffic, reduce the speed of traffic, and provide for needed short-term parking. The dedication of a public parking easement along Carson Street is consistent with Transportation Element Policy 9.6b of the General Plan. Execution of the DA would enhance the circulation in Old Town Goleta. Transportation Element Policy 5.3 of the General Plan (Ekwill Fowler South Kellogg Improvements) states the purpose of the improvements is to enhance the circulation system by facilitating the movement of existing and future traffic more efficiently from the southern portion of the Old Town area and from the Santa Barbara Airport, and to divert a portion of trips having origins or destinations in this area away from a congested segment of Hollister Avenue in Old Town between Fairview Avenue and SR-217. The project also strives to improve safety for bicyclists and pedestrians along Hollister Avenue in Old Town and to help facilitate revitalization efforts in the Goleta Old Town Redevelopment Project Area. One of the public benefits of the DA is that it was part of a settlement that facilitated the dedication of land to the City of Goleta for the Ekwill Fowler road improvements, which help achieve these transportation objectives. All the existing General Plan policies will remain in effect and the subsequent project will be evaluated against and will need to be found consistent with the adopted policies.

2. The Development Agreement is or will be compatible with the uses authorized in this Title, the district, and any applicable Specific Plan in which the property is located.

Consistent: The DA will be compatible with the uses authorized in Title 17 and the development project will be subject to the existing General Plan policies. The DA is limited to vesting the right to construct 25 future parking spaces at any time during the term of the DA (20 years) and the associated landscaping, hardscaping, and lighting improvements will be reviewed in compliance with Title 17 under 21-0002-SCD, 21-0040-ZC, and 21-0015-DRB.

3. The Development Agreement will provide substantial public benefits.

Consistent: The DA includes a public parking easement to the City of Goleta in Old Town. Transportation Element Policy 9.6b encourages on-street parking to create a buffer between pedestrians and vehicle traffic, reduce the speed of traffic, and provide for needed short-term parking. These 35 formerly private parking spaces along Carson Street will now be available for public use and this dedication is consistent with Transportation Element Policy 9.6b of the General Plan.

The Transportation Element of the City of Goleta's General Plan cites two needs: (1) a need for major operational improvements to improve traffic flow and safety for bicyclists and pedestrians on Hollister Avenue in the Old Town area and (2) a need to reduce congestion on Hollister Avenue in Old Town by creating an alternative route to divert trips via Ekwill Street and Fowler Street to South Kellogg Avenue and the SR-217

interchange. The DA will provide substantial public benefits as it was part of a settlement that granted land for a new public road, which will enhance traffic circulation in Old Town Goleta.

4. The Development Agreement will be non-detrimental to the public health, safety, and general welfare of persons residing or working in the neighborhood, and to property and improvements in the neighborhood.

Consistent: The DA does not pose public health, safety, and general welfare concerns to the surrounding neighborhood or residents near the project site since it authorizes a 20-year term on DRB approval of the parking lot instead of the usual three years (two years, with one-year extension) and dedicates land to the City of Goleta for 35 public parking spaces. The DRB approval would allow removal of landscaping for 25 new spaces at any time in the next 20 years while the 35 parking spaces dedicated to the City of Goleta are already constructed and will now be available to the public.

5. The Development Agreement complies with the provisions for the implementation of the California Environmental Quality Act.

Consistent: The DA complies with the provisions for implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3). The act of approving a Development Agreement does not allow for development or change of use on the project site itself. The DA would allow for a longer term for the construction of 25 parking spaces that were already previously entitled in accordance with a final Design Approval and 35 existing parking spaces that were previously used for private parking will now be available for public parking. Therefore, the DA has no possibility of creating a reasonably foreseeable change to the environment.

Conclusion

The DA does not change or modify any existing policy or use of the property. The DA would allow the property owner to make landscape, hardscape, and exterior lighting improvements and grant additional time for the property owner to enact those changes. As shown above and in the attached Ordinance, the findings can be made to support the approval of the DA. For these reasons, staff recommends adoption of the Development Agreement by Ordinance by the City Council.

FISCAL IMPACTS:

Normally costs associated development projects are borne solely by the applicant. However, the City will reduce by fifty percent (50%) the application and processing fee for Owners' application for the Development Agreement and the SCD (and the associated Zoning Clearance) as detailed in the Settlement Agreement.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 et seq.), the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000 et seq.), and the City's Environmental Review Guidelines, the project has been found to be exempt from CEQA and a Notice of Exemption is proposed. The City of Goleta is acting as the Lead Agency for this project.

The proposed Development Agreement, in and of itself, will not result in a physical change in the environment, and it is entirely separate from entitlement review for the property under separate consideration and CEQA analysis. Therefore, the Development Agreement can be found exempt per Section 15061(b)(3) of the CEQA Guidelines because common sense holds that the Development Agreement itself, with certainty, will not have a significant effect on the environment and is therefore not an activity subject to CEQA.

A draft Notice of Exemption has been prepared and is provided as Exhibit 2 of Attachment 1.

The proposed DA is separate and distinct from the proposed entitlements associated with Case Nos. 21-0002-SCD, 21-0040-ZC, and 21-0015-DRB that Fairview Business Associates and Torridon have applied for, which will undergo their own CEQA analysis as part of their review process.

NOTICE

On September 8, 2022, notice of this hearing was published in the Santa Barbara Independent and written notices were mailed to property owners and tenants within 500 feet of the subject property. Existing posted notices on the property were updated by September 5, 2022.

ALTERNATIVES:

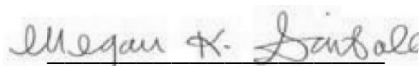
The Mayor and City Council may continue the matter for additional information or discussion.

Reviewed By:




Kristine Schmidt
Assistant City Manager

Legal Review By:



Megan Garibaldi
City Attorney

Approved By:



Robert Nisbet
City Manager

ATTACHMENTS:

1. An Ordinance of the City Council of the City of Goleta, California, Approving a Development Agreement setting the term of the final Design Review Board approval of 25 future parking spaces to the term of the Development Agreement and accepting an easement for 35 parking spaces at 420, 430, & 490 S. Fairview Avenue, Case No. 21-0002-ORD.

Exhibit 1 - Development Agreement by and Between City of Goleta and FBA and Torridon

Exhibit 2 - NOE

2. DRB Minutes from the February 22, 2022, meeting
3. Proposed Parking Plan
4. Staff Presentation

ATTACHMENT 1

City Council Ordinance No 22- ____

An Ordinance of the City Council of the City of Goleta, California, Approving a Development Agreement setting the term of the final Design Review Board approval of 25 future parking spaces to the term of the Development Agreement and accepting an easement for 35 public parking spaces at 420, 430, & 490 S. Fairview Avenue, Case No. 21-0002-ORD

ORDINANCE 22-_____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GOLETA, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT SETTING THE TERM OF THE FINAL DESIGN REVIEW BOARD APPROVAL TO 25 FUTURE PARKING SPACES TO THE TERM OF THE DEVELOPMENT AGREEMENT AND ACCEPTING AN EASEMENT FOR 35 PUBLIC PARKING SPACES AT 420, 430, & 490 S. FAIRVIEW AVENUE, CASE NO. 21-0002-ORD.

WHEREAS, Fairview Business Associates (FBA) is the owner of the property known as 420 S. Fairview. Torridon is the owner of the property known as 430 S. Fairview and 490 S. Fairview. The property at these addresses, known collectively as the Fairview Business Park (the "Property"), consists of three commercial buildings with a total of approximately 242,000 square feet of floor space situated on 16.67 acres of land; and

WHEREAS, An application for a Development Agreement was filed on June 14, 2021, by Eva Turenchalk, agent for Fairview Business Associates/Torridon, property owners of 420, 430, & 490 S. Fairview Avenue; and

WHEREAS, Fairview Business Associates, LLC and Torridon, LLC requested a Development Agreement that will set the term of the final Design Review Board approval to 25 future parking spaces to the term of the Development Agreement in exchange for dedicating a public parking easement to the City for 35 parking spaces, provided in Exhibit 1 to this Ordinance; and

WHEREAS, Government Code Sections 65865 et seq authorizes local agencies to enter into Development Agreements with persons having legal or equitable development interests in real property located within that jurisdiction and provide guidance for adoption of development agreements by local agencies; and

WHEREAS, Chapter 17.65 of the Goleta Municipal Code establishes the process and findings for Development Agreements proposed within the City of Goleta; and

WHEREAS, Fairview Business Associates, LLC and Torridon, LLC requested a Development Agreement to set the term of the final Design Review Board approval to 25 future parking spaces to the term of the Development Agreement in exchange for dedicating a public parking easement to the City of Goleta, provided in Exhibit 1 to this Ordinance; and

WHEREAS, On April 25, 2022, the Planning Commission conducted a duly noticed public hearing, at which time all interested persons were given an opportunity

to be heard; and

WHEREAS, On April 25, 2022, the Planning Commission recommended the City Council enter into the Development Agreement on a 5-0 vote; and

WHEREAS, On September 2 2022, the site was posted for the September 20, 2022 City Council meeting by the applicant (a minimum of 15 days prior to the City Council meeting);

WHEREAS, On September 8, 2022, notice of the public hearing was published in the Santa Barbara Independent and notices were mailed to owners and occupants within 500 feet of the project site; and

WHEREAS, On September 20, 2022, the City Council conducted a duly noticed public on the FBA/Torridon Development Agreement, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, The City Council considered the entire administrative record, including the staff report, the Draft Development Agreement by and between the City of Goleta and FBA/Torridon, and oral and written testimony from interested persons;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GOLETA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1 Recitals

The City Council hereby finds and determines that the foregoing recitals, which are incorporated herein by reference:

SECTION 2 Development Agreement Findings

Pursuant to Goleta Zoning Ordinance Section 17.65.040 (C), the following findings of consistency can be made for adoption of the FBA/Torridon Development Agreement:

- A. The Development Agreement is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable Specific Plan because it would enhance the traffic circulation in Old Town Goleta. Transportation Element Policy 9.6b encourages on-street parking to create a buffer between pedestrians and vehicle traffic, reduce the speed of traffic, and provide for needed short-term parking. The dedication of a public parking easement along Carson Street is consistent with Transportation Element Policy 9.6b of the General Plan. Execution of the DA would enhance the circulation in Old Town Goleta. Transportation Element Policy 5.3 of the General Plan (Ekwill Fowler South Kellogg Improvements) states the purpose of the improvements is to enhance the circulation system by facilitating the movement of existing and future traffic more efficiently from the southern portion of the Old Town area and from the Santa Barbara Airport, and to divert a portion of trips having origins or destinations in this area away from a congested segment of Hollister Avenue in Old Town between Fairview Avenue and

SR-217. The project also strives to improve safety for bicyclists and pedestrians along Hollister Avenue in Old Town and to help facilitate revitalization efforts in the Goleta Old Town Redevelopment Project Area. One of the public benefits of the DA is it was part of a settlement that facilitated the dedication of land to the City of Goleta for the Ekwill Fowler road improvements, which help achieve these transportation objectives. All the existing General Plan policies will remain in effect and the subsequent project will be evaluated against and will need to be found consistent with the adopted policies.

- B. The Development Agreement is or will be compatible with the uses authorized in this Title, the district, and any applicable Specific Plan in which the property is located because it will be compatible with the uses authorized in Title 17 and the development project will be subject to the existing General Plan policies. The DA is limited to vesting the right to construct 25 future parking spaces at any time during the term of the DA (20 years) and the associated landscaping, hardscaping, and lighting improvements will be reviewed in compliance with Title 17 under 21-0002-SCD, 21-0040-ZC, and 21-0015-DRB.
- C. The Development Agreement will provide substantial public benefits because it will provide a public parking easement to the City of Goleta in Old Town. Transportation Element Policy 9.6b encourages on-street parking to create a buffer between pedestrians and vehicle traffic, reduce the speed of traffic, and provide for needed short-term parking. These 35 formerly private parking spaces along Carson Street will now be available for public use and this dedication is consistent with Transportation Element Policy 9.6b of the General Plan.

The Transportation Element of the City of Goleta's General Plan cites two needs: (1) a need for major operational improvements to improve traffic flow and safety for bicyclists and pedestrians on Hollister Avenue in the Old Town area and (2) a need to reduce congestion on Hollister Avenue in Old Town by creating an alternative route to divert trips via Ekwill Street and Fowler Street to South Kellogg Avenue and the SR-217 interchange. The DA will provide substantial public benefits as it was part of a settlement that granted land for a new public road, which will enhance traffic circulation in Old Town Goleta.

- D. The Development Agreement will be non-detrimental to the public health, safety, and general welfare of persons residing or working in the neighborhood, and to property and improvements in the neighborhood because it authorizes a 20-year term on DRB approval of the parking lot instead of the usual 3 years (2 years with 1-year extension) and dedicates land to the City of Goleta for 35 public parking spaces. The DRB approval would allow removal of landscaping for 25 new spaces at any time in the next 20 years while the 35 parking spaces dedicated to the City of Goleta are already constructed and will now be available to the public.
- E. The Development Agreement complies with the provisions for the implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA

Guidelines 16061(b)(3) because the act of approving a Development Agreement does not allow for development or change of use on the project site itself. The DA would allow for a longer term for the construction of 25 parking spaces that were already previously entitled in accordance with a final Design Approval and 35 existing parking spaces that were previously used for private parking will now be available for public parking. Therefore, the DA has no possibility of creating a reasonably foreseeable change to the environment.

