



Agenda Item C.1
PUBLIC HEARING
Meeting Date: March 29, 2021

TO: Planning Commissioner Chair and Members

FROM: Peter Imhof, Planning and Environmental Review Director

CONTACT: Laura M. Bridley, Contract Planner
Kathy Allen, Supervising Senior Planner

SUBJECT: Proposed Development Agreement for Goleta Gardens LLC, 907 South Kellogg Avenue, APN 071-190-035; Case No. 20-0004-ORD

RECOMMENDATION:

It is recommended that the Planning Commission:

1. Open a public hearing to take verbal and written testimony; and
2. After considering the evidence presented during the public hearing, adopt Resolution No. 21-____, entitled "A Resolution of the Planning Commission of the City of Goleta, California, recommending to the City Council Approval of a Development Agreement to Extend the Date of Application of the Former Zoning Ordinance to the SyWest/Goleta Gardens LLC Project located at 907 S. Kellogg Avenue, Case No. 20-0004-ORD."

PROPERTY OWNER

Goleta Gardens LLC
C/o Bill Vierra, Syufy Enterprises
150 Pelican Way
San Rafael, CA 94901

APPLICANT/AGENT

SyWest Development
Attn. Robert Atkinson
150 Pelican Way
San Rafael, CA 94901

APPLICANT REQUEST/PROJECT DESCRIPTION:

The subject property (APN 071-190-035) is an 11.71-acre parcel located at the south terminus of Kellogg Avenue at 907 S Kellogg Avenue, within the Coastal Zone. The site is currently operating as the Westwind Drive-In Theater and Public Market. The property is zoned Service Industrial (I-S) and the land use designation is Service Industrial (I-S).

The applicant, Goleta Gardens LLC, proposes a Development Agreement to grant a license to the City of Goleta to use a private access road to the San Jose Creek Channel along a part of the subject site in exchange for an extension of the deadline to use the City's former zoning ordinance (Article 35 Coastal Zoning Ordinance) for the applicant's pending development proposal (Case No. 17-121-DP-DRB) from December 31, 2021 to December 31, 2023.

BACKGROUND:

Project History

The Planning and Environmental Review (PER) Department received an application from SyWest, agent for Goleta Gardens, LLC, for a Development Agreement (DA) on November 30, 2020 with the above-described request. This application was deemed complete on December 22, 2020. The request to extend the application of the former zoning ordinance is sought to apply to a project submitted by SyWest in 2017 (case 17-121-DP-DRB). The SyWest project application is for a Development Plan and Design Review of a 70,594 square foot, high-cube industrial building with parking and related site improvements at 907 South Kellogg Avenue. The application was determined to be complete to process on April 18, 2018 and, in May 2018, staff started the process to select a consultant to prepare the California Environmental Quality Act (CEQA) documentation for the project. In June 2018, SyWest requested the development application be placed on hold. No further work on the entitlement has been undertaken since that date. SyWest has indicated they would like the DA in place in order to continue related entitlement case work for the project.

Development Agreements

Development Agreements are a device that allows a project applicant to pursue a development with vested rights in exchange for the provision of public benefits to the local entity granting those vested rights. California Government Code Section 65864 authorizes the adoption of DAs to recognize the lack of certainty for development projects, and that reliance on existing rules and regulations can reduce that burden of uncertainty. Government Code Section 65865 provides standards for agencies to process DA's.

Goleta Municipal Code (MC) Section 17.65 provides the process and findings for the City to review a DA, consistent with the Government Code sections referenced above. If approved, a DA creates a contract between the City and developer that identifies for a specified time period, the rules, regulations, and policies that are applicable to a particular development. Such agreements must provide a public benefit to the City in accordance with findings (Section 17.65.040.C).

The DA must demonstrate that it is consistent with the City's General Plan, will be compatible with uses authorized in the Municipal Code, will provide substantial public benefit, will be non-detrimental to the public health, safety and general welfare of surrounding neighborhoods, and that it complies with the California Environmental Quality Act.

Goleta Municipal Code (MC) Section 17.01.040 (E.) (4) allows applications that were determined to be complete prior to September 1, 2019, an option of being processed under the zoning regulations in effect at that time, or to be processed under the updated Title 17. The option of using the former zoning ordinance terminates on December 31, 2021 unless a different date is approved by way of a Development Agreement by the City.

JURISDICTION

Per Goleta Zoning Ordinance Chapter 17.65, the City Council is the Review Authority on DAs following a recommendation by Resolution from the Planning Commission. The City Council's action on a DA request is adopted by Ordinance. Because the Goleta Gardens site is located within the Coastal Zone, the Ordinance approving a DA would also require follow-up action by the Coastal Commission as the City of Goleta does not have a certified Local Coastal Plan in place (see discussion below regarding Government Code Section 65869)

Review of the underlying project, Case No. 17-121-DP-DRB-CDP (in concept), will require preparation of the associated CEQA analysis and review/actions by the Design Review Board and Planning Commission at a minimum. The City Council review would only occur if there are significant unavoidable environmental impacts and/or on appeal. Given the site's location within the Coastal Zone, a Coastal Development Permit would also need to be approved by the California Coastal Commission.

DISCUSSION:

Proposed Development Agreement

Exhibit 1 to the Planning Commission Resolution (Attachment 1) provides the proposed Development Agreement for Goleta Gardens, LLC. The focus of this Agreement would allow the developer to use the development standards and review process in the former Goleta Zoning Ordinance (that changed with the adoption of the new Zoning Ordinance [Title 17] on April 2, 2020) for the review of the project proposed at 907 S. Kellogg Avenue, Goleta. In exchange, the property owner would grant a license to the City and its sublicensee, the County Flood Control District, to use an access road and area adjacent to the San Jose Creek Channel for maintenance purposes. In addition, if the City entitles the underlying project, the developer would convey a permanent easement to the City for the use of the access road and adjacent area. The difference between the license and easement is that the license lasts only for the duration of the Development Agreement, whereas the easement would be permanent.

The license would provide a benefit to the City, the surrounding neighborhoods and residents, given the City's and Flood Control District's longstanding commitment to the enhancement and protection of San Jose Creek. The license would enhance the ability of the City and the other local agencies to maintain, clean and manage the lower San Jose Creek Channel which carries significant floodwaters and protects acres of surrounding property.

As noted above, the site is located within the Coastal Zone. Government Code Section 65869 requires the California Coastal Commission to approve development agreements in areas where the required local coastal program has not been certified. Staff and the CCC staff are coordinating on this matter in order to facilitate a seamless process. However, the City process (Planning Commission review leading to a recommendation and City Council action) needs to be concluded before the CCC would take up the matter.

The DA findings that must be made are summarized below, per Goleta Municipal Code Section 17.65.040.C, and are included in the Resolution provided as Attachment 1:

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

Consistent: Execution of the DA would enhance the ability of the City of Goleta and other local agencies to access and maintain the lower San Jose Creek Channel, a major flood control channel and public works project called out to be completed in the City's General Plan, consistent with the City of Goleta General Plan, Conservation Element policies 1.10, 2.5, and 2.6.

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

Consistent: The DA does not contemplate allowing the underlying property to undertake any uses different from what is required in the Service Industrial ((I-S) zone district. However, if approved, the DA will allow the development standards and review process in place at the time the application was deemed complete to apply beyond the December 31, 2021 sunset date as established in Section 17.01.040(E)(4) and extend them to December 31, 2023.

3. The Development Agreement will provide substantial public benefits.

Consistent: The DA will result in the granting of a license and, if the City entitles the underlying 2017 project, an easement by Goleta Gardens LLC to allow the City to access the San Jose Creek Channel. The City and Flood Control District would be able maintain the creek channel and provide flood protection to the surrounding properties and area.

