



TO: Mayor and Councilmembers

FROM: Lisa Prasse, Interim Planning and Environmental Review Director

CONTACT: Kathy Allen, Supervising Senior Planner

SUBJECT: Village at Los Carneros Development Agreement

RECOMMENDATION:

- A. Consider a request from Comstock Homes (Attachment 1) to change a Development Agreement provision that requires completion of all affordable housing units by the 220th market rate building permit so that the Development Agreement provision of “220th market rate building permit” is replaced with “220th certificate of occupancy”;
- B. If Council grants the request in Recommendation A, direct staff to prepare either an Operating Memorandum or Development Agreement Amendment to effectuate the change to the Development Agreement;
- C. Consider a request from RTA Carneros Village – Phase II, LLC (“RTA”) (Attachment 2) to find good cause in relieving it from the Development Agreement provision that requires completion of all affordable housing units by the 220th market rate building permit;
- D. Consider a request from RTA to be relieved from the Development Agreement provision that requires the recreational building to be built during the first phase of construction of residential units;
- E. Consider the request from RTA to be relieved from the Development Agreement provision that requires the construction of a bridge to begin before final inspection of the 232nd market rate unit;
- F. If Council grants RTA’s requests in Recommendations D and/or E, direct staff to either prepare an Operating Memorandum or Development Agreement Amendment to effectuate the change to the Development Agreement; and
- G. Take such additional related action that may be desirable.

BACKGROUND:

2014 Project Approval

On August 19, 2014, the City Council approved the Village at Los Carneros ("VLC") project. The project will develop 465 residential units, including 70 affordable housing rental units. As a part of the approval, the City entered into a Development Agreement ("DA") with the Developer, CHA McKinley, Goleta, LLC (now RCS - Los Carneros, LLC or "Comstock Homes"). The DA is included as Attachment 3 and the associated subdivision map (TR32050) is Attachment 4.

The subdivision encompasses 14 lots. Lots 1-11 are the location of residential units, the park and the recreational building. The affordable units are located on Lot 1. Lot 12 is the backbone private road; and Lots 13 and 14 are the existing office/commercial buildings known as 1 and 71 S. Los Carneros Road. The project also includes a private recreational center to serve all of the site, excluding Lots 1 (affordable units) and 5 (market rate units), which will have their own recreational amenities. The project also includes a bridge over Tecolotito Creek to provide vehicular, pedestrian and bicycle access from the site to Cortona Drive.

At the time of approval, there was only one property owner (Comstock Homes) and, Comstock Homes did not disclose its intent to sell any of the lots other than Lot 1, which it intended to convey to an affordable housing provider. Accordingly, the Development Plan and the DA were written to apply to the entire development as if it was going to be owned by one Owner. Subsequent to the project approval, Comstock Homes sold Lot 5 (market rate units) to RTA in June 2016 and Lot 9 (market rate units) to RTA in January 2017. As originally contemplated, Comstock Homes donated Lot 1 (affordable units) to Peoples' Self Help Housing ("PSHH") on October 20, 2016. Further, PSHH has contracted with Comstock Homes to act as PSHH's General Contractor.

Relevant DA Provisions

The DA requires certain public benefits, including a recreation center, affordable housing units, and bridge to be built on the property and the completion of such public benefits to be done by a certain time in the construction of the entire development.

Recreation Center Provision: DA §4.01.02 provides:

Owner must complete the Project's Recreation Center and common area amenities as part of the construction of the first phase of Residential Units constructed in the Project. (DA, Pg. 11)

Affordable Housing Provision: DA §4.01.03 provides:

If the Affordable Housing Owner has not completed construction of the Affordable Buildings before City issues a building permit which would allow for the construction of the cumulative 220 units contained in any Market

Rate Building, then, absent good cause shown as determined by City in its sole discretion, ownership of the lots on which the Affordable Buildings will be constructed will revert to Owner. To ensure that construction of all Affordable Buildings occurs within a timely fashion after City issues a Building Permit for the first Market Rate Building, City will, absent good cause shown as determined by City in its sole discretion, issue a stop work notice, and curtail issuing building permits, for all Market Rate Buildings until all Affordable Buildings are constructed. (DA, Pg. 11)

Bridge Provision: DA §4.01.04 provides:

Owner must start construction of the bridge over Tecolotito Creek before the final inspection of the building containing the 232nd cumulative Market Rate Unit. (DA, Pg. 12)

Requests to Change DA Provisions

Comstock Homes, owner of all lots except Lots 1, 5, and 9, requests to change the DA affordable housing provision from “220 building permit” to “220 certificate of occupancy” (so that the affordable units must be completed by the 220 certificate of occupancy) in order to allow it to proceed more quickly with construction of market rate units.

RTA, owner of Lots 5 and 9, requests to be relieved from the affordable housing, recreational center and bridge provisions on Lot 9 so that it may proceed with and complete construction of the market rate units on those lots without regard to the completion of those three public benefits. (As discussed below, the City has already relieved RTA from these DA provisions on Lot 5 in 2016.)

Methods to Change the DA

The DA provides for two avenues to make changes to the DA:

Section 6.01 allows the City and the Developer to enter into an Operating Memorandum (OM) or Implementation Agreement (IA):

The Parties acknowledge that the provisions of the Agreement require close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments will be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution, will be attached to this Agreement as addenda and become a part hereof.” (DA, Pg. 15)

Section 6.03 allows the City and the Developer to enter into an amendment.

This Agreement may be amended from time to time only upon the mutual written consent of City and Owner. However, in connection with the transfer of any portion of Owner's rights or obligations under this Agreement to another Owner, Owner, such other Owner and City may agree that the signature of such other Owner may be required to amend this Agreement insofar as such amendment would materially alter the rights or obligations of such Owner hereunder. In no event will the signature or consent of any "Non-Assuming Transferee" be required to amend this Agreement." (DA, Pg. 16.)

As noted above in the DA provisions about OM/IA, they are meant to be used to execute "refinements and adjustments" to "details of performance for those items covered in general terms." On the other hand, DA Amendments are used to make "significant modifications" that would "materially alter the rights and obligations of such Owner."

DA Amendments are enacted in the same manner as the approval of a DA. A DA Amendment must be adopted by ordinance by the City Council after receiving a recommendation from the Planning Commission. DAs and DA amendments are subject to California Environmental Quality Review requirements.

Based on these definitions, Council must determine whether each requested change to the DA is significant. That is, does the change represent a refinement of a general term or does it materially alter the rights and duties of the owner? If the change is an immaterial implementation of a general term, then an operating memorandum or implementation agreement would be appropriate. If the change is significant, then a DA Amendment should be prepared.

Actions Taken Since DA Adoption August, 2014

Council's decision on whether to grant the requests must be reviewed in light of the actions that have been taken since Council's approval of the project and adoption of the DA.

- May, 2, 2016. Operating Memorandum No. 1 (Attachment 5) was entered into between Comstock Homes and the City to change the timing requirement for a permit required by the Army Corps of Engineers (ACOE). A condition of approval of the project required that Comstock Homes prepare a wetland and riparian area mitigation plan and obtain permits from the ACOE before construction permits could be issued. This operating memorandum allowed Comstock Homes to create a wetland buffer area and begin construction outside of the wetland buffer area before the ACOE permits were obtained. Comstock Homes agreed to not begin any construction in the wetland buffer area until the ACOE permit was obtained, which occurred on August 23, 2016.
- May 2016. Comstock Homes sold Lot 5 to RTA. The City and RTA entered into an agreement called "Estoppel and Agreement to Development Agreement" (hereinafter referred to as "Lot 5 Agreement," Attachment 6), which found good cause to relieve

RTA of the affordable housing provision and further relieved RTA of the recreation center and bridge provisions. In part, the Lot 5 Agreement had the effect of exempting 74 market rate units from the 220 building permit cap that is part of the affordable housing provision.

- June 6, 2016. Comstock Homes and RTA entered into an Assignment and Assumption Agreement to effectuate the sale of Lot 5. (Attachment 7) The Lot 5 Assignment transfers to RTA the rights and obligations of the project approvals to develop the 74 Market Rate apartments units that were approved for Lot 5. The City consented to the Assignment.
- December 30, 2016. Comstock Homes sold Lot 9 to RTA. Both developers entered into an Assignment and Assumption Agreement for Lot 9 (Attachment 8). The Assignment transferred to RTA the rights and obligations of the project approvals to develop 88 Market Rate condominiums that were approved for Lot 9. The City has not consented to the Assignment.

DISCUSSION

In addition to determining the merits of each request, Council must also determine whether each requested change to the DA is significant and then choose a method to effectuate the change. That is, does the change represent a refinement of a general term or does it materially alter the rights and duties of the owner? If the former, then an operating memorandum would be appropriate. If the latter, then Council should direct staff to process a DA Amendment. (See Methods to Change the DA above for more detail.)

I. Affordable Housing Provision:

RTA requests to be relieved from the affordable housing provision for Lot 9, while Comstock Homes requests a change to the DA provision requiring completion of the affordable units before the 220th certificate of occupancy, rather before the issuance of the 220th building permit. In order to consider these requests, it is important to provide some context regarding the intent of the DA provisions.

Building Permits as Leverage for Construction of Affordable Housing:

During the approval process for the overall project, the City Council expressed the importance of the 70 affordable housing units and completion by a certain time in the construction of the entire development. Consequently, the DA imposed a limitation on the number of market rate units that the developer could build before the affordable housing units were completed. This was done so that the developer did not prioritize the profitable market units and leave the affordable units to be built at a later time or not at all. Therefore, the City's leverage in ensuring that the affordable units were built and timely built was based on the ability to withhold a certain number of building permits for the market rate units.

The City's original leverage under the DA was 176 market rate units that would not have received a building permit if the affordable housing was not built by the request for the 220th building permit. In the beginning, there were 465 residential units approved: (1) 395 market rate units and (2) 70 affordable units. The affordable housing provision requires completion of the affordable units by the time the City issued the 220th building permit for market rate units. This means that if 219 market rate units were built and the affordable housing was not completed yet, building permits for the remaining 176 market rate units would not be issued. (See table below.)

The Lot 5 Agreement reduced the City's leverage to 102 market rate units that could be withheld. The Lot 5 Agreement excused 74 units from the total of 395 market units subject to the 220th building permit cap.

If only RTA's current request were granted, the number of building permits withheld would be 14.

If Comstock Homes current request were granted, the City would not limit the number of market rate building permits it would issue. Instead the 220th limitation would be applied to the number of certificates of occupancy that the City would be able to issue until such time as the affordable housing units were completed.

Certificates of Occupancy as Leverage for Construction of Affordable Housing:

If the City grants Comstock Homes request, the City's leverage would no longer be applied to building permits on the market rate units, but rather on certificates of occupancy on the market rate units.

If the City changes the DA provision as requested by Comstock Homes, then theoretically the City's initial leverage would have been 176 certificates of occupancy. The Lot 5 Agreement reduced the City's leverage to 102 certificates of occupancy.

If RTA's current request for Lot 9's 88 market rate units to be excused from the affordable housing provision were granted, then the City's leverage would be 14 certificates of occupancy.

However, if RTA's request was not granted and only Comstock Homes request was granted, then the City's leverage would be 102 certificates of occupancy. If both RTA and Comstock Homes' requests were granted, then 14 certificates of occupancy would be withheld.

The above information is summarized in the below table.

SUMMARY OF BUILDING PERMIT/OCCUPANCY LEVERAGE

AGREEMENT AND/OR REQUEST	BUILDING PERMIT LEVERAGE	CERTIFICATE OF OCCUPANCY LEVERAGE
Development Agreement	176 units (465 TU minus 70 AF minus 219 MR =176)	176 units (465 TU minus 70 AF minus 219 MR = 176)
Lot 5 Agreement	102 units (465 TU minus 70 AF minus 74 (Lot 5) minus 219 MR =102 Units)	102 units (465 TU minus 70 AF minus 74 (Lot 5) minus 219 MR =102 Units)
RTA's Request (if only RTA's request is granted)	14 units (465 TU minus 70 AF minus 74 (Lot 5) minus 88 (Lot 9) minus 219 MR =14 Units)	14 units 465 TU minus 70 AF minus 74 (Lot 5) minus 88 (Lot 9) minus 219 MR =14 Units
Comstock Homes Request (if only Comstock Homes request is granted)	0 units (All building permits can be issued with the change to the DA provision)	102 units 465 TU minus 70 AF minus 74 (Lot 5) minus 219 MR = 102
RTA and Comstock Homes Requests are both granted	0 units (All building permits can be issued with the change to the DA provision)	14 units 465 TU minus 70 AF minus 74 (Lot 5) minus 88 (Lot 9) minus 219 MR =14 Units

TU = Total Units

AF= Affordable Units

MR = Market Rate Units

Certificates of Occupancy: Other Considerations

If the City Council were to change the DA provision from building permit to certificate of occupancy, this could result in market rate units being completed and ready for the new owners or tenants to move in to before the affordable units are completed. If the City withholds certificates of occupancy, it may be subject to complaints by the developers,

new owners/tenants, and other residents who have an interest in seeing the buildings occupied. Further, the vacant buildings could become an attractive nuisance.

Current Status of Development:

Council may want to consider the requests along with some facts on the current status of the construction of the project. All three developers (PSHH, Comstock, and RTA) have units under construction at this time.

PSHH has the 70-unit affordable housing project under construction with completion of all of the buildings expected by early 2018. Comstock Homes (the contractor for the affordable units) have represented that the first of four buildings could be ready for occupancy by December 2017, with the remaining buildings done within one month after that. Comstock Homes indicated recently that the building foundations will be poured on the week of April 17 with framing happening shortly after the foundations cure.

Comstock Homes currently still has 138 market rate units for which building permits have not been issued. Comstock Homes has received 95 building permits and these units are currently being built. They will be ready for certificates of occupancy between now and the end of summer 2017.

RTA has 74 market rate units under construction on Lot 5 and it is expected that these units will be completed in the fall of 2017.

At the moment, the City may issue 124 more building permits before the 220th building permit cap is reached. Both Comstock Homes and RTA have completed the steps necessary to receive building permits. Comstock Homes has 84 market rate units and RTA has 88 market rate units for which they need building permits. If the City does not grant RTA's request to be relieved from the 220th building permit cap or grant Comstock Homes' request to change the DA provision, then the City would need to issue the remaining 124 building permits on a first come first serve basis. (The 124 number is reflective of the exemption the 74 units on Lot 5 per the May 2016 agreement, Attachment 6).

RTA's Representation of Good Cause

In determining whether to grant RTA's request, Council may want to consider RTA's reasons. Because the affordable housing provision allows for the City to relieve a developer of its requirements through a finding of good cause, the mechanism to grant RTA's request is through a motion finding good cause based on the evidence in the record. RTA believes that it has good cause because it does not have control over the construction of the affordable units. PSSH and Comstock Homes are responsible for the construction schedule for the affordable units. Further, RTA represents that it is not the master builder for the overall project and therefore the requirement should not be applicable to it.

So long as Comstock Homes is able to sell market rate lots to other developers, RTA's argument is something of a slippery slope. RTA finds itself in a situation of its own creation – it knew when it purchased Lot 9 that the entirety of the project was subject to the same rules governing provision of public benefits and that completion of those benefits would be outside its control.

If the Council were to find good cause to relieve RTA of the affordable housing provision for Lot 9, then only Comstock Homes' market units would be subject to the 220th building permit cap. If Council grants RTA's request, it needs to make a motion finding good cause and that motion must be supported by evidence in the record.

Comstock Homes Justification for DA Change

In determining whether to grant Comstock Homes request, Council may want to consider Comstock Homes' reasons. PSHH has provided a letter in support of Comstock Homes request (Attachment 9). Comstock Homes' justification is:

- Comstock Homes, in addition to building the main VLC project, is the General Contractor in building the Affordable Apartments for PSHH. As General Contractor, Comstock Homes will be able to construct the Affordable Apartments in an efficient and timely manner. It has the control and motivation to complete the PSHH affordable housing project; otherwise, the overall project cannot go forward.
- Comstock Homes has shown steady progress in the PSHH development. The Grading and Site Improvement Permit was issued November 17, 2016, Building Permits were issued December 6, 2016 and Sewer, Storm Drain, Water infrastructure were installed on February 3, 2017.
- Further, construction has been slowed due to the wet weather. Since late November 2016, there have been approximately 35 days of rain and de-watering delays. The Project site experienced approximately 3-4 inches of rain in December 2016 and 8-9 inches in January 2017.

If Council grants Comstock Homes request to change the DA provision, Council needs to direct staff to either enter into an operating memorandum or process a DA Amendment.

II. Recreation Center and Bridge Provisions:

In addition to the affordable housing requirement, RTA also requests to be relieved from DA's provisions requiring the recreation center to be built within the first phase of the project and the bridge to start construction prior to issuance of the 232nd certificate of occupancy. RTA's reason for these requests is it does not have control over the construction of these structures.

The bridge is anticipated to aid in multi-modal circulation flow in the area linking the housing area to the office/ research part on the west side of Tecolotito Creek. With the bridge, pedestrians, cyclists, and motorists would be able to access Cortona Drive area without using either Los Carneros Road or Hollister Avenue. The entire project benefits from the bridge component, not just the units being constructed by Comstock Homes.

Further, the future residents of the units to be constructed on Lot 9 will be able to use the recreational building in question. However, as the RTA request points out, RTA does not have control over the completion of those project components and as such is requesting relief from these provisions.

In considering this portion of the request, Council would be reducing the leverage that the City has in ensuring that these project amenities (bridge and recreation center) are constructed in the early and mid-phases of the overall project. A factor for Council to consider is the possibility that these amenities would not be completed in the time frame originally outlined in the DA.

Another policy issue to consider is whether Council wants to break up the requirements of the DA after Council has approved the project and the original developer sells off individual lots. As noted above, RTA's argument is a slippery slope – it bought Lot 9 with the knowledge that the DA applied to the entire project and the recreation center and bridge were not to be built on Lot 9. RTA at all times knew that the construction of the public benefits were not in its control.

However, Council should consider this request in light of the progress of the construction. Comstock Homes has communicated to staff that they intend to complete the recreation center by the end of May, 2017 (which staff concurs based on the status of construction) and begin construction of the bridge in July, 2017 (staff is unable to confirm this start date).

Conclusion

Given the integrated nature of the various requests, staff requests that the Council review the above information and provide direction to staff as how to proceed in this matter. With respect to RTA's request to be relieved from the affordable housing provision upon good cause, Council may effectuate such a finding by motion.

Except for RTA's request to be relieved from the affordable housing provision, if Council grants any other request, Council must direct staff to either prepare an operating memorandum or process a DA Amendment.

FISCAL IMPACTS:

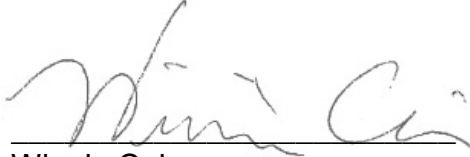
The costs associated with processing the developers' requests and preparing operating memoranda or DA Amendments would be shared equally by Comstock Homes and RTA.

ALTERNATIVES:

The Council may elect to continue this item for further review to grant some, all, or none of the requests or change the DA affordable housing provision to a different number on the building permit cap.

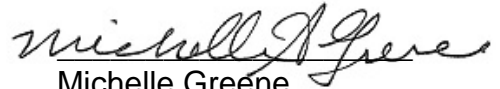
Council may also elect to continue the item and direct staff to enter into discussions with Comstock Homes and RTA to determine if there are any mutually acceptable alternatives available. Staff would bring any alternatives back to Council for approval.

Legal Review By:



Winnie Cai
Acting City Attorney

Approved By:



Michelle Greene
City Manager

ATTACHMENTS:

1. Letter from Comstock Homes
2. Letter from Tim Kihm, Red Tail Acquisitions
3. Development Agreement
4. Subdivision Map 32050
5. Operating Memorandum No. 1
6. Estoppel and Agreement dated May 2016 for Lot 5
7. Assignment and Assumption Agreement dated June 6, 2016 for Lot 5
8. Assignment and Assumption Agreement dated December 30, 2016 for Lot 9
9. Letter from PSHH

ATTACHMENT 1
REQUEST LETTER FROM COMSTOCK HOMES



February 15, 2017

City of Goleta
Attn: Tim Giles, City Attorney
130 Cremona Drive
Goleta, CA 93117

Subject: Request for Operating Memorandum to Development Agreement Between
City of Goleta CHA McKinley Goleta, LLC for Villages at Los Carneros
Dated August 19, 2014

Dear Mr. Giles

Thank you for your ongoing assistance of Comstock Homes ("Developer or Owner") in the ongoing development of Villages at Los Carneros ("Project"). We are submitting a request to the City of Goleta ("City") to process an Operating Memorandum for the above referenced Development Agreement to allow the development of the project to continue uninterrupted.

Section 4.01.03 requires the Developer to complete the affordable apartments prior to the City issuing the 220th building permit for market rate units.

"If the Affordable Housing Owner has not completed construction of the Affordable Buildings before City issues a building permit which would allow for the construction of a cumulative 220 units contained in any Market Rate Building, then, absent good cause shown as determined by City in its sole discretion, ownership of the lots on which the Affordable Buildings will be constructed will revert to Owner."

Modification Request: Change language from "City issues a building permit which would allow for the construction" to "City issuing certificates of occupancy for a cumulative of 220 units contained in any Market Rate Building".

The Project currently has the following product under construction: 95 For-Sale homes, 74 Market Rate Apartments and 70 Affordable Apartment. 92 of the For-Sale homes are sold to date with deliveries starting in later this month, and Market Rate Apartments are scheduled to be complete in September 2017.

Comstock Homes is the General Contractor in building the Affordable Apartments for People Self Help Housing Corp. ("PSHHC"). As General Contractor, Comstock will be able to construct the Affordable Apartments in an efficient and timely manner. This has been a wet winter in California, causing numerous construction delays. Since late November 2016 we have experienced approximately 35 days of rain and de-watering delays. Our Project experienced approximately 3-4 inches of rain in December 2016 and 8-9 inches in January 2017. We

estimate land development is currently 82% complete, and the overall project at 12% complete. We are currently forecasting completion of the first buildings for December 2017. A forecast of the cumulative certificates of occupancy for the entire Project is attached as an exhibit.

The Owner has shown "good cause" to the City to allow for the proposed modifications based on the timing of weather delays, processing events listed and the progress made to date:

- October 18, 2016 - Land Use Permit issued
- October 20, 2016 – Transfer of property and grant deed recorded
- November 17, 2016 – Site improvement and grading plans approved
- November 28, 2016 – Notice to proceed from PSHHC to Comstock as GC
- December 6, 2016 – Building permit issued
- December 6, 2016 – Grading started and completed December 13, 2016
- February 3, 2017 – Sewer, Storm Drain, Water infrastructure completed
- March 6, 2017 – Schedule to pour foundations

We greatly appreciate your consideration in this matter, and please feel free contact us if you have any questions or need additional information.

Regards,

David Lauletta

By Authorized Representative
David Lauletta

CHA McKinley Goleta, LLC

cc: Robert Comstock
Ryan Atkins
Scott Stone
Jennifer Carmen
Kathy Allen

Exhibit
Certificate of Occupancy Forecast
Villages at Los Carneros

Los Carneros Permit and C of O Status

	Units	Under Construction	Start	C of O	Cycle Time	Jan-17	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18
Avilla	Models	2	7/22/2016	2/23/2017	216		2												
	Phase I	7	8/12/2016	2/23/2017	195		7												
	Phase IIa	2	8/23/2016	3/23/2017	212			2											
	Phase IIb	5	3/15/2017	8/12/2017	150														
	Phase III	7	8/23/2016	3/23/2017	212			7											
Velaros	Phase IV	5	3/15/2017	8/12/2017	150								5						
	Models	2	7/22/2016	2/23/2017	216		2												
	Phase I	8	3/15/2017	8/12/2017	150								8						
	Phase II	8	5/15/2017	1/15/2018	245														
	Phase III	10																	
Marisol	Models	4	7/22/2016	2/23/2017	216		4												
	Phase I	10	8/12/2016	2/23/2017	195		10												
	Phase II	10	8/23/2016	3/2/2017	191			10											
	Phase III	12	9/5/2016	3/17/2017	193			12											
	Phase IV	10	4/15/2017	9/12/2017	150									10					
	Phase V	8	5/15/2017	10/12/2017	150									4					
	Phase VI	12																	
	Phase VII	12																	
	Phase VIII	12																	
Belisa	Phase IX	9																	
	Models	4	7/22/2016	2/23/2017	216		4												
	Phase I	12	8/12/2016	2/16/2017	188		12												
	Phase II	11	8/26/2016	3/2/2017	188			11											
	Phase III	12	9/6/2016	3/30/2017	205			12											
	Phase IV	12	4/15/2017	9/12/2017	150				12										
	Phase V	12	6/15/2017	1/15/2018	214									12					
Olas	Phase VI	6			0														
	Phase VII	9																	
	Models	44	2/15/2017	1/15/2018	334												44		
Apartments - Mkt	Phase II	44	2/15/2017	2/15/2018	365													44	
		74	11/15/2016	9/30/2017	319									74					
		70	12/15/2016	12/15/2017	365														
Apartments - Affordable		465																	
		95																	
C of O - Monthly						41	54	12	12	0	0	0	13	100	0	0	0	0	0
C of O - Cumulative						41	95	107	107	107	107	107	120	220	220	220	220	220	220
						Unit per DA													

ATTACHMENT 2
REQUEST LETTER FROM RED TAIL ACQUISTIONS



RED TAIL ACQUISITIONS, LLC
COMMERCIAL REAL ESTATE INVESTMENTS

February 14, 2017

Kathy Allen
Supervising Senior Planner
City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117

RE: Request for Minor Adjustment to Village at Los Carneros Development Agreement (DA)

Dear Kathy,

As you know, Red Tail Acquisitions, LLC (RTA) is currently developing 2 multi-family communities in the Villages at Los Carneros, master planned community under single purpose LLC's using the names "RTA Carneros Village, LLC" and "RTA Carneros Village – Phase II, LLC." The two multi-family communities are market rate apartments and condominiums on Lots 5 & 9 respectively.

First, I would like to thank the Planning Department and the City staff for their hard work, support and professionalism. They have worked hard to assist us in the permitting process and to make sure that our firm understands and complies with all of the conditions and requirements related to developing both of our communities.

The reason we are requesting adjustments to the DA, is that the DA required the master developer, Comstock Homes (CHA), to complete certain tasks within specified time frames. Likewise, RTA has certain responsibilities under the same DA; however, many of the conditions do not apply to RTA, and were clearly intended to be completed by CHA. In fact, RTA is not affiliated with CHA in any way and has no ability to complete many of the tasks, nor can RTA require CHA to complete them. This is creating undue burden on RTA, thus the reason for this request.

Specifically, RTA respectfully requests relief from the following 3 conditions by way of agreeing not to hold up any of our building permits or certificates of occupancy (or similar), to these conditions:

1. Completion of the project recreation center and common area amenities;
2. Completion of the affordable housing; and
3. Construction of Tecolotito Creek Bridge

For clarification, the City could still include the 74 & 88 units from our 2 communities in the total calculation as it related to CHA's conditions. This would seem to achieve the purpose and intent of the affordable housing requirement, as well as the recreation center and bridge.

Further, for Lot 9, we are on-hold pending approval of the requested adjustments to the DA. In fact, we are currently more than 45 days behind schedule and are unable to receive funding from our construction loan until these adjustments are approved by the City of Goleta.