SECTION 3 Environmental Assessment for the Project

The City Council makes the following environmental findings:

- A. The Development Agreement was analyzed for its potential environmental impacts and is exempt pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.; “CEQA”) and CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.). Specifically, the project is categorically exempt from environmental review pursuant to the following CEQA Guidelines: no possibility of significant effect [Section 15061(b)(3)]; the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment [Section 15060(c)(2)];

The Development Agreement would allow for a longer term for the construction of 25 parking spaces that were already previously entitled in accordance with a final Design Approval and 35 existing parking spaces that were previously used for private parking will now be available for public parking.

The proposed Development Agreement, in and of itself, will not result in a physical change in the environment and it is entirely separate from entitlement review for the property under separate consideration and CEQA analysis. Therefore, the Development Agreement can be found exempt per Section 15061(b)(3) of the CEQA Guidelines because common sense holds that the Development Agreement itself, with certainty, will not have a significant effect on the environment and is therefore not an activity subject to CEQA.

- B. There is substantial evidence in the record showing that an Exemption is appropriate for the Development Agreement;

SECTION 4 Actions

Based on the findings contained in Sections 1-4 above, the City Council take the following actions:

- A. Approve the Development Agreement by and between the City of Goleta and Fairview Business Associates/Torridon for the property located at 420, 430, & 490 S. Fairview Avenue provided as Exhibit 1 to this Ordinance based on the findings provided in Sections 1-4 above.
- B. Direct staff to file the Notice of Exemption (NOE) within five (5) business days after Council action.

SECTION 5 **Reliance on Record**

Each and every one of the findings and determinations in this Ordinance is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Development Agreement. The findings and determinations constitute the independent findings and determinations of the City Council in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 6 **Repeals**

To the extent any provision of this Ordinance repeals, amends, or supersedes any previous approvals, such repeal or replacement will not affect any penalty, forfeiture, or liability incurred before, or precluded prosecution and imposition of penalties for any violation occurring before this Ordinance's effective date. Any such repeal or superseded part of previous approvals will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 7 **Limitations**

The City Council's analysis and evaluation of the Development Agreement are based on the best information currently available. It is inevitable that, in evaluating a project, absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the Development Agreement and Project is the City Council's lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions.

SECTION 8 **Summaries of Information**

All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 9 **Severability**

If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications, and, to this end, the provision of this Ordinance are severable.

SECTION 10 **Mailing to Applicant**

The City Clerk is directed to mail a copy of this Ordinance to Fairview Business Associates/Torridon and to any other person requesting a copy.

SECTION 11 **Certification of City Clerk**

The City Clerk shall certify to the passage and adoption of this ordinance and, within 15 days after its adoption, shall cause it to be published in accord with California Law.

SECTION 12 **Effective Date**

This ordinance shall take effect on the 31st day following adoption by the City Council.

INTRODUCED ON the ____ day of _____, 2022.

PASSED, APPROVED, AND ADOPTED this _____ day of _____ 2022.

PAULA PEROTTE
MAYOR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

MEGAN GARIBALDI
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) ss.
CITY OF GOLETA)

I, DEBORAH S. LOPEZ, City Clerk of the City of Goleta, California, do hereby certify that the foregoing Ordinance No. 22-__ was introduced on _____, and adopted at a regular meeting of the City Council of the City of Goleta, California, held on the _____, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

ATTACHMENT 1 EXHIBIT 1

DEVELOPMENT AGREEMENT

**DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF GOLETA
AND
TORRIDON, LLC
AND
FAIRVIEW BUSINESS ASSOCIATES, LLC**

_____, 2022

THIS DEVELOPMENT AGREEMENT (“Development Agreement” or “Agreement”) is entered into as of the ____ day of _____ 2022, by and between the CITY OF GOLETA, a municipal corporation (the “City”), and Torridon, LLC, a California limited liability company (“Torridon”), and Fairview Business Associates, LLC, a California limited liability company (“FBA”). Together, Torridon and FBA are referred to as “Owners.” Together the City and Owners are referred to as “Parties.”

RECITALS

- A. FBA is the owner of certain real property known as 420 S. Fairview. Torridon is the owner of certain real property known as 430 S. Fairview and 490 S. Fairview. The property at these addresses, known collectively as the Fairview Business Park (the “Property”), consists of three commercial buildings with a total of approximately 242,000 square feet of floor space situated on 16.67 acres of land. **Exhibit 1** provides a legal description of the Property burdened by this Agreement.
- B. The County of Santa Barbara (“County”) on October 23, 2001 approved a Development Plan for the Property. The Development Plan acknowledges 25 potential future parking spaces (the “25 Future Spaces”). The Development Plan allowed for deferral of construction of the 25 Future Spaces because it concluded that the as-built parking would be sufficient and the County preferred to keep the landscaping in the area intact unless or until a need for further parking spaces materialized. The Development Plan required Owners to obtain a Substantial Conformity Determination (“SCD”) approval before Owners could build the 25 Future Spaces. The City’s Zoning Ordinance requires parking lot design to obtain Design Review Board approval.
- C. Pursuant to Goleta Municipal Code section 17.58.100, final Design Review Board (“DRB”) approval has a term of three (3) years with a possible extension of two years by the Director of Planning and Environmental Review. Owners desire to vest their rights to construct the 25 Future Spaces for a 20-year term in accordance with the DRB approval, subject to any extensions as provided by this Agreement, and to have the discretion to construct the 25 Future Spaces, pursuant to the DRB approved design, at any time during the term of this Agreement.
- D. The City is authorized to enter into development agreements with persons having legal or equitable development interests in real property located within the City pursuant to Government Code Section 65864 *et seq.*

- E. The City has adopted rules and regulations for consideration of development agreements, pursuant to Government Code Section 65865, in Title 17.64 of the Goleta Municipal Code.
- F. Owners have requested that City enter into a development agreement with Owner pursuant to the terms of a settlement agreement dated _____ (“Settlement Agreement”) and proceedings have been undertaken in accordance with Title 17 of the Goleta Municipal Code.
- G. The terms and conditions of this Agreement have been found by the City to be fair, just and reasonable, and prompted by the Public Benefits to adhere in the City. These Public Benefits include the amicable resolution of an eminent domain lawsuit by which the City seeks to condemn portions of the Property for the Ekwill Street and Fowler Road Extensions Project (which will result in the City gaining interests in Torridon’s property in fee simple, easements, and temporary easements described in **Exhibit 2**) and dedication of 35 parking spaces for use by the public.
- H. The public health, safety and welfare of the citizens of the City will be served by entering into this Agreement as the Owners will dedicate property needed for the City’s Ekwill Street and Fowler Road Extensions Project and 35 parking spaces to be used for public parking in Old Town Goleta as shown in **Exhibit 3**.
- I. This Agreement will bind future City Councils to the terms and obligations specified in this Agreement and limit, to the degree specified in this Agreement, the future exercise of the City’s ability to regulate development on the Property.
- J. This Agreement and the Project will serve to implement the policies, objectives, and standards of the elements of the City of Goleta General Plan and is consistent with the General Plan.
- K. This Agreement and the consent of Owner and City to each of its terms and conditions will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the public interest.
- L. On _____, 2022, the Planning Commission of the City, after giving notice pursuant to Sections 65090 and 65867 of the California Government Code, held public hearings on Owner’s application for this Agreement. The City Council, after providing public notice as required by law, similarly held a public hearing on _____, 2022.
- M. The City Council finds that review of the environmental impacts of this Agreement and the Project Approvals has been conducted in accordance with the provisions of CEQA and the State and local guidelines adopted thereunder, and the City Council has given consideration to such environmental review prior to its approval of the Agreement and the Project Approvals and has undertaken all actions necessary to comply with CEQA, including adoption of findings. The City Council further finds that this Agreement is consistent with the General Plan and all other applicable City plans, policies and regulations of the City of Goleta.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS

For purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- a) “Agreement” means this Development Agreement by and between the City and Owners.
- b) “Approval Date” means the date on which the Approval Ordinance is adopted by the City Council.
- c) “Approval Ordinance” means Ordinance No. _____, adopted by the City Council of the City on _____, approving this Agreement.
- d) “CEQA” means the California Environmental Quality Act, Section 21000, *et seq.*, of the California Public Resources Code.
- e) “City” means the City of Goleta, California.
- f) “City Council” means the City Council of the City of Goleta.
- g) “Code” means the Municipal Code of the City of Goleta.
- h) “Commencement Date” means that date which is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum, the Commencement Date shall be the date when the referendum proceedings have been concluded by any process which results in the Approval Ordinance or any Project Approvals subject to referendum becoming effective, and (ii) if litigation challenging the validity of this Agreement including any Project Approvals and/or environmental review pursuant to CEQA should be brought after the Approval Date, the Commencement Date shall be the date such litigation is concluded in a manner that permits the commencement or continuation of the parties’ rights and obligations under this Agreement.
- i) “Current Land Use Regulations” means the ordinances, resolutions, rules, regulations, requirements and official policies of the City in force as of the approval of this Agreement governing development agreements, permitted uses of the Property, parking, development standards, density and building intensity, subdivision, zoning, grading, landscaping, signage and design and improvement standards (not including building codes as provided by 3.4.1(c)) and shall also include the Project Approvals and the Permitted Uses.

- j) “Development Agreement Act” means Section 65864 *et seq.*, of the California Government Code.
- k) “Event of Default” is defined in Section 6.01.01.
- l) “Exactions” means any requirement imposed by the City in connection with or pursuant to any land use regulation or land use approval process for the dedication of land, construction or improvement of public improvements or amenities, payment of development fees, or other mitigation measures required to mitigate the impacts of the development including, without limitation, all development impact fees or linkage fees, utility capacity fees, service or connection fees, major facilities fees, park fees, flood control fees, environmental impact mitigation fees, affordable housing fees, arts fees, transportation fees, child care fees and any similar governmental fees, charges and exactions required for the development of projects or property.
- m) “Force Majeure Delay” is defined in Section 7.23.
- n) “General Plan” means the General Plan of the City as of the Approval Date.
- o) “Mortgage” is defined in Section 7.16.
- p) “Mortgagee” means any mortgagee of a mortgage and beneficiary under a deed of trust.
- q) “Owners” means Torridon, LLC, a California limited liability company (“Torridon”), and Fairview Business Associates, a California limited liability company (“FBA”) and each of its respective successors and assigns to all or any portion of the Property during such time as such portion is subject to this Agreement. Torridon is the legal owner of 430 S. Fairview and 490 S. Fairview as of the date of adoption of the Approval Ordinance. FBA is the legal owner of 420 S. Fairview as of the date of adoption of the Approval Ordinance.
- r) “Permitted Uses” means those uses set forth in the Project description referenced in the Substantial Conformity Determination.
- s) “Processing Fees” means all routine and generally applicable City-wide fees required by the City for processing applications and permits including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, maps and certificates of occupancy in effect at the time paid. Expressly exempted from Processing Fees are all Exactions.
- t) “Project” means the Property and the Project description referenced in the SCD.
- u) “Project Approvals” means approvals granted by the City on the SCD and related approvals, including but not limited to DRB approval.

- v) “Public Benefits” means that certain property to be granted by Owner to the City as consideration for this Agreement as described below.
- w) “Term” means the term of this Agreement, as provided in Section 7.01 of this Agreement.
- x) “Transfer” is defined in Section 4.01.01.
- y) “Zoning Ordinance” means the comprehensive Zoning Ordinance of the City, found in Title 17 of the Code of the City of Goleta as it exists on the Approval Date.

SECTION 2. TERM OF FINAL DESIGN REVIEW APPROVAL

The term of the final DRB approval on the 25 Future Spaces shall expire at the end of the Term of this Agreement unless terminated or extended pursuant to this Agreement. Owner shall have a vested right to construct the 25 Future Spaces in accordance with the final DRB approved design at any time during the term of this Agreement, or should Owner otherwise vest its right to do so through common law vesting.

SECTION 3. DEDICATION OF 35 PUBLIC SPACES

If and when the City, acting as the Successor Agency to the Goleta RDA, rejects the dedication of the 35 Spaces by FBA in that certain Irrevocable Offer to Dedicate Parking Easement on August 22, 2008 and recorded in the Official Records of the County of Santa Barbara on September 11, 2008 as Instrument Number 2008-0053413, City shall be entitled to record an easement conveying the 35 Spaces from FBA to the City for use as public parking in Old Town Goleta in the form attached as **Exhibit 3** and incorporated herein by reference.

SECTION 4. ASSIGNMENT, AMENDMENT AND REVIEW

4.01 Assignment

4.01.01 Right to Assign. Owners shall have the right to sell, ground lease, transfer or assign the Property in whole or in part (provided that no such partial transfer shall be permitted to cause a violation of the Subdivision Map Act, Government Code Section 66410 *et seq.*) to any person, partnership, joint venture, firm or corporation at any time during the Term; provided, however, that any such sale, ground lease, transfer or assignment that will include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement with respect to the property transferred and shall be made in strict compliance with the following requirements:

- a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, ground lease, transfer or assignment of all or a part of the Property and then, only in accordance herewith.

4.02 Changes and Amendments to Project

In the event Owners reasonably find that a change or amendment in the Project Approvals is reasonably necessary or appropriate, Owners shall apply for any required changes to the Project Approvals. Any such application that does not require an amendment to the Permitted Uses, Zoning Ordinance, or General Plan shall be processed in the normal manner for processing such matters in accordance with the Current Land Use Regulations, except as otherwise provided by this Agreement, including the Reservations of Power. Any application that requires an amendment to the Permitted Uses, Zoning Ordinance, or General Plan shall be processed in the normal manner for processing such matters in accordance with the land use regulations in effect at the time the application is filed.

SECTION 5. ANNUAL/SPECIAL REVIEW.