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

Consistent: The DA does not pose public health, safety and general welfare concerns to the surrounding neighborhood or residents near the project site in that it only authorizes additional time for the review of the proposed development application using the previous zoning standards and process. Further, through the terms of the DA, the public health, safety, and general welfare of the neighborhood as maintenance access to San Jose Creek will be improved through the provision of the easement.

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

Consistent: The DA complies with the provisions for implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3). The Development Agreement does not involve physical development of

the property at issue nor does it approve the underlying 2017 project, which will undergo its own process under CEQA and be subject to the full entitlement process under the City's zoning regulations. The Development Agreement allows the application of the development standards and review process in place at the time the application was deemed complete past the December 31, 2021 sunset date as established in Section 17.01.040(E)(4). Further, the Development Agreement will result in granting of a license by Goleta Gardens LLC to the City to use an existing access road to the San Jose Creek Channel to conduct maintenance and flood protection activities. The City and Flood Control's minimal use of this access road for creek maintenance purposes will not result in any foreseeable significant effect on the environment.

CONCLUSION

The DA does not change or modify any existing policy or use of the property or influence the City's discretion to entitle the underlying project or not. The DA would only grant additional time for the property owner to be vested under the prior Zoning Code to pursue the entitlement process for the high-cube warehouse project. As shown above and in the attached Resolution, the findings can be made to support the approval of the DA. For these reasons, staff recommends that the Planning Commission recommend adoption of the Development Agreement by Ordinance to the City Council.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Pursuant to the requirements of the California Environmental Quality Act (CEQA) (Public Resources Code §§ 21000 et seq.), the regulations promulgated thereunder (14 Cal. Code of Regulations §§ 15000 et seq.), and the City's Environmental Review Guidelines, the project can be found to be exempt from CEQA and a Notice of Exemption is proposed. The City of Goleta is acting as the Lead Agency for this project. See discussion under Number 5 of the Discussion section.


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

The proposed DA is separate and distinct from the proposed entitlement of the Goleta Gardens, LLC project that will undergo its own CEQA analysis as part of its review and public hearing process.

NOTICING

On March 18, 2021, notice of this hearing was published within the Santa Barbara Independent, and written notices were mailed to property owners and tenants within 500 feet of the subject property, as well as to the California Coastal Commission. A posted notice was also placed on the property frontage by March 14, 2021.

Legal Review by:



Winnie Cai
Assistant City Attorney

Approved By:



Peter Imhof
Planning and Environmental Review
Director

ATTACHMENTS:

1. Resolution No. 21-___, entitled "A Resolution of the Planning Commission of the City of Goleta, California, recommending to the City Council Approval of a Development Agreement to Extend the Date of Application of the Former Zoning Ordinance to the SyWest/Goleta Gardens LLC Project located at 907 S. Kellogg Avenue, Case No. 20-0004-ORD."

Exhibit 1 - Development Agreement by and Between City of Goleta and Goleta Gardens, LLC

Exhibit A - Legal Description

Exhibit B - Creek Access Road /Easement graphic

Exhibit C - Creek Access Road/Easement Legal Description

Exhibit D - Project Description for Goleta Gardens LLC

Exhibit E - Access and Maintenance Easement by Goleta Gardens LLC

Exhibit F - Easement for dedication of Creek Access Road

Exhibit 2 - Notice of Exemption

2. Staff Presentation

Attachment 1

Resolution No. 21-___, entitled “A Resolution of the Planning Commission of the City of Goleta, California, recommending to the City Council Approval of a Development Agreement to Extend the Date of Application of the Former Zoning Ordinance to the SyWest/Goleta Gardens LLC Project located at 907 S. Kellogg Avenue, Case No. 20-0004-ORD.”

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RESOLUTION 21-_____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GOLETA, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT TO EXTEND THE DATE OF APPLICATION OF THE FORMER ZONING ORDINANCE TO THE SYWEST/GOLETA GARDENS LLC PROJECT LOCATED AT 907 S. KELLOGG AVENUE, CASE NO. 20-0004-ORD.

The Planning Commission does resolve as follows:

SECTION 1: Recitals. The Planning Commission finds and declares that:

WHEREAS an application for a Development Agreement was filed on November 30, 2020 by Goleta Gardens LLC, owner of 907 S. Kellogg Avenue (Assessor Parcel Number 071-190-035), as demonstrated by a preliminary title report dated January 4, 2021, and related to a pending development application (“SyWest Project”) for a high-cube warehouse (“Project”); and

WHEREAS Goleta Gardens LLC proposes a Development Agreement to extend the deadline for use of the City’s former zoning ordinance (Article 35 Coastal Zoning Ordinance) for the applicant’s pending development proposal (Case No. 17-121-DP-DRB) from December 31, 2021 to December 31, 2023 in exchange *inter alia* for the granting of a license and, if the SyWest Project is approved, a permanent easement by Goleta Gardens LLC to the City of Goleta for use of a private access road to the San Jose Creek Channel along a part of the subject site; and

WHEREAS Government Code Sections 65684 et seq. recognize an efficiency for development projects to rely on existing policies, rules and regulations, while also recognizing that development agreements can facilitate the provision of public facilities as part of new development; and

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

WHEREAS the City of Goleta adopted a new zoning ordinance (Title 17 of the Municipal Code) on March 3, 2020, which became effective on April 3, 2020;

WHEREAS, on August 18, 2020, the City adopted amendments to Title 17 that allowed for the extension of the time frame for projects deemed complete prior to September 1, 2019 to use the City’s former zoning ordinance (Article 35) beyond December 31, 2021 with the approval of a Development Agreement as provided in Section 17.01.040(E)(4) of the Goleta Municipal Code; and

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

WHEREAS Goleta Gardens LLC requested a Development Agreement to allow for the SyWest Project to be processed under the standards of the City's former zoning ordinance until December 31, 2023 in exchange for *inter alia* the Owner's grant of a license to the City of Goleta to use an access road on Owner's property during the term of the proposed Development Agreement, provided in Exhibit 1 to this resolution; and

WHEREAS, on March 14, 2021, the site was posted for the March 29, 2021 Planning Commission meeting by the applicant (a minimum of 15 days prior to the Planning Commission meeting);

WHEREAS, on March 18, 2021, notice of the public hearing was published in the Santa Barbara Independent and notices were mailed to owners and occupants within 500 feet of the project site; and

WHEREAS, on March 29, 2021, the Planning Commission conducted a public meeting on the Goleta Gardens LLC Development Agreement, at which time all interested persons were given an opportunity to be heard; and

WHEREAS the Planning Commission considered the entire administrative record, including the staff report, the Draft Development Agreement by and between the City of Goleta and Goleta Gardens, LLC, and oral and written testimony from interested persons;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF GOLETA AS FOLLOWS:

SECTION 1. Recitals

The Planning Commission hereby finds and determines that the foregoing recitals, which are incorporated herein by reference, are true and correct.

SECTION 2. Development Agreement Findings

Pursuant to Goleta Zoning Ordinance Section 17.65.040 (C), the following findings of consistency can be made for adoption of the Goleta Gardens LLC Development Agreement

- A. The Development Agreement is consistent with the goals, objectives, policies, general land uses, and programs specified in the General Plan and any applicable Specific Plan because it would enhance the ability of the City of Goleta and other local agencies to access and maintain the lower San Jose Creek channel, a major

flood control channel and public works project called out to be completed in the City's General Plan.