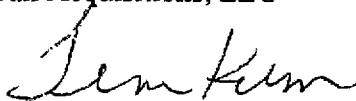
Again, as I stated above:

- RTA is not affiliated with CHA in any way;
- RTA is not involved with the construction of Recreation Center, the affordable housing nor the Tecolotito Creek Bridge in any way
- RTA has no ability to enforce CHA's completion of these conditions

Thank you for considering our request. Please feel free to contact me if you have additional questions or would like to discuss further.

Sincerely,

Red Tail Acquisitions, LLC



Tim Kihm

President, Land Acquisitions and Development

ATTACHMENT 3
VILLAGES AT LOS CARNEROS DEVELOPMENT AGREEMENT



2014-0053688

Recorded	REC FEE	0.00
Official Records		
County of		
Santa Barbara		
Joseph E. Holland		
County Clerk Recorder		

10/20/2014 10:11:20 AM	Page
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OFFICIAL BUSINESS
RECORDING FEES EXEMPT DUE TO
GOVERNMENT CODE § 27383

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CITY OF GOLETA

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Attn: Deborah Lopez,
City Clerk

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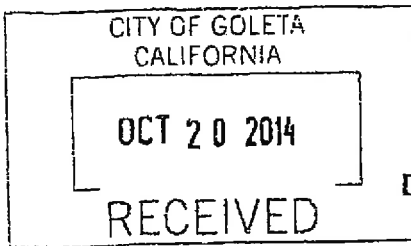
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DEVELOPMENT AGREEMENT BY AND BETWEEN:
CITY OF GOLETA AND CHA MCKINLEY GOLETA, LLC
FOR THE VILLAGE AT LOS CARNEROS
DATED: AUGUST 19, 2014



DEVELOPMENT AGREEMENT BETWEEN

CITY OF GOLETA AND CHA MCKINLEY GOLETA, LLC FOR THE VILLAGE AT LOS CARNEROS

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of this 19th day of August, 2014, by and between CHA McKinley Goleta, LLC ("Owner"), a Delaware limited liability company, and the City of Goleta, a municipal corporation ("City") pursuant to the authority of Government Code §§ 65864, *et seq.*

RECITALS

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

- A. Capitalized terms used in these Recitals carry the definitions set forth in this Agreement.
- B. Government Code §§ 65864-65869.5 (the "Development Agreement Statute") authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.
- C. Owner has requested City to consider entering into a development agreement regarding (i) Lots 1 through 12 ("Lots 1 through 12") of Vesting Tentative Map 32,050, on an approximately 43.13 acre site located south of Highway 101, east of Tecolotito Creek and north and west of Los Carneros Road ("Map 32,050"). The property covered by this Agreement is more particularly described in Exhibit "A" attached hereto (the "Property").
- D. The City Council of the City ("City Council") has found that this Agreement is consistent with the City's General Plan, as amended, ("General Plan") and with the Specific Plan.
- E. The City has conducted an environmental review of the Project and of the parties' proposed execution of a development agreement, as reflected in the EIR.
- F. Owner's proposed development of the Property (the "Project") will be known as the "Village at Los Carneros" and is generally described as follows: 465 residential multi-family units and associated pool as depicted on Exhibit "B" attached hereto. Of the 465 units, 321 will be for-sale condominium and townhome units, 74 will be market-rate apartments (the 321 condominium units and the 74 apartments will be referred to as "Market Rate Units" and will be contained in "Market Rate Buildings") and 70 will be rental apartments that will be restricted to "very low and low income households" (as defined by Health and Safety Code § 50105) (the "Affordable Units"). The Affordable Units will be contained in four buildings, each of which will have three floors of dwelling units with on-grade parking (the "Affordable Buildings"). The Project will also include on-site

recreational facilities (pool, playground, Neighborhood Park, half-court basketball and bicycle path) and other associated site improvements (circulation and parking, landscaping and lighting and drainage improvements), as well as off-site improvements. A comprehensive description of the Project is set forth in the EIR and is included as Condition No. 1 of the Conditions of Approval, which is attached hereto as Exhibit "C."

G. Lots 1 through 12, formerly Lots 2, 4, 5, 6 and 7 of Tract 14,500 with some minor boundary changes, are currently the subject of a "Second Amendment to and Restatement of Development Agreement between the County of Santa Barbara and Raytheon Company" dated September 24, 1996 and recorded on November 1, 1996 as Document No. 96-066148 (the "Raytheon Agreement"). The Raytheon Agreement has been amended several times since its adoption to, among other things, extend the term of the Raytheon Agreement. The term "Raytheon Agreement" includes any amendments to the original Raytheon Agreement. The Raytheon Agreement permits development of 204,000 square feet of office/manufacturing buildings on Lots 2 and 5 of Tract 14,500 ("Lots 2 and 5"). The parties have agreed that when the EIR is certified and the "Project Approvals" (as hereinafter defined in Section 2.01(I) below) and this Agreement are approved by City, and the statutes of limitations for challenging the EIR, the Project Approvals and this Agreement (including the time period for any referendum petition) have expired, without a challenge having been made or, if made, such challenge having been resolved to the satisfaction of Owner, the Raytheon Agreement will be terminated by the parties with respect to its application to Lots 2 and 5.

H. Owner has agreed to make several improvements to the parking facilities on Lots 13 and 14 shown on Map 32,050, Lots 2 and 5 with some minor modifications, and wishes to construct those improvements as quickly as possible.

I. Owner wishes to begin grading Lots 1 through 12 and constructing improvements to Lots 13 and 14 upon Project Approvals as quickly as possible.

J. Development of the Project will further the comprehensive planning objectives contained within the General Plan and the Specific Plan and will result in public benefits, including, among others, the following:

1. Providing housing which will help to satisfy City's obligation to meet City's share of regional housing needs;

2. Fulfilling the long-term economic goals for the City by providing housing to help offset the jobs/housing imbalance;

3. Terminating the Raytheon Agreement with respect to Lots 2 and 5, which will have the effect of:

- a. Terminating the right of the Owner to develop 204,000 square feet of office/manufacturing buildings on Lots 2 and 5 and will, instead, provide much needed housing (market rate as well as work force and very low income) within the City;

b. Allowing the City to receive traffic mitigation fees, which it would not otherwise receive under the Raytheon Agreement;

c. Reducing environmental impacts, including lower traffic generation, better air quality and less noise, as a result of Owner's development of housing, instead of office/manufacturing facilities, on Lots 2 and 5; and

d. Allowing the City to receive traffic improvements, which it would not otherwise receive under the Raytheon Agreement.

4. Providing 70 low and very low income units;

5. Providing fiscal benefits to City's general fund in terms of increased property taxes;

6. Providing affordable housing for very low income families not generally available in the City;

7. Relieving pressure to build housing in existing neighborhoods;

8. Protecting open space and agricultural land in the City by using land previously zoned for industrial development;

9. Providing short-term construction employment within the City;

10. Enhancing the City's public recreational facilities by providing a public Class I bikeway and a neighborhood park within the Project; and

11. In accordance with this Agreement, Owner making a total contribution of \$2,000,000 to the City for construction of Public Facilities or the Goleta Employer's Housing Assistance Fund ("Goleta EHAP Fund") to be determined by City.

K. On June 23, 2014, the Planning Commission of the City ("Planning Commission") held a duly noticed public hearing and recommended certification of the EIR and approval of this Agreement.

L. On July 15, 2014 and August 19, 2014, the City Council held a duly noticed public hearing, certified the EIR, approved the other Project Approvals and adopted Ordinance No. 14-07 approving this Agreement.

M. This Agreement is intended to be, and will be construed as, a development agreement within the meaning of the Development Agreement Statute and, in that connection, will, among other things, assure Owner that the Project can be completed in accordance with the "Applicable Law of the Project" (as hereinafter defined) and for the uses and to the density and intensity of development set forth in the Project Approvals and this Agreement. City and Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Owner and City agree as follows:

Section 1. Recitals.

The parties agree the foregoing Recitals are true and correct.

Section 2. Definitions.

2.01 Defined Terms.

Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this Agreement. Words and phrases not defined in this Section will have the meaning set forth in this Agreement; the Goleta Municipal Code ("GMC"); or in common usage.

(a) "Agreement" means this Agreement.

(b) "Applicable Law of the Project" means all of the ordinances, rules, regulations and official policies applicable to the Project as set forth in Section 3.03 hereof.

(c) "CEQA" means the California Environmental Quality Act (Public Resources Code §§ 21000, *et seq.*, "CEQA") including the regulations promulgated thereunder (14 Cal. Code of Regulations §§15000, *et seq.*, the "CEQA Guidelines").

(d) "Conditions of Approval" means those conditions of approval applicable to the Project.

(e) "City" means the City of Goleta, California, or its successors in interest.

(f) "Owner" means CHA McKinley Goleta, LLC, or its successors in interest and assignees pursuant to this Agreement.

(g) "Development Plan" means the development plan for the Property as defined in Section 2.01(l) below.

(h) "EIR" means that certain Environmental Impact Report identified as SCH #2011111001 prepared and certified in connection with the adoption of the Project Approvals and this Agreement.

(i) "Effective Date" means September 19, 2014, which represents the 30th day following the date of adoption by the City Council of Ordinance No. 14-07 approving this Agreement.

(j) "Mortgagee" means the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Property or any successor or assignee of any

such mortgage holder or beneficiary, provided that such mortgage holder or beneficiary has delivered written notice to the City stating its desire to receive notices of default pursuant to Section 8.02.

(k) "Project" means the development of the Property as described in Recital F above.

(l) "Project Approvals" means those entitlement approvals issued by City for the Project concurrently with approval of this Agreement including, without limitation, to certification of the EIR and approval of General Plan Amendment (10-043--GPA); Amendment to Raytheon Specific Plan (83-SP-3) (10-043-SPA) (the "SP Amendment"); rezone of the Property to PRD-432 (432 Units Planned Residential Development) (10-043-RZ); Vesting Tentative Map No. 32,050, including conditions of approval, affecting Lots 1 through 12 (the "Tentative Map"); and two Development Plans for the development of the Property (10-043-PD & 10-044-PD) (the "Development Plan").

(m) "Property" means the real property described in Recital C, above.

(n) "Specific Plan" means the Raytheon Specific Plan, as amended by the SP Amendment.

(o) "Subsequent Approvals" means those certain future approvals for the Project which the City agrees to grant pursuant to Section 4.02.01 below.

(p) "Tentative Map" means Vesting Tentative Map No. 32,050 as described in Section 2.01(l) above.

Section 3. Project and Property Subject to this Agreement; Applicable Law of the Project.

3.01 Permitted Uses; Terms and Conditions of Development.

All of the Project and the Property are subject to this Development Agreement. The permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes and other standards of Project design applicable to the Property are those set forth in the Project Approvals, the Applicable Law of the Project and this Agreement.

Vested Right to Develop; Effect of Agreement. Owner has the vested right to develop the Project on the Property in accordance with the Applicable Law of the Project and the Project Approvals and the provisions of this Agreement. The parties agree that the purpose and effect of this Agreement is to authorize the development of the Project pursuant to the Project Approvals and the Applicable Law of the Project. To the extent provided by law, the Project Approvals, Applicable Law of the Project, and this Agreement supersede any inconsistent ordinances, rules, regulations or official policies which either currently exist or may be enacted in the future, except as specifically set forth herein. The Project Approvals, once granted by City, remain valid for the Term of this

Agreement, notwithstanding any City regulation or provision of law to the contrary. By way of example only, the Map and any other subdivision and/or parcel maps (standard or vesting) affecting the Property remain valid for the Term of this Agreement, regardless of the timing of filing of any final map or of multiple final maps should Owner elect to pursue filing of multiple final maps.

Applicable Law of the Project. Subject to the termination of the Raytheon Agreement in accordance with the provisions of Section 4.01.01.02 below and except as otherwise provided in this Agreement, the ordinances, rules, regulations, and official policies of City governing permitted uses of the Property, governing density and governing design, improvement and constructions standards and specifications applicable to development of the Property, are those ordinances, rules, regulations and official policies in effect on the Effective Date (the "Applicable Law of the Project"). The City agrees that the Project, as conditioned, meets the requirements of and complies with the Applicable Law of the Project.

Exception for Uniform Codes. Section 3.03 does not apply to the City's enforcement of the "uniform codes" regulating building or construction standards which will apply to the Project at the time the City issues building permits. "Uniform Codes" means those Uniform Codes adopted by reference in the GMC in accordance with Government Code §§ 50022.2, *et seq.* as required by applicable law including, without limitation, Health and Safety Code § 18944.5 and Title 24 of the California Code of Regulations. The Uniform Codes govern building and construction standards including, without limitation, the building, plumbing, electrical, mechanical, grading, sign, and fire standards.

Subsequent Enactments. This Agreement does not preclude the City, in subsequent actions applicable to the Property or the Project, from applying new rules, regulations and official policies which do not conflict with the Applicable Law of the Project, the Project Approvals or this Agreement, which carry out the objectives of this Agreement, and which facilitate the development of the Project. No moratorium, initiative, or other limitation affecting building permits or other land use entitlements or the rate, timing or sequencing thereof which is enforced by City apply to the Property or the Project Approvals, provided however that the provisions of this Section 3.05 does not affect City's compliance with moratoria mandated by other governmental agencies or orders from a court of competent jurisdiction.

State and Federal Laws. This Agreement does not preclude the application to the Project of changes in City ordinances, rules, regulations and official policies, to the extent that such changes are specifically required to be applied to development such as the Project by changes in state or federal laws or regulations. In the event that any subsequent changes in state or federal laws or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision must be modified or deleted to comply with state or federal law.

To the extent that any (i) actions of Federal or State agencies, (ii) actions of regional and local agencies, including the City, required by Federal or State agencies, or

(iii) actions of the City taken in good faith in order to prevent adverse impacts upon the City by actions of Federal or State agencies have the effect of preventing, delaying or modifying development of the Project or any portion thereof, the City is not in any manner be liable for such prevention, delay or modification of said development.

Multiple Final Maps. Owner, as subdivider of the Property, states that it may file multiple final maps subsequent to City's approval of the Tentative Map in such number and at such times as the Owner, in its sole discretion, deems appropriate. City concurs in the filing of such multiple final maps. In the alternative, Owner may file a single final map encompassing all lots depicted on the Tentative Map.

Phasing of Development. Owner and City recognize that economic and market conditions may necessitate changing the order in which the infrastructure is constructed. Therefore, subject to the provisions of Section 4.01.02 below, City and Owner agree that, should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals and/or this Agreement, Owner and City will collaborate and City may allow any reasonable modification requested by Owner so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.

Fees, Conditions and Dedications. As an element of the Applicable Law of the Project, Owner is obligated to pay those fees, charges, exactions and assessments including, without limitation, dedications and any other fee or tax (including any excise and/or construction or any other tax) relating to development or the privilege of developing, ("fees") and to make those dedications and improvements, as are set forth in the Applicable Law of the Project, the Project Approvals, including any conditions of approval, and this Agreement. Specifically, for the Term of this Agreement, the Project must pay those development impact fees to mitigate potential impacts created by the Project as provided in City fee ordinances and resolutions in effect as of the Effective Date and Owner is not required to pay to City any new fees that may be enacted subsequent to the Effective Date; provided, however, to the extent any City fee ordinance or resolution in effect as of the Effective Date provides for a cost of living or other indexed type increase in the fee(s) covered by such ordinance and/or resolution, Owner is subject to such increase.

Notwithstanding the provisions of this Section 3.09, to the extent any federal or state law or regulation, adopted subsequent to the Effective Date, requires the City to pay a fee that would, absent the provisions of this Agreement, be passed through to Owner, Owner is required to pay such fee; provided, however, if such federal or state law or regulation in any way makes the City's imposition of a fee optional (and not mandatory), such fee is not be applicable to Owner or the Project.

In addition the City may charge processing fees for map recordation, land use permit approvals, compliance reviews, building permits, and other similar permits and entitlements as the same are in force and effect on a City-wide basis at the time

application is submitted for such permits and entitlements. This section does not operate to exempt the Project from the payment of uniform property taxes.

Goleta Transportation Impact Mitigation Fees. Owner must pay City's Transportation Impact Mitigation fee, on a unit by unit basis, before the City issues building permits for each Residential Unit, subject to a credit of \$373,450 for the trip mitigation fees previously paid in accordance with the provisions of the Raytheon Agreement. The fee must be paid in accordance with Exhibit "F" and indexed monthly based on the Engineering News Record ("ENR") Construction Cost Index for the Los Angeles area.

Park Fees. Owner must pay City Quimby fees for the Residential Units on a unit by unit basis before the City issues building permits subject to a fee credit of \$250,000, which the City determined represents Owner's cost of design and construction of the Class I bikeway as indicated in attached Exhibit "G," which is incorporated by reference. Owner will be required to comply with all applicable law in constructing the Class I bikeway including, without limitation, Labor Code § 1720 and 8 California Code of Regulations § 16000 which requires payment of prevailing wages for construction of the bikeway.

Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over the parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that, subject to any infrastructure phasing requirements that may be required by the Project Approvals and this Agreement, Owner has the right (without obligation) to develop the Property in such order and at such rate and at such times as Owner deems appropriate within the exercise of its subjective business judgment.

Reimbursement. Nothing in this Agreement precludes City and Owner from entering into any reimbursement agreements for the portion (if any) of the cost of any dedications, public facilities and/or infrastructure that City may require as conditions of the Project Approvals, to the extent that they exceed those reasonably necessary to mitigate the impacts of the Project. In that connection, City agrees that it will require future applicants to enter into a reimbursement agreement requiring reimbursement of Owner for such applicants' share of the cost of any such improvements, with such cost being compounded at an annual rate of interest equal to the interest rate that is charged by the Federal Reserve Bank of San Francisco, California, on advances to member banks under the Federal Reserve Act, plus one percent (1%), calculated from the date of Owner's deposit of funds with the City or the expenditure of funds by Owner to construct such improvements.

Pedestrian Easements/Underground Utilities. Easements dedicated for bicycle and/or pedestrian use are permitted to include easements for underground drainage, water, sewer, gas, electricity, telephone, cable and other utilities and facilities so long as they do not unreasonably interfere with bicycle and/or pedestrian use.

Amendments to Entitlements. It is contemplated by City and Owner that Owner may, from time to time, seek amendments to one or more of the Project Approvals. Any such amendments are contemplated by City and Owner as being within the scope of this Agreement as long as they are consistent with the Applicable Law of the Project and will, upon approval by City, continue to constitute the Project Approvals as referenced herein. The parties agree that any such amendments do not constitute an amendment to this Agreement nor require an amendment to this Agreement.

Eminent Domain. City will cooperate with Owner in implementing all of the conditions of the Project Approvals including, without limitation, the exercise of its eminent domain powers in connection therewith, provided that the City, in its independent exercise of judgment following all applicable procedures, has made the requisite findings properly supported by evidence that the use of such power is appropriate.

Vacation of Maintenance Easement. The Property is currently subject to a bicycle and bicycle maintenance easement along the existing berm slope at the northeastern boundary of the Property (the "Bicycle Easement"). Recognizing that the need for the Bicycle Easement no longer exists, City agrees to initiate procedures for vacating the Bicycle Easement. Such steps may include, without limitation, the adoption of a Resolution of Vacation, the execution of a quitclaim deed and taking such other action as necessary under the circumstances to vacate the Bicycle Easement.

Temporary Construction Easement. Owner must grant City a temporary construction easement in the approximate location depicted on Exhibit "D" attached hereto for the repair and replacement of the Los Carneros Road/101 Freeway overpass. Owner and City have the right, from time to time, to relocate the easement, subject to the other party's approval, such approval not to be unreasonably withheld, so that the location of the easement does not interfere with Owner's development of the Project.

3.02 Construction of Improvements on Lots 13 and 14 of the Tentative Map.

Owner may seek the necessary permits, and may commence construction of the parking improvements on Lots 13 and 14 upon the issuance of those permits, on the Effective Date.

3.03 Commencement of Grading.

Owner may seek the necessary permits, and may commence grading of Lots 1 through 12 upon the issuance of those permits, on the Effective Date. The Director may impose whatever conditions on the issuance of the permits that he or she deems reasonably necessary.

Section 4. Obligations of the Parties.

4.01 OBLIGATIONS OF AND CONTRIBUTIONS BY OWNER.

The parties acknowledge and agree that Owner's agreement to perform and abide by the covenants and obligations of Owner set forth herein is material consideration

for City's agreement to perform and abide by the covenants and obligations of City set forth herein, including without limitation the following specific public benefits to be provided to City in consideration for this Development Agreement.

Affordable Housing. The development of the Project will provide much needed rental units that will be rented to very low and low income households, within the City which will, in turn, help to satisfy City's obligation to meet City's share of regional housing needs. In addition, City may use a portion of Owner's total of \$2,000,000 contribution for the Goleta EHAP Fund to be administered by the City, or designee. The fund will be used to provide housing subsidies to local employees, including critical workforce employees, pursuant to criteria established pursuant to a program to be adopted by City subsequent to the execution of this Agreement.

Termination of Raytheon Agreement. Consistent with Owner's willingness to provide much needed housing in the City, Owner agrees to relinquish its rights under the Raytheon Agreement which would otherwise permit Owner to construct 204,000 square feet of office/manufacturing buildings on Lots 2 and 5. Therefore, upon the expiration of any statute of limitations to challenge this Agreement (including the time period for any referendum petition), the EIR or any Project Approval, or, if challenged, such challenge having been resolved to Owner's satisfaction, such satisfaction to be determined in Owner's sole and absolute discretion, the Raytheon Agreement and any and all rights thereunder are deemed terminated and of no further force or effect as it relates to the Property. When the statutes of limitations to challenge the EIR, any of the Project Approvals and this Agreement have expired, without a challenge having been made, or if a challenge to the EIR, any Project Approval and/or this Agreement has been made, such challenge has been resolved to the satisfaction of Owner, such satisfaction to be in Owner's sole and absolute discretion, the parties agree to execute such documentation as may be required to terminate the Raytheon Agreement as it relates to the Property. If a challenge is asserted against the EIR, any Project Approval and/or this Agreement, the Raytheon Agreement will remain in full force and effect until the earlier of (a) any such challenge has been resolved to the satisfaction of Owner or (b) the expiration of the term of the Raytheon Agreement. In addition, if such a challenge is asserted, the term of the Raytheon Agreement will be extended for the period between the date the challenge is asserted and the date the challenge is resolved to the satisfaction of Owner.

4.01.01.01 Owner Contribution.

Before receiving the first building permit for a Market Rate Building containing Residential Units (excluding the building permit for an Affordable Building), Owner must contribute to the City the sum of \$1,000,000 to be used by City in its sole discretion including, without limitation, for construction of public facilities as may be identified in the Capital Improvements Program adopted by the City Council or the Goleta EHAP Fund. Thereafter, Owner must contribute an additional \$1,000,000 before receiving a building permit for the Market Rate Building containing the 232nd cumulative Market Rate Units (excluding the building permit for an Affordable Building). City may use this contribution in the same manner as the first amount.

4.01.02. Completion of Recreation Center and Common Area Amenities.

Owner must complete the Project's Recreation Center and common area amenities as part of the construction of the first phase of Residential Units constructed in the Project.

4.01.03. Sale of Very Low and Low Income Units.

Owner may sell all or a portion of the Affordable Units provided such sale is consistent with City's applicable affordable housing guidelines.

Ownership and Management of the Affordable Buildings. Upon recordation of a final subdivision map creating the lots on which the Affordable Buildings are to be constructed, Owner intends to transfer the lots, at no cost, to a third party affordable housing Owner and manager ("Affordable Housing Owner"). The Affordable Housing Owner which will be responsible for the construction and management of the Affordable Buildings. The transfer of the lots to the Affordable Housing Owner is subject the City vacating the Temporary Construction Easement referenced in section 3.16. The Affordable Housing Owner will then have two years after Owner has been issued a building permit for any Market Rate Building to complete construction of the Affordable Buildings.

If the Affordable Housing Owner has not completed construction of the Affordable Buildings before City issues a building permit which would allow for the construction of a cumulative 220 units contained in any Market Rate Building, then, absent good cause shown as determined by City in its sole discretion, ownership of the lots on which the Affordable Buildings will be constructed will revert to Owner. To ensure that construction of all Affordable Buildings occurs within a timely fashion after City issues a building permit for the first Market Rate Building, City will, absent good cause shown as determined by City in its sole discretion, issue a stop work notice, and curtail issuing building permits, for all Market Rate Buildings until all Affordable Buildings are constructed. Owner agrees that it waives all legal recourse it may have against City for such action including, without limitation, equitable relief.

If the lots on which the Affordable Buildings will be built are not transferred by Owner to the Affordable Housing Owner, or if title to the lots reverts to Owner, then Owner has the absolute right to (a) construct the Affordable Buildings and act as the owner and manager of the Affordable Units (the "Affordable Housing Owner"), (b) transfer the lots to an affiliated entity in accordance with the provisions of this Agreement to act as the Affordable Housing Owner or (c) transfer the lots to an another Affordable Housing Owner which has not less than five years of experience in the ownership and management of affordable housing. If the Affordable Housing Owner does not have such experience, then the City's prior written consent to the transfer of the Affordable Buildings is required, such consent not to be unreasonably withheld.

Affordable Housing Owner must own and manage the land and the Affordable Buildings built on it. Affordable Housing Owner will be responsible for all management functions with respect to the Affordable Buildings including, without limitation, the selection of tenants, certification of household size and income, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. Such management functions must be performed by, or on behalf of, Affordable Housing Owner by an experienced, professional management company or organization. The City has no responsibility over management of the Affordable Buildings. Affordable Housing Owner must submit to the City for its approval its proposed property manager. Affordable Housing Owner will have the absolute right to replace its property manager at any time provided the replacement management company is an experienced, professional management company or organization with not less than five years of experience in managing affordable residential rental real estate or is an affiliate of Affordable Housing Owner or The Duncan Group and provided Affordable Housing Owner has provided City written notice of the management change. Except as provided in the foregoing, Affordable Housing Owner may only remove and/or replace the property manager with the prior written consent of the City, which cannot be unreasonably withheld or delayed.

Credit for Very Low Income Units in Excess of General Plan Requirements. Based on the provisions of Sections HE 11.4 and 11.5 of the Housing Element of the General Plan (the "Housing Element"), the 70 Affordable Units being provided by Affordable Housing Owner as part of the Project represent 13 more very low income units than would otherwise be required in accordance with the "unit equivalency" provisions of Section HE 11.4 of the Housing Element. Affordable Housing Owner must make 13 of the Affordable Units available to very low income households as part of the consideration for City's entering into this Development Agreement.

4.01.04. Construction of the Bridge Over Tecolotito Creek.

Owner must start construction of the bridge over Tecolotito Creek before the final inspection of the building containing the 232nd cumulative Market Rate Unit.

4.01.05. Nexus/Reasonable Relationship Challenges.

Owner consents to, and waives, any rights it may have now or in the future to challenge the legal validity of, the conditions, requirements, policies or programs required by the Existing Land Use Regulations or this Agreement including, without limitation, any claim that they constitute an abuse of the police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

4.01.06. Cooperation By Owner.

Owner will, in a timely manner, provide City with all documents, applications, plans and other information necessary for City to carry out its obligations

hereunder, and cause Owner's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefore.

4.01.07. Reimbursement for City's Efforts on Behalf of Owner.

To the extent that City, on behalf of Owner, attempts to enter into binding agreements with other entities in order to ensure the availability of certain permits and approvals or services necessary for development of the Project as described in this Agreement, Owner must reimburse City for all costs and expenses incurred in connection with seeking and entering into any such agreement. Any fees, assessments or other amounts payable by City pursuant to any such agreement must be borne by Owner except where Owner notified City in writing, before City entering into such agreement, that it does not desire for City to execute such agreement.