The City and Owners shall annually review compliance with this Agreement in compliance with Government Code Section 65865.1.

SECTION 6. DEFAULT, REMEDIES AND TERMINATION

6.01 Enforceability.

6.01.01 Default. Subject to Sections 6.02 and 6.03, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default (“Event of Default”). In the event that Owners file for reorganization or other relief under any Federal or State bankruptcy or insolvency law, whether voluntarily or by involuntary bankruptcy or insolvency action, all provisions of this Agreement shall remain in full force and effect unless Owners engage in an Event of Default. For purposes of this Agreement, a party claiming another party is in default shall be referred to as the “Complaining Party”, and the party alleged to be in default shall be referred to as the “Party in Default”.

6.02 Procedure Regarding Defaults.

6.02.01 Notice of Default. The Complaining Party shall give written notice of default to the Party in Default, specifying the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default nor shall it change the time of default. The Party in Default shall diligently endeavor to cure, correct or remedy the matter complained of, provided the such cure, correction or remedy shall be completed within the applicable time period set forth herein after receipt of written notice (or such additional, time as may be deemed by the Complaining Party to be reasonably necessary to correct the matter). Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. If an Event of Default occurs, prior to exercising any remedies, the Complaining Party shall give the Party in Default written notice of such default. Without limitation, evidence of default may arise in the course of the regularly scheduled annual review described in Section 5.

6.02.02 Cure Periods. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such thirty (30) day period, the cure shall be deemed to have occurred within such thirty (30) day period if (i) the cure is commenced at the earliest practicable date following receipt of the notice; (ii) the cure is diligently prosecuted to completion at all times thereafter; (iii) at the earliest practicable date (in no event later than thirty (30) days after the curing party's receipt of the notice), the curing party provides written notice to the other party that the cure cannot practicably be completed within such thirty (30) day period; and (iv) the cure is completed at the earliest practicable date. In no event shall the Complaining Party be precluded from exercising remedies, subject to the preceding sentence if a default is not cured within sixty (60) days after the first notice of default is given. After that time, if the issue is not resolved to the Complaining Party's satisfaction, the parties shall mediate the matter through non-binding mediation. Subject to the foregoing, if a party fails to cure a default after the 60 days cure period and mediation, the Complaining Party, at its option, may terminate this Agreement pursuant to California Government Code Section 65868, and/or institute legal proceedings pursuant to this Agreement.

6.02.03 Procedures Regarding City Termination. Notice of intent to terminate shall be by certified mail, return receipt requested. Upon delivery by the City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) days in accordance with Government Code Sections 65867 and 65868. Upon consideration of the evidence presented in said review and a determination by the City Council based thereon, the City may give written notice of termination of this Agreement to Owners. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of annual review) made by the City against Owners, or any person who succeeds to Owners with respect to any portion of the Property, shall be based upon written findings supported by substantial evidence in the record. Any purported termination of this Agreement for alleged default shall be subject to review in the Superior Court of the County of Los Angeles pursuant to Code of Civil Procedure § 1094.5(c).

6.02.04 Institution of Legal Action. Subject to notice of default and opportunity to cure under Section 6.01 and 6.02, and subject further to the limitation on remedies set forth in Section 6.03, in addition to any other rights or remedies, any party to this Agreement may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. If a legal action or proceeding is brought by any party to this Agreement because of an Event of Default under this Agreement, or to enforce a provision hereof, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees, incurred in prosecuting such legal action or proceeding. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

6.03 Remedies.

6.03.01 Owners Remedies. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in damages under or with respect to this Agreement or the application thereof. In addition, the parties agree that monetary damages are not an adequate remedy for Owners if the City should be determined to be in default under this Agreement. The

parties further agree that specific performance shall be Owners' only remedy under this Agreement and Owners may not seek monetary damages in the event of a default by City under this Agreement. Owners covenant not to sue for or obtain monetary damages for the breach by City of any provision of this Agreement.

6.03.02 City's Remedies. The parties agree that the City shall have limited remedies for monetary damages and specific performance as specifically provided for in this Section 6.03.02. The City shall not have any right to compel specific performance with respect to the construction of the Project or any obligation to construct the Project. Further, the City shall have no right to monetary damages as a result of Owner's failure to construct the Project. The City shall have the right to sue for monetary damages for failure by the Owners to pay any amounts owing pursuant to Section 7.05.01. In no event shall the City be entitled to consequential damages or punitive damages for any breach of this Agreement.

6.03.03 Voter Actions. The parties understand that the Development Agreement Act authorizes this Development Agreement to bind the City even as to actions taken by voters of City. If a court of competent jurisdiction enters a final, non-appealable order to the contrary and City fails or refuses to perform its obligations under this Agreement solely to comply with a measure adopted by initiative after entry of such a final, non-appealable order subjecting this Agreement to the effects of legislation adopted by initiative after the Approval Date, this Agreement shall be modified or suspended to the extent required by Government Code Section 65869.5 and Owners' remedies by reason thereof shall be limited to reformation or rescission of this Agreement.

6.03.04 Other Actions. Nothing in this Agreement shall be deemed to waive or limit any rights and remedies that the parties would otherwise have against the other relating to matters not covered by this Agreement.

6.04 Termination of Agreement.

As to the Property and all of the rights of Owners hereunder, and except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement unless earlier terminated or extended pursuant to this Agreement. Subject to the notice and cure provisions set forth in Section 6.02, the City shall have the right to terminate this Agreement as to the Property and the rights of Owners hereunder, in the event Owners default and fail to cure such default within the respective cure period. Subject to the notice and cure provisions set forth in Section 6.02, Owner shall have the right to terminate this Agreement and the rights of the City hereunder in the event the City defaults and fails to cure such default within the respective cure period. Upon the termination of this Agreement, neither party shall have any further right or obligation with respect to the Property hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination (other than commencement of construction of either phase) or with respect to any obligations which are specifically set forth as surviving this Agreement.

6.04.01 No Obligation By Owner To Develop the Project. The Owners are free, in their sole and subjective business judgment, not to proceed with development of the Project. The City

acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement.

SECTION 7. GENERAL PROVISIONS

7.01 Term. The Term of this Agreement shall commence upon the Commencement Date and shall be twenty (20) years, unless terminated, modified or extended pursuant to the provisions of this Agreement or by the agreement of the City Council and Owners. The Term of this Agreement shall be tolled during any period of time in which a Force Majeure Delay exists.

7.02 Approval Procedure: Recordation. The following procedure shall govern approval of this Agreement (which shall precede the execution hereof by the City):

- (a) Prior to City Council approval of this Agreement, Owner shall execute this Agreement;
- (b) City Council shall undertake all necessary proceedings to consider this Agreement in accordance with the procedures established by the Development Agreement Ordinance. Approval by the City shall be by adoption of the Approval Ordinance; and
- (c) As provided in Section 65868.5 of the Development Agreement Act, the City shall cause a copy of this Agreement to be recorded with the County Recorder within ten (10) days following the Commencement Date.

7.03 Cooperation and Implementation. City represents that it will cooperate with Owners to the fullest extent reasonable and feasible to implement this Agreement. Upon satisfactory completion by Owners of all of its preliminary actions and payments of appropriate fees, City shall promptly commence and diligently proceed to complete all steps necessary for the implementation of this Agreement and the development of the Property in accordance with the terms of this Agreement, including, but not limited to, the processing and checking of any and all Project Approvals, agreements, covenants and related matters required under the conditions of this Agreement, building plans and specifications, and any other plans necessary for the development of the Property, requests for inspections and certificates of occupancy, filed by or on behalf of Owners. Owners shall, in a timely manner, provide City with all documents, plans and other information necessary for the City to carry out its obligations hereunder.

7.04 Legal Challenges.

7.04.01 Defense. If any legal action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of the Project Approvals or of this Development Agreement, Owners and the City shall cooperate in defending any such action. The City shall notify Owners of any such legal action against City within ten (10) days after the City receives service of process, except for any petition for a Temporary Restraining Order, in which case the City shall notify Owners immediately upon receipt of notice thereof.

7.04.02 Continued Processing. The filing of any lawsuit(s) by a third party (not a party to this Agreement) after the Approval Date against the City and/or Owners relating to this

Agreement or to other development issues affecting the Project shall not delay or stop the processing or issuance of any permit or authorization necessary for development of the Project, unless the City in good faith determines that such delay is legally required.

7.05 Indemnity.

7.05.01 Owners' Indemnity. To the fullest extent permitted by law, Owners hereby agree, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the City and its elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including reasonable fees of accountants, attorneys, engineers, consultants or other professionals and all costs associated therewith, arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to any act, failure to act, error, or omission of Owners or any of its officers, agents, servants, lessees, employees, contractors, subcontractors, materialmen, suppliers or their officers, agents, servants, lessees, or employees, or arising or claimed to arise, directly or indirectly, out of, in connection with, resulting from, or related to this Agreement or Project Approvals, any construction permitted pursuant to this Agreement or Project Approvals, or any subsequent use of the Property, or any portion thereof, permitted by this Agreement or Project Approvals except for any actions resulting from the gross negligence or intentional acts of an Indemnitee.

7.05.02 Survival of Indemnity. The indemnity provisions contained in Sections 7.04 and 7.05 shall survive the termination of the Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under these indemnity provisions, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover under these indemnity provisions. Owners shall pay Indemnitees for any reasonable attorneys' fees and costs incurred in enforcing these indemnification provisions.

7.06 Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service), or sent by registered or certified mail, postage prepaid, return receipt required, or by electronic facsimile transmission (provided the facsimile transmission is followed by delivery of a "hard" copy), and shall be deemed received on the date of receipt personally, by registered or certified mail or by facsimile.

Unless otherwise indicated in writing, such notice shall be sent addressed as follows:

If to the City:

City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

With a copy to:

City Attorney
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

If to Owner:

Torridon, LLC
c/o Jason Yardi Ashok
521 Santa Barbara St,
Santa Barbara, CA 93101

and

Legal Department
Yardi Systems, Inc.
430 S. Fairview Avenue
Santa Barbara, CA 93117

With a copy to:

Beth Collins, Esq.
Brownstein, Hyatt, Farber & Schreck
1021 Anacapa St Floor 2
Santa Barbara, CA 93101-2102

7.07 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

7.08 Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.

7.09 Modification, Amendment or Extension. Subject to any notice and hearing requirements imposed by law, this Agreement may be modified, amended and/or extended from time to time by mutual written consent of the City and Owners in the same manner as its adoption by ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868 and the Approval Ordinance and Title 17 of the Municipal Code.

7.10 Conflicts of Law. In the event that state, regional or federal laws or regulations enacted after the Approval Date or the action or inaction of any other affected governmental jurisdiction prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall (a) provide the other party with written notice of such state, regional or federal restriction, provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement, and (b) Owners and the City staff shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement, but only to the minimum extent necessary to comply with such federal, regional or state law or regulation. Thereafter, regardless of whether the parties reach an

agreement on the effect of such federal, regional or state law or regulation upon this Agreement, the matter shall be scheduled for hearings before the Council. Ten (10) days' written notice of such hearing shall be given, pursuant to Government Code Sections 65090 and 65867. The Council, at such hearing, shall determine the exact modification or suspension which shall be necessitated by such federal, regional or state law or regulation. Owner, at the hearing, shall have the right to offer oral and written testimony. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the Council. Any suspension or modification may be subject to judicial review. The City shall cooperate with Owners in the securing of any permits which may be required as a result of such modifications or suspensions. If Owners and the City do not agree on the modification or suspension, either party may elect to terminate this Agreement.

7.11 Waiver. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event

7.12 Successors and Assigns. Except as expressly provided to the contrary in this Agreement, the burdens and obligations of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement and all successors in interest to the Property or any portion thereof or any interest therein, and shall be covenants running with the land.

7.13 Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California.

7.14 Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Property.

7.15 Statement of Compliance. Within thirty (30) days following any written request, in accordance with the notice provisions of this Agreement, which either party may make from time to time, the other party shall execute and deliver to the requesting party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (b) that this Agreement is in full force and there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (c) any other information reasonably requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party. Said statement(s) shall be in the form reasonably satisfactory to the City, Owners and to any purchaser, lender, title company, governmental agency, or other person reasonably requesting such statement(s) in connection with sale, use, development, construction, financing or marketing of the Property. The

City and Owners, for their own respective uses, shall also be entitled to obtain a statement of compliance at any reasonable time.

7.16 Mortgagee Protection. The parties hereto agree that this Agreement shall not prevent or limit the right of Owners at its sole discretion, to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device (collectively “Mortgage”) securing financing of the purchase, development or operation of the Property or any portion thereof (including, without limitation, any combination of purchase financing, construction financing, bridge loans, take-out and permanent financing), as provided in this Agreement; provided, however, that any such Mortgage shall be subordinate to this Agreement and provided further that if any portion of the Property is to be dedicated or transferred to the City pursuant to this Agreement then such Mortgage shall not encumber the portion of the property to be dedicated or transferred to the City.

The City acknowledges that prospective lenders providing such financing may request certain interpretations and modifications of this Agreement, and agrees upon request, from time to time, to meet with Owners and representatives of such lenders to discuss in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification which the City determines is consistent with the intent and purposes of this Agreement and protects the interests of the City under this Agreement. Any Mortgagee of Property shall be entitled to the following rights and privileges: Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value.

If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owners under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within three (3) days of sending the notice of default to Owners, as the case may be. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement; in no event shall any such Mortgagee or its successors or assigns be entitled to a building permit or occupancy certificate until all fees and other obligations due by Owners under this Agreement have been performed and/or paid to the City, all defaults have been cured, and all otherwise applicable conditions to such permit or certificate have been satisfied.