- B. The Development Agreement is compatible with the uses authorized in Title 17 because the DA does not contemplate allowing the underlying property to undertake any uses different from what is required in the Service Industrial ((I-S) zone district. However, if approved, the DA will allow the development standards and review process in place at the time the application was deemed complete to apply beyond the December 31, 2021 sunset date as established in Section 17.01.040 (E) (4) and extend these development standards and review process to December 31, 2023.
- C. The Development Agreement will result in the granting of a license and, if the SyWest Project is approved, an easement by Goleta Gardens LLC to allow the City to access the San Jose Creek Channel, benefiting the City and Flood Control District's ability to maintain the creek channel and provide flood protection to the surrounding properties and area.
- D. The Development Agreement does not pose public health, safety and general welfare concerns to the surrounding neighborhood or residents near the project site in that it only authorizes additional time for the review of the proposed development application using the previous zoning standards and process. Further, through the terms of the DA, the public health, safety, and general welfare of the neighborhood as maintenance access to San Jose Creek will be improved through the provision of the easement.
- E. The Development Agreement complies with the provisions for the implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3) because the Development Agreement does not involve physical development of the property at issue nor does it approve the underlying SyWest project, which will undergo its own process under CEQA and be subject to the full entitlement process under the City's zoning regulations. The Development Agreement allows the application of the development standards and review process in place at the time the application was deemed complete past the December 31, 2021 sunset date as established in Section 17.01.040(E)(4). Further, the Development Agreement will result in granting of a license by Goleta Gardens LLC to the City to use an existing access road to the San Jose Creek Channel to conduct maintenance and flood protection activities. The City and Flood Control's minimal use of this access road for creek maintenance purposes will not result in any foreseeable significant effect on the environment.

SECTION 3: Environmental Assessment for the Project.

The Planning Commission makes the following environmental findings:

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

SECTION 4: *Recommendation.* The Planning Commission recommends that the City Council take the following actions:

- A. Adopt the Development Agreement by and between the City of Goleta and Goleta Gardens LLC for the property located at 907 S. Kellogg provided as Exhibit 1 to this Resolution based on the findings provided in Sections 1-3 above.
- B. Direct staff to file the Notice of Exemption (NOE) within five (5) business days after Council action.

SECTION 5: *Reliance on Record.* Each and every one of the findings and determinations in this Resolution is based on the competent and substantial evidence, both oral and written, contained in the entire record relating to the Development Agreement. The findings and determinations constitute the independent findings and determinations of the Planning Commission in all respects and are fully and completely supported by substantial evidence in the record as a whole.

SECTION 6: *Limitations.* The Planning Commission’s analysis and evaluation of the Development Agreement is based on the best information currently available. It is inevitable that, in evaluating a project, absolute and perfect knowledge of all possible aspects of the project will not exist. One of the major limitations on analysis of the Development Agreement and Project is the Planning Commission’s lack of knowledge of future events. In all instances, best efforts have been made to form accurate assumptions.

SECTION 7: *Summaries of Information.* All summaries of information in the findings, which precede this section, are based on the substantial evidence in the record. The absence of any particular fact from any such summary is not an indication that a particular finding is not based in part on that fact.

SECTION 8: This Resolution will remain effective until superseded by a subsequent Resolution.

SECTION 9: The City Clerk is directed to mail a copy of this Resolution to The Goleta Gardens LLC and to any other person requesting a copy.

SECTION 10: This Resolution will become effective immediately upon adoption.

SECTION 11: The City Clerk will certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

PASSED, APPROVED AND ADOPTED this 29th day of March 2021.

KATIE MAYNARD
VICE CHAIR

ATTEST:

APPROVED AS TO FORM:

DEBORAH S. LOPEZ
CITY CLERK

WINNIE CAI
ASSISTANT CITY ATTORNEY

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

I, DEBORAH S. LOPEZ, City Clerk of the City of Goleta, California, DO HEREBY CERTIFY that the foregoing Resolution No. 21-__ was duly adopted by the Planning Commission of the City of Goleta at a regular meeting held on the __29th__ day of __March, 2021 by the following vote of the Planning Commission:

AYES:

NOES:

ABSENT:

(SEAL)

DEBORAH S. LOPEZ
CITY CLERK

Exhibit 2

Draft Notice of Exemption

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NOTICE OF EXEMPTION (NOE)

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

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

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



Subject: Filing of Notice of Exemption

Project Title:

Goleta Gardens LLC Development Agreement
Case No. 20-0004-ORD

Project Applicant:

Goleta Gardens LLC

Project Location (Address and APN):

907 S. Kellogg Avenue
Goleta, CA 93117
County of Santa Barbara
APN 071-190-035

Description of Nature, Purpose and Beneficiaries of Project:

The Goleta Gardens LLC (SyWest as agent) is requesting approval of a Development Agreement to grant a license and, under certain conditions, a permanent easement to the City of Goleta to use a private access road to the San Jose Creek Channel along part of the subject site, in exchange for extension of the deadline to use the City's former zoning ordinance (Article 35 Zoning Ordinance) for the applicant's pending development proposal (Case No. 17-121-DP-DRB). from December 31, 2021 to December 31, 2023. The proposed Development Agreement will be considered by the Planning Commission and acted upon by the City Council.

The beneficiaries of the projects are the property owner and the City of Goleta.

Name of Public Agency Approving the Project:

Goleta City Council

Name of Person or Agency Carrying Out the Project:

Goleta Gardens LLC

NOTICE OF EXEMPTION (NOE)

Exempt Status: *(check one)*

- ☐ Ministerial (Sec. 15268)
☐ Declared Emergency (Sec. 15269)
☐ Emergency Project (Sec. 15269)
☒ Categorical Exemption/Other: §15061.B.3

Reason(s) why the project is exempt:

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

The Development Agreement complies with the provisions for implementation of the California Environmental Quality Act (CEQA) and can be found exempt per CEQA Guidelines 15061(b)(3). The Development Agreement allows the application of the development standards and review process in place at the time the application was deemed complete past the December 31, 2021 sunset date as established in Section 17.01.040(E)(4) that establishes new standards per the City's Chapter 17 zoning regulations adopted in 2020. Further, the Development Agreement will result in granting of a license and, under certain conditions, a permanent easement by Goleta Gardens LLC to the City to use an existing access road to the San Jose Creek Channel to conduct maintenance and flood protection activities. The City and Flood Control's minimal use of this access road for creek maintenance purposes will not result in any foreseeable significant effect on the environment. Therefore, the Development Agreement can be found exempt per Section 15061(b)(3) of the CEQA Guidelines because common sense holds that the Development Agreement itself, with certainty, will not have a significant effect on the environment and is therefore not an activity subject to CEQA.

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

Kathy Allen, Supervising Senior
Planner (805) 961-7545,
kallen@cityofgoleta.org

Name	Title	Date
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If filed by the applicant:

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

Date received for filing at OPR: _____

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

Exhibit 1

Development Agreement

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DEVELOPMENT AGREEMENT BY AND BETWEEN

CITY OF GOLETA

AND

GOLETA GARDENS LLC

THIS DEVELOPMENT AGREEMENT (“Development Agreement” or “Agreement”) is entered into as of the ____th day of _____ 2021, by and between the CITY OF GOLETA, a municipal corporation (the "City"), and GOLETA GARDENS LLC, a California limited liability corporation (“Goleta Gardens” or “Owner”).