4.01.08. City's Efforts to Defend and/or Enforce Multi Agency Agreements.

Owner must defend and indemnify – the to the extent set forth in this Agreement – City in any challenge by any person to any agreement between City and other government agencies entered into at the request of Owner to facilitate the development of the Project Site, and must reimburse City for any costs and expenses incurred by City in enforcing any such agreement.

Obligations of City. City agrees to take the following actions in its review of the Project pursuant to this Agreement:

Processing and Approvals. Provided that Owner is not in default under this Agreement, upon submission by Owner of all completed applications for permits and approvals for the Project and payment of all appropriate processing fees as provided in this Agreement, City will commence and complete with reasonable diligence all steps necessary to issue and, if allowed by applicable law, issue all permits or approvals required for development of the Project, as contemplated by the Project Approvals and Applicable Law of the Project including, without limitation, to (a) the holding of all required public hearings and provision of notice for such public hearings, and (b) the granting of the requested permit or approval if the City determines that it complies with this Agreement and the Project Approvals. Such permits and approvals include, without limitation, building permits, road encroachment permits, use and land use permits, site clearance or demolition permits, grading plans and permits, landscape plans, Design Review Board review, and certificates of occupancy (the "Subsequent Approvals").

City must exercise reasonable diligence to expedite the processing of Owner's permit applications for the development of the Project. Owner, in a timely manner, will provide City with all documents, applications, plans or other information necessary for City to carry out its obligations hereunder and will cause the Owner's architects, planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

If, at the time of submittal or resubmittal of any application for a permit or approval, City determines it is unable to process the application in a timely fashion, City will, upon request of Owner and for the purpose of processing the application in a timely fashion, contract or employ a private entity or persons on a temporary basis to perform services necessary to permit City to process the application in a timely fashion. However, City need not enter into a contract or employ those persons if it determines either of the following:

(a) No entities or persons are available or qualified to perform the services; or

(b) City would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available qualified entities or persons.

City may charge Owner in an amount necessary to defray costs directly attributable to employing or contracting with entities or persons performing such services.

City will not require Owner to obtain any further approvals or permits for the development of the Project during the Term of this Agreement unless such permits or approvals are required by the Applicable Law of the Project. The City agrees that any conditions of approval or departmental conditions imposed upon the issuance of such further approvals or permits will not be in conflict with this Agreement or with the Applicable Law of the Project, as defined above.

Environmental Review. In approving this Agreement and the Project, City has taken whatever actions are reasonably required by CEQA. Any subsequent actions taken regarding the Project will conform with CEQA requirements.

Land Use, Building and Grading Permits. Upon application by Owner, City will issue building permits to Owner consistent with the Project Approvals and Applicable Law. In addition, upon application by Owner, City will issue site clearance permits, rough and final grading permits, demolition permits, permits for installation of storm drains, utilities, offsite improvements, and similar improvements, and grading permits of any type required by Owner for grading or development operations of any type consistent with this Agreement. Within the authority conferred by the Goleta Municipal Code on the Director, approval of minor Project design modifications consistent with the intent of the Project Approvals shall not be reasonably withheld by the City. The above permits will be issued in conformity with the Applicable Law of the Project and with Section 4.02.01 hereof.

Other Governmental Permits. Owner is responsible for applying, and will apply from time to time, and for obtaining other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project, at Owner's sole cost, in connection with the development of, or provision of services to, the Project. Such permits include, without limitation, such permits as may be required by Owner and Owner is also responsible for coordinating with all non-City providers of utilities to ensure the proper installation and construction of said utilities.

Withholding of Permits. Except as provided herein, permits or approvals for the development of the Project will not be withheld unless allowing such development to proceed before completion of construction would (i) violate a court order, (ii) violate an order of a governmental agency with jurisdiction over City, or (iii) pose a threat dangerous to public health and safety as reasonably determined by City.

Section 5. Implementation of this Agreement.

Effective Date. This Agreement must be approved by Ordinance pursuant to Government Code § 65867.5 and will be in full force and effect on the Effective Date.

Term. The term of this Agreement ("Term") commences upon the Effective Date and will extend until the twentieth (20th) anniversary of the Effective Date subject to the tolling conditions set forth in Section 7.03. The parties further agree to consult regarding possible tolling of the Term should delay in permit processing or review by a public agency with jurisdiction over the Project or its improvements pose a substantial impediment to Owner's ability to complete construction of the Project within the Term, and any agreement to toll the Term will not be unreasonably withheld by City.

Section 6. Amendment of Agreement and Discretionary Permits.

6.01 Operating Memoranda.

The Parties acknowledge that the provisions of the Agreement require a close degree of cooperation and that new information and future events may demonstrate that changes are appropriate with respect to the details of performance of the Parties under this Agreement. The Parties desire, therefore, to retain a certain degree of flexibility with respect to the details of performance for those items covered in general terms under this Agreement. If and when, from time to time, the Parties find that refinements or adjustments are desirable, such refinements or adjustments will be accomplished through operating memoranda or implementation agreements approved by the Parties which, after execution, will be attached to this Agreement as addenda and become a part hereof.

6.02 Execution of Memoranda.

Operating memoranda or implementation agreements may be executed on behalf of City by the City Manager and the City Attorney. In the event a particular subject requires notice or hearing, such notice or hearing will be appropriately given. Any significant modification to the terms of performance under this Agreement will be processed as an amendment of this Agreement in accordance with this Agreement and must be approved by the City Council.

6.03 Amendments.

This Agreement may be amended from time to time only upon the mutual written consent of City and Owner. However, in connection with the transfer of any portion of Owner's rights or obligations under this Agreement to another Owner, Owner, such other Owner and City may agree that the signature of such other Owner may be required to amend this Agreement insofar as such amendment would materially alter the rights or obligations of such Owner hereunder. In no event will the signature or consent of any "Non-Assuming Transferee" be required to amend this Agreement.

6.04 Minor Changes.

Any change to this Agreement which does not substantially affect (i) the Term of this Agreement, (ii) permitted uses of the Project Site, (iii) provisions for the reservation or dedication of land, (iv) conditions, terms, restrictions or requirements for subsequent discretionary actions, (v) the density or intensity of use of the Project Site or the maximum height or size of proposed buildings or (vi) monetary contributions by Owner, will, with Owner's consent, be subject to the review and approval of City's city manager (the "City Manager") and not require notice or public hearing, except to the extent otherwise required by law. Any denial of a minor change may be appealed to the City Council.

6.05 Future Development Agreements.

Except as otherwise consented to by Owner, any future development agreement that may be entered into between City and a successor or assign of Owner with respect to any portion of the Project Site must be consistent with the terms and provisions of this Agreement.

6.06 Subsequent Approvals Do Not Require Amendments to Development Agreement.

Except as may be otherwise agreed to by the parties, no amendment of this Agreement is required in connection with the issuance of any Subsequent Approval. Any Subsequent Approval issued after the Execution Date will automatically be incorporated into this Agreement and vested hereby. City will not issue any Subsequent Approval for any portion of the Project Site unless Owner requests such Approval from City.

Section 7. Default and Remedies; Annual Review; Impossibility of Performance; Cooperation in the Event of Legal Challenge; Applicable Law; Termination upon Completion of Development; Processing During Third Party Litigation.

Default; General Provisions. No party is in default of this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice from the other party of an event of default. The notice of an event of default must specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent and continuous prosecution to completion of the cure as soon as

is reasonably possible will be deemed a cure (and a party is not deemed to be in default) within such period.

Default of Owner. Owner will be in default under this Agreement upon a finding and determination by the City Council that, upon the basis of substantial evidence, Owner has not complied with any one or more of the material terms and conditions of this Agreement. Neither City nor Owner has bear any obligation to the other under this Agreement should Owner fail to commence construction of the Project within the Term of this Agreement.

Default of City. The City will be in default under this Agreement if it fails to comply with any material term or condition of this Agreement applicable to City. In the event of default by City, Owner, at its sole discretion and without obligation to do so, may apply for and process permits and seek development approval under the City's land use planning process then in effect as applicable to the Property. The enactment of any ordinances, rules, regulations and official policies other than the Applicable Law of the Project does not in any manner restrict the specific enforceability of this Agreement.

Remedies Upon Default. Except as provided herein, upon the default by any party under this Agreement, the party not in default will have all rights and remedies provided by law, including but not limited to the right to terminate this Agreement pursuant to Government Code § 65865.1, the right to seek specific performance, or other injunctive or declaratory relief, and the right to seek writs of mandate compelling performance with the terms of this Agreement or requiring other action consistent with this Agreement.

7.01.01. Disputes Resolution of Disputes.

This Section establishes the exclusive process by which disputes between or among the parties to this Agreement concerning or relating to this Agreement will be resolved. The dispute resolution process established herein will apply to disputes between the parties related to the interpretation or enforcement of, or compliance with, the terms and provisions of this Agreement. Disputes that are not alleged to relate to the interpretation or enforcement of, or compliance with, this Agreement are not subject to this dispute resolution process. Otherwise, disputes are resolved as follows:

7.01.01.02 Informal Discussions.

With regard to any dispute between or among the parties contemplated by this Agreement, within seven (7) days written notice from either party, the City Manager and Owner's senior executives must meet and attempt in good faith to resolve any such disputes through informal discussions, which discussions will not exceed ten (10) business days.

7.01.01.03 Mediation.

If the parties are unable to resolve their dispute through informal discussion, then either party may commence mediation by providing to JAMS (or other mediator mutually agreed to by the parties) and the other parties a written request for mediation, setting forth the subject of the dispute and the relief requested. The parties will cooperate with JAMS and with one another in selecting a mediator from JAMS' panel of neutrals, and in scheduling the mediation proceedings. The parties covenant that they will participate in all phases of the mediation in good faith. The mediation process will occur in two phases, if necessary, as described below. During the first phase of the mediation, which in no event will exceed thirty (30) days unless otherwise agreed to by the parties, the parties will attempt to resolve their dispute in accordance with JAMS standard mediation procedures. If the parties are unable to resolve their dispute during this first phase of the mediation process, then the second phase of the mediation process will be conducted in a manner consistent with this Section. If the parties are unable to resolve their dispute through the first phase of mediation, as described above, the party that commenced mediation (the "Complaining Party"), will have ten (10) business days from the expiration of the thirty (30) day period described above to file a brief with the other party (the "Responding Party") and with the mediator presiding over the first phase of the mediation process (the "Mediator"), which brief must set forth the merits of the Complaining Party's position regarding the issues raised during the first phase of mediation (the "Initial Brief"). The Responding Party will have ten (10) business days from its receipt of the Initial Brief to file a brief with the Mediator and the Complaining Party responding to the issues raised in the Initial Brief and setting forth the merits of the Responding Party's position regarding the issues raised during the first phase of mediation (the "Responding Brief"). The Complaining Party will have five (5) business days from its receipt of the Responding Brief to file a reply brief with the Mediator and the Responding Party replying to the issues raised in the Responding Brief (the "Reply Brief"). In no event will the Initial Brief and the Responding Brief be longer than fifteen (15) pages and in no event will the Reply Brief be longer than ten (10) pages. Except as otherwise set forth in this Section, the Initial Brief, the Responding Brief and the Reply Brief will be formatted in accordance with requirements of Rule 3.1110 of the California Rules of Court, unless otherwise agreed to by the parties. The Mediator will have two weeks following its receipt of the Reply Brief to consider the arguments set forth by the Complaining Party and the Responding Party in their respective briefs and issue an opinion stating which party the Mediator would consider to be the prevailing party if the Mediator were a judge presiding over the dispute in a court of law (the "JAMS Opinion").

7.01.01.04 Offers of Compromise Inadmissible.

All offers, promises, conduct and statements, including the JAMS Opinion, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator and any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Notwithstanding the forgoing, the JAMS Opinion will serve as the basis solely for determining whether, in the event a

dispute between the parties is litigated, either party will be awarded attorneys fees in accordance with this Agreement.

7.01.01.05 Equitable Remedies.

Either party may, at its own cost, seek (i) equitable relief before the mediation to preserve the status quo pending the completion of the mediation process, and (ii) any available relief necessary to prevent the running of any applicable statutes of limitation governing any and all causes of action related to a dispute between or among the parties concerning or relating to this Agreement. Except for those actions or proceedings described above, neither party may commence a civil action with respect to the matters submitted to mediation until after the completion of the initial mediation session, or ninety (90) days after the date of filing the written request for mediation, whichever occurs first.

7.01.01.06 Court Enforcement.

The provisions of this Section may be enforced by any Court of competent jurisdiction, and the party seeking enforcement will be entitled to an award of all related costs, fees and expenses, including attorney's fees, to be paid by the party against whom enforcement is ordered.

7.01.01.07 Effect of JAMS Opinion.

Nothing in this Section will in any way be interpreted as requiring that Owner and City and/or City's designee reach agreement with regard to those matters being addressed, nor will the outcome of these meetings be binding in any way on City or Owner unless expressly agreed to in writing by the parties to such meetings. Notwithstanding the forgoing, the JAMS Opinion will be binding on the parties solely for the purposes of determining whether, in the event a dispute between or among the parties is litigated, either party will be awarded attorneys fees in accordance with this Agreement.

7.01.01.08 Attorneys Fees.

Should any judicial remedy be sought by any party because of any default under this Agreement or to enforce any provision hereof, or to obtain a declaration of rights hereunder (each individually a "Judicial Action"), the prevailing party in such Judicial Action is entitled to reasonable attorney's fees, court costs and such other costs as may be fixed by the court (collectively, "Attorneys Fees"), provided the prevailing party in the Judicial Action was also determined to be the prevailing party in the JAMS Opinion. For purposes of this Agreement, Attorneys Fees will be calculated from the start of the first phase of mediation, as described in Section 7.01.04.03, and will include all reasonable costs related to the first and second phases of mediation. If the prevailing party in a Judicial Action was determined to be the losing party in the JAMS Opinion, then each party will assume the cost of their own Attorneys Fees. Not in limitation of the forgoing, the parties will assume their own costs related to the informal dispute resolution process described above.

Compliance with the California Claims Act. Compliance with the procedures set forth in this Section 7.01 will be deemed full compliance with the requirements of the Government Claims Act (Government Code §§ 900, *et seq.*) including, without limitation, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code § 910.

Annual Review. Pursuant to Government Code § 65865.1, throughout the Term of this Agreement, good faith compliance with the terms of this Agreement by Owner will be reviewed by the Director on or about each anniversary of the Effective Date. If as a result of such review, the Director reasonably determines, on the basis of substantial evidence, that Owner has not complied in good faith with the terms and conditions of this Agreement, the Director will provide written notice thereof ("Notice of Non-Compliance") to Owner, stating in specific detail and specific reasons for such finding. After the Director provides the Notice of Non-Compliance to Owner, Owner has the right to cure such non-compliance as provided in Section 7.01 above. In addition, Owner has the right to appeal the Director's determination of non-compliance to the Planning Commission. If the Planning Commission determines, on the basis of substantial evidence, that Owner has complied in good faith with the terms and conditions of this Agreement, the Planning Commission's decision is final and non-appealable. If, however, the Planning Commission determines Owner has not complied in good faith with the terms and conditions of this Agreement, Owner has the right to appeal that determination to the City Council. The Director's failure to perform an annual review pursuant to the terms of this Section 7.02 cannot constitute or be asserted as a default by Owner.

Impossibility of Performance. Nonperformance by Owner or City is not a default if such nonperformance is attributable to events beyond the reasonable control of Owner or City such as war, terrorist attack, strikes, riots, floods, earthquakes, fires, casualties, acts of public enemy, other similar causes, the failure of any non-City governmental entity of competent jurisdiction, e.g., special districts, to issue permits required for the development of the Project or a commitment to serve the Project after all requirements for such issuance or commitment are met, the rescission or suspension of a commitment which has already been made to serve the Project by a public entity, a referendum which seeks to set aside any of the Project Approvals or this Agreement, litigation or administrative appeals to a governmental entity to set aside any of the Project Approval or this Agreement or any component thereof, or the issuance of a court order preventing development of the Project. If performance has been delayed by any such cause, the Term of this Agreement and times of performance under this Agreement will be extended for the period of the delay with such period commencing to run from the time of the commencement of the cause.

7.02 Cooperation in the Event of Legal Challenge; City's Indemnification.Third Party Challenges.

In the event of any administrative, legal or equitable action or other proceeding instituted by any person or entity not a party to the Agreement challenging the validity of any provision of this Agreement, challenging any of the Project Approvals, or challenging the sufficiency of any environmental review of either this Agreement or any

Approval under CEQA (each a "Third Party Challenge"), each party must cooperate in the defense of such Third Party Challenge, in accordance with this Section. In light of the parties' mutual interests in successfully defending against a Third Party Challenge, all communications between Owner and the City concerning a Third Party Challenge must be kept confidential and cannot be disclosed by either party without the written consent of the other party. Owner agrees to pay City's costs of defending a Third Party Challenge, including all court costs and reasonable attorney's fees expended by City (including the time and cost of the City Attorney) in defense of any Third Party Action, as well as the time of City's staff spent in connection with such defense. Owner may select its own legal counsel to represent Owner's interests in any Third Party Challenge at Owner's sole cost and expense. City agrees that it will not enter into a settlement agreement to any Third Party Challenge without Owner's written consent. Owner's obligation to pay City's costs in the defense of a Third Party Challenge does not extend to those costs incurred on appeal unless otherwise authorized by Owner in writing.

7.02.02. Third Party Challenges Related to the Applicability of City Laws.

The provisions of this Section will apply only in the event of a legal or equitable action or other proceeding, before a court of competent jurisdiction, instituted by any person or entity not a party to this Agreement challenging the applicability to the Project or Project Site of a conflicting City Law (a "Third Party Enforcement Action"):

7.02.02.01 Cooperation in Case of a Third Party Enforcement Action.

In the event of a Third Party Enforcement Action, City must (i) promptly notify Owner of such action or proceeding, and (ii) cooperate with Owner so as to most effectively respond to the Third Party Enforcement Action. In no event will City take any action that would frustrate, hinder, or otherwise complicate Owner's efforts to respond. The parties to this Agreement agree to cooperate, to the maximum extent permitted by law, in the defense of such action or proceeding. For purposes of this Section, the required cooperation between the parties includes, without limitation, developing litigation strategies, preparing litigation briefs and other related documents, conferring on all aspects of the litigation, developing settlement strategies, and, to the extent permitted by law, jointly making significant decisions related to the relevant litigation, throughout the course thereof. In light of the parties' mutual interests in successfully defending against a Third Party Enforcement Action, all communications between Owner and the City concerning a Third Party Enforcement Action must be kept confidential and cannot be disclosed by either party without the written consent of the other party.

7.02.02.02 Litigation Costs.

City's costs of defending any Third Party Enforcement Action, including all court costs, and reasonable attorney's fees expended by City (including the time and cost of the City Attorney) in defense of any Third Party Enforcement Action, as well as the time of City's staff spent in connection with such defense (the "Enforcement Action Defense

Costs), will be paid in accordance with this Agreement. Notwithstanding the forgoing, in no event will the Enforcement Action Defense Costs extend to, nor will Owner or the Project be obligated to pay, any costs incurred on appeal unless otherwise authorized by Owner in writing;

7.02.02.03 Settlement.

City must not enter into a settlement agreement or take any other action to resolve any Third Party Enforcement Action without Owner's written consent. City cannot, without Owner's written consent, take any action that would frustrate, hinder or otherwise prevent Owner's efforts to settle or otherwise resolve any Third Party Enforcement Action.

7.02.02.04 Effect of a Judgment.

Provided that City complies with this Section and provided that Owner is a party to the relevant Third Party Enforcement Action, Owner agrees to be bound by any final judgment (i.e., following all available appeals) arising out of a Third Party Enforcement Action and further agrees that no default under this Agreement will arise if such final judgment requires City to apply to the Project or Project Site a City Law that conflicts with Applicable Law or this Agreement.

7.02.03. Defense and Indemnity.

Owner must defend and indemnify City from and against any and all damages, claims, costs and liabilities arising out of the personal injury or death of any third party, or damage to the property of any third party, to the extent such damages, claims, costs or liabilities result from the construction of the Project by Owner or by Owner's contractors, subcontractors, agents or employees. Nothing in this Section will be construed to mean that Owner must defend or indemnify City from or against any damages, claims, costs or liabilities arising from, or alleged to arise from, activities associated with the maintenance or repair by City or any other public agency of improvements that have been offered for dedication and accepted by City or such other public agency or for any other public improvements constructed by City or constructed by Owner at direction of City. City and Owner may from time to time enter into subdivision improvement agreements, as authorized by the Subdivision Map Act, which agreements may include defense and indemnity provisions different from those contained in this Section. In the event of any conflict between such provisions in any such subdivision improvement agreement and the provisions set forth above, the provisions of such subdivision improvement agreement will prevail.

7.02.04. Governing Law.

This Agreement is to be construed and enforced in accordance with the laws of the State of California. Jurisdiction for all disputes is Santa Barbara County, California. The standard of review for determining whether a default has occurred under the Agreements is to be the standard generally applicable to contractual obligations in California. The terms and provisions of this Section will survive any termination of this Agreement.

Agreement Constitutes Legislative Act. Owner acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement will be that accorded legislative acts of City.

Termination Upon Completion of Development of Project. This Agreement terminates when the Property has been fully developed consistent with this Agreement and when all of Owner's obligations in connection with the Project are satisfied, as determined by City. For purposes hereof, all obligations of Owner are deemed satisfied upon final inspection and issuance of certificates of occupancy for structures contemplated by the Project Approvals, subject to compliance with any conditions of approval imposed in connection with the Project Approvals and Subsequent Approvals. In such event, City, with Owner's prior written consent, such consent not to be unreasonably withheld, may record a Notice of Termination of this Agreement. Termination of this Agreement as to the Owner or the Property or any portion thereof does not affect any requirements to comply with the terms and conditions of the applicable zoning, the Project Approvals, approval and acceptance of infrastructure improvements, any applicable permit(s), or any other land use entitlements approved with respect to the Property, nor does it affect any other covenants of Owner specified in this Agreement to continue after the termination of this Agreement.

Termination of Agreement for Completed Units. This Agreement terminates with respect to each Market Rate Unit within a Market Rate Building, without the execution or recordation of any further documents, when a certificate of occupancy has been issued for all of the units in the Market Rate Building in which such units are located.

Section 8. General and Miscellaneous Provisions.

Covenants Running with the Land. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement are binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement are enforceable during the Term hereof as equitable servitudes and constitute covenants running with the land pursuant to applicable law including, without limitation, Civil Code § 1468. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and benefits each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

8.01 Mortgagee Rights and Protections.Notification of Mortgagee. Owner will provide City with any Mortgagee's address and contact information. City will notify any Mortgagee of any event of default by Owner under this Agreement and provide to any such Mortgagee the same opportunity to cure such event of default as is provided to Owner under this Agreement. In addition, Owner may provide City a written request for such notice on behalf of any Mortgagee. Failure to so notify any Mortgagee does not give rise to any liability on the part of City, provided that this Agreement cannot be terminated by City as to any Mortgagee to which either of the following is true:

(a) the Mortgagee cures any default by Owner involving the payment of money within sixty (60) days after the notice of default;

(b) as to defaults requiring title or possession of the Property or any portion thereof to effectuate a cure: (i) the Mortgagee agrees in writing, within ninety (90) days after the written notice of default, to perform the proportionate share of Owner's obligations under this Agreement allocable to that part of the Property in which the Mortgagee has an interest conditioned upon such Mortgagee's acquisition of the Property or portion thereof by foreclosure (including a trustee sale) or by a deed in lieu of foreclosure; (ii) the Mortgagee commences foreclosure proceedings to reacquire title to the Property or applicable portion thereof within said ninety (90) days and thereafter diligently pursues such foreclosure to completion; and (iii) the Mortgagee promptly and diligently cures such default after obtaining title or possession. Subject to the foregoing, in the event any Mortgagee records a notice of default as to its mortgage or deed of trust, City will consent to the assignment of all of Owner's rights and obligations under this Agreement to the Mortgagee or to any purchaser of the Owner's interest at a foreclosure or trustee sale and Owner remains liable for such obligations unless released by City or unless the applicable portion of the Property is transferred in accordance with Section 8.03.

Encumbrances on the Subject Property. This Agreement is superior and senior to the lien of any mortgage on the Property, and is senior to any construction financing recorded against the Property. Owner must provide City with subordination agreements as required evidencing the priority of this Agreement over all other encumbrances. Notwithstanding the foregoing, no breach of this Agreement can defeat, render invalid, diminish or impair the lien of any mortgage made in good faith and for value, and any acquisition or acceptance of title or any right or interest in or with respect to the Property or any portion thereof by a Mortgagee (whether pursuant to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or otherwise) is subject to all of the terms and conditions of this Agreement.

8.02 Assignments and Transfers of Ownership.Right to Assign. Owner has the right to assign (by sale, transfer or otherwise) its rights, duties and obligations under this Agreement as to any portion of the Property subject to the provisions contained in this Section 8.03. Any such assignment must be accompanied with Owner's transfer of fee title of that portion of the Property being transferred. Any attempt to assign or delegate this Agreement, other than in accordance with the provisions of this Section 8.03, are void and of no force or effect.

Assignment to Owner's Affiliated Entities. Owner has the absolute right to assign its rights, duties and obligations under this Agreement to any entity (a) in which either CHA McKinley Goleta, LLC ("CHA"), or an affiliate of CHA, is a managing member or (b) in which CHA, or an affiliate of CHA, is responsible for the development of the Property. As used in this Agreement, the term "affiliate" means an entity controlling, controlled by or under common control with the entity to which the term applies, whether by ownership, contract or voting control. Owner and the entity to whom the rights are to be assigned (the "Assignee") must sign an Assignment and Assumption Agreement in the form of Exhibit "E" attached hereto ("Assignment and Assumption Agreement") and Owner must provide City with a signed copy of the Assignment and Assumption Agreement.

Assignment to Qualified Owners. Owner has the absolute right to assign its rights, duties and obligations under this Agreement upon satisfaction of the following conditions:

(i) Owner is not in default under this Agreement at the time of the assignment with respect to the assigned portion;

(ii) Owner and the Assignee have signed an Assignment and Assumption Agreement and furnished a copy to the City;

(iii) The Assignee, or an affiliate of the Assignee, has not less than five years of experience in residential real estate development;

(iv) The Assignee, or an affiliate of the Assignee, has the financial capability to construct that portion of the Project which is being transferred to the Assignee as evidenced by the Assignee (and/or the Assignee's affiliate) either (a) having a net worth of at least Ten Millions Dollars (\$10,000,000) (as evidenced by a statement of financial condition dated not more than ninety (90) days before the date of transfer, which is accompanied either by an opinion of a certified or a chartered public accountant or by a certificate by the chief financial or accounting officer of the Assignee confirming the statement fairly represents the financial condition of the transferee) or (b) having furnished Owner with evidence of a term sheet issued by a financial institution, which term sheet reflects equity and/or debt financing sufficient to complete the portion of the Property being acquired by the Assignee; and

(v) Owner has provided City written notice of the satisfaction of conditions (i) through (iv) and a signed copy of the Assignment and Assumption Agreement.

Assignment to Other Owners. Except as set forth in Sections 8.03.02 and 8.03.03, no assignment is valid without the City's prior written consent which consent cannot be unreasonably withheld, conditioned or delayed. In order to obtain that consent, Owner must provide City with all reasonable information required by City and reimburse City for all reasonable legal costs incurred by it in reviewing a request for a proposed

assignment. A consent by City to one assignment is not deemed to be consent to any subsequent assignment.