7.17 Covenant of Good Faith and Fair Dealing. No party shall do anything which shall have the effect of harming or injuring the right of the other parties to receive the benefits of this Agreement.

7.18 Covenant of Cooperation. Owners and the City shall cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the Property or the Project which may be required from public agencies other than the City. Owner reserves the right to challenge any ordinance, measure, moratorium or

other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

7.19 Justifiable Reliance. The City acknowledges that, in investing money and planning effort in and to the Project and all public improvements and dedication offers required hereunder, and in undertaking commencement of the Project, Owners will be doing so in reliance upon the City's covenants contained in this Agreement and upon the enforceability of this Agreement, and the City agrees that it will be reasonable and justifiable for Owners to so rely.

7.20 Project Is Private Undertaking. It is specifically understood and agreed to by and between the parties hereto that: (1) the subject development is a private development; (2) except for the obligations of the City described herein, if any, the City has no responsibilities for or duty to third parties concerning any public improvement until such time and only until such time that the City accepts the same pursuant to the provisions of this Agreement or in connection with any subdivision map approval; (3) Owners shall have full power over and exclusive control of the real property herein described subject only to the limitations and obligations of Owners under this Agreement and the Project Approvals; and (4) the contractual relationship between the City and Owners is such that Owner is not an agent of the City nor is City an agent of Owner.

Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to waive or modify any otherwise applicable obligations the City, acting in its governmental capacity and not as a party to this Agreement, may have to Owners or any other party, under and in accordance with all applicable laws.

7.21 Further Actions and Instruments. The parties to this Agreement shall cooperate with and provide reasonable assistance to the other parties to the extent contemplated in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of any party, the other parties shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

7.22 Section Headings. All Article and Section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

7.23 Enforced Delay (Force Majeure).

In addition to specific provisions of this Agreement, performance by any party hereunder, including making payments, shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, epidemics, pandemics, casualties, acts of God, litigation (including without limitation, third party legal challenges to the Project, the Project Approvals or the environmental clearance for the Project Approvals and the Project), unavailability of materials, unforeseeable events beyond the control of Owner, governmental restrictions including moratoria imposed or mandated by governmental entities (but only as to delays or defaults on the part of Owner), enactment of conflicting state or federal laws or regulations (but only if the party claiming delay complies at all times with the provisions of this

Agreement pertaining to such conflicting laws), delays caused by the delay or failure by any entity other than the party claiming such delay to provide financing for or construction of needed public facilities or infrastructure as contemplated or required by this Agreement, delays due to the enforcement of environmental regulations, litigation brought by third parties, or similar bases for excused performance.

An extension of time for any such cause including an extension of the Term (a “Force Majeure Delay”) shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other parties within thirty (30) days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) days after it obtains actual knowledge of the event. The time for performance due to a Force Majeure Delay will be extended for such period of time as the cause of such delay exists (whether or not it extends beyond the Term or the Extended Term) but in no event for longer than for such period of time.

Notwithstanding the first sentence of paragraph (b), above, the following shall apply: (i) Owners shall be entitled to a Force Majeure Delay for a period longer than the period of enforced delay if the City Council determines that such longer period is reasonably required; and (ii) Owners shall be entitled to a Force Majeure Delay notwithstanding the fact that Owners may not have given timely notice to the City, if the City Council determines that such Force Majeure Delay is reasonably required. A Force Majeure Delay shall not include the existence of any adverse or difficult market or economic conditions.

7.24 Emergency Circumstances.

If, as the result of specific facts, events or circumstances, the City believes that a severe and immediate emergency threat to the health or safety of the City or its residents, meeting the requirements of subparagraph (b), below, requires the modification, suspension or termination of this Agreement, the City will, after reasonable notice to Owner (in light of all the circumstances), hold a hearing on such facts, events or circumstances, at which Owners shall have the right to address the City Council. The City shall have the right to modify, suspend or terminate this Agreement, in whole or in part, if, following such hearing, the City Council determines that such modification, suspension or termination is required in order to protect the health and safety of the City and its residents.

For purposes of this Section 7.24, an emergency must meet each of the following criteria: (i) it must be based on genuine health, safety and general welfare concerns (other than general growth management issues); (ii) it must arise out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City of Goleta; and (iii) based upon its terms or its effect as applied, it does not apply exclusively or primarily to the Property or the Project.

7.25 Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement and/or the rights and obligations of the parties hereto.

7.26 Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

7.27 Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original and all of which when taken together shall constitute one and the same instrument.

7.28 Entire Agreement. This Agreement consists of 16 pages and three (3) exhibits (designated 1 through 3), which constitute the entire understanding and agreement of the parties.

[Signature page follows]

IN WITNESS WHEREOF, the parties have each executed this Agreement on the date first written above.

CITY OF GOLETA

By: _____
Robert Nisbet, City Manager
City of Goleta

ATTEST

By: _____
Deborah Lopez, City Clerk

APPROVED AS TO FORM:
CITY OF GOLETA

By: _____
Megan Garibaldi, City Attorney

TORRIDON, LLC

By: _____
Jason Yardi, Manager

FAIRVIEW BUSINESS ASSOCIATES, LLC

By: _____
Jill Smith, Authorized Representative

YARDI SYSTEMS, INC.

By: _____
Jill Smith, Authorized Representative

APPROVED AS TO FORM:
BROWNSTEIN HYATT FARBER SCHRECK

By: _____
Beth A. Collins, Esq.

EXHIBIT “1” TO DEVELOPMENT AGREEMENT

PROPERTY LEGAL DESCRIPTION

LEGAL DESCRIPTION

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

PARCEL 2 OF PARCEL MAP NO. 32,016 IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED MARCH 23, 2006 IN BOOK 59, PAGES 46 THROUGH 52, INCLUSIVE, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 071-130-062

LEGAL DESCRIPTION

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

PARCEL A:

PARCEL 1 OF PARCEL MAP NO. 32,016 IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP RECORDED MARCH 23, 2006 IN BOOK 59, PAGES 46 THROUGH 52 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

PARCEL B:

A RECIPROCAL, NON-EXCLUSIVE ACCESS EASEMENT FOR INGRESS AND EGRESS AS MORE PARTICULARLY DESCRIBED IN THAT CERTAIN RECIPROCAL EASEMENT AGREEMENT RECORDED ON APRIL 30, 2003 AS INSTRUMENT NO. 2003-0054533 OF OFFICIAL RECORDS OF SANTA BARBARA COUNTY, CALIFORNIA.

APN: 071-130-061

LEGAL DESCRIPTION

Real property in the City of Goleta, County of Santa Barbara, State of California, described as follows:

PARCEL ONE:

THAT PORTION OF THE RANCHO LA GOLETA, BEING ALSO PORTIONS OF PARCELS A AND B OF PARCEL MAP NO. 11,097 IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP FILED IN BOOK 6 AT PAGE 17 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEASTERLY CORNER OF SAID PARCEL B, AS SHOWN ON SAID PARCEL MAP NO. 11,097, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE 1ST, SOUTH 00°08'42" EAST ALONG THE MOST EASTERLY LINE OF SAID PARCEL B, A DISTANCE OF 97.07 FEET; THENCE 2ND, LEAVING SAID EASTERLY LINE OF PARCEL B, NORTH 89°59'13" WEST A DISTANCE OF 223.42 FEET; THENCE 3RD, NORTH 00°00'47" EAST A DISTANCE OF 96.45 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL B AND ALSO THE SOUTHERLY LINE OF THE ABOVE REFERENCED PARCEL A, SAID POINT BEING DISTANT SOUTH 89°51'18" WEST 223.15 FEET FROM SAID NORTHEASTERLY CORNER OF PARCEL B; THENCE 4TH, LEAVING SAID SOUTHERLY LINE OF PARCEL A AND CONTINUING NORTH 00°00'47" EAST A DISTANCE OF 440.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL A, SAID POINT BEING DISTANT NORTH 89°51'18" EAST ALONG SAID NORTHERLY LINE OF PARCEL A 508.17 FEET FROM THE NORTHWESTERLY CORNER OF SAID PARCEL A; THENCE 5TH, NORTH 89°51'18" EAST ALONG SAID NORTHERLY LINE A DISTANCE OF 318.96 FEET TO THE NORTHEASTERLY CORNER OF SAID PARCEL A AS SHOWN ON SAID PARCEL MAP; THENCE 6TH, SOUTH 00°08'42" EAST ALONG THE EASTERLY LINE OF SAID PARCEL A, A DISTANCE OF 440.00 FEET, TO THE SOUTHEASTERLY CORNER OF SAID PARCEL A AS SHOWN ON SAID PARCEL MAP; THENCE 7TH, ALONG THE SOUTHERLY LINE OF SAID PARCEL A SOUTH 89°51'18" WEST A DISTANCE OF 97.02 FEET TO THE POINT OF BEGINNING.

THIS LEGAL DESCRIPTION IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF APPROVING A LOT LINE ADJUSTMENT, GOLETA PLANNING CASE NO. 02-83-LLA RECORDED APRIL 09, 2003, AS INSTRUMENT NO. 03-0044344 OF OFFICIAL RECORDS.

PARCEL TWO:

AN EASEMENT FOR ACCESS PURPOSES OVER, UNDER, ACROSS AND THROUGH A TRACT OF LAND DESCRIBED AS FOLLOWS:

THAT PORTION OF THE RANCHO LA GOLETA, IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, BEING ALSO A PORTION OF PARCEL "A" OF PARCEL MAP NO. 12,317 AS SAME IS SHOWN ON THE MAP THEREOF FILED IN BOOK 19 AT PAGE 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHWESTERLY CORNER OF PARCEL "A" AS SHOWN ON SAID PARCEL MAP NO. 12,317, THENCE 1ST, ALONG THE WESTERLY LINE OF SAID PARCEL "A" SOUTH 0°08'42" EAST 31.96 FEET; THENCE 2ND, LEAVING SAID WESTERLY LINE OF PARCEL "A" AND AT RIGHT ANGLES THERETO, NORTH 89°51'18" EAST 52.54 FEET, MORE OR LESS TO THE POINT OF INTERSECTION WITH THE SOUTHERLY PROLONGATION OF THE EASTERLY RIGHT-OF-WAY LINE OF THAT CERTAIN PUBLIC STREET SHOWN AS MAGNOLIA AVENUE (66.00 FEET WIDE) ON PARCEL MAP NO. 11,097 AS SAME IS SHOWN ON THE MAP THEREOF FILED IN BOOK 6, PAGE 17 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE 3RD, NORTH 0°08'42" WEST ALONG SAID SOUTHERLY PROLONGATION OF THE EASTERLY RIGHT-OF-WAY LINE OF MAGNOLIA AVENUE 31.96 FEET, MORE OR LESS TO A POINT ON THE MOST NORTHERLY LINE OF SAID PARCEL "A", SAID POINT ALSO BEING THE SOUTHEASTERLY CORNER OF MAGNOLIA AVENUE AS SHOWN ON SAID PARCEL MAP NO. 11,097;

THENCE 4TH, SOUTH 89°51'18" WEST ALONG SAID NORTHERLY LINE OF PARCEL "A" 52.54 FEET,
MORE OR LESS, TO THE POINT OF BEGINNING.

APN: 071-130-057

EXHIBIT “2” TO DEVELOPMENT AGREEMENT
TORRIDON PROPERTY SUBJECT TO CONDEMNATION ACTION

LEGAL DEFINITIONS
City of Goleta
Ekwill Street and Fowler Road Extensions Project
As to APN 071-090-036

“**Fee,**” also known as fee simple or fee simple absolute, grants to the City of Goleta (“Goleta”) absolute ownership of the interests in the portions of the property to be acquired.

“**Permanent Flood Control Easement**” refers to a permanent easement and right of way to Goleta for street drainage and flood control purposes, over, under, along, through and across said property, together with the rights to construct maintain, repair and replace Goleta’s improvements thereon and refers to a temporary easement in favor of Goleta, its successor and assigns, to install, re-install, replace, remove, and maintain sandbags and similar sediment control protective devices, as determined necessary by Goleta, for the prevention of construction related flooding, erosion and sediment transfer across adjacent properties and into on-site drainage inlets/sources, together with all necessary rights incidental thereto in connection with the exercise of any easement rights described herein.

Property Owner shall not erect or construct, or permit to be erected or constructed, any building, structure or improvement on, over, or under any portion of the easement, or plant trees or any other vegetation on any portion of the easement, except with the prior written consent of Goleta, its successors and assigns.

No other easement shall be granted on, under or over the easement without the prior written consent of Goleta, its successors and assigns.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

“**Temporary Construction Easement**” (TCE) refers to the right of Goleta, its successors and assigns, to engage in construction and related activities for the project, together with all necessary rights of ingress and egress to the easement area in connection with the exercise of any of the easement rights.

The rights under this easement shall commence on May 1, 2020 and end on December 31, 2024.

Property Owner shall not cause, directly, indirectly or negligently, any interference with or harm to the rights conveyed hereunder.