RECITALS

- A. Goleta Gardens is the owner of a 11.71-acre parcel of real property designated as APN 071-190-035 and located at 907 S. Kellogg Avenue in the City of Goleta, California (“Property”). A legal description of the Property is attached hereto as **Exhibit A**.
- B. The Property is bounded on the east by San Jose Creek, a portion of which is a concrete-lined channel built and maintained to ensure that flood water is carried away from the City’s developed areas, including properties adjacent to the creek along Kellogg Avenue, including the Goleta Gardens Property. Both upstream and downstream of the concrete lined section, San Jose Creek is an important riparian and natural resource for the City and region. The City has a longstanding commitment to the enhancement and protection of San Jose Creek, and devotes significant resources to ensuring that it is maintained in a condition that protects the City’s residents and businesses from flooding.
- C. A portion of the Property is improved with a dirt road that allows limited vehicle access from Kellogg Avenue, the nearest public road, to the westerly bank of San Jose Creek (“Creek Access Road”). A graphic depicting the Creek Access Road is attached hereto as **Exhibit B** and a legal description is attached hereto as **Exhibit C**.
- D. A portion of the Creek Access Road is burdened by easements in favor of the Santa Barbara County Flood Control and Water Conservation District (“SBFCD”) that grant SBFCD a right of access for flood control purposes. The City and the SBFCD have, with the Owner’s permission, utilized the Creek Access Road for vehicular access to San Jose Creek for purposes of creek maintenance and repair, both the portion of the Creek Access Road burdened by the easements and a portion of the Creek Access Road over which there is no easement, license or other formal agreement between Goleta Gardens and the City or the SBFCD to allow such a use of the Creek Access Road.
- E. The City has approached Goleta Gardens with a request that it convey to the City an easement for the use of the entirety of the Creek Access Road for purposes of

vehicular access to San Jose Creek for purposes of creek maintenance and repair by the City and the SBFCD. Such a conveyance would confer a substantial and compelling public benefit on the City and its residents, since the City would thereby avoid the necessity of utilizing public funds to acquire the easement.

- F. Goleta Gardens has submitted an application to the City to develop the Property with an industrial project (“Project”). On April 11, 2018, the City determined the Project application to be “complete” under the provisions of the City zoning code then in effect (“Prior Code”). The Project Description is attached as **Exhibit D**.
- G. On March 3, 2020, the City adopted a comprehensive revision to its zoning code (“New Code”). On August 18, 2020, the City adopted a number of amendments to the New Code. Under the New Code, as amended, Goleta Gardens has the option to have its Project evaluated under the development standards of the Prior Code or the development standards of the New Code, which option expires on December 31, 2021 or such later date as may be set by a Development Agreement.
- H. The City is authorized to enter into development agreements with persons having legal or equitable development interests in real property located within the City pursuant to Government Code Section 65864 *et seq.*
- I. The City has adopted rules and regulations for consideration of development agreements, pursuant to Government Code Section 65865, in Chapter 17.65 of the Goleta Municipal Code.
- J. Owner has requested that City enter into a development agreement with Owner and proceedings have been undertaken in accordance with Title 17 of the Goleta Municipal Code.
- K. The terms and conditions of this Agreement have been found by the City to be fair, just and reasonable.
- L. The public health, safety and welfare of the citizens of the City will be served by entering into this Agreement by virtue of the Owner’s commitment to license the City’s and SBFCD’s use of the Creek Access Road during the term of this Agreement and a conditional commitment to convey an easement to the City and SBFCD for that purpose should the Project be approved.
- M. This Agreement will bind future City Councils to the terms and obligations specified in this Agreement and limit, to the degree specified in this Agreement, the future exercise of the City’s ability to regulate development on the Property.
- N. This Agreement and the Project will serve to implement the policies, objectives, and standards of the elements of the City of Goleta General Plan and is consistent with the General Plan.

- O. This Agreement and the consent of Owner and City to each of its terms and conditions will eliminate uncertainty in planning and provide for the orderly development of the Property and generally serve the public interest.
- P. On_____, 2021, the Planning Commission of the City, after giving notice pursuant to Sections 65090 and 65867 of the California Government Code, held a public hearing on Owner's application for this Agreement. The City Council, after providing public notice as required by law, similarly held a public hearing on _____, 2021.
- Q. The City Council finds that review of the environmental impacts of this Agreement has been conducted in accordance with the provisions of CEQA and the State and local guidelines adopted thereunder, and the City Council has given consideration to such environmental review prior to its approval of the Agreement has undertaken all actions necessary to comply with CEQA, including adoption of findings. The City Council further finds that this Agreement is consistent with the General Plan and all other applicable City plans, policies and regulations of the City of Goleta.

AGREEMENT

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

SECTION 1. DEFINITIONS

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

- a) "Agreement" means this Development Agreement by and between the City and Owner.
- b) "Approval Date" means the date on which the Approval Ordinance is adopted by the City Council.
- c) "Approval Ordinance" means Ordinance No._____, adopted by the City Council of the City on_____, approving this Agreement.
- d) "CEQA" means the California Environmental Quality Act, Section 21000, et seq., of the California Public Resources Code.
- e) "City" means the City of Goleta, California.
- f) "City Council" means the City Council of the City of Goleta.
- g) "Code" means the Municipal Code of the City of Goleta.

- h) "Commencement Date" means that date which is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum, the Commencement Date shall be the date when the referendum proceedings have been concluded by any process which results in the Approval Ordinance, and (ii) if litigation challenging the validity of this Agreement and/or environmental review pursuant to CEQA should be brought after the Approval Date, the Commencement Date shall be the date such litigation is concluded in a manner that permits the commencement or continuation of the parties' rights and obligations under this Agreement.
- i) "Development Agreement Act" means Section 65864 et seq., of the California Government Code.
- j) "Owner" means Goleta Gardens LLC, a California limited liability corporation and each of its respective successors and assigns to all or any portion of the Property during such time as such portion is subject to this Agreement. Goleta Gardens represents that it is the legal owner of the entire Property as of the date of adoption of the Approval Ordinance.
- k) "Project" means the Property and the proposed development of the Property described in the Project Description contained in **Exhibit D**.
- l) "Public Benefits" means the license and easement described in Sections 3 and 4.
- m) "Term" means the term of this Agreement, as provided in Section 7.1 of this Agreement.
- n) "Zoning Ordinance" means the comprehensive Zoning Ordinance of the City, found in Title 17 of the Code of the City of Goleta as it exists on the Approval Date.

SECTION 2. USE OF PRIOR CODE TO EVALUATE THE PROJECT; GENERAL PLAN CHANGES.

During the term of this Agreement, the Project shall be evaluated by all City staff and agencies utilizing the provisions of the Prior Code, including but not limited to its development standards, environmental standards and procedures. "Prior Code" shall refer to the Zoning Ordinance as it existed on April 11, 2018. During the term of this Agreement, the Project shall be evaluated by all City staff and agencies utilizing the provisions of the General Plan and Airport Land Use Plan as they exist on the date of execution of this Development Agreement.

Goleta Gardens recognizes and acknowledges that the City is under no obligation to approve the Project or any environmental review document prepared in connection with the application, and that the City reserves all of its discretion and the full measure of its police powers to evaluate the application on its merits in accordance with applicable procedures, standards and requirements. It is understood and agreed that this Agreement shall not be construed in any fashion as an approval of the Project or an advance determination and does not provide Goleta Gardens with any expectation as to the outcome of the discretionary review

process. The City neither expressly nor by implication conveys any position with regard to whether the Project may or may not be approved or as regards any conditions that may be imposed on such Project. An adverse decision on those applications will not constitute a default of this Agreement, but instead will constitute a terminating event of this Agreement.

SECTION 3. GRANT OF EASEMENT.

Goleta Gardens agrees that the City may impose a condition of Project approval requiring Goleta Gardens to execute and record, within thirty (30) days of the City's discretionary entitlements for the Project becoming final if the Project is approved, a non-exclusive easement in perpetuity by which the City and SBFGD may utilize the Creek Access Road for vehicular and pedestrian access to the creek for creek maintenance and repair purposes only. The easement shall be in the form attached hereto as **Exhibit E**. "Final" in this Section 3 shall mean: (i) the entitlements are granted and are subject to no further administrative appeal (including City and Coastal Commission); and (ii) any litigation over the validity of the entitlements is resolved by final judgment in favor of their validity.