Events Not Constituting an Assignment. The following are not considered assignments for the purpose of this Agreement:

(vi) Any mortgage, deed of trust or other form of conveyance for financing pertaining to all, or any portion of, the Property;

(vii) Any mortgage, deed of trust or other form of conveyance for restructuring or refinancing any amount of indebtedness described in subparagraph (i);

(viii) The granting of easements to any public agency or utility to facilitate the development of all, or any portion of, the Property; or

(ix) The sale of a completed dwelling unit to an individual purchaser.

Limited Effect of Default. A default by any Assignee only applies to that portion of the Property owned by the Assignee and cannot cancel or diminish in any way Owner's rights under this Agreement with respect to any other portion of the Property not owned by the Assignee. The Assignee is responsible for the reporting and annual review requirements relating to the portion of the Property owned by the Assignee. Any amendment to this Agreement between City and Assignee can only affect that portion of the Property owned by the Assignee and cannot cancel or diminish in any way Owner's rights under this Agreement with respect to any portion of the Property not owned by the Assignee.

Release of Owner. Upon any transfer of any portion of the Property in accordance with the provisions of this Section 8.03, City agrees to look solely to the Assignee for compliance by the Assignee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by the Assignee. Following any assignment, City must, if requested by Owner, provide the Owner with a release in writing of Owner's obligations under this Agreement arising subsequent to the effective date of the assignment with respect to that portion of the Property which is subject to the assignment.

Release of Transferring Owner. As of the effective date of the Assignment, City must, if requested by Owner, provide the transferring Owner with a release in writing of Owner's obligations under this Agreement arising subsequent to the effective date of the Assignment with respect to the Property or such portion thereof which is subject to the Assignment.

Insurance. Concurrently with the execution of this Agreement by Owner, and before the commencement of any work, Owner must furnish evidence to City that all of the following insurance requirements have been satisfied.

(b) **General.** Owner must, throughout the duration of this Agreement, maintain, or cause to be maintained, the insurance specified below, to insure Owner and

its employees for liability arising out of the work in connection with the Property, Project and this Agreement at the minimum levels set forth herein, with the City being an additional insured on the CGL and excess or umbrella liability insurance.

(c) **Commercial General Liability.** Commercial General Liability ("CGL") insurance with coverage in an amount not less than \$2,000,000.00 general aggregate, \$1,000,000.00 per occurrence and \$2,000,000.00 products/completed operations, and including contractual liability insurance for the indemnification heretofore provided to the City (subject to the policy terms, conditions, definitions and exclusions).

(d) **Business Auto Coverage.** Business Automobile Liability insurance with coverage in an amount not less than \$1,000,000.00 per accident for bodily injury and property damage, covering all vehicles used by the Owner (personal, company) and its employees, on or within the Project or Property or associated therewith.

(e) **Excess or Umbrella Liability Insurance (Over Primary Coverage).** Such excess coverage must be at least as broad as the underlying coverage and be provided on a "pay on behalf" basis. The excess or umbrella coverage can be not less than \$5,000,000 per occurrence/annual aggregate.

(f) **Workers' Compensation.** Coverage must be maintained as required by the State of California.

(g) **Insurance Coverage to be Maintained by Owner's Contractors and Subcontractors.** Owner must require by contract that its contractors and subcontractors maintain the same CGL, business auto, excess or umbrella liability and workers' compensation insurance as set forth in subsections (b) through (e), inclusive, hereof, except that the required minimum limits for the CGL coverage will be \$1,000,000 general aggregate, \$1,000,000 per occurrence and \$1,000,000 products/completed operations, with excess or umbrella liability insurance in the amount of \$1,000,000 per occurrence/annual aggregate. The CGL policy must include, contractual liability insurance (subject to the policy terms, conditions, definitions and exclusions).

Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, then to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties, the remaining provisions of this Agreement, or the application of this Agreement to other situations, continues in full force and effect.

8.03 Relationship of Agreement and Project Approvals.

This Agreement and the Project Approvals were approved by City as a single interdependent group of approvals for development of the Property, each of which depends on the others for its effectiveness. In the event that Owner challenges this Agreement, the Project Approvals, or any portion thereof, in an action filed in a court of law, which action is brought within the time period provided for by law, this Agreement and the Project Approvals will be suspended pending dismissal of such action, the

expiration of the limitation period applicable to such action, or final resolution of such action. If as a result of such action, any portion of this Agreement or the Project Approvals is invalidated by a court of law in a manner which impairs the application of this Agreement as intended by the parties, the entire Agreement and all Project Approvals will be reviewed by City for reconsideration of said Agreement and Project Approvals.

Further Actions. Each party will promptly take such further actions and execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Construction. This Agreement has been reviewed and revised by legal counsel for both Owner and City, and no presumption or rule that ambiguities will be construed against the drafting party applies to the interpretation or enforcement of this Agreement, which will be interpreted and enforced according to the plain meaning thereof.

Notices. All notices, approvals, acceptances, demands and other communications required or permitted under this Agreement must be in writing and delivered in person or by U.S. mail (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

To City:

City Manager's Office
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

To Owner:

Robert W. Comstock
CHA McKinley
Goleta, LLC 321 12th Street, Ste. 200
Manhattan Beach, CA 90266

With a copy to:

Kenneth B. Bley, Esq. Cox, Castle & Nicholson LLP
2049 Century Park East, 28th Floor
Los Angeles, CA 90067-3284

Any written communication given by mail is deemed delivered two (2) working days after such mailing date; any written communication given by overnight delivery service is deemed delivered one (1) working day after the dispatch date; any delivery in person is deemed delivered when delivered to the party to whom it is addressed. Either party may change its address by giving the other party written notice of its new address as provided above.

Estoppel Certificate. Either party may, at any time and from time to time, deliver written notice to the other party requesting such party to certify in writing that, to the knowledge of the certifying party: (i) this Agreement is in full force and effect and a binding obligation of the parties, (ii) this Agreement has not been amended or modified either orally or in writing or, if so amended, identifying the amendments, and (iii) the requesting party is not known to be in default of the performance of its obligations under this Agreement, or if in default, describing therein the nature of any such defaults. A party receiving a request hereunder must execute and return such certificate within fifteen (15) days following the receipt thereof, unless City, in order to determine the appropriateness of the certificate, promptly commences and proceeds to conclude a review pursuant to the provisions of Section 7.02 hereof. The City Manager is authorized to execute for City.

If a party fails to deliver a certificate within the fifteen (15) day period, the party requesting the certificate may deliver a second notice (Second Notice) to the other party stating that the failure to deliver the certificate within ten (10) working days following the receipt of the Second Notice constitutes conclusive evidence that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting party. Failure to deliver the requested certificate within the ten (10) working day period will then constitute conclusive evidence upon the party which fails to deliver such certificate that this Agreement is in full force and effect without modification and there are no unexcused defaults in the performance of the requesting party.

Owner's Interest. Owner represents that the Property is owned by Owner or that Owner has control of the Property described in Exhibit "A."

No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other party has any right of action based upon any provisions of this Agreement.

Relationship of Parties. It is understood that Owner is not an agent of the City and City is not an agent of Owner. It is specifically understood and agreed by and between the parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of

any kind between Owner and City is formed by this Agreement. The only relationship between City and Owner is that of a governmental entity regulating the development of private property with Owner as Owner of such private property.

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

Applicable Law. The laws of the State of California governs the interpretation and enforcement of this Agreement, with venue for any legal action lying in a court of competent jurisdiction in the County of Santa Barbara, State of California.

Time of Essence. Time is of the essence for this Agreement.

Recordation. This Agreement will be recorded, at Owner's sole cost and expense, upon execution by the parties.

Entire Agreement and Amendment. This Agreement, together with all documents and exhibits referred to herein, contains all of the agreements of the parties with respect to the matters contained herein, and no other prior agreement or understanding pertaining to any such matter is effective for any purpose. No provision of this Agreement may be amended except by an agreement in writing signed by the parties hereto or their respective successors in interest.

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

8.04 Counterparts and Exhibits.

This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of ____ pages, including notary acknowledgment forms, and, in addition, eight (8) exhibits which constitute the entire understanding and agreement of the parties to this Agreement. The following exhibits are attached to this Agreement:

- Exhibit A: Legal Description of the Property
- Exhibit B: Depiction of Residential Buildings
- Exhibit C: Conditions of Approval
- Exhibit D: Depiction of Temporary Construction Easement
- Exhibit E: Form of Assignment and Assumption Agreement
- Exhibit F: Estimated GTIP Fees
- Exhibit G: Estimated Park/Rec/Quimby Fees

Signatures. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Owner and City. This

Agreement inures to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Facsimile Signatures. Signatures delivered by facsimile or e-mailed (in pdf format) are as binding as originals upon the parties so signing and delivering.

8.05 Days.

As used in this Agreement, the term "days" means calendar days. If the time for performance of an obligation under this Agreement falls on a Saturday, a Sunday or a state or federal holiday, the time for performance will be extended to the next day which is not a Saturday, a Sunday or a state or federal holiday.

8.06 Inconsistency.

In the event of any inconsistency between any Applicable Law of the Project and a Project Approval, the provisions of the Project Approval controls. In the event of any inconsistency between any Applicable Law of the Project or Project Approval and this Agreement, the provisions of this Agreement control.

8.07 Construction.

All parties were represented by counsel in the preparation of the Agreement and no presumption or rule that ambiguity be construed against a drafting party will apply to interpretation or enforcement hereof. Captions on sections and subsections are provided for convenience only and will not be deemed to limit, amend or affect the meaning of the provision to which they pertain. In the event of any conflict between the Agreement and the rules, regulations or official policies of City, the provisions of this Agreement prevail to the extent of such conflict.

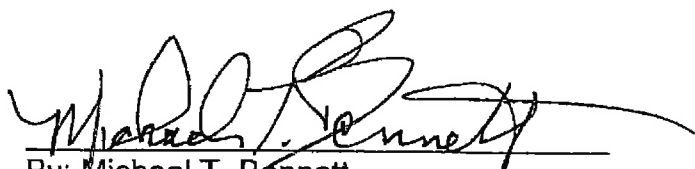
IN WITNESS WHEREOF, Owner and City have executed this Agreement as of the date first hereinabove written.

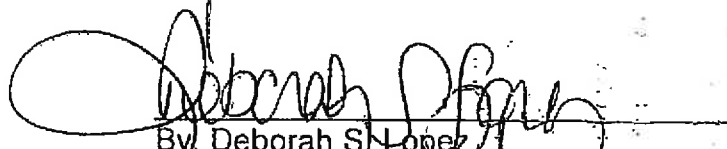
OWNER

**CHA McKinley Goleta, LLC, a
Delaware limited liability company**

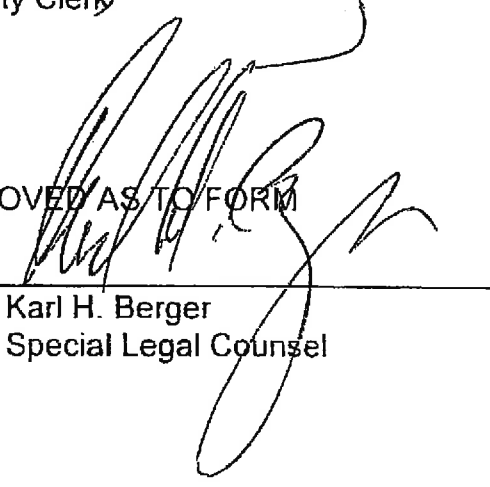
**CITY OF GOLETA, a municipal
corporation**


By: Robert W. Comstock
Its: Managing Member


By: Michael T. Bennett
Its: Mayor


By: Deborah S. Lopez
Its: City Clerk

APPROVED AS TO FORM


By: Karl H. Berger
Special Legal Counsel

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

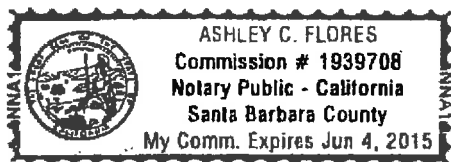
County of Santa Barbara

On October 27, 2014 before me, Ashley C Flores, Notary Public.

personally appeared Michael T. Bennett

Here Insert Name and Title of the Officer

Name(s) of Signer(s)



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.

Place Notary Seal Above

Signature:

Ashley C Flores

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement VLC

Document Date: August 19, 2014

Number of Pages: —

Signer(s) Other Than Named Above: Deborah Lopez, Karl Berger

Capacity(ies) Claimed by Signer(s)

Signer's Name: Michael T. Bennett

☒ Corporate Officer — Title(s): Mayor

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing:

City of Goleta

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

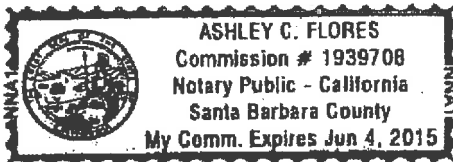
CIVIL CODE § 1189

State of California

County of Santa Barbara

On October 27, 2014 before me, Ashley C Flores, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Deborah Lopez
Name(s) of Signer(s)



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.

Place Notary Seal Above

Signature: Ashley C Flores
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement VLC

Document Date: August 19, 2014 Number of Pages: 1

Signer(s) Other Than Named Above: Michael T Bennett, Karl Borek

Capacity(ies) Claimed by Signer(s)

Signer's Name: Deborah Lopez

- ☒ Corporate Officer — Title(s) City Clerk
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: City of Santa Barbara

Signer's Name: _____

- ☐ Corporate Officer — Title(s): _____
- ☐ Individual
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

RIGHT THUMBPRINT OF SIGNER

Top of thumb here

Signer Is Representing: _____


State of California

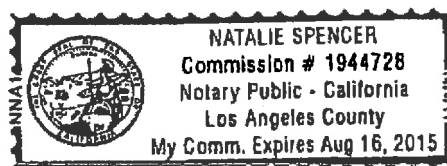
County of Los Angeles

On October 15, 2014 before me, Natalie Spencer, Notary Public, personally appeared Robert W. Comstock, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument he, or the entity upon behalf of which he 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.

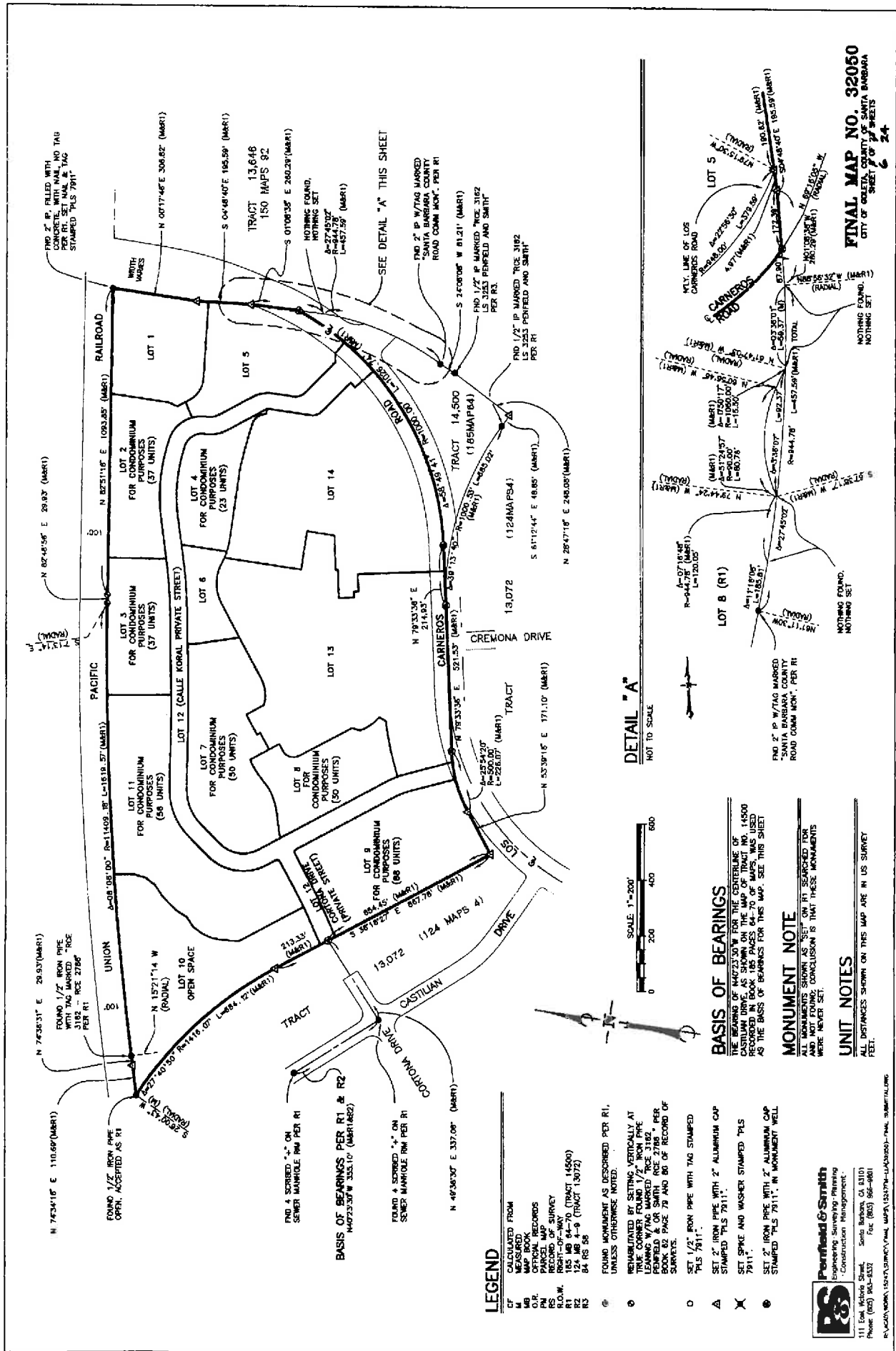
WITNESS my hand and official seal.


SIGNATURE OF NOTARY



(SEAL)

ATTACHMENT 4
SUBDIVISION MAP 32050



ATTACHMENT 5
OPERATING MEMORANDUM NO. 1



2016-0027565

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
CITY CLERK
CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, California 93117

Recorded
Official Records
County of
Santa Barbara
Joseph E. Holland
County Clerk Recorder

REC FEE

0.00

04:24PM 02-Jun-2016

TP
Page 1 of 13

EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code § 6103

(Space above this line for Recorder's use)

OPERATING MEMORANDUM NO. 1

This Operating Memorandum No. 1 (the "**Operating Memorandum**") is made as of May 2, 2016 by and between RCS – Los Carneros, LLC, a Colorado limited liability company ("**Owner**") and the City of Goleta, a general law city and municipal corporation (the "**City**"). The Parties agree as follows:

1. **Recitals.** The Parties execute this Operating Memorandum with reference to the following:
 - A. City and Owner executed a Development Agreement dated August 19, 2014 (the "**Agreement**") regarding development of the Villages at Los Carneros project ("**Project**") on that real property identified in attached Exhibit "1," and incorporated by reference.
 - B. Section 8.08 of the Agreement provides that the parties may clarify details regarding performance by City or Owner pursuant to the Agreement as refinements and further development of the Project proceed;
 - C. The Mitigation Monitoring and Reporting Program ("MMRP") that was adopted and incorporated into the condition of approval for the Project requires, among other things, that City approve a wetland and riparian area mitigation plan before City issues construction permits. Condition No. BIO 2-1(a), which reflects this requirement, is attached as Exhibit "2," for reference;
 - D. As written, Owner can only fully comply with BIO 2-1(a) if it obtains an ACOE Permit since the Army Corps of Engineers has jurisdictional authority over the buffer area;
 - E. The parties anticipate that an ACOE Permit will be issued in the next 60-90 days. The parties believe, it would be unduly burdensome for City to delay issuing construction permits for the balance of the approved construction area, i.e., that area beyond the buffer area, while waiting for an ACOE Permit;
 - F. With implementation of the buffer area, which reflects the parties' original understanding of what should be regulated by a wetland and riparian area mitigation plan, City may issue construction permits for the balance of the approved construction area; and

- G. City finds that this Operating Memorandum is desirable in order to clarify the procedure for issuing construction permits for the Project in accordance with applicable law and the Agreement.

2. **Definitions.** Unless the contrary is stated or clearly appears from the context, the following definitions govern the construction of the words and phrases used in this Operating Memorandum. Words and phrases not given a meaning by this Operating Memorandum have the meaning set forth in the Agreement.

“ACOE Permit” means a permit issued by the Army Corps of Engineers as required by the Project and applicable law.

“Approved construction area” means the real property graphically depicted in attached Exhibit “3,” which is incorporated by reference.

“Buffer area” means that area identified in blue within the approved construction area.

“Construction permits” means both grading and building permits issued by City in accordance with applicable law.

“Project approvals” means all approvals made by the City Council allowing the Project to be developed including, without limitation, the Agreement.

3. **Issuing Construction Permits.** Except as otherwise provided, and notwithstanding anything to the contrary within the Project approvals, City may issue construction permits for the approved construction area in accordance with the Project approvals.

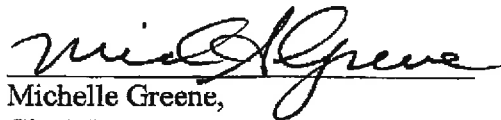
4. **Buffer Area.** As to the buffer area, City cannot issue construction permits until Owner secures a valid ACOE Permit. Upon obtaining a valid ACOE Permit, Owner may submit it to the Director for review and approval. If Director approves the ACOE Permit, City may then issue construction permits for the buffer area.

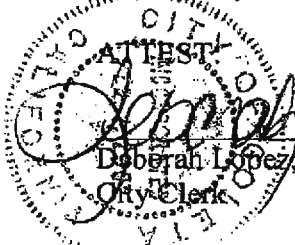
5. **No Other Change.** Except as expressly clarified by this Operating Memorandum, all of the terms and conditions of the Agreement remain unchanged and in full force and effect.

6. **Miscellaneous.** Terms and conditions of this Operating Memorandum may not be waived, amended or modified except in a writing executed by the Parties. This Operating Memorandum may be executed in multiple counterparts, each of which are deemed an original and all of which constitute one and the same Operating Memorandum.


7. **Recordation.** The parties will record this Operating Memorandum in the Office of the Santa Barbara County Recorder in the manner set forth in Government Code § 65868.5.

CITY:


Michelle Greene,
City Manager



APPROVED AS TO FORM:


Tim W. Giles,
City Attorney

OWNER:

RCS – LOS CARNEROS, LLC,
a Colorado limited liability company


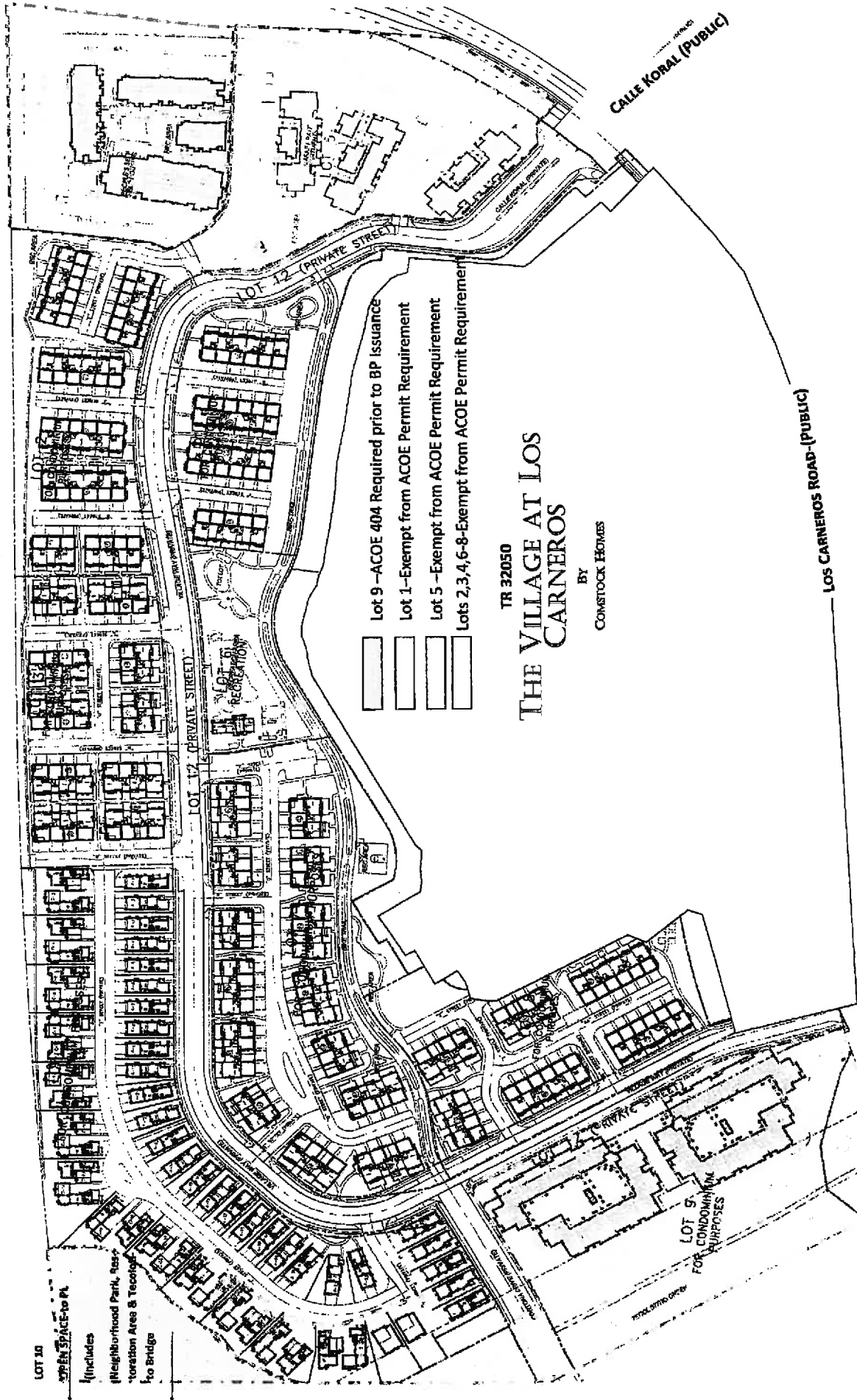
By: 
Sharon K. Eshima, Manager

EXHIBIT 1



Executed at San Francisco on June 2, 2016
California
Glenn Campos Dputy City
 Signature of Declarant Glenn

Signature of Declarant

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 not the truthfulness, accuracy, or validity of that document.