(Right of Way Legal Description)
(Fee Interest)

Parcel: EKWILL-2-1

A portion of land in the City of Goleta, County of Santa Barbara, State of California, being a portion of Parcel 2 of Parcel Map No. 32,016 recorded in Book 59, Pages 46 through 52 of Parcel Maps, in the office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the southwesterly corner of said Parcel 2, said point being shown on record of survey recorded in Book 179, Pages 34 through 36 of Records of Survey in the office of the County Recorder of said County, being the northwesterly terminus of that line shown on said map as S 86° 21' 15" E, 42.05 feet; thence, along the southerly boundary of said Parcel 2 S 86° 21' 15" E, 42.05 feet to a point on the easterly boundary of Fairview Avenue; thence, along said easterly boundary N 00° 49' 55" E, 64.08 feet to the point of beginning also being a point on the northerly boundary of an irrevocable offer of dedication for a roadway easement described per Instrument No. 2001-0096623 of Official Records; thence,

- 1st along said northerly boundary S 86° 21' 15" E, 223.50 feet; thence,
- 2nd N 73° 20' 06" W, 65.18 feet; thence,
- 3rd N 86° 21' 26" W, 132.70 feet to the beginning of a tangent curve; thence
- 4th along the arc of said curve having a radius of 34.00 feet, being concave northwesterly through a central angle of 45° 59' 03", in a northwesterly direction 27.29 feet to the beginning of a tangent compound curve; thence,
- 5th along the arc of said curve having a radius of 14.00 feet, being concave northwesterly through a central angle of 41° 54' 42". in a northwesterly direction 10.24 feet; thence,
- 6th N 01° 32' 19" E, 11.78 feet; thence,
- 7th N 88° 18' 13" W, 0.75 feet to a point on the easterly boundary of Fairview Avenue; thence,
- 8th along said easterly boundary S 00° 49' 55" W, 46.06 feet to the point of beginning.

Containing an area of 2,961.66 square feet more or less.

Bearings and distances as shown herein are based upon the California Coordinate System of 1983 (CCS83) Zone 5.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

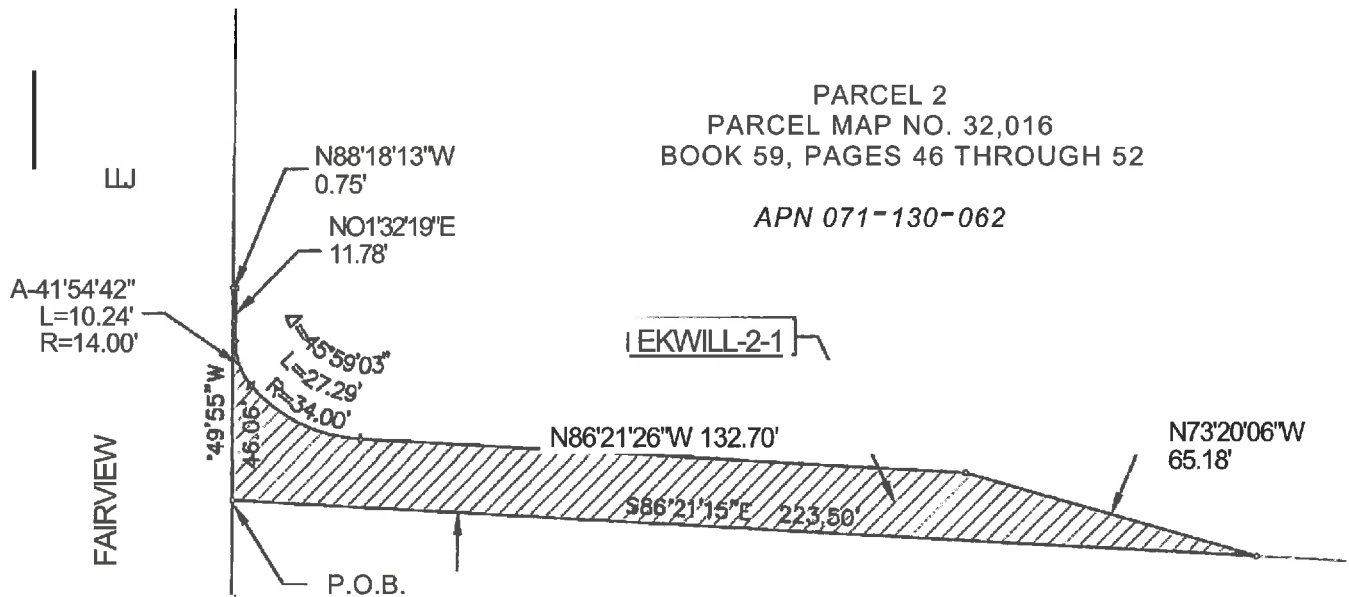
Signature:  G
Mark E. Reinhardt, PLS

Date. 71/4 '9)? 0/4z



PARCEL 2
PARCEL MAP NO. 32,016
BOOK 59, PAGES 46 THROUGH 52

APN 071-130-062



IRREVOCABLE OFFER OF DEDICATION FOR A
— ROADWAY EASEMENT DESCRIBED PER INSTRUMENT
NO. 2001-0096623 OF OFFICIAL RECORDS

1.2.05' P.O.C.

APN 071-

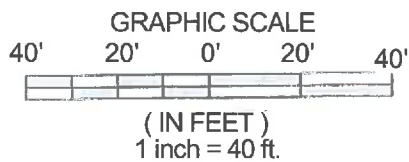
151-011

APN 071-151-012

APN 071-151-009

APN 071-151-002

APN 071-151-007



LEGEND
P.O.B. Point of Beginning
P.O.C. Point of Commencement



MNS
ENGINEERS INC
201 N. Calle Cesar Chavez,
Ste 300 Santa Barbara, CA
93103 805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

EKWILL-2-1 RIGHT OF WAY EXHIBIT
APN 071-130-062
FAIRVIEW AVENUE
CITY OF GOLETA

(Drainage & Flood Control Easement Legal Description)

Parcel: EKWILL-2-4

A portion of land in the City of Goleta, County of Santa Barbara, State of California, being a portion of Parcel 2 of Parcel Map No. 32,016 recorded in Book 59, Pages 46 through 52 of Parcel Maps, in the office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the southeasterly corner of said Parcel 2, said point being shown on record of survey recorded in Book 179, Pages 34 through 36 of Records of Survey in the office of the County Recorder of said County, being the northeasterly terminus of that line shown on said map as N 61° 45' 56" E, 47.10 feet; thence, along the easterly boundary of said Parcel 2 N 00° 52' 12" E, 39.17 feet to a point on the northerly boundary of an irrevocable offer of dedication for a roadway easement described per Instrument No. 2001-0096623 of Official Records; thence, along said northerly boundary N 86° 21' 15" W, 42.63 feet to the point of beginning; thence,

- 1st Continuing along said northerly boundary N 86° 21' 15" W, 25.79 feet; thence,
- 2nd N 55° 18' 24" E, 63.23 feet; thence,
- 3rd N 00° 20' 44" E, 11.20 feet; thence,
- 4th S 89° 39' 53" E, 17.01 feet to a point on the easterly boundary of said Parcel 2, said point lying N 00° 52' 12" E, 90.62 feet along said easterly boundary from said southeasterly corner of said Parcel 2; thence,
- 5th along said easterly boundary S 00° 52' 12" W, 32.18 feet to a point on the northerly boundary of an easement to the County of Santa Barbara for flood control purposes per Instrument No. 5013 filed in Book 2301 Page 132 of Official Records; thence,
- 6th along said northerly boundary S 60° 55' 46" W, 1.13 feet; thence,
- 7th N 25° 32' 39" W, 9.30 feet; thence,
- 8th N 89° 39' 16" W, 2.58 feet; thence,
- 9th S 55° 18' 24" W, 42.89 feet to the point of beginning.

Containing an area of 1,226.00 square feet more or less.

Bearings and distances as shown herein are based upon the California Coordinate System of 1983 (CCS83) Zone 5.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

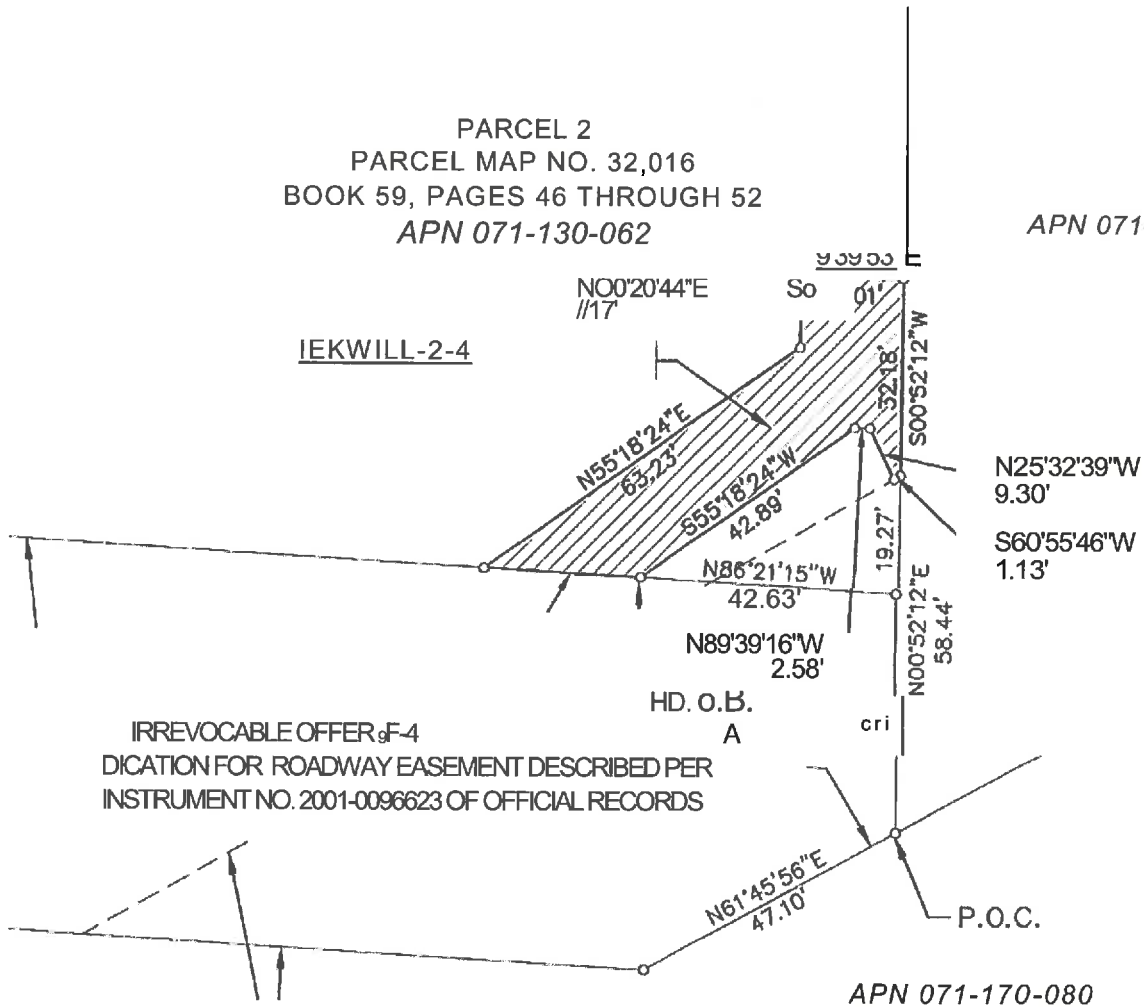
Signature:  Date:)- 12/-
Mark E. Reinhardt, PLS



PARCEL 2
PARCEL MAP NO. 32,016
BOOK 59, PAGES 46 THROUGH 52
APN 071-130-062

APN 071-130-051

IEKWILL-2-4



IRREVOCABLE OFFER OF
DICATION FOR ROADWAY EASEMENT DESCRIBED PER
INSTRUMENT NO. 2001-0096623 OF OFFICIAL RECORDS

COUNTY OF S.B. FLOOD CONTROL EASEMENT
PER INSTRUMENT NO. 5013 FILED IN BOOK 2301
PAGE 132 OF OFFICIAL RECORDS

GRAPHIC SCALE

30' 15' 0' 30'

(IN FEET)
1 inch = 30 ft.

LEGEND

P.O.B. Point of Beginning
P.O.C. Point of Commencement



MINS
ENGINEERS INC
201 N. Cole Cesar Chavez, Ste
300 Santa Barbara, CA 93103
805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

EKWILL-2-4 DRAINAGE & FLOOD CONTROL
EASEMENT EXHIBIT
APN 071-130-062
CITY OF GOLETA

(Temporary Construction Easement Legal Description)

Parcel: EKWILL-2-2

A portion of land in the City of Goleta, County of Santa Barbara, State of California, being a portion of Parcel 2 of Parcel Map No. 32,016 recorded in Book 59, Pages 46 through 52 of Parcel Maps, in the office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the southwesterly corner of said Parcel 2, said point being shown on record of survey recorded in Book 179, Pages 34 through 36 of Records of Survey in the office of the County Recorder of said County, being the northwesterly terminus of that line shown on said map as S 86° 21' 15" E, 42.05 feet; thence, along the southerly boundary of said Parcel 2 S 86° 21' 15" E, 42.05 feet to a point on the easterly boundary of Fairview Avenue; thence, along said easterly boundary N 00° 49' 55" E, 64.08 feet to a point on the northerly boundary of an irrevocable offer of dedication for a roadway easement described per Instrument No. 2001-0096623 of Official Records; thence, along said northerly boundary S 86° 21' 15" E, 223.50 feet to the point of beginning; thence,

- 1st N 73° 20' 06" W, 65.18 feet; thence,
- 2nd N 86° 21' 26" W, 132.70 feet to the beginning of a tangent curve; thence
- 3rd along the arc of said curve having a radius of 34.00 feet, being concave northeasterly through a central angle of 45° 59' 03", in a northwesterly direction 27.29 feet to the beginning of a tangent compound curve; thence,
- 4th along the arc of said curve having a radius of 14.00 feet, being concave northeasterly through a central angle of 41° 54' 42", in a northwesterly direction 10.24 feet; thence,
- 5th N 01° 32' 19" E, 11.78 feet; thence,
- 6th N 88° 18' 13" W, 0.75 feet to a point on the easterly boundary of Fairview Avenue; thence,
- 7th along said easterly boundary N 00° 49' 55" E, 10.00 feet; thence,
- 8th S 88° 55' 39" E, 31.38 feet; thence,
- 9th S 01° 02' 54" W, 21.57 feet; thence,
- 10th S 89° 10' 03" E, 119.09 feet; thence,
- 11th S 00° 49' 57" W, 17.73 feet; thence,
- 12th S 60° 18' 56" E, 12.93 feet; thence,
- 13th S 78° 53' 45" E, 22.26 feet; thence,
- 14th S 72° 44' 14" E, 34.82 feet; thence,
- 15th N 00° 36' 06" W, 3.11 feet; thence,
- 16th S 88° 37' 43" E, 8.15 feet; thence,
- 17th S 01° 27' 15" W, 5.66 feet; thence,
- 18th S 86° 21' 15" E, 40.97 feet; thence,

19th S 01° 06' 33" W, 5.00 feet to a point on the northerly boundary of said offer of dedication for a roadway easement; thence,
20th along said northerly boundary N 86° 21' 15" W, 42.76 feet to the point of beginning.