SECTION 4. INTERIM REVOCABLE LICENSE.

Upon execution of this Development Agreement, Goleta Gardens shall execute and deliver to the City a non-exclusive revocable license under which the City and SBFGD may utilize the Creek Access Road for vehicular and pedestrian access to the creek for creek maintenance and repair purposes only. This License shall be in the form attached hereto as **Exhibit F** and shall terminate at the expiration or earlier termination of this Agreement or upon recordation of the easement referred to in Section 3 above, whichever occurs later.

SECTION 5. ANNUAL/SPECIAL REVIEW.

5.01 Annual Review. The City shall, at least every twelve (12) months during the Term of this Agreement review the extent of good faith substantial compliance by Owner with the terms of this Agreement. Subject to the notice and cure procedure set forth in Section 6.01.02, such a periodic review may result in amendment or termination of this Agreement, provided a default has been established under the terms of this Agreement. Pursuant to Government Code Section 65865.1, as amended, Owner shall have the duty to file an annual review request with the City, pay any applicable Processing Fees for such annual review and demonstrate its good faith compliance with the terms of this Agreement at such periodic review. The parties recognize that this Agreement and the documents incorporated herein could be deemed to contain many requirements (i.e., construction standards, landscape standards, etc.) and that evidence of each and every requirement would be a wasteful exercise of the parties' resources. Accordingly, Owner shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith and substantial compliance with the major provisions of this Agreement.

(a) Any party may address any requirement of this Agreement during the review. However, ten (10) days' written notice of any requirement to be addressed shall be made by the requesting party. If at the time of review an issue not previously identified in writing is

required to be addressed, the review at the request of either party shall be continued to afford sufficient time for analysis and preparation.

5.02 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Director of Planning and Environmental Review or City Council, as determined from time to time by the City Council, shall conduct such special reviews.

5.03 Opportunity to be Heard. Upon written request to the City by Owner, Owner shall be permitted an opportunity to be heard orally and/or in writing at a hearing before the City Council regarding its performance under this Agreement. Owner shall also be heard before the City Council at any required public hearing concerning a review of action on the Agreement.

5.04 Information to be Provided Owner. The City shall, to such an extent as is practical, deposit in the mail to Owner a copy of staff reports and related exhibits concerning contract performance a minimum of seven (7) business days prior to any such review or action upon this Agreement by the Planning Commission or the City Council.

SECTION 6. DEFAULT, REMEDIES AND TERMINATION

6.01 Enforceability.

6.01.01 Default. Subject to Sections 6.01.02 and 6.01.03, failure by any party to perform any term or provision of this Agreement required to be performed by such party shall constitute an event of default ("Event of Default"). In the event that Owner files for reorganization or other relief under any Federal or State bankruptcy or insolvency law, whether voluntarily or by involuntary bankruptcy or insolvency action, all provisions of this Agreement shall remain in full force and effect unless Owner engages in an Event of Default. For purposes of this Agreement, a party claiming another party is in default shall be referred to as the "Complaining Party", and the party alleged to be in default shall be referred to as the "Party in Default".

6.01.02 Procedure Regarding Defaults.

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

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

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

6.01.03 Institution of Legal Action. Subject to notice of default and opportunity to cure under Section 6.01.02, and subject further to the limitation on remedies set forth in Section 6.01.04, in addition to any other rights or remedies, any party to this Agreement may institute legal action to cure, correct or remedy any default, to enforce any covenants or agreements herein, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. If a legal action or proceeding is brought by any party to this Agreement because of an Event of Default under this Agreement, or to enforce a provision hereof, the prevailing party shall be entitled to reimbursement of all costs and expenses, including reasonable attorneys' fees, incurred in prosecuting such legal action or proceeding. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

6.01.04 Remedies.

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

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

(b) **City's Remedies.** The parties agree that the City shall have limited remedies for monetary damages and specific performance as specifically provided for in this Section 6.01.04. The City shall not have any right to compel specific performance with respect to the construction of the Project, or any obligation to construct the Project. Further, the City shall have no right to monetary damages as a result of Owner's failure to construct the Project.

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

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

6.02 Termination of Agreement.

As to the Property and all of the rights of Owner hereunder, and except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement unless earlier terminated pursuant to this Agreement. Subject to the notice and cure provisions set forth in Section 6.01.02, the City shall have the right to terminate this Agreement as to the Property and the rights of Owner hereunder, in the event Owner defaults and fails to cure such default within the respective cure period. Subject to the notice and cure provisions set forth in Section 6.01.02, Owner shall have the right to terminate this Agreement and the rights of the City hereunder in the event the City defaults and fails to cure such default within the respective cure period. Upon the termination of this Agreement, neither party shall have any further right or obligation with respect to the Property hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination (other than commencement of construction of either phase) or with respect to any obligations which are specifically set forth as surviving this Agreement.

6.02.01 Termination by Owner Prior to Development. The Owner is free, in its sole and subjective business judgment, not to proceed with development of the Project and, in such an event, to terminate this Agreement. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the parties to this Agreement. In the event Owner decides not to proceed with development of the Project and to terminate this

Agreement, the Owner shall provide written notice to the City of that decision and of the final, irrevocable termination of this Agreement. Immediately upon the giving of such written notice to the City, the parties' rights and obligations under this Agreement shall cease, except with respect to any obligations which are specifically set forth as surviving this Agreement.

SECTION 7. GENERAL PROVISIONS

7.01 Term. This Agreement shall terminate on December 31, 2023, except to the extent that (i) it has been extended by written instrument executed by the Parties, or (ii) the "Commencement Date" has been delayed as a result of referendum proceedings or litigation as set forth in Section 1(h).

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

(a) Prior to City Council approval of this Agreement, Owner shall execute this Agreement;

(b) City Council shall undertake all necessary proceedings to consider this Agreement in accordance with the procedures established by the Development Agreement Ordinance. Approval by the City shall be by adoption of the Approval Ordinance; and

(c) As provided in Section 65868.5 of the Development Agreement Act, the City shall cause a copy of this Agreement to be recorded with the County Recorder within ten (10) days following the Commencement Date. The Owner shall reimburse the City for recording costs.

7.03 Cooperation and Implementation. City represents that it will cooperate with Owner to the fullest extent reasonable and feasible to implement this Agreement. Upon satisfactory completion by Owner of all of its preliminary actions and payments of appropriate fees, City shall promptly commence and diligently proceed to complete all steps necessary for the implementation of this Agreement. Owner shall, in a timely manner, provide City with all documents, plans and other information necessary for the City to carry out its obligations hereunder.

7.04 Legal Challenges.

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

7.04.02 Continued Processing. The filing of any lawsuit(s) by a third party (not a party to this Agreement) after the Approval Date against the City and/or Owner relating to this Agreement or to other development issues affecting the Project shall not delay or stop the

processing or issuance of any permit or authorization necessary for development of the Project, unless the City in good faith determines that such delay is legally required.

7.05 Indemnity.

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

7.05.02 Survival of Indemnity. The indemnity provisions contained in Sections 7.05.01 and shall survive the termination of the Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law. Payment is not required as a condition precedent to an Indemnitee's right to recover under these indemnity provisions, and an entry of judgment against an Indemnitee shall be conclusive in favor of the Indemnitee's right to recover under these indemnity provisions. Owner shall pay Indemnitees for any reasonable attorneys' fees and costs incurred in enforcing these indemnification provisions.