State of Colorado
County of Boulder

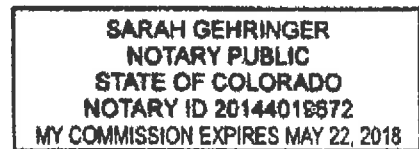
)
)

On April 29, 2016, before me, Sarah Gehringer a Notary Public,
personally appeared Sharon K. Enigma, 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 Colorado that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

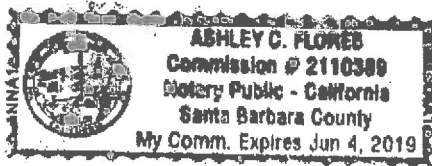
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
 County of Santa Barbara)
 On May 2, 2014 before me, Ashley C Flores, Notary Public
 Date Here Insert Name and Title of the Officer
 personally appeared Michelle A. Greene
 Name(s) of Signer(s)

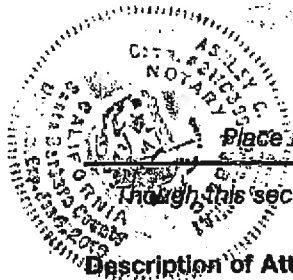
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s),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



Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Operating Memo No. 1 Document Date: 5/2/2014
 Number of Pages: 7 Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

Signer's Name: _____
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator
☐ Other: _____
 Signer Is Representing: _____

CH112

EXHIBIT 2
pg 1 of 2

3.0 MITIGATION MONITORING AND REPORTING PROGRAM

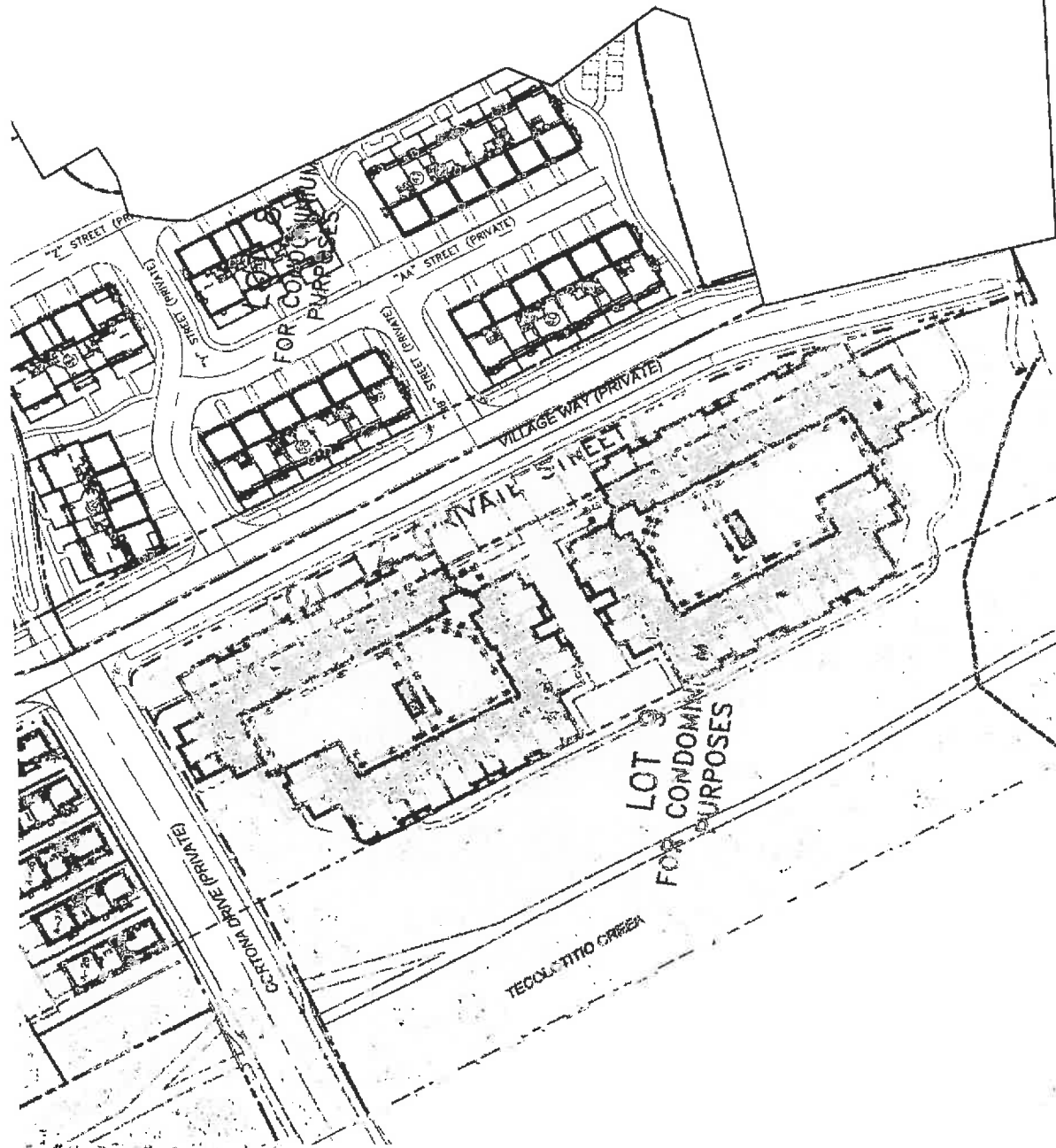
#	Mitigation Measure	Implemented By	When Implemented	Monitoring or Reporting Action
	avoid harm or disturbance to nesting birds to the Director of Planning and Environmental Review, CDFW, and USFWS, if applicable.			
BIO 2-1(a)	The proposed permanent loss of 0.09 acre of Tecolotito Creek ESHA (coincident with Tecolotito Creek SPA, City of Goleta wetlands ESHA, and CDFW jurisdictional habitat), consisting of 0.07 acre of Southern Arroyo Willow Riparian Forest and 0.02 acres of Coastal Freshwater Marsh, must be mitigated on-site at a 3:1 ratio by implementation of a City and California Department of Fish and Wildlife approved on-site restoration plan. To the extent feasible, grading shall avoid the creek, creek banks, and riparian vegetation corridor and must be modified unless modification is shown to be infeasible to the satisfaction of the Director of Public Works and the Director of Planning and Environmental Review.	Permittee	<p>A wetland and riparian area mitigation plan must be developed by a City-approved biologist, or resource ecologist, specialist and approved by the Director of Planning and Environmental Review Department or its designee, and those additional federal/state/ and local agencies with jurisdictional responsibilities over wetlands and riparian areas before the City issues a grading permit. At a minimum, the plan must include:</p> <ul style="list-style-type: none"> • Description of the project/impact and mitigation site(s) • Specific objectives • Plant palette • Implementation plan • Success criteria • Required maintenance activities • Monitoring plan • Contingency measures 	The wetland and riparian mitigation project must be monitored for a five-year period commencing when the City-approved biologist, restoration ecologist, or resource specialist notifies the City that installation of all elements of the approved plan have been completed. Five years after implementation of the mitigation project, a final report must be submitted to the Director of Planning and Environmental Review, or designee, and appropriate federal/state/local agencies, which at a minimum must discuss the implementation, monitoring, and management of the mitigation project over the five-year period, and indicate whether the mitigation has been successful based on established success criteria.

EXHIBIT 2 pg 2 of 2

3.0 MITIGATION MONITORING AND REPORTING PROGRAM

#	Mitigation Measure	Implemented By	When Implemented	Monitoring or Reporting Action
BIO 2-1(b)	The Permittee must provide performance securities and enter into agreements, in a form approved by the City Attorney, for installation and maintenance of the wetland and riparian mitigation plan. The maintenance period must be a minimum of five (5) years from the date the City-approved biologist, restoration ecologist, or resource specialist notifies the City that the installation of all wetland mitigation plan elements is complete.	Permittee	The performance securities must be provided and agreements signed before the City issues any grading or building permit.	Upon notification by the City-approved biologist, restoration ecologist, or resource specialist, the Director of Planning and Environmental Review, or designee, must inspect the site to verify installation according to the approved wetland mitigation restoration plan. The Director of Planning and Environmental Review, or designee, must check maintenance as needed. The Director of Planning and Environmental Review, or designee may permit release of the performance security for good cause shown.
BIO 2-1(c)	Temporary impacts to 0.09 acre of Tecolotito Creek ESHA, coincident with the Tecolotito Creek SPA, City of Goleta wetlands ESHA and CDFW jurisdictional habitat, consisting of 0.09 acres of Southern Arroyo Willow Riparian Forest and 0.001 acre of Coastal Freshwater Marsh, must be mitigated on-site at a 3:1 ratio through the restoration of the impacted area, as well as enhancement of additional disturbed habitats within Tecolotito Creek and/or the unnamed tributary.	Permittee	A habitat mitigation and monitoring plan (HMMP) must be developed by a City-approved biologist, restoration ecologist, or resource specialist and approved by the Director of Planning and Environmental Review, or designee, and federal/state/local public agencies with jurisdiction before the City issues a grading permit for the Project. Only naturally occurring species from Tecolotito Creek and associated riparian	The mitigation program must be monitored for a five-year period commencing when the City-approved biologist, restoration ecologist, or resource specialist notifies the City that installation of all elements of the approved plan have been completed. Five years after implementation of the mitigation project, a final report must be submitted to the Director of Planning and Environmental Review, or designee, and appropriate







Lot 5 –Exempt from ACOE Permit Requirement

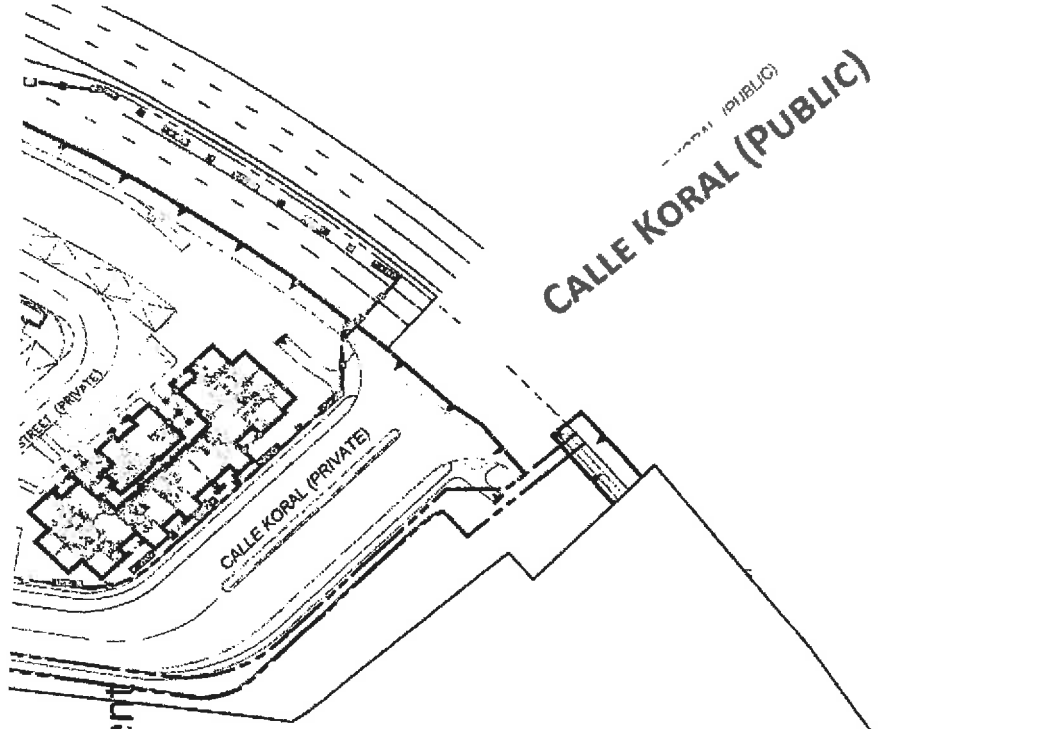


Lots 2,3,4,6-8-Exempt from ACOE Permit Requirement

TR 32050

THE VILLAGE AT LOS CARNEROS

BY
COMSTOCK HOMES



LOS CARNEROS ROAD-(PUBLIC)

Lot 9 --ACOE 404 Required prior to BP Issuance

Lot 1-Exempt from ACOE Permit Requirement

ATTACHMENT 6
ESTOPPEL AND AGREEMENT DATED MAY 2016 FOR LOT 5

**ESTOPPEL AND AGREEMENT
REGARDING A
DEVELOPMENT AGREEMENT DATED AUGUST 19, 2014**

THIS ESTOPPEL AND AGREEMENT REGARDING DEVELOPMENT AGREEMENT (the "Estoppel"), dated as of May __, 2016, is provided by the CITY OF GOLETA, a municipal corporation ("City"), in favor of BANK OF AMERICA, N.A. (together with its successors and assigns, "Lender"), in accordance with and with respect to that certain Development Agreement (the "Original Agreement") between City of Goleta and CHA McKinley Goleta, LLC for the Village at Los Carneros, dated as of August 19, 2014, by and between City and CHA McKinley Goleta, LLC ("Developer"), as assigned and assumed in part by RTA Carneros Village, LLC, a Delaware limited liability company ("Borrower"), pursuant to that certain Assignment and Assumption Agreement, dated as of May __, 2016 (the "Assignment and Assumption"), by and between Developer and Borrower, which Original Agreement relates to certain real property located in the City of Goleta, Santa Barbara County, California, and more specifically described in the Original Agreement (the "Property").

Pursuant to a Construction Loan Agreement to be entered into on or about the date hereof by and between Lender and Borrower (as the same may be amended, restated or replaced from time to time, the "Loan Agreement"), Lender intends to make a loan to Borrower (as increased from time to time, the "Loan") for the purpose of, among other things, constructing certain improvements on particular real property which is the subject of the Assignment and Assumption (the "Subject Property"), as more particularly identified within the Assignment and Assumption. City acknowledges that Lender will rely on the representations in this Estoppel when making the Loan to Borrower. Capitalized terms used and not otherwise defined herein shall have the meanings given to them in the Original Agreement.

NOW THEREFORE, as of the date of this Estoppel, City represents, warrants, covenants, agrees and certifies to Lender as follows:

1. Agreements Effective. The Original Agreement is in full force and effect, without amendment, modification or supplement, except as otherwise referenced in the preamble hereto and is fully binding upon City and Developer, and there are currently no known unsatisfied conditions to the effectiveness of the Original Agreement.
2. Receipt of Assignment. City received the Assignment and Assumption and acknowledges Borrower's assumption of the "Assumed Obligations" as set forth on Exhibit C attached thereto. Such Assignment and Assumption complies with Section 8.02 of the Original Agreement.
3. Existing Defaults. City is not aware of any existing uncured default by Developer under the Original Agreement, nor has any known event occurred which, with the passage of time or the giving of notice or both, would constitute such a default.
4. Project Recreation Center. Completion of the Project's Recreation Center and common area amenities, as set forth in the Original Agreement, will not be

required before Borrower can obtain building permits or certificates of occupancy for improvements on the Subject Property.

5. Affordable Buildings. Borrower is not required to construct Affordable Buildings on the Subject Property. The Original Agreement requires Developer to construct Affordable Buildings elsewhere within the Project. But, the failure or delay of Developer to comply with the Original Agreement as to Affordable Buildings will not affect the Assignment and Assumption or Borrower's ability to obtain building permits or certificates of occupancy for improvements on the Subject Property that are otherwise developed in accordance with the Project's requirements. City agrees that good cause exists to allow Borrower to continue development of the Subject Property notwithstanding Developer's failure or delay to construct Affordable Buildings as required by the Original Agreement (see Section 4.01.03 of the Original Agreement). Accordingly, City will not exercise its right to issue a stop work notice, or curtail issuing building permits, for all Market Rate Buildings on the Subject Property should Developer fail to construct Affordable Buildings within the time period in the Original Agreement.
6. Tecolotito Creek Bridge. Similarly, Borrower's ability to obtain building permits and certificates of occupancy for improvements on the Subject Property will not be affected by Developer's failure or delay in constructing a bridge over Tecolotito Creek in accordance with the Original Agreement.
7. Notice of Deed of Trust. City acknowledges the existence of and consents to the Loan and recording of the associated Deed of Trust. City agrees and acknowledges (a) that Lender is a "Mortgagee" as contemplated by the Original Agreement and is entitled to all of the rights of Mortgagee under the Original Agreement (including, without limitation, the right to receive notices from City (which notices shall be sent to Lender at the address specified in Section [10] of this Estoppel or such other address as provided to City by written notice from time to time) and to cure Borrower defaults); (b) that the requirement to deliver notice of "Mortgagee's" request for notices in accordance with Section 8.01 of the Original Agreement shall be deemed to have been satisfied by the execution of this Estoppel; and (c) that any and all mortgagee protections set forth in the Original Agreement are intended for the benefit of Lender as a "Mortgagee".
8. Consent to Assignment. As a condition to Lender's agreement to make the Loan to Borrower, Lender has required that Borrower assign its rights under the Original Agreement to Lender as additional collateral for the Loan. City hereby consents to the collateral assignment of such rights by Borrower to Lender as additional collateral for the Loan and hereby agrees that if Lender or its designee or nominee (a "Successor Owner") should become the successor owner of the Subject Property through foreclosure of the Deed of Trust, or acceptance of a deed in lieu thereof, then provided Successor Owner assumes the obligations of Borrower under the Original Agreement, (a) Successor Owner shall have all of the rights of Borrower under the Original Agreement (with respect to the Subject Property), including the right, but not the obligation, to complete construction of

the improvements to be constructed on the Subject Property, (b) the time periods for performance of Borrower's obligations under the Original Agreement shall be extended for a period of time reasonable under the circumstances to permit Successor Owner to perform Borrower's obligations under the Original Agreement (and such time periods shall be tolled for any period that Lender is precluded from exercising remedies under the Deed of Trust, whether as a result of a stay in bankruptcy or otherwise), (c) Successor Owner will not be subject to any claims, offsets, defenses, or penalties arising as a result of Borrower's performance, or failure to perform, under the Original Agreement before the date that Successor Owner succeeds to the interests of Borrower under the Original Agreement and (d) in no event will Successor Owner be obligated to cure defaults under the Original Agreement which cannot be reasonably cured by Successor Owner.

9. Notices. Lender's address for notices is as follows:

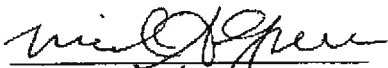
Bank of America, National Association
555 California Street, 6th Floor
San Francisco, CA 94104
Attn: Hans Starks

10. Defaults by Parties Other than Borrower. No failure by any person or entity to satisfy any obligations under the Original Agreement, other than Borrower's failure to satisfy the "Assumed Obligations" referenced in the Assignment and Assumption, shall (a) constitute a default by Borrower under the Original Agreement or preclude or delay the issuance of a Certificate of Occupancy with respect to the Subject Property or (b) result in any liability attributable to Developer by Borrower or Lender; City hereby agreeing to look to parties other than Borrower for the satisfaction of all obligations under the Original Agreement other than the "Assumed Obligations". Neither a default by Developer or any other person or entity under the Original Agreement, nor a default by Borrower under the Original Agreement shall cancel or diminish the rights of Successor Owner under the Original Agreement.

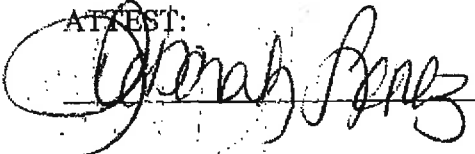
[Signature Follows on Next Page]

IN WITNESS WHEREOF, this Estoppel and Agreement Regarding Development Agreement has been executed as of the date first written above.

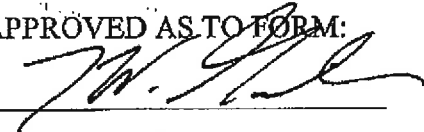
CITY OF GOLETA,
a municipal corporation

By: 
Name: Michelle Greene
Its: City Manager

ATTEST:



APPROVED AS TO FORM:



By: Tim W Giles
Name:
Its: CITY ATTORNEY

NAI-1500986713v6

ATTACHMENT 7
ASSIGNMENT AND ASSUMPTION AGREEMENT
DATED JUNE 6, 2016 FOR LOT 5

**RECORDING REQUESTED BY
CHICAGO TITLE**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

LINER LLP
633 West 5th Street, Suite 3200
LOS ANGELES, CA 90071
ATTENTION: BILL PHAM, ESQ.

30 - 1
Red-Recn.
(agreed) - (ASUA)
CCW



2016-0028575

Recorded	REC FEE	127.00
Official Records		
County of	CONFORMED COPY	2.00
Santa Barbara		
Joseph E. Holland		
County Clerk Recorder		

08:00AM 09-Jun-2016 | AG Page 1 of 30

(Above Space For Recorder's Use Only)

ASSIGNMENT AND ASSUMPTION AGREEMENT
(re Development Agreement)

This Assignment and Assumption Agreement ("**Agreement**") is made and entered into as of June 6, 2016, by and between RCS - Los Carneros, LLC, a Colorado limited liability company ("**Assignor**") and RTA Carneros Village, LLC, a Delaware limited liability company ("**Assignee**").

RECITALS

A. Assignor, as seller, and Assignee, as buyer, are parties to that certain Agreement of Purchase and Sale, dated July 16, 2015, as amended by First Amendment to Purchase and Sale Agreement dated September 14, 2015, as amended by Second Amendment to Purchase and Sale Agreement dated September 16, 2015, as amended by Third Amendment to Purchase and Sale Agreement dated December 10, 2015, as further amended by Fourth Amendment to the Purchase and Sale Agreement dated March 28, 2016 (collectively the "**Purchase Agreement**"), pursuant to which Assignee is acquiring from Assignor certain real property located in Goleta, County of Santa Barbara, State of California, more particularly described on Exhibit "A" attached hereto (the "**Transferred Property**"). The Transferred Property is Lot 5 of Tract No. 32050 in the City of Goleta, County of Santa Barbara, State of California, as shown on the map filed in Book 206, Pages 31 through 54 of Maps, in the office of the County Recorder of said County. The Transferred Property is a part of the master development commonly known as "Village at Los Carneros" and referred to herein as the "**Project**." The portion of the Project owned by Assignor as of the date hereof is more particularly described on Exhibit "B" attached hereto (the "**Retained Project Site**").

B. The City of Goleta ("**City**") and Assignor's predecessor in interest, CHA McKinley Goleta, LLC, entered into that certain Development Agreement dated August 19, 2014 and recorded in the official records of Santa Barbara County, California (the "**Official Records**") on November 20, 2014 as Instrument Number 2014-0053368 (as amended, the "**Development Agreement**"), providing for certain rights, entitlements, covenants, conditions, restrictions, and agreements relating to the development of certain real property and appurtenances thereto as more particularly described in the Development Agreement, including, without limitation, the Transferred Property and the Retained Project Site.

C. In connection with the conveyance of the Transferred Property to Assignee pursuant to the Purchase Agreement, Assignor desires to transfer to Assignee the Transferred Project Approvals (as hereinafter defined) as contemplated in Section 3.3 of the Development Agreement. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Transferred Project Approvals with respect to the Transferred Property.

D. Capitalized terms not otherwise defined in this Agreement must have the meanings ascribed thereto in the Development Agreement.

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

1. Assignment. Subject to the limitations, conditions and exceptions set forth in this Agreement, Assignor assigns and transfers to Assignee all of the Assignor's right title, and interest in and to the Development Agreement and the Project Approvals (as defined in the Development Agreement) but only with respect to the Transferred Property as more specifically defined below (collectively, the "Transferred Project Approvals"). It is the intent of the Assignor and Assignee that the Transferred Project Approvals will permit Assignee to develop up to 74 multi-family residential units. Assignee hereby accepts such assignment from Assignor, subject to the following (collectively, the "Encumbrances"): (i) this Agreement; and (ii) recorded covenants, conditions, restrictions, and easements.

2. Assumption. Assignee expressly assumes all obligations, duties and responsibilities under (i) the Transferred Project Approvals relating to the Transferred Property, and (ii) the Assumed Obligations (as defined herein). The Assumed Obligations are the obligations of Assignor under the Development Agreement and Project Approvals that are applicable to the development of the Transferred Property, and do not include those specific provisions of the Development Agreement or Conditions of Approval that do not apply to the development of the Transferred Property. The Assumed Obligations as more particularly described on Exhibit "C" attached hereto as "Required" obligations of the "MARKET RATE APTS (Lot 5)."

Assignee agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by Assignor with respect to the Transferred Project Approvals and the Assumed Obligations from and after the date hereof including, without limitation, those obligations specifically allocated to the Transferred Property as described in Section 4 below. However, Assignee does not assume any obligations, duties, or responsibilities under or with respect to the Transferred Project Approvals and/or the Assumed Obligations arising prior to the date hereof.

3. Covenants and Other Limitations and Conditions. Assignee, at Assignee's sole cost, must (i) perform, or cause to be performed, all covenants, representations, terms, undertakings, obligations, warranties, and agreements of "Owner" under the Development Agreement with respect to the Transferred Project Approvals and the Assumed Obligation, so as to protect Assignor's (and other property owner's) rights and otherwise prevent a default by Assignor (and/or other property owners) under the Development Agreement as a result of any

failure by the Assignee to perform such obligations from and after the date hereof; (ii) prosecute and defend any legal action, arbitration or other controversy which is filed or initiated relating to the Transferred Project Approvals or the Assumed Obligations relating to periods from and after the date hereof solely with respect to the Transferred Property; and (iii) give prompt notice to Assignor and deliver to Assignor complete copies of any notice of default given or received with respect to the Development Agreement and/or Transferred Project Approvals, whether the default be of the City or Assignee, or any other party, solely with respect to the Transferred Property. Following the effective date of this Agreement, Assignor shall be released from all liabilities related to the Transferred Project Approvals.

4. **Indemnification.** From and after the effective date of this Agreement, Assignee and Assignor, their successors (including corporate successors and successors-in-interest to their respective property interests), assigns, and affiliates ("**Indemnifying Parties**") each hereby agrees to indemnify, defend (with counsel acceptable to the Indemnified Party) and hold harmless the other ("**Indemnified Parties**") from and against any and all claims, liability, loss, damage, cost or expense (including reasonable attorneys' fees) which an Indemnified Party might incur or suffer under the Development Agreement or by reason of this Agreement ("**Claims**") arising out of or relating to an Indemnifying Party's respective ownership, development and operation of its respective property, or by reason of any alleged undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement relating to the Indemnifying Parties' respective property, except to the extent caused by the gross negligence or willful misconduct of such Indemnified Party. For purposes of determining the obligations of the Assignee as an Indemnifying Party hereunder, the only undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement relating to Assignee's property are those specifically assigned to Assignee hereunder (i.e., the Transferred Property Approvals and the Assumed Obligations, to the extent arising from and after the date hereof), and all other undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement are retained by and are the responsibility of the Assignor or other owners of the remaining property governed by the Development Agreement, as Indemnifying Parties.

5. **Effective Date.** This Agreement must be effective upon its recordation in the Official Records, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Transferred Property.

6. **Remainder of Project.** Any and all rights or obligations pertaining to such portion of the Retained Project Site other than the Transferred Property are expressly excluded from the assignment and assumption provided in Sections 1 and 2 above.

7. **Notices.** All notices required or permitted hereunder must be in writing, and be personally delivered, sent by nationally-recognized overnight courier (such as Federal-Express), or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by facsimile to the addresses set forth in below; provided, however, if notice is sent by facsimile, a copy must be sent by registered or certified mail or nationally-recognized overnight courier on the same day. All notices sent by mail will be deemed received three (3) days after the date of mailing, as aforesaid. All notices sent by facsimile must be

deemed received upon receipt of a confirmation of the transmission thereof. Notices must be sent as follows:

To Assignor:

RCS-Los Carneros, LLC
Attn: Ryan Atkin
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Telephone: (303) 533-1617
Fax: (303) 466-3008
Email: ratkin@realcapitalsolutions.com

With a copy to:

Real Capital Solution
Attn: Brian Mulqueen
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Telephone: (303) 533-1731
Fax: (303) 466-3008
Email: bmulqueen@realcapitalsolutions.com

To Assignee:

RTA Carneros Village, LLC
c/o Fowler Property Acquisitions, LLC
2082 Michelson Drive, Suite 400
Irvine, CA 92612
Attn: Tim Kihm
Telephone: (949) 399-2505
Fax: (949) 399-2535
Email: tkihm@rtacq.com

with a copy to:

Nancy Dubonnet, Esq.
2082 Michelson, Suite 450
Irvine, CA 92612
Telephone: (949) 399-2525
Fax: (949) 399-2528
Email: nancy@dubonnetlaw.com

8. Interpretation. This Agreement must be construed in accordance with and governed by the laws of the State of California. If any provision of this Agreement or application thereof to any person or circumstances must to any extent be invalid, the remainder of this Agreement must not be affected and each provision of this Agreement must be valid and

enforced to the fullest extent permitted by law. The exhibits attached to this Agreement are incorporated by reference herein. This Agreement can be modified by a writing executed by Assignor and Assignee (or the then current fee title owner of the Transferred Property) and recorded in the Official Records.