Containing an area of 4,717.68 square feet more or less.

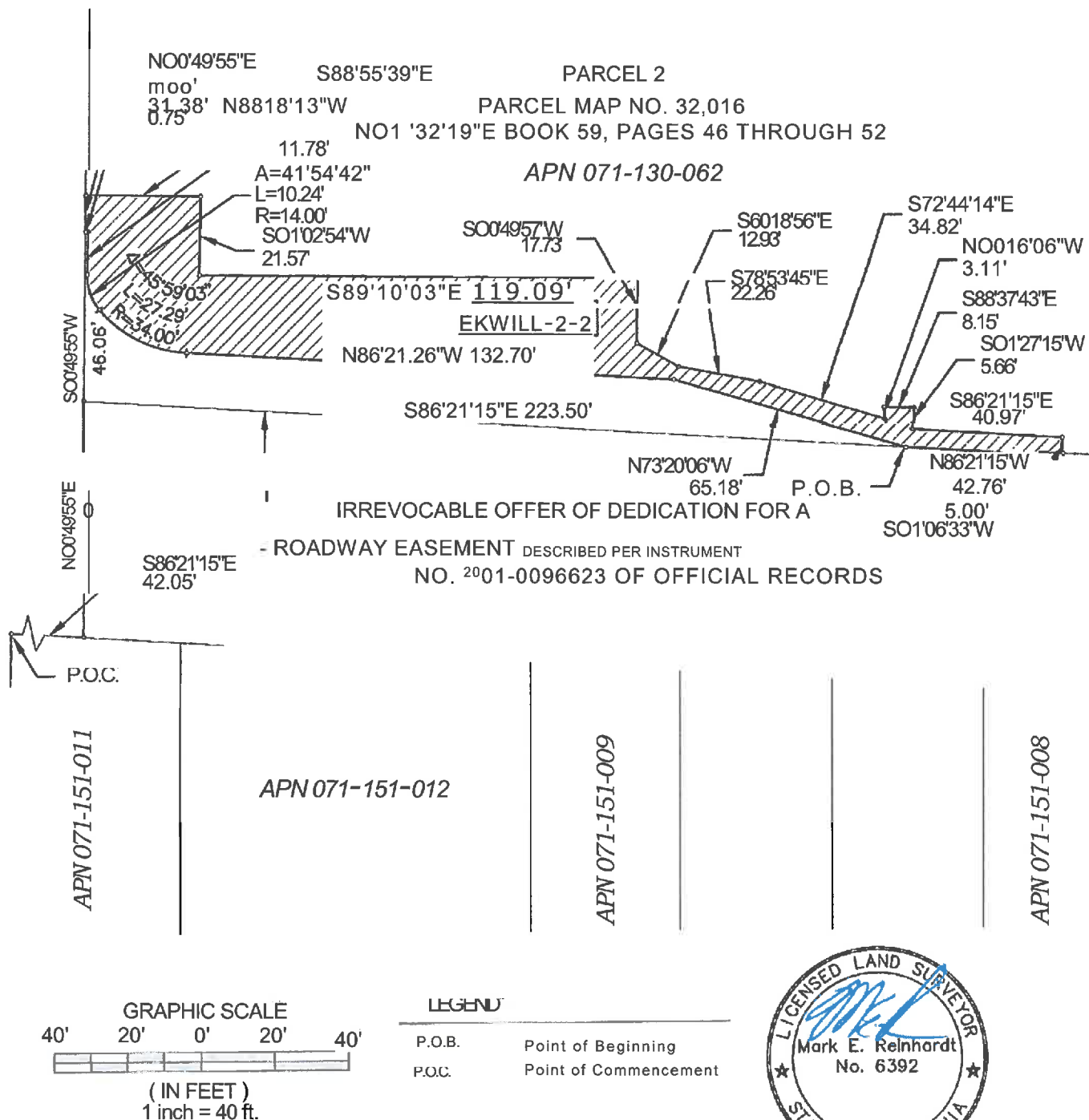
Bearings and distances as shown herein are based upon the California Coordinate System of 1983 (CCS83) Zone 5.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature:
Mark E. Reinhardt, PLS

Date: Z /





.13110K1
ENGINEERS INC
201 N. Calle Cesar Chavez,
Ste 300 Santa Barbara, CA
93103 805.692.6921 Phone

ENGINEERING
PLANNING
SURVEYING
CONSTRUCTION MANAGEMENT

EKWILL-2-2 TEMPORARY CONSTRUCTION
EASEMENT EXHIBIT
APN 071-130-062
FAIRVIEW AVENUE
CITY OF GOLETA

(Temporary Construction Easement Legal Description)

Parcel: EKWILL-2-3

A portion of land in the City of Goleta, County of Santa Barbara, State of California, being a portion of Parcel 2 of Parcel Map No. 32,016 recorded in Book 59, Pages 46 through 52 of Parcel Maps, in the office of the County Recorder of said County.

Said portion of land is described as follows:

Commencing at the southeasterly corner of said Parcel 2, said point being shown on record of survey recorded in Book 179, Pages 34 through 36 of Records of Survey in the office of the County Recorder of said County, being the northeasterly terminus of that line shown on said map as N 61° 45' 56" E, 47.10 feet; thence, along the easterly boundary of said Parcel 2 N 00° 52' 12" E, 39.17 feet to the point of beginning also being a point on the northerly boundary of an irrevocable offer of dedication for a roadway easement described per Instrument No. 2001-0096623 of Official Records; thence,

- 1st along said northerly boundary N 86° 21' 15" W, 416.62 feet; thence,
- 2nd S 89° 12' 29" E, 356.03 feet; thence,
- 3rd N 00° 05' 52" E, 20.89 feet; thence,
- 4th S 88° 42' 47" E, 21.02 feet; thence,
- 5th N 01° 17' 13" E, 15.36 feet; thence,
- 6th S 88° 42' 56" E, 39.25 feet to a point on the easterly boundary of said Parcel 2; thence,
- 7th along said easterly boundary S 00° 52' 12" W, 56.47 feet to the point of beginning.

Signature:  Mark E. Reinhardt, PLS

Date: 2 / 29



Containing an area of 6,162.57 square feet more or less.

Bearings and distances as shown herein are based upon the California Coordinate System of 1983 (CCS83) Zone 5.

This real property description was prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

PARCEL 2
 PARCEL MAP NO. 32,016
 BOOK 59, PAGES 46 THROUGH 52 N01°17'13"E
 APN 071-130-062

EKWILL-2-3

S89°12'29"E 356.03'

N86°21'15"W 416.62'

IRREVOCABLE OFFER OF DEDICATION FOR A
 ROADWAY EASEMENT DESCRIBED PER INSTRUMENT
 NO. 2001-0096623 OF OFFICIAL RECORDS

S88°42'47"E
 21.02'

N00°55'2"E
 20.89'

S88°42'56"E

39.25'

P.O.B.

P.O.C.

S86°21'15"E 241.61'

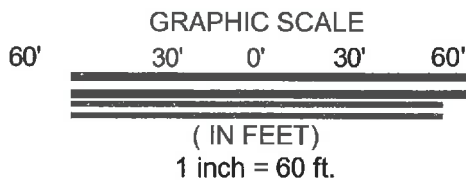
APN 071-170-080

APN 071-151-004

APN 071-151-005

APN
 071-151-006

DALEY ST.



LEGEND

P.O.B. Point of Beginning
 P.O.C. Point of Commencement



MNS
 ENGINEERS INC
 201 N. Calle Cesar Chavez, Ste
 300 Santa Barbara, CA 93103
 805.692.6921 Phone

ENGINEERING
 PLANNING
 SURVEYING
 CONSTRUCTION MANAGEMENT

EKWILL-2-3 TEMPORARY CONSTRUCTION
 EASEMENT EXHIBIT
 APN 071-130-062
 CITY OF GOLETA

EXHIBIT “3” TO DEVELOPMENT AGREEMENT
EASEMENT FOR 35 SPACES

RECORDING REQUESTED BY

City of Goleta

WHEN RECORDED RETURN TO

City Clerk
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

PUBLIC PARKING EASEMENT DEED

APN: 071-130-061

“No Fee Required” (Government Code Section 6103 & 27383)
Recorded for the benefit of City of Goleta

City of Goleta, by: (signature required above this line)

For a valuable consideration, receipt of which is hereby acknowledged, FAIRVIEW BUSINESS ASSOCIATES, LLC, a California limited liability company, herein referred to as “GRANTOR”, represents that it is the owner of the hereinafter described real property located at 420 S. Fairview, Goleta, California, as described on Exhibit A (the “Property”) and for a valuable consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, convey and release unto the CITY OF GOLETA, a municipal corporation, herein referred to as “GRANTEE”, a perpetual, PUBLIC PARKING EASEMENT, upon, through, under, over and across the hereinafter described real property for the use, maintenance, repair, replacement, reconstruction, and inspection of 35 parking spaces for the benefit of the public on the property as described on Exhibit B (“Easement Area” or “Public Parking Area”), together with the right to have and hold said easement and to cross the Easement Area to access the parking. Such rights shall be for GRANTEE and for the general public. The easement granted herein shall not be considered the dedication of a public right of way.

GRANTOR, its successors and assigns, shall be responsible for maintaining and keeping in good repair the above described works and shall have a right-of-entry upon the Easement Area for the purposes of inspecting, operating, maintaining, and keeping in good repair the above described works of improvement. GRANTOR shall give GRANTEE thirty (30) days’ written notice prior to any maintenance activities which would reduce or prohibit access to the Easement Area.

There is reserved to GRANTOR, its successors and assigns, the right and privilege to use the above described land of GRANTOR at any time, in any manner and for any purpose which does not interfere with the full use and enjoyment by GRANTEE, and its permittees, of the rights and privileges herein granted. Notwithstanding the foregoing, in no way shall GRANTOR or its employees, licensees, agents or contractors have the right to construct buildings or structures, install trees or bushes, or otherwise obstruct in any fashion whatsoever the use of said easement and access rights by GRANTEE or use the Public

Parking Area in violation of the rules and ordinances for public parking, in force and as such may change from time to time, and the regulation and policing of such parking spaces.

NOW THEREFORE, GRANTOR hereby agrees as follows:

1. Easement is an easement in gross to GRANTEE for public parking.
2. GRANTOR will maintain parking spaces in the same manner and on the same schedule as the rest of this parking lot. Parking spots will be maintained in good repair and in compliance with all laws.
3. GRANTOR'S employees may park and use the parking spaces within the Easement Area in the same manner as any member of the public, but will not have any priority.
4. GRANTEE shall have the right to install parking meters within the Easement Area and impose and enforce any parking time limits which GRANTEE deems appropriate, in GRANTEE'S sole discretion. Without limiting the foregoing, and subject to GRANTEE's right to modify such terms from time to time, parking shall be available within the Easement Area on the following terms and conditions:
 - a. daily from 7:00 a.m. to 10:00 p.m., every day except Sunday;
 - b. there shall be no parking between the hours of 10:00 p.m. and 6:00 a.m. the following day;
 - c. enforcement of parking restrictions shall not be in effect on holidays recognized by the City of Goleta; and
 - d. parking shall be limited to durations of 90 minutes.
5. The electric charging stations currently located within the Easement Area shall be made available to the public, subject to a reasonable charge payment to GRANTOR for reimbursement for electric expense. If GRANTOR does not wish to make such electric charging stations available, GRANTOR may relocate such charging stations at its sole cost to another location outside of the Easement Area. GRANTEE, at GRANTEE's cost, shall have the right to install its own charging stations within the Easement Area at any time.
6. GRANTOR shall be solely responsible for monitoring and security for the Property. GRANTEE shall take all steps necessary to maintain property security for the Easement Area and to remove unauthorized vehicles from the Easement Area.
7. GRANTEE shall have the right to install and maintain signage adequate to identify the Public Parking Area and to aid in the ingress and egress of vehicular traffic to and from the Public Parking Area.
8. Neither GRANTEE nor GRANTEE'S permittees shall utilize any area of the Property for parking other than the Easement Area. Should GRANTEE'S permittees park any vehicle anywhere on the Property other than on the Easement Area, GRANTOR shall have the right to remove any such vehicle from the Property. GRANTEE shall inform all permitted users of the Easement Area that GRANTOR has the right to tow any vehicles parked outside of the Easement Area.
9. GRANTEE and its permittees shall have a right of entry and exit across the Easement Area.