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

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

If to the City: City Manager, City of Goleta
 130 Cremona Drive, Suite B
 Goleta, CA 93117

With a copy to: City Attorney, City of Goleta
 130 Cremona Drive, Suite B
 Goleta, CA 93117

If to Owner: Goleta Gardens LLC, c/o Bill Vierra
Syufy Enterprises
150 Pelican Way
San Rafael, California 94901

With a copy to: Steven Amerikaner, Esq.
Brownstein, Hyatt, Farber & Schreck
1021 Anacapa St. Floor 2
Santa Barbara, CA 93101-2102

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

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

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

7.10 Conflicts of Law. In the event that state, regional or federal laws or regulations enacted after the Approval Date or the action or inaction of any other affected governmental jurisdiction prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the parties shall (a) provide the other party with written notice of such state, regional or federal restriction, provide a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement, and (b) Owner and the City staff shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement, but only to the minimum extent necessary to comply with such federal, regional or state law or regulation. Thereafter, regardless of whether the parties reach an agreement on the effect of such federal, regional or state law or regulation upon this Agreement, the matter shall be scheduled for hearings before the Council. Ten (10) days' written notice of such hearing shall be given, pursuant to Government Code Sections 65090 and 65867. The Council, at such hearing, shall determine the exact modification or suspension which shall be necessitated by such federal, regional or state law or regulation. Owner, at the hearing, shall have the right to offer oral and written testimony. Any modification or suspension shall be taken by the affirmative vote of not less than a majority of the authorized voting members of the Council. Any suspension or modification may be subject to judicial review. The City shall cooperate with Owner in the securing of any permits which may be required as a result of such modifications or suspensions. If Owner and the City do not agree on the modification or suspension, either party may elect to terminate this Agreement.

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

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

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

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

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

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

The City acknowledges that prospective lenders providing such financing may request certain interpretations and modifications of this Agreement, and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to discuss in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent

to any such requested interpretation or modification which the City determines is consistent with the intent and purposes of this Agreement and protects the interests of the City under this Agreement. Any Mortgagee of Property shall be entitled to the following rights and privileges: Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value.

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

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

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

7.18 Covenant of Cooperation. Owner and the City shall cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the Property or the Project which may be required from public agencies other than the City. Owner reserves the right to challenge any ordinance, measure, moratorium or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.

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

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

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

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

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

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

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

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

7.26 Entire Agreement. This Agreement consists of _____() pages and six (6) exhibits (designated A through F), which constitute the entire understanding and agreement of the parties.

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

(signatures on next page)

CITY OF GOLETA

OWNER

By:_____

By:_____

ATTEST

By:_____

By:_____

City Clerk

(Title)

APPROVED AS TO FORM:

By:_____

City Attorney

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EXHIBIT A

Property Legal Description

Goleta Gardens LLC Development Agreement

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EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 071-190-035

Parcel "B" of Parcel Map No. 11950, in the City of Goleta, County of Santa Barbara, State of California, in [Book 13, Page 58](#) of Parcel Maps, in the Office of The County Recorder of said County.

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EXHIBIT B

Creek Access Road Graphic

Goleta Gardens LLC Development Agreement

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SOUTH KELLOGG AVENUE

POINT OF BEGINNING

TRUE POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	DISTANCE
LA	N 89°10'40" W	23.80'
L1	N 89°10'40" W	20.00'
L2	S 00°49'20" W	12.56'
L3	S 33°38'22" W	82.98'
L4	S 28°51'27" W	13.16'
L5	S 44°09'14" W	186.52'
L6	S 45°50'46" E	5.00'
L7	N 44°09'14" E	208.36'
L8	N 33°38'22" E	96.92'

EASEMENT AREA
±2,082 SQ. FT.

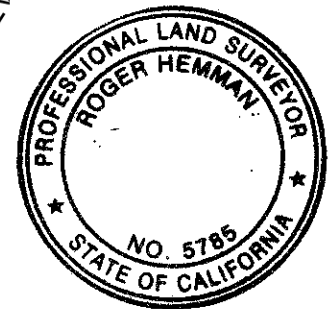
15' WIDE EASEMENT TO COUNTY OF
SANTA BARBARA & SANTA BARBARA
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
PER 1860 OR 759

5' WIDE EASEMENT TO COUNTY OF
SANTA BARBARA & SANTA BARBARA
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
PER 2196 OR 507

PARCEL B
PARCEL MAP 11,950
13 PM 58

APN 071-190-035

FLOOD CONTROL CHANNEL
WARD MEMORIAL BOULEVARD



[Signature]

15 JANUARY 2021

SCALE: 1"=50'



RDH

LAND SURVEYING & CONSULTING
2325.01 2325-EX-01.DWG (EX-B)

EXHIBIT B
Creek Access Road Graphic

15 JANUARY 2021

1 OF 1

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EXHIBIT C

Creek Access Road Legal Description

Goleta Gardens LLC Development Agreement

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EASEMENT LEGAL DESCRIPTION

CREEK ACCESS ROAD EASEMENT

That portion of Parcel B of Parcel Map No. 11,950, in the City of Goleta, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County in Book 13, Page 58 of Parcel Maps, described as follows:

Beginning at the northeast corner of said Parcel B; thence, along the north line of said Parcel B, North 89°10'40" West 23.80' to a point in the northwest line of the parcel described in the deed to County of Santa Barbara and Santa Barbara County Flood Control and Water Conservation District recorded in the office of said County Recorder on July 7, 1967 in Book 2196, Page 507 of Official Records, said point being the True Point of Beginning; thence, continuing along said north line of said Parcel B,

- 1st - North 89°10'40" West 20.00 feet; thence, at right angles to said north line,
- 2nd - South 0°49'20" West 12.56 feet to a line parallel with and distant westerly 10.00 feet from the northwest line of said parcel described in said deed to County of Santa Barbara and Santa Barbara County Flood Control and Water Conservation District; thence, along said parallel line,
- 3rd - South 33°38'22" West 82.98 feet; thence,
- 4th - South 28°51'27" West 13.16 feet to a line parallel with and distant westerly 5.00 feet from said northwest line; thence, along said parallel line,
- 5th - South 44°09'14" West 186.52 feet; thence,
- 6th - South 45°50'46" East 5.00 feet to said northwest line; thence, along said northwest line by the following two courses:
- 7th - North 44°09'14" East 208.36 feet; thence,
- 8th - North 33°38'22" East 96.92 feet to the True Point of Beginning.

Containing 2,082 square feet, more or less.



Roger Hemman, PLS 5785
Date: 15 January 2021



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EXHIBIT D

Project Description

Goleta Gardens LLC Development Agreement

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Exhibit D

Project Description - Goleta Gardens LLC

The subject property (APN 071-190-035) is an 11.71-acre parcel located at the south terminus of Kellogg Avenue at 907 S. Kellogg Avenue, within the California Coastal Zone. The site is currently operating as the Westwind Drive-In Theater and Public Market. The property is zoned Service Industrial (I-S) and the land use designation is Service Industrial (I-S). The applicant proposes a Development Agreement to grant a license to the City of Goleta to use a private access road to the San Jose Creek Channel in exchange for the extension of the deadline to use the City's former zoning ordinance (Article 35 Zoning Ordinance) from December 31, 2021 to December 31, 2023 on applicant's pending development proposal (Case No. 17-121-DP-DRB).

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EXHIBIT E

Creek Access and Maintenance Easement

Goleta Gardens LLC Development Agreement

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RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

CITY OF GOLETA
130 Cremona Drive, Suite B
Goleta, California 93117

No Recording Fee Pursuant to Gov't Code §§ 6103 and 27383
No Documentary Transfer Tax Pursuant to California Revenue & Taxation Code § 11922

(Space above this line is for Recorder's use)

ACCESS AND MAINTENANCE EASEMENT

THIS ACCESS AND MAINTENANCE EASEMENT is entered into this _ day of _____, 202_, by and between **GOLETA GARDENS LLC, a California limited liability company** ("Grantor") and the **CITY OF GOLETA, a municipal corporation of the State of California** ("Grantee") who hereby agree as follows:

1. Grantor's Property. The Property that is the subject of the Easement is located at 907 S. Kellogg Avenue, in the City of Goleta, the County of Santa Barbara, State of California, commonly known as APN 071-190-035, and is further described in **Exhibit "A"** attached hereto ("Property"). Grantor covenants that it is the owner of the above described real property and has full right, power, and authority to grant this Easement, and that said Property is free and clear of encumbrances and liens of whatsoever character except those recorded against the Property.