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

10. Attorneys' Fees. If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party must be entitled to recover from the other party, in addition to all other damages, all out-of-pocket reasonable costs and expenses of such action, proceeding or arbitration, including, without limitation, actual attorneys' fees, witness fees' and court costs, whether or not such action, proceeding or arbitration is pursued to judgment. The phrase "prevailing party" as used in this Section 10 means the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed, this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR" *SIGNED IN COUNTERPART*

RCS - Los Carneros, LLC
a Colorado limited liability company

By: _____
Sharon K. Eshima, Manager

"ASSIGNEE"

RTA Carneros Village, LLC
a Delaware limited liability company

By:  _____
Benton Ketel, Manager

enforced to the fullest extent permitted by law. The exhibits attached to this Agreement are incorporated by reference herein. This Agreement can be modified by a writing executed by Assignor and Assignee (or the then current fee title owner of the Transferred Property) and recorded in the Official Records.

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

10. Attorneys' Fees. If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party must be entitled to recover from the other party, in addition to all other damages, all out-of-pocket reasonable costs and expenses of such action, proceeding or arbitration, including, without limitation, actual attorneys' fees, witness fees' and court costs, whether or not such action, proceeding or arbitration is pursued to judgment. The phrase "prevailing party" as used in this Section 10 means the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise.

IN WITNESS WHEREOF, the parties hereto have executed, this Agreement as of the dates set forth next to their signatures below.

SIGNED IN COUNTERPART

"ASSIGNOR"

RCS - Los Carneros, LLC
a Colorado limited liability company

By: 
Sharon K. Eshima, Manager

"ASSIGNEE"

RTA Carneros Village, LLC
a Delaware limited liability company

By: _____
Benton Ketel, Manager

Exhibit A

Legal Description of Transferred Property

Lot 5 of Final Map No. 32050, in the City of Goleta, County of Santa Barbara, State of California, as shown on map filed in Book 206, Pages 31 through 54 of Maps, in the office of the County Recorder of said County.

Exhibit B

Legal Description of Retained Project Site

Lots 1 through 4, inclusive, and Lots 6 through 12, inclusive, of Final Map No. 32050, in the City of Goleta, County of Santa Barbara, State of California, as shown on map filed in Book 206, Pages 31 through 54 of Maps, in the office of the County Recorder of said County.

Exhibit C

Transferred Property's Assumed Obligations

A	B	C	D	E	F	G	H	I	J	K	L
Condition #	Task	Market Rate APIS	Status	Comments	Column						
1	Planning and Environmental Review Department										
2	Before grading permits are issued, the applicant must submit plans demonstrating a minimum 100-foot setback buffer between the project development and the top of the existing creek bank.										
3	Before building permits are issued, the applicant must submit plans demonstrating substantial compliance with the plans and conditions of approval on file with the Director. Any subsequent modification to the project as approved, including the site plan, floor plan, elevations, landscaping and materials, must be referred to the Director to determine whether the Planning Commission should review the proposed modification.										
4	Before building permits are issued, the applicant must obtain all the necessary approvals, licenses and permits and pay all the appropriate fees as required by the City.										
5	The applicant must comply with all mitigation measures identified in the Final Environmental Impact Report and the CEQA Addendum for the General Plan Amendment. A Mitigation Monitoring and Reporting Program (MMPRP) was prepared as part of the environmental review for the project and is attached as Attachment 2, Exhibit 3 and Attachment 1, Exhibit 2 to Resolution Nos. 1 and 2. The mitigation measures of the MMPRP are incorporated into these conditions of approval by reference. All mitigation measures and conditions of approval must be listed on the plans submitted for plan check and the plans for which a building permit is issued.										
6	Any changes to the colors and materials of the exterior facade of the building must be in compliance with Design Review Board recommendations and approved to the satisfaction of the Director.										
7	Before the City issues a building permit, the applicant must submit final landscaping and irrigation plans to the Director for review and approval to demonstrate compliance with the City's Water Conservation regulations and Guidelines for Water Conservation in Landscaping. The plant materials used in landscaping must be compatible with the Goleta climate pursuant to Sunset Western Garden Book's Zone 24 published by Sunset Books, Inc., Revised and Updated 2001 edition, which is available for review at the Planning and Environmental Services Department. Additionally, the landscaping and irrigation must be completely installed before the City issues a final Certificate of Occupancy. Additionally, the final landscaping and irrigation plans must comply with the following:										
8	a. Reclaimed water must be used as the water source to irrigate landscaped areas, if feasible. To that end, dual water connections must be installed to allow for landscaping to be irrigated by reclaimed water, if feasible.										
9	b. Efficient irrigation systems must be installed which minimize runoff and evaporation and maximize the water which will reach plant roots (e.g., drip irrigation, automatic sprinklers equipped with moisture sensors).										
10	c. Automatic sprinkler systems must be set to irrigate landscaping during early morning hours or during the evening to reduce water losses from evaporation. Sprinklers must also be reset to water less often in cooler months and during the rainfall season so that water is not wasted by excessive landscaping irrigation.										
11	6. Selection of drought-tolerant, low-water consuming plant varieties must be used to reduce irrigation water consumption.										

A	B	C	D	E	F	G	H	I	J	K	L
Condition #		TASK	MARKET RATE APTS	STATUS CONSTACK	COMMENTS	Column 1					
1											
2											
7		7. Trash and recycling enclosures must be provided and shown on the site plan that are sufficiently large enough to store the necessary bins required for the regular collection of commercial solid waste and recyclable materials. The site plan with the location and dimensions of the trash and recycling enclosure and an elevation view of the enclosure must be provided to the Director for review and approval before the City issues building permits.	Req'd	Req'd	PODIUM/APARTMENTS ONLY-All others within individual unit						
8		8. Ground level mechanical equipment, refuse collectors, storage tanks, generators and other similar facilities must be screened from view with dense landscaping and walls of materials and finishes compatible with the overall design of the project and any ancillary buildings.	Req'd	Req'd	Project Wide-Fenced off or surrounded by shrubs						
9		9. Exterior lighting must be designed to minimize off-site glare.	Req'd	Req'd	Project Wide-Per DRB/Photometric						
10		10. The building must be designed to comply with all GMC standards for the attenuation of interior noise.	Req'd	Req'd	Project Wide						
11		11. The applicant must provide a marketing implementation plan that includes, without limitation, notification to residents of Goleta regarding the availability of affordable housing in the project, eligibility requirements, application requirements, and access to application materials to the satisfaction of the Director.			Not applicable to Market Rate Apartments						
12		12. Energy conservation measures must be included in the project. All new residential and commercial buildings must comply with the energy efficiency standards set forth in the GMC and with the California Green Building Code, as adopted by the GMC. Before the City issues building permits, the applicant must obtain the Director's approval of an energy efficiency plan that includes the following (unless the applicant of the Director)demonstrates their infeasibility to the satisfaction	Req'd	Req'd	Complies with CAL Green						
19		a. use of photovoltaic systems;	Req'd	Req'd	Project wide						
20		b. passive cooling strategies such as passive or fan aided cooling plan designed into the structure and/or a roof opening for hot air venting or installation of underground cooling tubes; c. high efficiency outdoor lighting and/or solar powered lighting;	Req'd	Req'd	Project wide						
21		d. installation of Energy Star roofs, furnaces, and appliances;	Req'd	Req'd	Project wide						
22		e. use of solar-assisted water heating for swimming pools and tankless hot water on demand systems if their energy efficiency is demonstrated to exceed that of a central storage tank water heating system;	Req'd	Req'd	Project Wide-Tankless WH provided for individual units-Solar Hot water Not Feasible- Approved per DRB						
23		f. use of passive solar cooling/heating;	Req'd	Req'd	window locations, insulation						
24		g. use of natural lighting in lieu of artificial lighting;	Req'd	Req'd	window locations, insulation						
25		h. installation of energy efficient lighting;	Req'd	Req'd	Per code						
26		i. use of water-efficient landscapes; water-efficient irrigation systems and devices; and use of reclaimed water (if available);	Req'd	Req'd	Per plans						
27		j. installation of cool pavements	Req'd	Req'd	Provided by Marborg						
28		k. provision of segregated waste bins for recyclable materials;	Req'd	Req'd	Per Recycling/Re-Use plan						
29		l. zero waste/high recycling standards.	Req'd	Req'd							
30		Building Conditions									
31											

A	B	C	D	E	F	G	H	I	J	K	L
Condition #		TASK	MARKET RATE APTS	STATUS COMSTOCK	COMMENTS	Column D					
1											
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32	13	13. Before building permits are issued, the applicant must submit a geotechnical/soils report, along with an associated grading plan that addresses the current code to the Director for review and approval.	Req'd	Complete	Submitted/COMPLETE						
33	14	14. Before grading permits are issued, the applicant must submit a soils report to the Director for review and approval.	Req'd	Complete	Submitted/COMPLETE						
34	15	15. Before grading permits are issued, the applicant must submit a grading plan to the Director for review and approval. Before building permits are issued, plans must show conformance with the 2013 California Building Code, 2013 California Mechanical Code, 2013 California Plumbing Code, 2013 California Electrical Code, and 2013 California Energy Code, all as adopted by the GMC.	Req'd	Complete	Submitted/COMPLETE-- CBC,CMC,CPC,CEC,EEC 2013 compliance project wide						
35	16	16. Before building permits are issued, plans must show compliance with accessibility requirements per the 2013 California Building Code, as adopted by the GMC.	Req'd	Complete	In Compliance-Project Wide						
36	17	17. At least one stairway must access the roof per the 2013 California Building Code, as adopted by the GMC.	Req'd	On Podium Plans	Podium/Marek Rate/PSHHC only						
37		Fire Department Conditions									
38	18	18. The project must comply with all applicable requirements in the 2013 California Building and Fire Codes, and the 2009 International Fire Code as adopted by the GMC and Santa Barbara County Fire Protection District regulations.	Req'd	Req'd	Complies with Fire Codes						
39	19	19. Construction of any cafeteria or kitchen facilities in the recreation facility must include installation of a grease interceptor capable of removing fats, oils, and grease from the kitchen waste stream. If the Santa Barbara County Health Department determines that the food preparation area does not require the installation of grease interceptors, then this condition will not be required.	N/A	N/A	COMPLETE N/A- Applies to commercial properties						
40	20	20. Construction activities must include a storm water pollution prevention plan addressing non-storm water run-off, debris removal, track-out and protection of storm water system.	Req'd	Req'd	COMPLETE-Ongoing						
41	21	21. Any diesel-powered generators must be approved by the Santa Barbara County Fire Protection District and provide for secondary containment, placarding, spill detection and prevention. Underground tanks require additional environmental monitoring requirements.	Req'd	Req'd	Notes on all plans						
42	22	22. The applicant must provide the Santa Barbara County Fire Protection District an inventory of any and all chemicals used for laundry, pool or house cleaning, emergency generators or other devices.	Req'd	N/A	N/A Outsourced						
43	23	23. The applicant, or designee, must contact Underground Service Alert before digging or excavating.	Req'd	Req'd	COMPLIES						
44	24	24. Any demolition must be screened for asbestos and lead, with proper notifications to the Air Quality Management District (AQMD).	N/A	N/A	N/A						
45	25	Public Works Department Conditions 25. All conditions included in the City of Goleta Public Works Department Memorandum of May 22, 2014 are incorporated into these conditions of approval as follows:									
46		Before Recordation of Final Map:									
47		a. Permittee must submit a draft Final Map to the Public Works for review and approval. The map must include but not be limited to:	N/A	Complete	COMPLETE						
48		1. An easement is necessary for street purposes along Los Cameros Road to facilitate the fourth (4th) to the fifth (5th) intersection.	N/A	Complete	COMPLETE						
49		2. An easement for bicycle and pedestrian purposes through the site as described in the Development Agreement with private maintenance per the Landscaping/Tree and Planting Maintenance Agreement.	N/A	Complete	COMPLETE						
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Condition #	TASK	MARKET RATE	STATUS	COMMENTS	Column 1						
1											
2											
51	b. Permittee must provide for a temporary construction easement to the City of Glendale for the Los Cameros Road/101 Freeway overpass in accordance with the Development Agreement.	N/A	Complete	COMPLETE							
52	c. Permittee must submit to the Public Works Department for review two (2) copies of a public improvement plans for Los Cameros Road and Cortona Drive prepared by a registered civil engineer. As determined by the Public Works Department, the improvements must include but not be limited to:	N/A	Complete								
53	Los Cameros Road	N/A	Complete	COMPLETE							
54	1. Minimum eight (8) foot standard sidewalk.	N/A	Complete	COMPLETE							
55	2. Minimum eight (8) foot pathway with street trees or other landscaping as approved by the Public Works Director.	N/A	Complete	COMPLETE							
56	3. Drainage improvements in accordance with the approved final drainage report.	N/A	Complete	COMPLETE							
57	4. Preservation of trees/curb/monuments.	N/A	Complete	COMPLETE							
58	5. Provide pavement preparation, crack seal and slurry seal for 1/4 the width of the street along the property footage (at a minimum) to repair any damage/branch cuts/resurfacing, as necessary.	N/A	Complete	COMPLETE							
59	6. All driveways and intersection accesses must be ADA compliant, including truncated domes, as necessary.	N/A	Complete	COMPLETE							
60	7. Striping and pavement markings along Los Cameros Road that are obliterated by construction activities, utility connections, or other project-related activities must be replaced in kind.	N/A	Req'd	To be Completed when road improvements are complete-							
61	Cortona Drive	N/A		on Plans							
62	1. Transitions of the sidewalk to the bridge on both sides of the street.			To be Completed when Bridge Improvements are complete-							
63	2. Provide pavement preparation, crack seal and slurry seal for 100 feet beyond the end of the bridge and transition work in the street (at a minimum) to repair any damage/branch cuts/resurfacing, as necessary.	N/A	Req'd	COMPLETE							
64	3. All driveways and intersection accesses must be ADA compliant, including truncated domes, as necessary.	N/A	Req'd	Prior to Acceptance							
65	4. Striping and pavement markings along Los Cameros Road that are obliterated by construction activities, utility connections, or other project-related activities must be replaced in kind.	N/A	Req'd	COMPLETE							
66	d. Permittee must submit to the Public Works Department final street improvement plans for approval by the Public Works Director for Los Cameros Road and Cortona Drive prepared by a registered civil engineer.	N/A	Complete	COMPLETE							
67	e. Permittee must provide signed Agreement for Public Improvements, an Engineer's Estimate, signed and stamped by a registered civil engineer and approved by City Engineer. The Permittee must also provide for construction of improvements before execution of the Agreement. Securities will be submitted in 100% of the engineer's estimate for the performance of the work and 100% of the engineer's estimate for labor and materials.	N/A	Complete	COMPLETE							
68	f. Permittee must provide an executed Landscaping/Maintenance Maintenance Agreement for landscaping improvements within the public right of way (median and pathway) along Los Cameros Road subject to the review and approval of the City Attorney.	N/A	Complete	COMPLETE							

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TAX			MARKET RATE	STATUS		COMMENTS	Column 1				
Condition 4			APTS	COMSTOCK							
1		g. Permittee must post securities for installation of 100% of the engineer's estimate for the performance of the work and 100% of the engineer's estimate for labor and material. The Permittee must post securities for continued maintenance of the landscape improvements before execution of the Landscape Maintenance Agreement. The securities must be in the amount as provided in the agreement and based on a Landscape Architect's Estimate, signed and stamped by a registered landscape architect.	NA	Complete	COMPLETE						
69		a. Permittee must record a Final Map.									
70		b. Permittee must submit the drainage study for review and approval by the Public Works Department. The final drainage study must incorporate appropriate Best Management Practices (BMPs) to minimize storm water impacts and comply with the City's Storm Water Management Plan (SWMP) and the City's General Plan. The study must include the following:									
71		1. Existing watershed map.	Req'd	Complete	COMPLETE						
72		2. Using the Santa Teresa Unit Hydrograph or approved equal, provide Hydrologic calculations for the 2, 5, 10, 25, 50, and 100 year storm events for both pre and post construction.	Req'd	Complete	COMPLETE						
73		3. Mitigate any increase in peak flow for the 2, 5, 10, 25, 50, and 100 year storm events over existing conditions.	Req'd	Complete	COMPLETE						
74		4. Design and initiate the 1" storm volume over the existing conditions for the 2, 5, 10, 25, 50, and 100 year storm events.	Req'd	Complete	COMPLETE						
75		5. Specify to person or firm selected to meet the City's Storm Water Management Plan.	Req'd	Complete	COMPLETE						
76		c. Permittee must submit a final grading plan for review and approval by Building and Public Works Departments. The final grading plan must incorporate appropriate Best Management Practices (BMPs) to minimize storm water impacts and comply with the City's Storm Water Management Plan (SWMP) and the City's General Plan. The SWMP must identify the following:									
77		1. All proposed storm water BMPs required to mitigate storm water quality impacts	Req'd	Complete	COMPLETE						
78		2. Clean water activities such as: bio-swales, permeable paving, on-site detention, silt/filtration and other operational features.	Req'd	Complete	COMPLETE						
79		d. Permittee must provide a Storm Water Pollution Prevention Plan (SWPPP) to be approved by the Public Works Department. The plan must include the minimum Best Management Practices (BMPs) for all on-site construction and storm water quality management and must be shown on building plans. BMPs placed/installed/included but not limited to the property heritage and adjacent property heritages. Paving and staging areas at the construction site must be swept daily to decrease sediment transport to the public storm drain system and dust.	Req'd	Complete	COMPLETE						
80		e. Permittee must provide a Pre-Construction Waste Reduction and Recycling Plan (WRRP) to the Public Works Department for review and approval. Said plan must indicate how a 65% diversion goal must be maintained during construction including but not limited to the following:	Req'd	Complete	COMPLETE						
81		1. Demolition and/or excess construction materials must be separated onsite for reuse/recycling or proper disposal (e.g., concrete asphalt).	Req'd	Complete	COMPLETE						
82		2. During grading and construction, separate bins for recycling of construction materials and brush must be provided onsite.	Req'd	Complete	COMPLETE						
83			Req'd	Complete	COMPLETE						

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Condition	Task	Market Rate	Status	Comments	Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
1											
2											
84	3. Develop a Source Reduction Plan (SRP) detailing the recommended program(s) and the estimated reduction of the solid waste disposed by the project. For example, the SRP may include a description of how it will be used on the construction site, instead of sending excess fill material to a landfill, one detail is that once procedures such as use of duplex copy machines and purchase of office supplies with recycled content.	Req'd	Complete	COMPLETE							
85	4. Implement a program to purchase materials that have recycled content for project construction and/or operation (i.e., plastic lumber, office supplies, etc.). The program could include requesting suppliers to show recycled materials content. To ensure compliance, the Permittee must develop an integrated solid waste management program, including recommended source reduction, recycling, composting programs and/or a combination of such programs, subject to Public Works Department staff review and approval before issuance of any certificate of occupancy.	Req'd	Complete	COMPLETE							
86	5. At the end of the project, Permittee shall submit a Post-Construction Waste Reduction & Recycling Summary Report documenting the types and amounts of materials that were generated during the project and how much was reused, recycled, composted, salvaged, or landfilled.	Req'd	Complete	COMPLETE							
87	6. This requirement must be printed on the grading and construction plans.	Req'd	Complete	Project Wide							
88	7. Materials must be recycled as necessary throughout construction. All materials must be recycled before occupancy clearance.	Req'd	Complete	Project wide							
89	8. The Permittee/property owner must contract with a City approved hauler to facilitate the recycling of all construction recoverable/recyclable material. A copy of the Contract must be provided to the City. Recoverable construction material must include but not be limited to: asphalt, lumber, concrete, glass, metals, and drywall.	Req'd	Complete	Project wide							
90	9. The Permittee must develop and implement a Solid Waste Management Program (SWMP). The program must identify the projected amount of ongoing waste generated on-site at project completion. The program must include the following measures, but is not limited to those measures: 1. Provision of at least 50% of space and/or bins designated for storage of recyclable materials within the project site. 2. Implement of a green waste source reduction program focusing on recycling of all green waste generated on-site.	Req'd	Complete	Project Wide							
91	Before Any Building Permit Issuance: a. Permittee must identify on the Building Plan(s) the following, at a minimum:	Req'd	Complete	Project wide							
92	1. All existing survey monuments to be preserved and/or tied out in coordination with the County of Santa Barbara Surveying Office.	Req'd	Complete	COMPLETE							
93	2. Trash/recycle area(s) that provide for BMPs to ensure that organics and other materials are appropriately filtered before entering a public storm drain system or natural waterway.	Req'd	Complete	IN PLACE							
94	3. Identify that trash and recycling containers contain minimum equal volume (minimum 50% recyclables), and trash/recycling areas are easily accessed by the consumer and the trash hauler. Green waste is not a part of the 50% recycle calculation.	Req'd	Complete	To Be Provided by Marborg per Unit							
95	4. Identify an area that is adequate for green waste within trash/recycle area(s) or provide statement if intent is to have a maintenance company haul off green waste.	Req'd	Complete	Maintenance Co. to haul off							
96	Before Encroachment Permit Issuance: a. Permittee must submit to the Public Works Department two (2) copies of a final public improvement plan, prepared by a registered civil engineer and approved by the Public Works Director.	Req'd	Complete	COMPLETE							
97		N/A	Complete	COMPLETE							
98											
99											
100											
101											

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Condition #		TASK	MARKET RATE APES	STATUS	COMMENTS	Column1					
1											
2											
102	a	Permittee must pay GTP Fees pursuant to City ordinance and in accordance with the Development Agreement.	Req'd	Req'd	@BP PER DA						
103	b	Permittee must pay Quimby Fees pursuant to City ordinance and in accordance with the Development Agreement.	Req'd	Req'd	@BP PER DA						
104	c	Permittee must complete all Public Improvements on Los Cameros Road and Cortina Drive as approved on the public improvement plans.	N/A	Req'd	Ongoing						
105	d	Permittee must submit to the Public Works Department reproducible Record Drawings and an electronic signed copy of the Record Drawings.	N/A	Req'd	Upon completion of Public Improvements Monument Bonds posted						
106	e	All existing survey monuments that were preserved and/or tied out must be reset in coordination with the County of Santa Barbara's Surveyor's Office.	N/A	Req'd	On Plans						
107	f	All private improvements (i.e., backflow devices, signs) shall be located out of the public right of way and subject to approval by the Public Works Department.	Req'd	Req'd	Per Approved Plans						
108	g	All new utility services must be underground from the public right of way to the site.	Req'd	Req'd	Upon Completion of Public Improvements and City acceptance						
109	h	Permittee must repair any damaged public improvements (curbs, gutters, sidewalks, pavement markings, etc.) caused by construction subject to the review and approval of the Public Works Department.	N/A	Req'd							
110	i	Permittee must provide the Environmental Services Coordinator, for approval, a Post Construction Final Waste Reduction and Recycling Report. Said report must designate all materials landfilled and recycled, broken down into material types.	Req'd	Req'd	Project Wide						
111		26. All onsite utilities including, without limitation, water, electricity, gas, sewer and storm drains, must be installed underground.	Req'd	Req'd	Per Approved Plans						
112	25										
113	27	Before the City issues a Certificate of Occupancy, the applicant must ensure that all curbs, gutters, pavement and driveway aprons are installed to the satisfaction of the Public Works Director, or designee.	Req'd	Req'd	Project Wide						
114	28	Before the City issues a Certificate of Occupancy, all damaged or off-grade curbs, sidewalk and pavement must be removed and replaced as required by the Public Works Director, or designee	Req'd	Req'd	Project Wide						
115	29	The applicant must secure any required encroachment permits from the Public Works Director, or designee, before commencing any work in the public right-of-way	Req'd	Req'd	Project Wide						
116											
117	30	The project must comply with the latest National Pollution Discharge Elimination System (NPDES) requirements and provide Best Management Practices (BMPs) for sediment control, construction material control and erosion control.	Req'd	Req'd	Project Wide						
118	31	Before the City issues a building permit, the location and size of all proposed water meter must be approved by the City	N/A	Complete	COMPLETE						
119	32	Before the City issues a building permit, the applicant must clean and inspect (via remote TV camera) the project sewer lateral. If found impaired, the applicant is responsible for the replacement of the lateral.	Req'd	Req'd	Project Wide						
120	33	A registered civil engineer must provide storm (hydrologic and hydraulic) calculations for appropriate storm drain facilities to control on-site drainage and mitigate off-site impacts, as follows, subject to review and approval from the Public Works Director, or designee:	Req'd	Complete	Project Wide						
121		The design must follow the criteria contained in both the Santa Barbara County Department of Public Works Hydrology Manual and Standard Urban Storm Water Mitigation Plan or most recent editions. Flows must remain in their historical drainage pattern so as not to impact neighboring properties.	Req'd	Complete	Project Wide						

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TASK			MARKET RATE APPLS		STATUS		COMMENTS				
Condition #											
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122		b New development must not increase the rate of flow (cubic feet per second) or velocity (feet per second) of site run-off water to any off-site drainage areas beyond the measured or calculated pre-project rate and velocity.	Req'd	Req'd	Project Wide						
123		34. Construction related parking must be provided on-site.		Req'd	Project Wide						
124		36. All record drawings (as-built drawings) and supporting documentation must be submitted to the Public Works Director, or designee, before scheduling the project's final inspection.	N/A	Req'd	Upon completion of Public Improvements						
125		Police Department Conditions									
126		36 Before the City issues a building permit, the applicant must submit a photometric light study to the Police Chief, or designee, for review and approval. A site plan must be provided showing buildings, parking areas, walkways, and the point-by-point photometric calculation of the required light levels. Foot candles must be measured on a horizontal plane and conform to a uniformity ratio of 4:1 average/minimum. The photometric study must be point-by-point and include the light loss factor (.7). Lighting levels must be adjusted to meet the minimum foot candle requirements within each area of the site. All interior or exterior corridors, passageways and pedestrian walkways and open parking lot shall be illuminated at all times with a minimum maintained one foot-candle of light on the walking surface.	Req'd	Req'd	Project Wide						
127		37. A schematic plan of the security camera system must be submitted and approved by the Goleta Police Department before the City issues a building permit, and must be included as a page in the stamped approved set of plans.	Req'd	N/A	N/A for Comstock						
128		38. Lighting devices must be enclosed and protected by weather and vandal resistant covers.	Req'd	N/A	N/A for Comstock						
129		39. Stairways must be illuminated with a minimum maintained one foot-candle of light on all landings and stair treads at all times.	Req'd	N/A	N/A for Comstock						
130		40. Recessed areas of building or fences, which have a minimum depth of two feet, a minimum height of five feet, and do not exceed six feet in width and are capable of human concealment, must be illuminated with a minimum maintained 0.25 foot-candles of light at ground level during the hours of darkness. This requirement applies to defined recessed areas which are within six feet of the edge of a designated walking surface with an unobstructed pathway to it, not hindered by walls or hedge row landscaping a minimum of two feet in height.	Req'd	Req'd	Project Wide						
131		41. All types of exterior doors must be illuminated during the hours of darkness, with a minimum maintained one foot-candle of light measured within a five-foot radius on each side of the door at ground level. The light source must be controlled by a photocell device or a time-clock with an astronomical clock feature and capable of operating during a power outage.	Req'd	Req'd	Project Wide						
132		42. The addressing, open parking lot and trash dumpster must be illuminated with a maintained minimum of one foot-candle of light on the ground surface during hours of darkness.	Req'd	Req'd	Podium and Apartments only						
133		43. Street addressing must be a minimum of 6 inches high and must be visible from the street or driving surface, of contrasting color to the background and illuminated during hours of darkness. Addressing must also be shown on plan elevations.	Req'd	Req'd	4" FOR RESIDENTIAL						
134		44. All landscaping must be low profile around perimeter fencing, windows, doors and entryways so as not to limit visibility or provide climbing access. Dense bushes cannot be clumped together in a manner that provides easy concealment.	Req'd	Req'd	Project Wide						
135		45. Stairwell doors exiting onto the street must have a minimum 100-square inch vision panel, with a minimum five inch width, to provide visibility into the area being entered. Vision panels must meet the requirements of the California Building Code, as adopted by the GMC. Vision panels must grade.	Req'd	Req'd	Podium/Apartments only						