The real property for this PUBLIC PARKING EASEMENT is fully described and depicted on Exhibit "B", each attached hereto and made a part hereof by reference.

IN WITNESS WHEREOF, the PUBLIC PARKING EASEMENT DEED is executed by the undersigned this ____ day of _____, 2022

GRANTOR:

FAIRVIEW BUSINESS ASSOCIATES, LLC
a California limited liability company

By: _____
Jill Smith, Authorized Representative

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 2022 before me, _____, a Notary Public, personally appeared _____, 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.

Signature _____ (SEAL)

Exhibit "A"

GRANTOR'S PROPERTY

Real property in the City of Goleta, County of Santa Barbara, State of California, described-as-follows:

420 S. Fairview

PARCEL 1 OF PARCEL MAP NO. 32,016 IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON PARCEL MAP RECORDED MARCH 23, 2006 IN BOOK 59, PAGES 46 THROUGH 52 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 071-130-61

EXHIBIT B
LEGAL DESCRIPTION OF PUBLIC PARKING SPACES

Exhibit B
Public Parking Easement
Legal Description

That portion of Rancho La Goleta, in the City of Goleta, County of Santa Barbara, State of California and also being a portion of Parcel 1 of Parcel Map No. 32,016 per the map thereof filed in Book 59 pages 46 thru 52 of Parcel Maps, in the office of the County Recorder of said County more particularly described as follows:

Beginning at the northeasterly corner of said Parcel 1 and the True Point of Beginning;

Thence 1st, South 89° 52' 03" West along the northerly line of said Parcel 1 a distance of 33.00 feet;

Thence 2nd, South 00° 00' 00" West leaving said northerly line and into said Parcel 1 a distance of 5.00 feet;

Thence 3rd, South 89° 52' 07" West distance of 433.16 feet to the easterly line of a Fairview Avenue per Instruments No. 30021 filed in Book 2287 at Page 1295, and Instrument No. 30022 filed in Book 2287 at Page 1297 of Official Records filed in the office of the County Recorder of said County;

Thence 3rd, South 00° 09' 30" East along said easterly line distance of 28.00 feet;

Thence 4th, North 89° 54' 31" East leaving said easterly line distance of 39.50 feet;

Thence 5th, South 00° 09' 30" East a distance of 16.50 feet;

Thence 6th, South 89° 59' 53" East a distance of 383.00 feet;

Thence 7th, North 00° 09' 30" West a distance of 16.50 feet;

Thence 8th, North 89° 52' 03" East a distance of 43.59 feet to the easterly line of said Parcel 1;

Thence 9th, North 00° 00' 47" West along said easterly line a distance of 33.92 to the True Point of Beginning.

--- End of Legal Description---

Area described: 19,758 s.f. / 0.45 acres

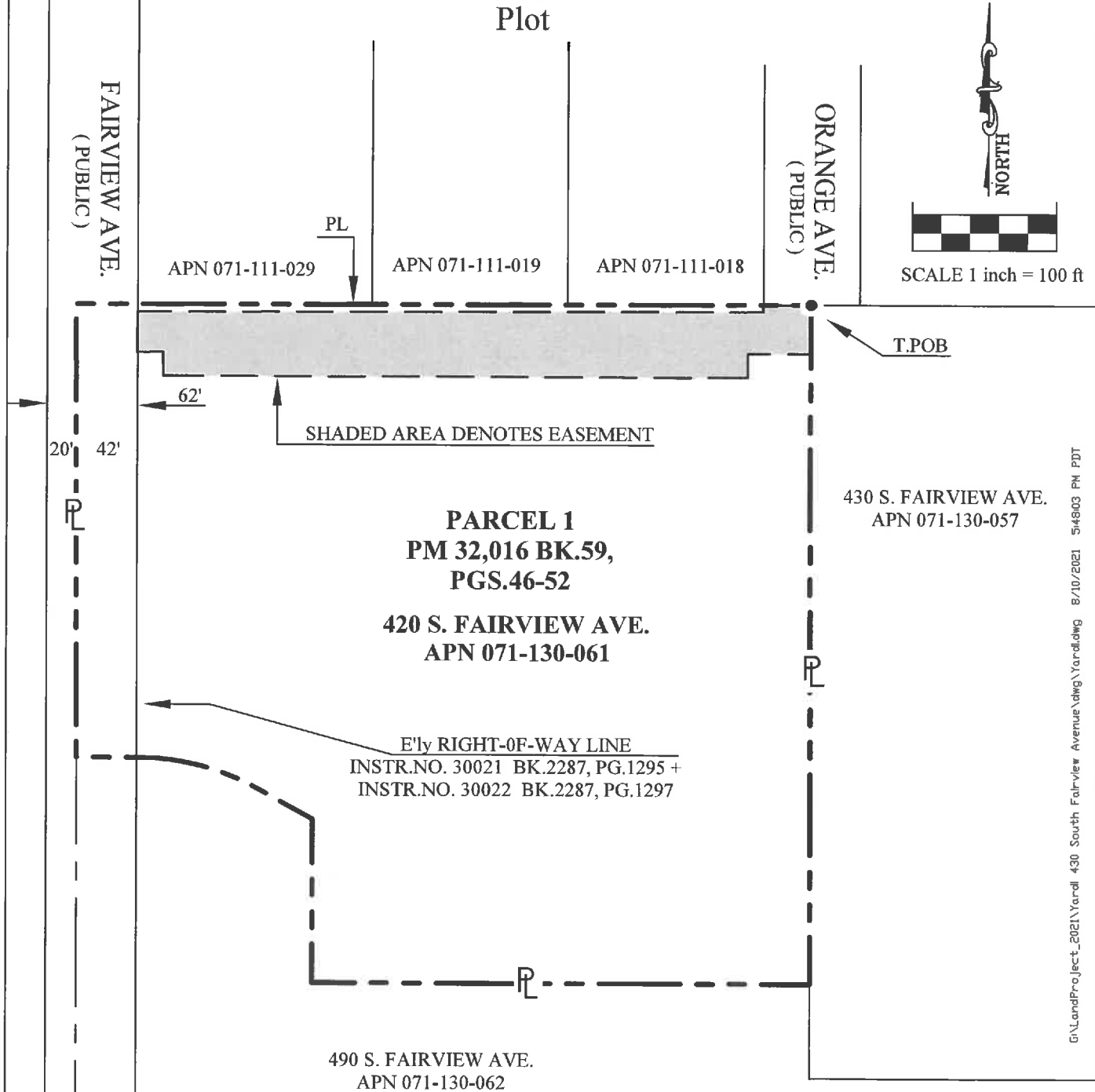
Prepare by: _____


Jeffery K. Prober, PLS 8101

Date: 8-10-2021



Exhibit B Public Parking Easement Plot



PROBER 
Land Surveying
645 Flora Vista Road, SB, CA 93109
805-452-9690 plssb@cox.net
www.ProberLandSurveying.com

ATTACHMENT 1 EXHIBIT 2

CEQA NOTICE OF EXEMPTION

NOTICE OF EXEMPTION (NOE)

To: ☐ Office of Planning and Research
P.O. Box 3044, 1400 Tenth St. Rm. 212
Sacramento, CA 95812-3044

From: City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

☒ Clerk of the Board of Supervisors
County of Santa Barbara
105 E. Anapamu Street, Room 407
Santa Barbara, CA 93101



Subject: Filing of Notice of Exemption

Project Title:

Fairview Business Associates/Torridon Development Agreement
Case No. 21-0002-ORD

Project Applicant:

Eva Turenchalk of Turenchalk Planning Services, Agent
Arnold Brier, agent for Fairview Business Associates/Torridon, Applicant

Project Location (Address and APN):

420, 430, 490 S Fairview Avenue
Goleta, CA 93117
County of Santa Barbara
APN: 071-130-061, -057, -062

Description of Nature, Purpose, and Beneficiaries of Project:

The applicant, Fairview Business Associates/Torridon, proposes a Development Agreement (DA) to set the term of the final Design Review Board approval to 25 future parking spaces to the term of the Development Agreement (20 years) and dedicating a public parking easement at 420, 430, & 490 S. Fairview Avenue, Case No. 21-0002-ORD.

The beneficiaries of the project are the property owners and tenants and the City of Goleta.

Name of Public Agency Approving the Project:

The City of Goleta

Name of Person or Agency Carrying Out the Project:

Eva Turenchalk of Turenchalk Planning Services, Agent; Arnold Brier, agent for Fairview Business Associates/Torridon, Applicant

Exempt Status: *(check one)*

- ☐ Ministerial (Sec. 15268)
- ☐ Declared Emergency (Sec. 15269 (a))
- ☐ Emergency Project (Sec. 15269 (b) (c))
- ☒ Exemption: § 15061 (b) (3) (Review for Exemption)

NOTICE OF EXEMPTION (NOE)

Reason(s) why the project is exempt:

The proposed project is exempt pursuant to the California Environmental Quality Act (Public Resources Code §§ 21000 et seq.; "CEQA") and CEQA Guidelines (14 Cal. Code Regs. §§ 15000 et seq.). Specifically, the project is categorically exempt from environmental review pursuant to CEQA Guidelines § 15061 (Review for Exemption).

The project involves a Development Agreement between Fairview Business Associates/Torridon and the City of Goleta, which will not result in a physical change in the environment and is entirely separate from entitlement review for the property under separate consideration and CEQA analysis. The DA is limited to vesting the right to construction of 25 future parking spaces at any time during the term of the DA (20 years) and implementation of associated landscaping, hardscaping, and lighting improvements, all in accordance with Title 17 and a final Design Review approval, which is separately reviewed in compliance with Title 17 under Permit Nos. 21-0002-SCD and 21-0040-ZC. The Development Agreement also results in 35 spaces on the existing private parking lot available for public parking. Therefore, the Development Agreement can be found exempt per Section 15061(b)(3) of the CEQA Guidelines because common sense holds that the Development Agreement itself, with certainty, will not have a significant effect on the environment and is therefore not an activity subject to CEQA.

City of Goleta Contact Person, Telephone Number, and Email:

Travis Lee, Associate Planner
805-961-7500
tlee@cityofgoleta.org

Signature

Title

Date

If filed by the applicant:

1. Attach certified document of exemption finding
2. Has a Notice of Exemption been filed by the public agency approving the project?
☐Yes ☐No

Date received for filing at OPR: _____

Note: Authority cited: Section 21083 and 211110, Public Resources Code
Reference: Sections 21108, 21152.1, Public Resources Code

ATTACHMENT 2

DESIGN REVIEW BOARD MINUTES FEBRUARY 8, 2022

Design Review Board Minutes – Approved

February 22, 2022

Page 6 of 8

MOTION: Member King moved, seconded by Member Clinton, to continue to March 8, 2022, Item B.5, Balboa Residential Addition, 274 Daytona Drive (APN 079-421-015), Case No. 21-0017-LUP.

VOTE: Motion carried by the following roll call vote: Ayes: Chair Branch, Member Clinton, Member Degasis, Member Eymann, and Member King. Noes: None. Absent: Vice Chair Shallenberger and Member Whelan.

C. CONCEPTUAL/PRELIMINARY REVIEW

C.1 420, 430, and 490 S Fairview Avenue (APNs 071-130-061, -057, -062) Yardi Development Plan Agreement Case No. 21-0002-ORD-SCD-DRB, 21-0040-ZC

[Staff Report](#)

[Att A - Findings](#)

[Att B - Project Plans](#)

[Att C - Notice of Exemption](#)

Site visits reported by Chair Branch (virtual), Member Clinton, Member Degasis, and Member Eymann. No ex-parte conversations reported.

Staff Speaker:

Travis Lee, Associate Planner

The plans were presented by agent Eva Turenchalk of Turenchalk Planning Services on behalf of Yardi Systems.

No public speakers.

MOTION: Member Eymann moved, seconded by Member Clinton, to grant approval for Conceptual/Preliminary Review of Item C.1, Yardi Development Plan Agreements, 420, 430, and 490 S. Fairview Avenue (APNs 071-130-061, -057, -062), Case No. 21-0002-ORD-SCD-DRB, 210040-ZC, as submitted, and determine that Case No. 21-0002-ORD-SCD-DRB, 21-0040-ZC, are in conformance with DRB Findings for Development, Yardi Development Agreement, Case No. 21-0002-ORD-SCD-DRB, 21-0040-ZC.

VOTE: Motion carried by the following roll call vote: Ayes: Chair Branch, Member Clinton, Member Degasis, Member

Design Review Board Minutes – Approved

February 22, 2022

Page 7 of 8

Eymann, and Member King. Noes: None. Absent Vice Chair Shallenberger and Member Whelan.

D. ADVISORY REVIEW

D.1 130 Cremona Drive (APN 073-330-102) City of Goleta City Hall Solar PV Project

[Staff Report](#)

[Att A - 90% Project Plans](#)

[Att B - Structure Framing Plan and Elevation](#)

[Att C - Installation Examples](#)

[Att D - Site Photos and Tree Removal Plan](#)

Site visits reported by Chair Branch, Member Clinton, Member Degasis, Member Eymann, and Member King. No ex-parte conversations reported.

Staff Speakers:

Cindy Moore, Sustainability Manager
Angelina Foshay, Management Assistant

The plans were presented by Gabrielle Reese, project manager, and Stuart Davis, engineer, with Sandbar Solar & Electric.

No public speakers.