2. Grant of Easement. Grantor hereby grants to Grantee, and its successors and assigns, a perpetual nonexclusive easement and right of way for pedestrian and vehicular access by Grantee, and its employees, agents, contractors, customers, invitees and guests over, across, under and on that certain real property in the County of Santa Barbara, State of California, described on the attached **Exhibit "B-1"** and depicted on the attached **Exhibit "B-2"** (such rights being described hereafter as the "Easement" and the area affected by thereby, the "Easement Area"). The Easement shall include the right to use the Easement Area to access, maintain, repair, construct and reconstruct, an existing flood control channel and flood control appurtenances ("Flood Control Channel") adjacent to the Easement Area, together with the reasonable right of access over and across the Property for purposes of exercising the rights granted herein. Grantee shall have an irrevocable easement to go over, under, across and through the Easement Area, and all portions thereof determined by Grantee, in its sole discretion, to be necessary, expedient or convenient to effectuate or implement the rights of Grantee as set forth herein. Any action or inaction by the Grantee pursuant to this paragraph shall not create any liability on the part of the Grantee.

3. No Obstruction/Modification. No walls, fences, barriers or improvements of any kind will be constructed or maintained within the Easement Area by Grantor in any manner which would impair free access and movement of pedestrian and vehicular traffic through the Easement Area. Grantor shall not alter, modify or change the location or alignment of any vehicular access, the grade of the Easement Area, the flow of water or storm water within the Easement Area, cause any erosion, allow any water run-off from irrigation, construction any permanent or temporary structures such as buildings, sheds, barns, garages, or walls without the

prior written consent of Grantee, which may be withheld in the sole and absolute discretion of Grantee.

4. Permitted Parties. The Easement may be used by and for the benefit of Grantee, and its successors, assigns, tenants, subtenants, employees, agents, contractors, customers, visitors, licensees, invitees, and guests, including, without limitation the Santa Barbara Flood Control and Water Conservation District.

5. Grantee Non-responsibility. The Grantee shall be under no obligation to protect the Grantor, its property or any improvements located on the Property. The rights granted herein shall be without notice to Grantor or any third party. No exercise by Grantee of any of the rights herein shall entitle Grantor to any compensation for any matter whatsoever. More particularly, Grantor hereby assumes all risk of damage to property (real or personal) and injury to persons and waives and releases Grantee and its officers, directors , employees, agents, representatives, successors and assigns (collectively, "Representatives") from any damages, costs (including, but not limited to, reasonable attorneys' fees), actions, causes of action, demands, claims, losses, liabilities and expenses of every type and description (collectively , "Costs") arising from this Easement, including, without limitation, any flood control activities conducted at or around the Flood Control Channel.

6. Indemnification. Notwithstanding anything herein to the contrary, Grantee shall indemnify and hold Grantor harmless from and against any and all Costs arising solely from the acts or omissions of Grantee in making use of the Easement.

7. Runs with Land. This Agreement and the benefits and burdens herein shall be binding upon, and inure to the benefit of, each party and any person having or acquiring any right, title, or interest in or to any portion of the Property, whether by operation of law or any manner whatsoever. All provisions of this Agreement are intended to be covenants running with the land pursuant to Section 1468 of the Civil Code of the State of California.

8. Governing Law. This Agreement shall be construed and enforced **in** accordance with the laws of the State of California.

9. Attorney's Fees. In the event any party shall commence any legal action or arbitration proceeding to enforce the terms or conditions hereof , the prevailing party shall be entitled to reasonable fees, costs, and expenses incurred.

10. Counterparts; Document Execution and Change. This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed one original.

11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and may not be modified or amended except by a writing executed by the Parties

IN WITNESS WHEREOF, Grantor has executed this agreement as of the day and year first above written.

GRANTOR

Goleta Gardens LLC

By: SyWest Holdings LLC,
a California limited liability company
Its: Member/Manager

By: Syufy Enterprises,
a California limited partnership
Its: Member/Manager

By: Syufy Properties, Inc.,
a California corporation
Its: General Partner

By: _____ William Vierra
Its: Senior Vice President

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Exhibit A

Legal Description of Property

For APN/Parcel ID(s):071-190-035

Parcel "B" of Parcel Map No. 11950, in the City of Goleta, County of Santa Barbara, State of California, in Book 13, Page 58 of Parcel Maps, in the Office of The County Recorder of said County.

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Exhibit B -1

Legal Description of the Easement Area

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EASEMENT LEGAL DESCRIPTION

CREEK ACCESS ROAD EASEMENT

That portion of Parcel B of Parcel Map No. 11,950, in the City of Goleta, County of Santa Barbara, State of California, as shown on the map filed in the office of the County Recorder of said County in Book 13, Page 58 of Parcel Maps, described as follows:

Beginning at the northeast corner of said Parcel B; thence, along the north line of said Parcel B, North $89^{\circ}10'40''$ West 23.80' to a point in the northwest line of the parcel described in the deed to County of Santa Barbara and Santa Barbara County Flood Control and Water Conservation District recorded in the office of said County Recorder on July 7, 1967 in Book 2196, Page 507 of Official Records, said point being the True Point of Beginning; thence, continuing along said north line of said Parcel B,

- 1st - North $89^{\circ}10'40''$ West 20.00 feet; thence, at right angles to said north line,
- 2nd - South $0^{\circ}49'20''$ West 12.56 feet to a line parallel with and distant westerly 10.00 feet from the northwest line of said parcel described in said deed to County of Santa Barbara and Santa Barbara County Flood Control and Water Conservation District; thence, along said parallel line,
- 3rd - South $33^{\circ}38'22''$ West 82.98 feet; thence,
- 4th - South $28^{\circ}51'27''$ West 13.16 feet to a line parallel with and distant westerly 5.00 feet from said northwest line; thence, along said parallel line,
- 5th - South $44^{\circ}09'14''$ West 186.52 feet; thence,
- 6th - South $45^{\circ}50'46''$ East 5.00 feet to said northwest line; thence, along said northwest line by the following two courses:
- 7th - North $44^{\circ}09'14''$ East 208.36 feet; thence,
- 8th - North $33^{\circ}38'22''$ East 96.92 feet to the True Point of Beginning.

Containing 2,082 square feet, more or less.



Roger Hemman, PLS 5785
Date: 15 January 2021



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Exhibit “B -2”
Depiction of the Easement Area

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SOUTH KELLOGG AVENUE

POINT OF BEGINNING

TRUE POINT OF BEGINNING

LINE TABLE		
LINE	BEARING	DISTANCE
LA	N 89°10'40" W	23.80'
L1	N 89°10'40" W	20.00'
L2	S 00°49'20" W	12.56'
L3	S 33°38'22" W	82.98'
L4	S 28°51'27" W	13.16'
L5	S 44°09'14" W	186.52'
L6	S 45°50'46" E	5.00'
L7	N 44°09'14" E	208.36'
L8	N 33°38'22" E	96.92'

EASEMENT AREA
±2,082 SQ. FT.