	A	B	C	D	E	F	G	H	I	J	K	L
	Condition #		TASK	MARKET RATE APTS	STATUS COMSTOCK	COMMENTS	Column1					
1												
2												
136	46		48. Interior stairwell doors must have glazing panels a minimum of five inches wide and 20 inches in height and meet the requirements of the California Building Code, as adopted by the GMC. Guest rooms must have a deadbolt lock, a secondary security latch and a wide angle (190-200 degree) door viewer, not to be mounted more than 58 inches from the bottom of the door.	Req'd	Req'd	Podium/Apartments only						
137	47		47. Exterior mounted ladders are prohibited except: (1) ladders with a minimum 1/8 inch thick steel plate, securely attached to the ladders edge on each side, and extending to within two inches of the wall for a height of ten feet above ground level. A door and cover must be securely attached to the front of the ladder, and be constructed of minimum 1/8-inch steel, extending from ground level to at least ten feet high. The ladder must have non-removable hinge pins and be locked securely against the side wall by a locking mechanism with a minimum five pin tumbler operation; or (2) the bottom of the ladder must begin ten feet above the ground surface.	N/A Project Access not needed Exterior Ladders	N/A	N/A for Comstock						
138	48		48. All pool entrances must be posted with "No Trespassing" signs.	Req'd	Req'd	Noted on plans						
139	49		49. Any pool restroom and shower doors must have access control as reviewed and approved by the Goleta Police Department.	Req'd	Req'd	Prior to Building Permit						
140	50		50. Exterior gates leading to the pool must be secured by electronic access control.	Req'd	Req'd	Project Wide						
141	51		51. When a specific project option is selected, the Police Department may require the applicant to comply with more specific requirements as they pertain to stairwells, trash dumpsters, parking, other possible requirements they may pertain to a specific assisted living facility layout (access controls).	N/A	N/A	N/A per Planning						
142	52		52. Before any construction occurs the perimeter of the property must be fenced with a minimum 6-foot high fence. The fence must be covered with a material approved by the Director to prevent dust from leaving the site.	Req'd	Complete	Project Wide						
143	53		53. Public sidewalks must remain open at all times.	Req'd	Req'd	Project Wide						
144	54		54. All haul trucks hauling soil, sand, and other loose materials must either be covered or maintain two feet of freeboard.	Req'd	Req'd	Project Wide						
145	55		55. NOx emissions during construction must be reduced by limiting the operation of heavy-duty construction equipment to no more than 5 pieces of equipment at any one time.	Req'd	Req'd	Project Wide						
146	56		56. Staging of construction vehicles and vehicle entry and egress to the site must be approved by the Public Works Director, or designee. Temporary construction driveways must be approved by the Public Works Director, or designee.	Req'd	Req'd	Project Wide						
147	57		57. Temporary construction driveways must be removed before the City issues a certificate of occupancy.	Req'd	Req'd	Project Wide						
148	58		58. Construction vehicles cannot use any route except the City's designated Truck Routes.	Req'd	Req'd	Project Wide						
149	59		59. The applicant must develop and implement a construction management plan, as approved by the Public Works Director, or designee, which includes the following measures recommended by the AQMD	Req'd	Req'd	Project Wide						
150	60	a	a. Configure construction parking to minimize traffic interference.	Req'd	Req'd	Project Wide						
151	61	b	b. Provide temporary traffic controls during all phases of construction activities to maintain traffic flow (e.g., flag person).	Req'd	Req'd	Project Wide						
152	62	c	c. Re-route construction trucks away from congested streets.	Req'd	Req'd	Project Wide						
153	63	d	d. Maintain equipment and vehicles engines in good condition and in proper tune as per manufacturer's specifications and per AQMD rules, to minimize dust emissions.	Req'd	Req'd	Project Wide						
154	64	e	e. Suspend use of all construction equipment during second stage smog alerts.	Req'd	Req'd	Project Wide						
155	65			Req'd	Req'd	Project Wide						

A	B	C	D	E	F	G	H	I	J	K	L
Condition			MARKET RATE		STATUS		COMMENTS				
TASK			APTS		CONSTOCK		Column1				
1											
2											
156		f. Use electricity from temporary power poles rather than temporary diesel or gasoline-powered generators.	Req'd	Req'd	Project Wide						
157		g. Diesel-powered equipment such as booster pumps or generators should be replaced by electric equipment, if feasible.	Req'd	Req'd	Project Wide						
158		h. Catalytic converters must be installed, if feasible.	Req'd	Req'd	Project Wide						
159		i. Equipment must be equipped with two-to-four-degree engine lms retard or pre-combustion chamber engines.	Req'd	Req'd	Project Wide						
160		j. Use methanol or natural gas powered mobile equipment and pile drivers instead of diesel if readily available at competitive prices.	Req'd	Req'd	Project Wide						
161		k. Use propane or butane powered on-site mobile equipment instead of gasoline if readily available at competitive prices.	Req'd	Req'd	Project Wide						
162		59. During construction and operations, all waste must be disposed in accordance with all applicable laws and regulations. Toxic wastes must be discarded at a licensed, regulated disposal site by a licensed waste hauler.	Req'd	Req'd	Project Wide						
163	59	60. All leaks, drips and spills occurring during construction must be cleaned up promptly and in compliance with all applicable laws and regulations to prevent contaminated soil on paved surfaces that can be washed away into the storm drains.	Req'd	Req'd	Project Wide						
164	60	61. If materials spills occur, they must be cleaned up in a way that will not affect the storm drain system.	Req'd	Req'd	Project Wide						
165	61	62. The project must comply with the GMC storm water and urban pollution controls.	Req'd	Req'd	Project Wide						
166	62	63. Before anticipated rainfall, construction dumpsters must be covered with tarps or plastic sheeting.	Req'd	Req'd	Project Wide						
167	63	64. Inspections of the project site before and after storm events must be conducted to determine whether Best Management Practices have been implemented to reduce pollutant loadings identified in the Storm Water Prevention Plan.	Req'd	Req'd	Project Wide						
168	64	65. The owner or contractor must conduct daily street sweeping and truck wheel cleaning to prevent dirt in the storm drain system.	Req'd	Req'd	Project Wide						
169	65	66. Storm drain system must be safeguarded at all times during construction.	Req'd	Req'd	Project Wide						
170	66	67. All diesel equipment must be operated with closed engine doors and must be equipped with factory-recommended mufflers.	Req'd	Req'd	Project Wide						
171	67	68. Electrical power must be used to run air compressors and similar power tools.	Req'd	Req'd	Project Wide						
172	68	69. The applicant must provide a telephone number for local residents to call to submit complaints associated with the construction noise. The number must be posted on the project site and must be easily viewed from adjacent public areas.	Req'd	Req'd	Project Wide						
173	69	70. During construction, the contractor must store and maintain equipment as far as possible from adjacent residential property locations northwest of the site.	Req'd	Req'd	Project Wide						
174	70	71. Construction related noise is restricted to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday, and prohibited at anytime on Sunday or a Federal holiday.	Req'd	Req'd	Project Wide						
175	71	Impact Fee Conditions									
176	72	72. Before certificates of occupancy are issued, the applicant must pay a one-time fire services mitigation fee. The fee amount must be based upon the adopted fee at the time the certificate of occupancy is issued.	Req'd	Req'd	Project Wide						
177	73	73. Before certificates of occupancy are issued, the applicant must pay a one-time park services mitigation fee. The fee amount must be based upon the adopted fee at the time the certificate of occupancy is issued.	Req'd	Req'd	Project Wide						
178	74	74. Before building permits are issued, the applicant must pay the required sewer connection fees.	Req'd	Req'd	Project Wide						

	A	B	C	D	E	F	G	H	I	J	K	L
	Condition #		Task	Market Rate ADTs	Commission	Comments	Column1					
1												
2												
179	75		75. Before the City issues a certificate of occupancy, the applicant must pay traffic mitigation fees.	Req'd		Project Wide						
180	76		76. The applicant must pay the required School Fees in accordance with applicable law. This condition does not limit the applicant's ability to appeal or protest the payment of these fees to the school district(s).	Req'd		Project Wide						
181			Flood Control Conditions									
182	77		77. Any improvements located within the Santa Barbara County Flood Control and Soil Conservation District ("Flood Control District") easements require a maintenance agreement with the Flood Control District. Additionally, the Flood Control District must approve all improvements including plantings, within its easement.	N/A		COMPLETE						
183			Fire Department Conditions									
184	78		78. The Fire Department Plan must include the types and sizes of any plantings near the Flood Control District maintenance road. All proposed landscaping, including trees, must be set back from the maintenance road such that the drip line of the plantings does not cross the maintenance road.	N/A		COMPLETE						
185			Santa Barbara County Fire Protection District									
186	79		79. All conditions included in the Santa Barbara County Fire Department Letter of April 28, 2014 are incorporated into these conditions of approval except that all fire development impact fees required by the City will be paid to the City in accordance with applicable law. These conditions are as follows:	Req'd		Project Wide						
187		a	a. Road name(s) must be required for this project. Contact the City of Goleta, Planning Department at 805-339-7433 for application information.	N/A		COMPLETE						
188		b	b. Fire Protection Certificates will be required before each phase of the Project.	Req'd		Project Wide						
189			Before Vertical Construction the following Conditions Must Be Met:									
190		a	a. Access must be as shown on plans dated January 11, 2011, and received April 16, 2014.	Req'd		Project Wide						
191		b	b. A minimum of 13 feet, 6 inches of vertical clearance must be provided and maintained for the life of the project for emergency apparatus access.	Req'd		Project Wide						
192			Street signs must be installed:	Req'd		Project Wide						
193		a	a. The private road sign(s) must be blue with white letters.	Req'd		Project Wide						
194		b	b. The City road sign(s) must be brown with white letters.	Req'd		Project Wide						
195		c	c. Reference Santa Barbara County Engineering Design Standards, Standard Details 8-984-6781.	Req'd		Project Wide						
196			Temporary address posting is required during construction. Inspections will not be completed without temporary address posted.	Req'd		Project Wide						
197			New fire hydrant(s) must be installed, number to be determined:	Req'd		Project Wide						
198		a	a. The fire department must have on file a set of approved fire hydrant plans before to any work being started.	Req'd		Project Wide						
199		b	b. Fire hydrant(s) must be located per fire department specifications and must flow 1250 gallons per minute at a 20 psi residual pressure.	Req'd		Project Wide						
200		c	c. A water district permit and plan approval must be obtained before to fire hydrant installation/upgrade. For application information, contact Goleta Water District, 805-984-6781.	N/A		Project Wide						
201		d	d. Fire hydrant(s) must consist of one 4-inch outlet and two 2-1/2-inch outlets.	Req'd		Project Wide						
202		e	e. A set of approved fire hydrant plans, stamped and dated by the fire department must be kept at the project site available upon request.	N/A		COMPLETE						

A	B	C	D	E	F	G	H	I	J	K	L
Condition #		TASK	MARKET RATE APIS	STATUS COMSTOCK	COMMENTS	Column 1					
1											
2											
229		g. Provide an Engineers Itemized cost estimate for the Water System Improvements that are to be constructed by the Permittee's contractor and ordered to the Permittee. This information will be used by the District to determine the Survey and Inspection deposit amounts (including required before to issuance of a Conditional Serve Letter	NA	Complete	COMPLETE						
230		To obtain a Final Can & Will Serve Letter	NA	Complete							
231		Meet conditions a through c: stated above. And:	NA	Complete							
232		a. Submit payment of the New Water Supply Charge (NWSC), for 17.67 AF Per Acre to Goleta District Costa Section 516450, the New Water Supply Charge for the Proposed Project cannot be paid until the final approval of the Proposed Project by the applicable and use agency and before issuance of a Final Can and Will Serve Letter. The NWSC for the Proposed Project based on current rates is \$1801.52867.	NA	Complete	COMPLETE						
233		b. Pay all fees and charges incurred as part of application approval including any balances from Plan Check review.	NA	Req'd							
234		c. Provide a copy of the Land Use approval for the Proposed Project including Conditions of Approval from the City of Goleta Planning and Environmental Services Department.	NA	Complete	COMPLETE						
235		d. Provide a certified copy of the final building permit from the City of Goleta Planning and Environmental Services Department.	Req'd	Req'd							
236		e. Provide now addressing documentation from the County of Santa Barbara Fire.	Complete	Complete	COMPLETE						
237		f. Provide a Water System Improvements deposit for District construction of the main extensions (fire hydrants, meter installations and service lines).	NA	Complete	COMPLETE						
238		g. Provide any Survey and Inspection deposit amounts determined during the plan check review or Conditional Can and Will Serve Letter for the Permittee's construction of the main extensions.	NA	Complete	COMPLETE						
239		h. A Private Fire Life Service Agreement between the permit owner and Fire Life Service provider must be approved by the District, executed and recorded against the properties. The agreement will need to clearly identify the party that will be responsible for the life line (i.e. HOA or Property Owner's Association). This will be the responsible party for maintenance of and payment of service charges for the fire line.	Req'd	Req'd	Project Wide						
240		To have water service activated:									
241		Meet conditions a through g above, and:									
242		a. Construct Water System Improvements and install approved backflow assemblies. Backflow assemblies must be installed, inspected, and tested before any onsite work including demolition, grading, and construction.	Req'd	Req'd	Project Wide						
243		Mitigation, Monitoring and Reporting Program (MMRP)									
81		81. In accordance with the requirements of Public Resources Code § 21081.6, the adopted Mitigation Monitoring and Reporting Program (MMRP) set forth in attached Attachment 1, Exhibit 2 and Attachment 2, Exhibit 3 are incorporated into these Conditions of Approval by or provisions of any such mitigation measure conflict with the terms and conditions. Each of the mitigation measures in the MMRP constitute conditions of approval for the project. Should the terms provisions of the other project conditions of approval set forth above, the stricter condition of approval controls.									
244		Development Plan Conditions									
82		82. The Final Development Plan expires five (5) years after approval, unless before the expiration date, substantial physical construction was completed on the Development Plan or a Time Extension has been applied for by the Permittee. The decision maker with jurisdiction over the project may, upon good cause shown, grant a time extension for one year.	Req'd	Req'd	Project Wide						
245											
246											

	A	B	C	D	E	F	G	H	I	J	K	L
1												
2	Condition #		TASK	MARKET RATE APPS	STATUS CON/STOCK	COMMENTS	Column 1					
247	83		83. If the Permittee requests a Time Extension, the project may be revised to include updated language to standard conditions and/or may include revised/additional conditions which reflect changed circumstances or additional identified project impacts. The Permittee is the City issues a building permit or certificate of occupancy, as applicable, required to pay all applicable fees in effect at the time	Req'd	Req'd	Project Wide						
248	84		84. City will not issue any development permit, including for grading, except in conformance with an approved Final Development Plan. The size, shape, arrangement, use, and location of buildings, walkways, parking areas, drainage facilities, and landscaped areas must be developed in substantial conformity with the approved development plan marked City Council Hearing Attachment 4 dated June 23, 2014. Substantial conformity must be determined by the Director.	Req'd	Req'd	Project Wide						
249	85		85. On the date a subsequent Preliminary or Final Development Plan is approved for this site, any previously approved, but unbuilt, plans become null and void.	Req'd	Req'd	Project Wide						
250	86		86. Revised plans and building elevations incorporating all conditions of approval for this project must be coordinated and submitted to Planning and Environmental Review as one package in accordance with plan check requirements. All plans, including site, grading, landscape, irrigation, mechanical, and street improvement plans must be reviewed for condition compliance before issuance of any permits such as grading, building, or encroachment permits. Any change to the colors, construction materials, design, or location of any structure onsite, or other site or landscape improvements, except to the extent such changes are deemed in substantial conformity, must not be made without approval by the Director.	Req'd	Req'd	Project Wide						
251			Miscellaneous									
252	87		87. All plans submitted with a request for a Land Use Permit, building, and/or grading permit must include all applicable conditions of project approval.	Req'd	Req'd	Project Wide						
253	88		88. Before approval of the first Land Use Permit for general grading and/or buildings for development, the Permittee must pay all applicable City of Goleta permit processing fees in full. Before the start of any work on-site, the Permittee must request and attend a preconstruction meeting that includes monitor(s), project superintendent, architect, subcontractors, as well as City representatives.	Req'd	Req'd	Project Wide						
254	89		89. Any temporary building, trailer, commercial coach, etc. installed or used in connection with construction of this project must comply with the requirements of Section 35-281, Article III of the Goleta Municipal Code.	Req'd	Req'd	Project Wide						
255	90		90. All trees planted or preserved in accordance with this approval must be maintained according to the latest adopted American National Standard Institute (ANSI) guidelines for tree care, generally referred to as ANSI A300 (various parts), and the companion publications "Best Management Practices" published by the International Society of Arboriculture (ISA). Any pruning of trees, other than light pruning of no more than 25 percent (25%) of the foliage within any one growing season, requires review and approval of the City of Goleta before commencement of the work.	Req'd	Req'd	Project Wide						
256	91		91. The Permittee is responsible for informing all subcontractors, consultants, engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein in the Goleta Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City.	Req'd	Req'd	Project Wide						

	A	B	C	D	E	F	G	H	I	J	K	L
	Condition #		TASK	MARKET RATE APPS	STATUS COMMITTEE	COMMENTS	Column1					
257	92		92. The Permittee is responsible for the completeness and accuracy of all forms and supporting materials submitted in connection with any application. Any errors or discrepancies found therein may constitute grounds for the revocation of any approvals.	Req'd	Req'd	Project Wide						
258	93		93. CHA McKinley, Goleta LLC and Los Cameros Business Park, LP (Developer) agree to indemnify and hold the City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising from the City's approval of Case No. 10-043-GPA, SPA, RZ, VTM, DP; 10-044-DP; 10-045-DPAM, CLJP (the "Project"). Should the City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of the City approval of the Project, the Developer agrees to defend the City (at the City's request and with counsel satisfactory to the City) and will indemnify the City for any judgment rendered against it or any sums paid out in settlement or otherwise. For purposes of this section "the City" includes the City of Goleta's elected officials, appointed officials, officers, and employees.	Req'd	Req'd	Project Wide						
259			DEVELOPMENT AGREEMENT									
260			H. Owner has agreed to make several improvements to the parking facilities on Lots 13 and 14 shown on Map 32,050, Lots 2 and 5 with some minor modifications, and wishes to construct those improvements as quickly as possible.	N/A	Req'd	Comstock						
261			I. Owner wishes to begin grading Lots 1 through 12 and constructing improvements to Lots 13 and 14 upon Project Approvals as quickly as possible.	N/A	Req'd	Comstock						
262			Multiple Final Maps Owner, as subdivider of the Property, states that it may file multiple final maps subsequent to City's approval of the Tentative Map Inclusion number and at such times as the Owner, in its sole discretion, deems appropriate. City consents in the filing of such multiple final maps in the alternative. Owner may file a single final map encompassing all lots depicted on the Tentative Map.	N/A	N/A	COMPLETE						
263	3.08		Planning of Development Owner and City recognizes that economic and market conditions may necessitate changing the order in which the Infrastructure is constructed. Therefore, subject to the provisions of Section 46102 below, City and Owner agree that, should it become necessary or desirable to develop any portion of the Project's infrastructure in an order that differs from the order set forth in the Project Approvals and/or the Agreement, Owner and City will collaborate and City will allow any reasonable modification requested by Owner so long as the modification continues to ensure adequate infrastructure is available to serve that portion of the Project being developed.	N/A	N/A	COMPLETE						
264	3.09		FEES, CONDITIONS AND DEDICATIONS									
265	3.09.01		Goleta Transportation Impact Mitigation Fees									
266			Must pay on a unit by unit basis before City will issue building permit for each Residential Unit (per Exhibit "G" of DA)	Req'd	Req'd	Project Wide						
267	3.09.02		Park Fees									
268			Must pay Quimby Fees for Residential Units on a unit by unit basis before City issues Building Permit	Req'd	Req'd	Project Wide						
269	3.15		VACATION OF MAINTENANCE EASEMENT									
270			vacation of existing bicycle and bicycle maintenance easement along northeastern boundary. By way of exception on Final Map.	N/A	Complete	COMPLETE						
271	3.36		TEMPORARY CONSTRUCTION EASEMENT									
272			Shown as shown on Exhibit "D" of DA	N/A	Complete	COMPLETE						
273	3.01.01		OWNER CONTRIBUTION									
274			Owner to contribute \$1,000,000 to Goleta CHAP Fund prior to 1st BP. Owner to contribute additional \$1,000,000 prior to 232nd BP.	N/A	Req'd	\$1,000,000 deposited						

	A	B	C	D	E	F	G	H	I	J	K	L
	Condition #		TASK	MARKET DATE APIS	STATUS COMSTOCK	COMMENTS	Column1					
1												
2												
275		3-10-07	COMPLETION OF RECREATION CENTER AND COMMON AREA AMENITIES									
276			Complete construction as part of 1st phase of construction									
277			OWNERSHIP & MANAGEMENT OF AFFORDABLE BUILDINGS			Comstock						
278		4-01-03	Owner to transfer lot created by Final Map upon recordation to Affordable Housing Owner (PSHHC). If PSHHC has not constructed affordable units w/in two years then property reverts to developer and units must be constructed prior to construction of 22nd Market Rate Unit.									
279			CONSTRUCTION OF BRIDGE OVER TECOLOITTO CREEK			Comstock						
280		4-01-06	Must start construction before final inspection of building containing 232nd cumulative Market Rate unit									
281			MITIGATION MONITORING & REPORTING PROGRAM			Comstock						
282												
283		AESTHETICS										
284		AES2-1	Fencing and Shaker Plates prior to start of Grading/permit issuance			Project Wide						
285		AES2-2	Securities/LS Maintenance Agreement (buildings, LS, rec facilities, parking lots, trash enclosures, driveways)			Project Specific						
286		AES3-1	Height of structures-compliance			Project Wide						
287		AES3-2	Composite Utility & equipment plan-external/roof mounted mechanical equipment			Project Wide						
288		AES3-3	landscape plan -75% drought tolerant native and/or Mediterranean type plant coverage			Project Wide						
289		AES4-1	Outdoor project lighting to conform to GP Policy VH 4.12			Project Wide						
290		AIR QUALITY										
291		AQ 1-1	Dust Control Requirements-Shown on ALL Plans			Project Wide						
292		AQ 1-2	Reduced Emissions requirements-In ALL contracts & on ALL plans			Project Wide						
293		AQ 1-3	Diesel Fuel Emissions limited			Project Wide						
294		AQ 2-1	Alternative Transportation, Transportation Demand Management Plan (TDM)			Project Wide						
295		AQ 3-1	Ventilation systems rated at MERV13 or better (particulate removal)			Project Wide						
296		AQ 3-2	US101/UPRR rail line real-estate disclosure			Project Wide						
297		BIOLOGICAL RESOURCES										
298		BIO 1-1	Prior to Bridge Construction Permit			Comstock						
299		BIO 1-2	Prior to activities impacting bird nesting			Comstock						
300		BIO 2-1(a)	A wetland and riparian area mitigation plan			Comstock						
301		BIO 2-1(b)	Performance securities/and agreements-Riparian Restoration Plan			COMPLETE						
302		BIO 2-1(c)	HIMP by Biologist			COMPLETE						
303		BIO 2-1(d)	Riparian Corridor/Bridge Maintenance			COMPLETE						
304		BIO 2-1(e)	Bioplan for Bridge Permit			COMPLETE						
305		BIO 2-1(f)	Prior to Bridge Construction Permit			Comstock						
306		BIO 2-2(a)	ESHA/SPA Vegetation restoration plan submitted			Pending ACOE Approval						
307		BIO 2-2(b)	Performance securities/and agreements-ESHA/SPA			COMPLETE						
308		BIO 2-3	ESHA/SPA landscape and Real Model Plan			COMPLETE						
309		BIO 3-1(a)	Ranch style Rail fence designed prior to GP-Signage prior to C of O			On Plans						
310		BIO 3-1(b)	Performance securities/agreement prior to BP			Req'd						
311		BIO 3-1(c)	personal training-sensitive habitat areas			Req'd						
312		BIO 3-1(d)	Shielded Exterior Lighting-Away from ESHA/SPA			Req'd						
313		BIO 4-1	Flood Control clearance-Bridge Design-Prior to Bridge Permit			Comstock						
314		BIO 5-1	Tree Protection and Replacement Plan (TPRP)			Comstock						

A	B	C	D	E	F	G	H	I	J	K	L
1	2	TASK	MARKET RATE APTS	STATUS COMSTOCK	COMMENTS	Column1					
		CULTURAL RESOURCES									
315	CR 1.1	City approved Archeologist/Native American monitor	Req'd	Req'd	Comstock						
316	CR 1.2	Meeting w/ Archeologist/Chumash reps onsite prior to grading	Req'd	Req'd	Comstock						
317	CR 1.3	Construction Monitoring Plan	Req'd	Req'd	Comstock						
318	CR 1.4	Evaluation of Archeological remains-Notes must be on plans	Req'd	Req'd	Comstock						
319	CR 1.5										
		GEOLOGY AND SOILS									
320											
321	GEO 4.1	Submit foundation plans-City B&S to verify design is in conformance with Soils report	Req'd	Req'd	Project Wide						
322	GEO 5.1	Monitoring Well/Archeologist/Chumash	Req'd	Req'd	COMPLETE						
323	GREENHOUSE GAS EMISSIONS										
324	GHG 1	Show requirements on all architectural plans	Req'd	Req'd	Project Wide						
		HAZARDOUS AND HAZARDOUS MATERIALS									
325											
326	HAZ 1.1	NIPOM CG & R's proximity to UPRR & US 101 (contaminations)	Req'd	Req'd	COMPLETE	Recorded in CCAR's					
327	HAZ 1.2	Safe (water/evaporation plan (train accident)	Req'd	Req'd	COMPLETE						
328	HAZ 5.1	Hazardous Materials Business Plan (HMBP)	If Required	If Required							
329	HAZ 6.1										
		HYDROLOGY AND WATER QUALITY									
330											
331	HYDRO 1.1	Drainage and Hydrology Study	Req'd	Req'd	COMPLETE						
332	HYDRO 1.2	Bridge Design	Req'd	Req'd	COMPLETE						
333	WQ 1.1	SWPPP	Req'd	Req'd	COMPLETE						
334	WQ 2.1	O & M Plan	Req'd	Req'd	Pending						
335	WQ 2.2	Maintenance Agreement-Storm Water Quality protection/BMP's	Req'd	Req'd	Pending						
		LAND USE AND PLANNING									
336											
337	LU 5.1	Deed Restriction/Airport Risks	Req'd	Req'd	Pending Recordation						
338	NOISE										
339	N 2.1	protective measures for units located within the 65-75 dBA CNEL & Line of sight UPRR/AUS 101	Req'd	Req'd	Project Wide						
340	V 1.1	Vibration Mitigating Features-w/in 70' UPRR CL Track	Req'd	Req'd	Comstock						
341	PUBLIC SERVICES										
342	PS 1.1	Fire protection Certificate	Req'd	Req'd	Project Wide						
343	PS 3.1	HCA (Hazardous Community) of Neighborhood Park	Req'd	Req'd	COMPLETE	In CCAR's					
344	RECREATION										
		Neighborhood park Plans			Pending Final Review/Approval- Planning						
345	REC 1.1		Req'd	Req'd							
346	REC 2.1	Pathway to Neighborhood Park Plans	Req'd	Req'd							
		TRANSPORTATION AND TRAFFIC									
347											
348	TR 1.1	Interim Street plans -designed per city standards submitted for review/approval	Req'd	Req'd	COMPLETE						
349	TR 2.1	Traffic Impact Fee-Prior to BP per DA	Req'd	Req'd	Project Wide						
350	TR 3.1	Traffic Impact Fee-Prior to BP per DA	Req'd	Req'd	Project Wide						
351	TR 7.1	Re-striping Cortona Drive-Plan-(other project already conditioned)	Req'd	Req'd	On Plans						

1	A	B	C	D	E	F	G	H	I	J	K	L
2	Condition #		TASK	DIRECT RATE APTS	STATUS COMSTOCK	COMMENTS	Column 1					
352	TR 7.2		Traffic Impact Fee-Prior to BP per DA	Req'd	Req'd	Project Wide						
353	TR 7.3		City Capital Improvement Plan- Traffic Impact Fees-Prior to BP per DA	Req'd	Req'd	Project Wide						
354	TR 7.4		Los Cameros Northbound through lane-monetary contribution (GTIF)	Req'd	Req'd	Project Wide						
355	TR 8.1		GTIF-Prior to BP per DA	Req'd	Req'd	Project Wide						
356	TR 8.2		GTIF-Prior to BP per DA	Req'd	Req'd	Project Wide						
	UTILITIES AND SERVICE SYSTEMS											
357												
358	SW 2.1		SWMP prior to BP	Req'd	Req'd	Project Wide						
359												

**CITY ACKNOWLEDGMENT OF ASSIGNMENT
AND ESTOPPEL CERTIFICATE**

The City of Goleta ("City") hereby acknowledges receipt of (but is not a party to) the assignment of the Transferred Project Approvals (as contemplated in Section 3.3 of the Development Agreement) and the assumption of the Assumed Obligations pursuant to the Assignment and Assumption Agreement to which this page is attached.