The Design Review Board conducted Advisory Review of the City of Goleta City Hall Solar PV Project, 130 Cremona Drive (APN 073-330-102), with the following comments:

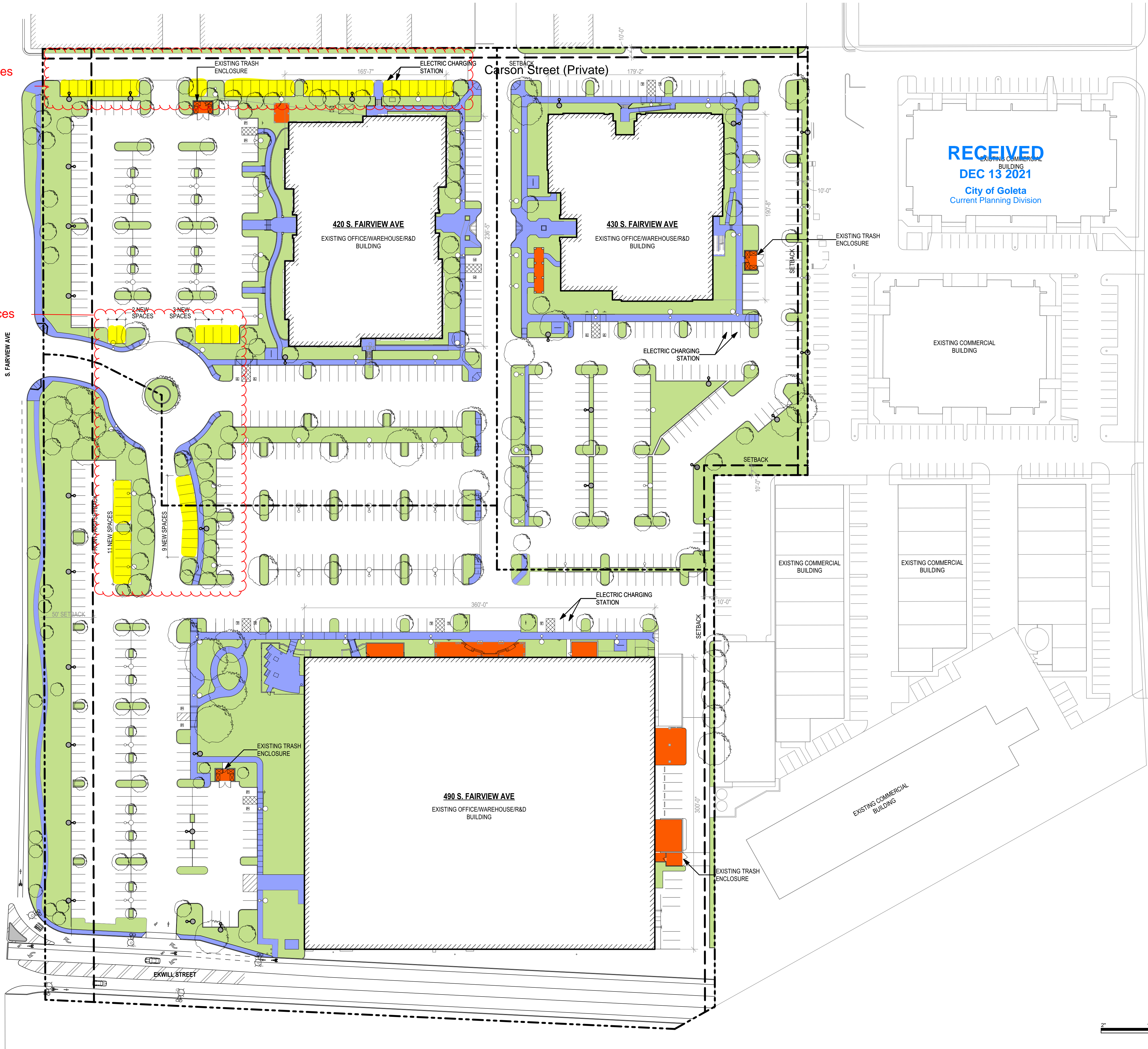
1. The project received positive comments.
2. There are probably 2 to 4 locations along the perimeter of the existing parking lot that might accept new tree plantings. It does not look like there is a location on the proposed site for 15 trees.
3. A native tree species like the Coast Live Oak Tree in a 24-inch box standard form was recommended possibly.
4. The planting areas under the canopies would easily support non-climbable plants such as the Indian hawthorn or the Coffeeberry species that would grow 2-3 feet tall and not overwhelm the planting space, to fill the parking lot planters.

ATTACHMENT 3

PROPOSED PARKING PLAN

35 public parking spaces

25 new parking spaces



proposed site plan legend

- (E) LIGHT POLE TO REMAIN
- PROPOSED LIGHT POLE
- (E) TREE TO REMAIN
- (E) PARKING SPACE
- (N) PARKING SPACE

project statistics

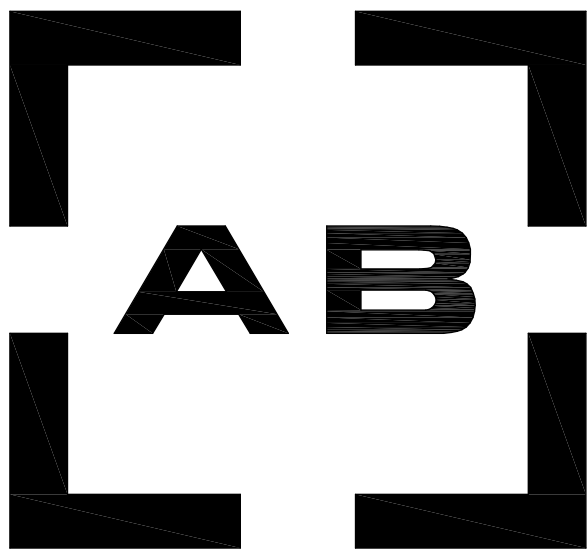
| LOT AREA: | GROSS | NET |
|------------------------------------|------------|------------|
| 420 S FAIRVIEW | 162,479 SF | 201,683 SF |
| 430 S FAIRVIEW | 214,751 SF | 162,043 SF |
| 490 S FAIRVIEW | 389,862 SF | 362,419 SF |
| TOTAL: | 767,092 SF | 726,145 SF |
| 2001 EKWILL DEDICATION | | -43,570 SF |
| 2021 EKWILL DEDICATION | | -2,962 SF |
| CARSON ACCESS AND PARKING EASEMENT | | -19,738 SF |
| FC EASEMENT | | -1,226 SF |
| NET SITE AREA: | | 658,629 SF |
| HABITABLE AREAS: | 242,000 SF | |
| NON-HABITABLE STRUCTURES: | 6,384 SF | |

coverage statistics

| | | |
|--------------------|------------|------|
| BUILDING COVERAGE, | | |
| COVERED DOCKS, | | |
| ENTRIES, PERGOLAS, | | |
| TRASH ENCLOSURES | 182,520 SF | 28% |
| LANDSCAPE | 147,033 SF | 22% |
| DRIVES/PAVING AREA | 298,762 SF | 45% |
| HARDSCAPE | 39,037 SF | 6% |
| TOTAL: | 658,629 SF | 100% |

parking calculations

| | EXISTING | PROPOSED |
|-----------------|----------|----------|
| STANDARD: | 712 | 25 |
| ADA: | 20 | 0 |
| ELECTRIC: | 6 | 0 |
| TOTAL: | 738 | 25 |
| BICYCLE PARKING | 73 | 0 |



AB design studio, inc.

architecture | interior design | urban planning
420 E. HALEY STREET 12421 VENICE BLVD. STE 210
SANTA BARBARA, CA 93101 LOS ANGELES, CA 90068
805.963.2100 | www.abdesignstudioinc.com
p r o j e c t t e a m

submittals / revisions

PRINT DATE: 12/10/2021

project info

PROJECT 19043.00:
FAIRVIEW BUSINESS PARK
REVISED PARKING LOT/
SUBSTANTIAL CONFORMITY
DETERMINATION

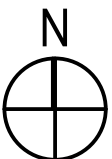
PROJECT ADDRESS:
420, 430 & 490 S. Fairview Avenue
Goleta California
OWNER CONTACT:

A0.01

PROPOSED SITE PLAN

PROPOSED SITE PLAN

SCALE: 1" = 50'



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ATTACHMENT 4

STAFF PRESENTATION

Fairview Business Associates/Torridon Development Agreement

21-0002-ORD

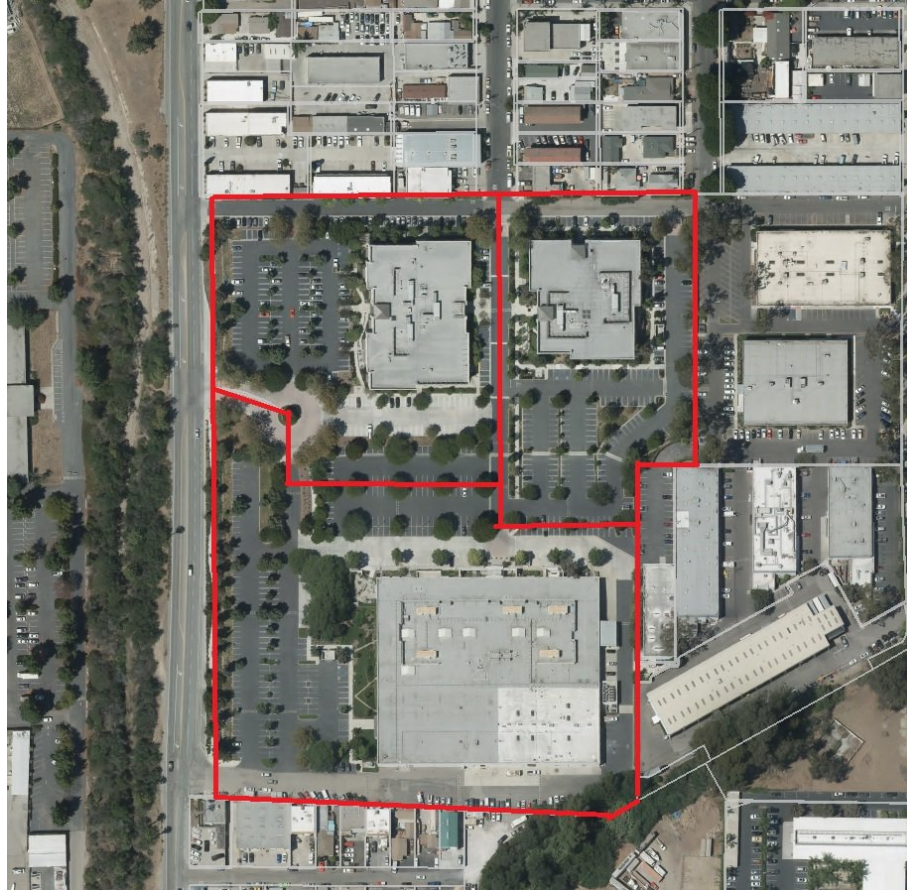
September 20, 2022

City of Goleta

City Council



Vicinity Map – 420, 430, & 490 South Fairview

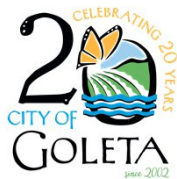


September 20, 2022 City Council

2

Background

- Fairview Business Associates/Torridon filed Development Agreement (DA) application for 20-year Design Review Board (DRB) approval in exchange for dedication of 35 public parking spaces
- Application deemed complete January 11, 2022
- Applicant and City Attorney's office have collaborated on Draft DA
- Planning Commission recommended approval to City Council on April 25, 2022 (5-0)



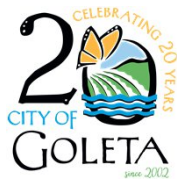
Proposed Parking Plan



September 20, 2022 City Council

Development Agreements

- DAs allow projects to seek vested rights in exchange for a public benefit
- California Government Code §65864 and §65865 have standards for agencies to use for DAs
- Goleta Municipal Code incorporates Gov. Code guidance in Section 17.65
- Planning Commission recommends approval of DAs to City Council



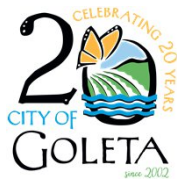
Development Agreement Process

- Recommendation by the Planning Commission to the City Council
- City Council considers item and acts for the City



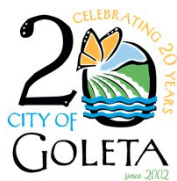
Development Agreement Details

- Allows applicant 20 years to add 25 new parking spaces
- City gains 35 public parking spaces along Carson Street dedicated by the applicant
- DA complies with goals, objectives, policies of General Plan including uses authorized by Title 17, the district and any applicable Specific Plan in which property is located
- DA provides substantial public benefit and is non-detrimental to public health, safety, and general welfare
- DA complies with CEQA



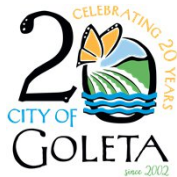
Environmental Review

- A Notice of Exemption is provided was prepared (Exhibit 2 to Attachment 1)
- Section 15061(b)(3) of the CEQA Guidelines because the Development Agreement itself will not have a significant effect on the environment and is therefore not an activity subject to CEQA
- DA does not authorize any development, only the rules for future analysis of proposed project



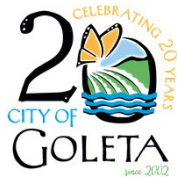
Conclusion

- The Fairview Business Associates/Torridon Development Agreement complies with Municipal Code §17.65;
- The Project can be found exempt from CEQA per CEQA Guidelines Section 15061(b)(3);



Recommendation

- That the City Council adopt the proposed Ordinance that:
 - Approves the Fairview Business Associates/Torridon Development Agreement; and
 - Approves the Notice of Exemption included as Exhibit 2 to the Resolution



Questions?