City certifies upon information and belief to Assignor and Assignee, and the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Transferred Property, on the date stated below, as follows:

(i) The Development Agreement is in full force and effect and there are currently no unsatisfied conditions to the effectiveness of the Development Agreement;

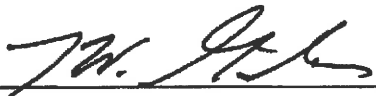
(ii) The Development Agreement has not been amended. In accordance with the Development Agreement, the Operating Memoranda described in the Recitals to the Assignment and Assumption Agreement clarify the terms and conditions of the Development Agreement;

(iii) City acknowledges that the assignment of the Transferred Project Approvals to Assignee is effective to the extent it is consistent with the terms and conditions of the Development Agreement and the Specific Plan; and

(iv) City has not issued any notice of default under the Development Agreement and is not aware of any existing default with respect to Assignor or the Transferred Property.

Dated: 5/24, 2016

City of Goleta

By: 

Print Name: Tim W. Geller

[Attach to Assignment and Assumption Agreement]

NOTARY ACKNOWLEDGMENT

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 not the truthfulness, accuracy or validity of that document.

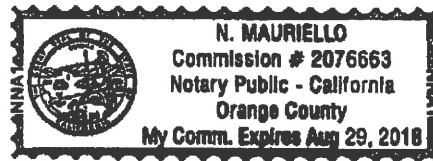
State of California)
County of Orange)

On June 6 2016, before me, N. Mauriello, Notary Public, personally appeared BENTON KETEL, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature on the instrument the person, or the entity upon behalf of which the person 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)



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 not the truthfulness, accuracy, or validity of that document.

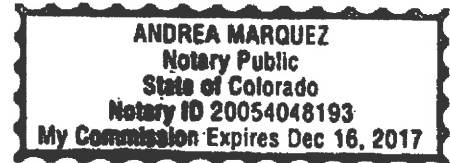
State of Colorado)
County of Boulder)

On April 28th, 2017, before me, Andrea Marquez, a Notary Public, personally appeared Sharon K. Eschima, 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 Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



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 not the truthfulness, accuracy, or validity of that document.

State of _____)
County of _____)

On _____, 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 _____

ATTACHMENT 8
ASSIGNMENT AND ASSUMPTION AGREEMENT
DATED DECEMBER 30, 2016 FOR LOT 9

Simplify /

Recording Requested By:
First American Title Company
Homebuilder Services Division
Subdivision Department
53330'00-55

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Pham Law Group, Inc.
633 West 5th Street, 26th Floor
Los Angeles, CA 90071
Attention: Bill Pham, Esq.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

2016-0070811

Recorded	REC FEE	73.00
Official Records		
County of		
Santa Barbara		
Joseph E. Holland		
County Clerk Recorder		
	DS	
02:01PM 30-Dec-2016	Page 1 of 12	

(Above Space For Recorder's Use Only)

ASSIGNMENT AND ASSUMPTION AGREEMENT
(re Development Agreement for Los Carneros)

This Assignment and Assumption Agreement ("**Agreement**") is made and entered into as of December 30, 2016, by and between RCS - Los Carneros, LLC, a Colorado limited liability company ("**Assignor**") and RTA Carneros Village - Phase II, LLC, a Delaware limited liability company ("**Assignee**").

RECITALS

A. Assignor, as seller, and Assignee, as buyer, are parties to that certain Purchase and Sale Agreement and Joint Escrow Instructions, dated November 9, 2016 ("**Purchase Agreement**"), pursuant to which Assignee is acquiring from Assignor certain real property located in Goleta, County of Santa Barbara, State of California, more particularly described on **Exhibit "A"** attached hereto (the "**Transferred Property**"). The Transferred Property is a portion of Lot 9 of Tract No. 32050 in the City of Goleta, County of Santa Barbara, State of California, as shown on the map filed in Book 206, Pages 31 through 54 of Maps, in the office of the County Recorder of said County. The Transferred Property is a part of the master development commonly known as "Village at Los Carneros" and referred to herein as the "**Project**." The portion of the Project owned by Assignor as of the date hereof is more particularly described on **Exhibit "B"** attached hereto (the "**Retained Project Site**").

B. The City of Goleta ("**City**") and Assignor's predecessor in interest, CHA McKinley Goleta, LLC, entered into that certain Development Agreement dated August 19, 2014 and recorded in the official records of Santa Barbara County, California (the "**Official Records**") on November 20, 2014 as Instrument Number 2014-0053368 (as amended, the "**Development Agreement**"), providing for certain rights, entitlements, covenants, conditions, restrictions, and agreements relating to the development of certain real property and appurtenances thereto as more particularly described in the Development Agreement, including, without limitation, the Transferred Property and the Retained Project Site.

C. In connection with the conveyance of the Transferred Property to Assignee pursuant to the Purchase Agreement, Assignor desires to transfer to Assignee the Transferred

Project Approvals (as hereinafter defined) as contemplated in Section 3.3 of the Development Agreement. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Transferred Project Approvals with respect to the Transferred Property.

D. Capitalized terms not otherwise defined in this Agreement must have the meanings ascribed thereto in the Development Agreement.

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

1. Assignment. Subject to the limitations, conditions and exceptions set forth in this Agreement, Assignor assigns and transfers to Assignee all of the Assignor's right title, and interest in and to the Development Agreement and the Project Approvals (as defined in the Development Agreement) but only with respect to the Transferred Property as more specifically defined below (collectively, the "Transferred Project Approvals"). It is the intent of the Assignor and Assignee that the Transferred Project Approvals will permit Assignee to develop up to 74 multi-family residential units. Assignee hereby accepts such assignment from Assignor, subject to the following (collectively, the "Encumbrances"): (i) this Agreement; and (ii) recorded covenants, conditions, restrictions, and easements.

2. Assumption. Assignee expressly assumes all obligations, duties and responsibilities under (i) the Transferred Project Approvals relating to the Transferred Property, and (ii) the Assumed Obligations (as defined herein). The Assumed Obligations are the obligations of Assignor under the Development Agreement and Project Approvals that are applicable to the development of the Transferred Property, and do not include those specific provisions of the Development Agreement or Conditions of Approval that do not apply to the development of the Transferred Property. ~~The Assumed Obligations as more particularly described on Exhibit "C" attached hereto as "Required" obligations of the "(Lot 9)."~~

Assignee agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by Assignor with respect to the Transferred Project Approvals and the Assumed Obligations from and after the date hereof including, without limitation, those obligations specifically allocated to the Transferred Property as described in Section 4 below. However, Assignee does not assume any obligations, duties, or responsibilities under or with respect to the Transferred Project Approvals and/or the Assumed Obligations arising prior to the date hereof.

3. Covenants and Other Limitations and Conditions. Assignee, at Assignee's sole cost, must (i) perform, or cause to be performed, all covenants, representations, terms, undertakings, obligations, warranties, and agreements of "Owner" under the Development Agreement with respect to the Transferred Project Approvals and the Assumed Obligation, so as to protect Assignor's (and other property owner's) rights and otherwise prevent a default by Assignor (and/or other property owners) under the Development Agreement as a result of any failure by the Assignee to perform such obligations from and after the date hereof; (ii) prosecute and defend any legal action, arbitration or other controversy which is filed or initiated relating to the Transferred Project Approvals or the Assumed Obligations relating to periods from and after the date hereof solely with respect to the Transferred Property; and (iii) give prompt notice to

Assignor and deliver to Assignor complete copies of any notice of default given or received with respect to the Development Agreement and/or Transferred Project Approvals, whether the default be of the City or Assignee, or any other party, solely with respect to the Transferred Property. Following the effective date of this Agreement, Assignor shall be released from all liabilities related to the Transferred Project Approvals.

4. Indemnification. From and after the effective date of this Agreement, Assignee and Assignor, their successors (including corporate successors and successors-in-interest to their respective property interests), assigns, and affiliates ("**Indemnifying Parties**") each hereby agrees to indemnify, defend (with counsel acceptable to the Indemnified Party) and hold harmless the other ("**Indemnified Parties**") from and against any and all claims, liability, loss, damage, cost or expense (including reasonable attorneys' fees) which an Indemnified Party might incur or suffer under the Development Agreement or by reason of this Agreement ("**Claims**") arising out of or relating to an Indemnifying Party's respective ownership, development and operation of its respective property, or by reason of any alleged undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement relating to the Indemnifying Parties' respective property, except to the extent caused by the gross negligence or willful misconduct of such Indemnified Party. For purposes of determining the obligations of the Assignee as an Indemnifying Party hereunder, the only undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement relating to Assignee's property are those specifically assigned to Assignee hereunder (i.e., the Transferred Property Approvals and the Assumed Obligations, to the extent arising from and after the date hereof), and all other undertakings, obligations, representations, warranties, conditions, covenants or agreements contained in the Development Agreement are retained by and are the responsibility of the Assignor or other owners of the remaining property governed by the Development Agreement, as Indemnifying Parties.

5. Effective Date. This Agreement must be effective upon its recordation in the Official Records, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Transferred Property.

6. Remainder of Project. Any and all rights or obligations pertaining to such portion of the Retained Project Site other than the Transferred Property are expressly excluded from the assignment and assumption provided in Sections 1 and 2 above.

7. Notices. All notices required or permitted hereunder must be in writing, and be personally delivered, sent by nationally-recognized overnight courier (such as Federal-Express), or sent by registered or certified mail, postage prepaid, return receipt requested to the addresses set forth below, or sent by facsimile to the addresses set forth in below; provided, however, if notice is sent by facsimile, a copy must be sent by registered or certified mail or nationally-recognized overnight courier on the same day. All notices sent by mail will be deemed received three (3) days after the date of mailing, as aforesaid. All notices sent by facsimile must be deemed received upon receipt of a confirmation of the transmission thereof. Notices must be sent as follows:

To Assignor:

RCS-Los Carneros, LLC
Attn: Ryan Atkin
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Telephone: (303) 533-1617
Fax: (303) 466-3008
Email: ratkin@realcapitalsolutions.com

With a copy to:

Real Capital Solution
Attn: Eric Besch
371 Centennial Parkway, Suite 200
Louisville, CO 80027
Telephone: (303) 533-1695
Fax: (303) 466-3008
Email: ebesch@realcapitalsolutions.com

To Assignee:

RTA Carneros Village – Phase II, LLC
c/o Fowler Property Acquisitions, LLC
2082 Michelson Drive, Suite 300
Irvine, CA 92612
Attn: Tim Kihm
Telephone: (714) 624-7539
Fax: (949) 399-2535
Email: tkihm@rtacq.com

with a copy to:

Nancy Dubonnet, Esq.
2082 Michelson, Suite 450
Irvine, CA 92612
Telephone: (949) 399-2525
Fax: (949) 399-2528
Email: nancy@dubonnetlaw.com

8. Interpretation. This Agreement must be construed in accordance with and governed by the laws of the State of California. If any provision of this Agreement or application thereof to any person or circumstances must to any extent be invalid, the remainder of this Agreement must not be affected and each provision of this Agreement must be valid and enforced to the fullest extent permitted by law. The exhibits attached to this Agreement are incorporated by reference herein. This Agreement can be modified by a writing executed by Assignor and Assignee (or the then current fee title owner of the Transferred Property) and recorded in the Official Records.

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

10. Attorneys' Fees. If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party must be entitled to recover from the other party, in addition to all other damages, all out-of-pocket reasonable costs and expenses of such action, proceeding or arbitration, including, without limitation, actual attorneys' fees, witness fees' and court costs, whether or not such action, proceeding or arbitration is pursued to judgment. The phrase "prevailing party" as used in this Section 10 means the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise.

[Signature page to follow]

IN WITNESS WHEREOF, the parties hereto have executed, this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR"

RCS - Los Carneros, LLC
a Colorado limited liability company

By: Sharon K. Eshma
Name: SHARON K Eshma
Title: manager

"ASSIGNEE"

RTA Carneros Village - Phase II, LLC
a Delaware limited liability company

Signed In
Counterpart


By: _____
Benton Ketel, Manager

IN WITNESS WHEREOF, the parties hereto have executed, this Agreement as of the dates set forth next to their signatures below.

"ASSIGNOR"

RCS - Los Carneros, LLC
a Colorado limited liability company

Signed In
Counterpart

By: 
Name: Sharon K. Eshma
Title: Manager

"ASSIGNEE"

RTA Carneros Village - Phase II, LLC
a Delaware limited liability company

By: 
Benton Ketel, Manager

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 not the truthfulness, accuracy, or validity of that document.

State of Colorado)

County of Boulder)

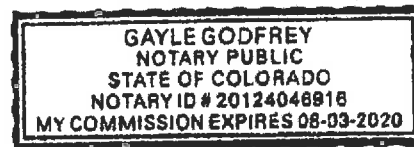
On December 14, 2016, before me, Gayle Godfrey,
Notary Public, personally appeared Shuan Shima,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their 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 Colorado
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Gayle Godfrey

(Seal)



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 not the truthfulness, accuracy, or validity of that document.

State of CALIFORNIA)

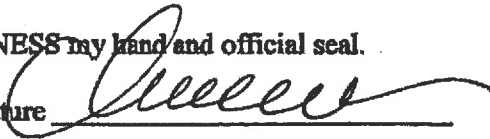
County of ORANGE)

On December 20, 2016, before me, N. MAURIELLO,
Notary Public, personally appeared Benton Retel,
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)

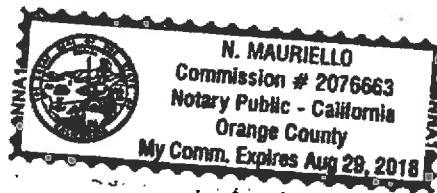


Exhibit A

Legal Description of Transferred Property

Residential Building Module as shown in the Condominium Plan for the Village at Los Carneros (Olas Phase 1), recorded on December 5, 2016 as Instrument No. 2016-0065188, encumbering a portion of Lot 9 of Tract No. 32050, as shown on a Subdivision Map filed on March 10, 2015, Book 206, Pages 31 through 54, inclusive, of Maps, both in the Office of the Santa Barbara County Recorder.

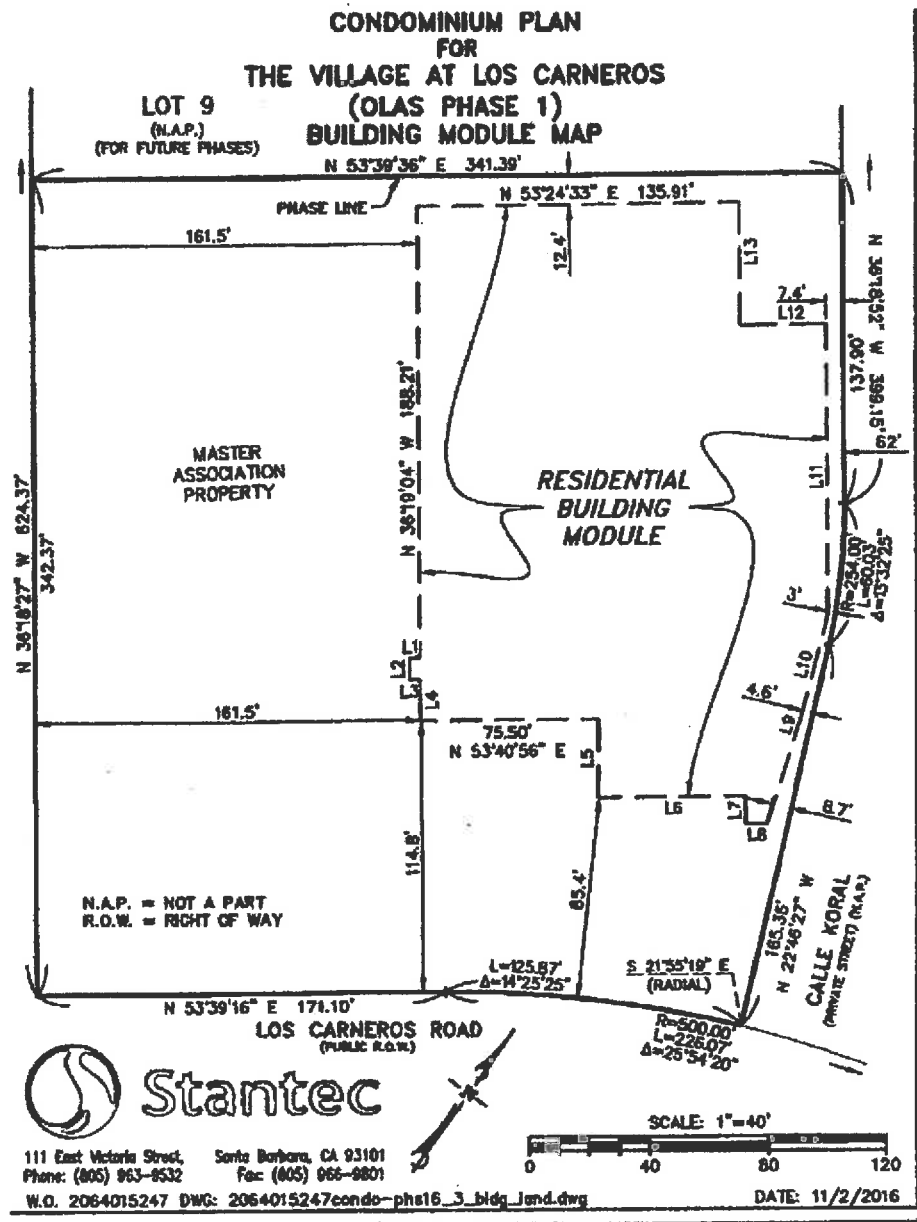


Exhibit A

Legal Description of Transferred Property

Residential Building Module as shown in the Condominium Plan for the Village at Los Carneros (Olas Phase 2), recorded on December 5, 2016 as Instrument No. 2016-0065189, encumbering a portion of Lot 9 of Tract No. 32050, as shown on a Subdivision Map filed on March 10, 2015, Book 206, Pages 31 through 54, inclusive, of Maps, both in the Office of the Santa Barbara County Recorder.

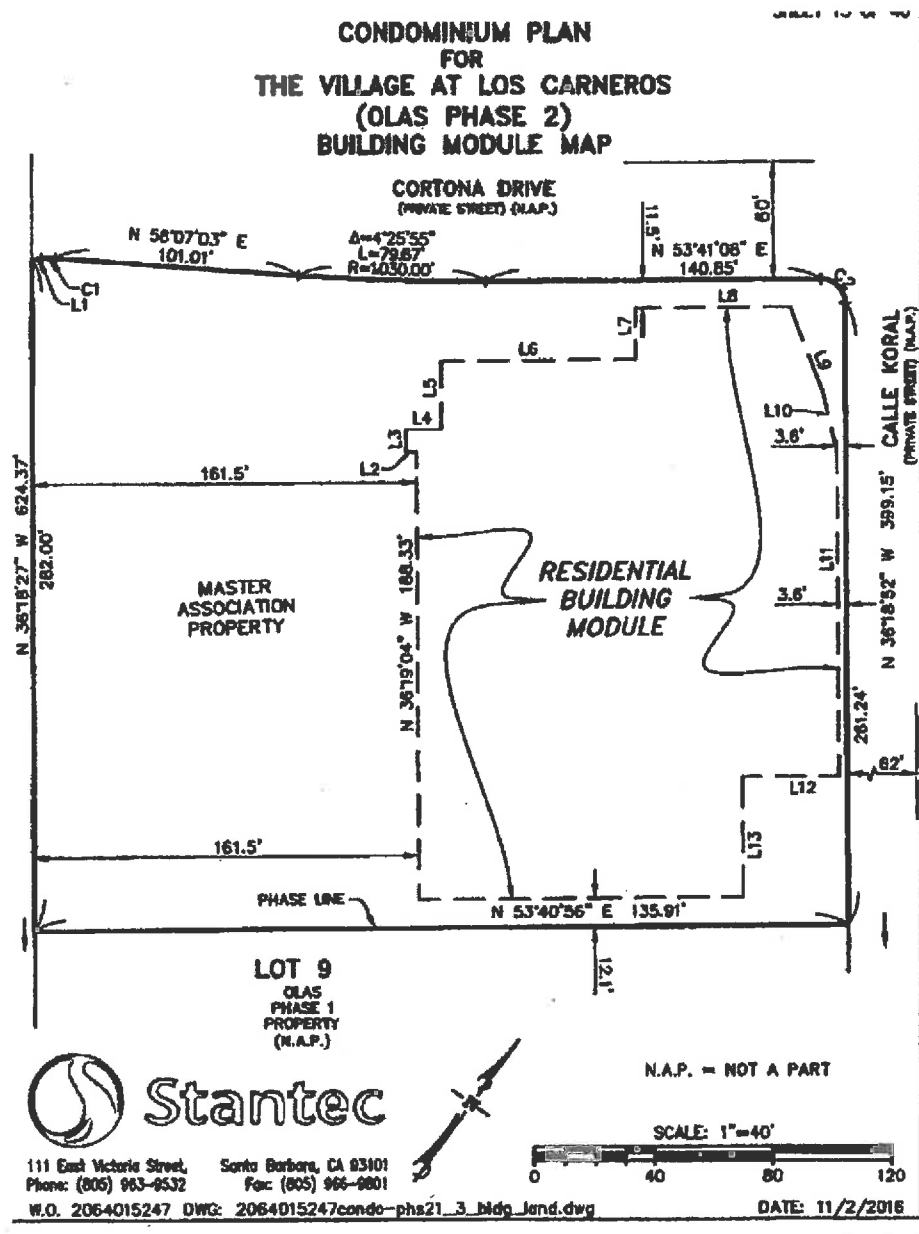


Exhibit B

Legal Description of Retained Project Site

Lots 2 through 4, inclusive, Lots 6 through 8, Lot 9 (excluding the Transferred Property), and Lots 10 through 12 inclusive, of Final Map No. 32050, in the City of Goleta, County of Santa Barbara, State of California, as shown on map filed in Book 206, Pages 31 through 54 of Maps, in the office of the County Recorder of said County.

ATTACHMENT 9
LETTER FROM PEOPLES' SELF-HELP HOUSING

February 27, 2017

Honorable Mayor Paula Perotte
And Distinguished Members of the City Council
City of Goleta

RE: Village at Los Carneros – Affordable Housing Project Status

Dear All,

I am writing to you as the developer of the 70 new units of affordable rental housing, currently under construction on "Lot 1", as a component and requirement of the larger master planned market rate housing project at Village at Los Carneros.

During the master project approvals process, an affordable housing requirement was written into the Development Agreement between the City and the Master Developer. It provided certain flexibilities to the Master Developer along with potential restrictions by which the City could control development in order to ensure the affordable units would be completed along with the market rate units. The City restricted the number of market rate housing permits to 220, that could be issued prior to completion of the affordable housing units. We understand the Master Developer, because of greater than anticipated market demand has come to a point where this trigger will now affect issuance of the needed additional permits, to meet Goleta housing demand. And as housing is a critical issue for all of California, some adjustments seem necessary.

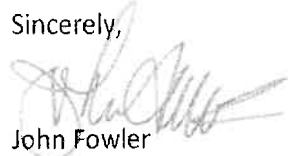
While the affordable housing project is not complete at this time, we have all the necessary funding in place and we are proceeding diligently with the work and anticipate delivery of the units before the end of this year. We have closely collaborated with Comstock Homes on the affordable project, since it was approved in July 2014 and preliminary plans approved through Design Review Board in September of 2014. We and they have been continuously diligent since then in developing plans and pursuing approvals and permits, although the process took much longer than projected to obtain. Furthermore, due to the special processing and sophistication of the affordable housing financing that was required for us to go forward with our project (which included a combination of federal tax credits and tax-exempt bond financing awards administered by two state agencies), the closing of our associated construction and permanent debt along with private investors' equity financing was quite lengthy, which delayed our start date past our original target date required to stay in sync with the master project's construction schedule. This was obviously not something that could have been known when the original number of market rate permits was set, that could be issued before completion of the affordable housing units.

We understand and support the Master Developer's request of the City to amend their Master Development Agreement allowing them to continue to construct market rate product beyond the current restriction, and instead be governed and controlled by final Certificates of Occupancy. This modification would free up their

ability to pull additional permits at this time and help ensure the viability of the rest of the master development, while still maintaining the City's control around the market rate units, without jeopardizing the completion of the affordable housing units.

Therefore, we support a modification to the Master Developer's Development Agreement with the City, to allow them to pull additional permits for market rate housing starts beyond the 220 restriction, and moving that restriction to Certificates of Occupancy as the condition for the completion of the affordable housing units.

Sincerely,

A handwritten signature in dark ink, appearing to read "John Fowler", is written over a light gray circular stamp.

John Fowler
President & CEO