15' WIDE EASEMENT TO COUNTY OF
SANTA BARBARA & SANTA BARBARA
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
PER 1860 OR 759

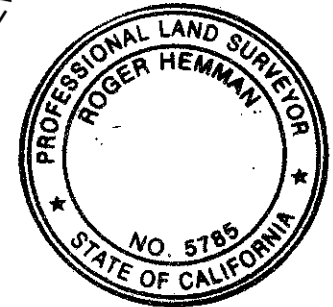
5' WIDE EASEMENT TO COUNTY OF
SANTA BARBARA & SANTA BARBARA
COUNTY FLOOD CONTROL AND
WATER CONSERVATION DISTRICT
PER 2196 OR 507

PARCEL B
PARCEL MAP 11,950
13 PM 58

APN 071-190-035

FLOOD CONTROL CHANNEL

WARD MEMORIAL BOULEVARD



[Signature]

15 JANUARY 2021

SCALE: 1"=50'



EXHIBIT B
Creek Access Road Graphic

15 JANUARY 2021

1 OF 1

RDH

LAND SURVEYING & CONSULTING
2325.01 2325-EX-01.DWG (EX-B)

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CERTIFICATE OF ACCEPTANCE
Pursuant to Section 27281 of the
California Government Code

This is to certify that the interest in real property conveyed by the Flood Easement dated _____, 2021, from Santa Barbara Nissan, LLC to City of Goleta, a municipal corporation, is hereby accepted by the undersigned officer on behalf of the City of Goleta, pursuant to the authority conferred by Resolution No. _____, adopted by the City Council of the City of Goleta on _____, 202_, and the City of Goleta consents to recordation thereof by its duly authorized officer.

Dated: _____, 202_ CITY OF GOLETA

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EXHIBIT F

Revocable License Agreement

Goleta Gardens LLC Development Agreement

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EXHIBIT F
NON-EXCLUSIVE REVOCABLE LICENSE AGREEMENT

This Non-Exclusive Revocable License Agreement ("**License**") is executed on _____, 20____, by and between **Goleta Gardens LLC, a California limited liability corporation** ("**Licensor**") and **City of Goleta, a municipal corporation** ("**Licensee**").

RECITALS

A. Licensor is the fee owner of that certain real property located at 907 S. Kellogg Avenue, Goleta, California, APN 071-190-035 (the "**Property**"). Licensor has submitted to Licensee an application for approvals to construct a new commercial development on the Property ("**Project**"), and Licensor and Licensee have entered into a Development Agreement dated _____ ("**Development Agreement**") to memorialize their agreement with respect to the Licensor's application.

B. Licensee has requested that Licensor license a portion of the Property to Licensee for the non-exclusive use thereof by Licensee for the purpose of vehicular and pedestrian access to San Jose Creek to accomplish repair and maintenance activities.

C. Licensor agrees to license such portion of the Property to Licensee for such purposes for a specified period of time, subject to and upon the terms and conditions contained in this License.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, which by this reference are incorporated herein, and in consideration of the mutual covenants, conditions and agreements contained herein, Licensor and Licensee hereby agree as follows:

1. **GRANT OF LICENSE AND PERMITTED USE.**

Licensor hereby grants to Licensee a license to utilize that certain portion within the Property as shown on Exhibit A (the "**Premises**") on the terms set forth herein. Licensee may grant a sublicense the Santa Barbara Flood Control and Water Conservation District to use the Premises, subject to all the terms and conditions of this license. The Premises collectively contain approximately 2,082 square feet of land, in the location shown on the Site Plan (attached hereto as Exhibit A and incorporated herein). During the Term (defined in Section 2, below), Licensee and Licensee's employees and contractors shall have the non-exclusive right to utilize the Premises only for vehicular and pedestrian access from the public right of way known as S. Kellogg Avenue to San Jose Creek, such access to be utilized only by Licensee's employees and contractors for creek, channel and bridge repair and maintenance purposes only (the "**Permitted Use**"). Licensee and its employees and contractors shall make no other use of the Premises or any use of any other portion of the Property. Licensee acknowledges and understands that, during the Term, Licensor shall have the right to license and lease any portion of the Property, including the Premises, to third parties, so long as such additional licenses and leases do not unreasonably interfere with Licensee's right to use the Premises hereunder.

2. TERM, TERMINATION; NO RIGHT TO RENEW OR EXTEND; NO LICENSE FEE.

The term ("**Term**") of this License shall commence on the date this License is executed by and delivered to both parties ("**Commencement Date**") and terminating on the earlier of: (i) execution and recording of a non-exclusive easement in perpetuity as described in Section 3 of the Development Agreement, or (ii) the expiration or earlier termination of the Development Agreement. Licensee shall have no right or option to extend or renew the Term. During the Term, Licensee shall have no obligation to pay to Licensors any rent or any license fee.

3. USE OF PREMISES.

- (a) The Premises shall be used only by Licensee and its employees and only for the Permitted Use specified in Section 1 above, and for no other use or purpose. Licensee shall, at Licensee's sole cost and expense, comply with all governmental laws, statutes, ordinances, codes, orders, rules, regulations, requirements and mandates (collectively, "**Laws**") affecting Licensee's use of the Premises. Licensee shall not: (i) do or permit anything to be done, nor bring or keep anything in or around the Premises or the Property, that will increase the risk of fire or other loss (including by way of example, bring flammables or explosives onto the Property) except for gasoline (and other substances typically found in vehicles) in Licensee's vehicles, if any, on the Premises; (ii) do or permit anything to be done which may be a nuisance to nearby occupants; (iii) commit or suffer any waste upon or about the Property; (iv) permit any liens to be recorded against the title to the Property or any portion thereof as a result of the activities of Licensee or Licensee's agents, contractors or employees; or (v) work on, wash, clean, maintain, repair or refuel any vehicles on the Premises or Property. In the event that any such liens are recorded, Licensee shall immediately cause such liens to be discharged and released from the title to the Property.
- (b) Except for gasoline (and other substances typically found in vehicles) in Licensee's vehicles, if any, on the Premises, Licensee shall not, and shall not direct, suffer or permit any of Licensee's agents, contractors or employees at any time to handle, use, manufacture, store or dispose of in or about the Property any flammables, explosives, radioactive materials, hazardous wastes or materials, toxic wastes or materials, petroleum products or derivatives or any substance subject to regulation (collectively, "**Hazardous Materials**") by or under any federal, state or local laws, regulations, statutes or ordinances relating to the protection of the environment or the keeping, use or disposition of environmentally hazardous materials, substances, or wastes (collectively, "**Environmental Laws**"). Licensee shall protect, defend, indemnify and hold Licensors and each and all of Licensors' directors, officers, general partners, beneficiaries, stockholders, employees and agents harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of any actual or asserted failure of Licensee to fully comply with all applicable Environmental Laws, or the presence, handling, use or disposition in or from the Premises of any Hazardous Materials, or by reason of any actual or asserted failure of Licensee to keep, observe, or perform any provision of this Section 3.

- (c) Licensee shall be responsible for the acts and omissions of all of Licensee's employees, agents and contractors, and shall ensure that they do not do anything upon the Property which Licensee is not allowed to do under this License. Also, Licensee shall faithfully observe and comply with any and all rules and regulations which Licensor may promulgate from time to time regarding the use of the Property.

4. UTILITIES, SERVICES AND OTHER COSTS.

During the Term, Licensee shall be solely responsible for and shall apply for, arrange and promptly pay directly to the utility service provider for Licensee's Permitted Use of the Premises all charges for gas, electricity, water, telephone, telecommunications, data, refuse and garbage removal, sewer service charges, fire sprinkler service, fire alarm service and any other utility or service used, consumed or provided in, or furnished, or attributable to the Premises, however supplied, at the rates charged by the supplying utility companies and service providers.

5. CONDITION OF PREMISES.

Licensee acknowledges and agrees that Licensee is familiar with the condition of the Premises, and agrees to accept the Premises in their existing condition "AS IS", without any obligation of Licensor to modify, improve or alter the Premises, or to perform any other construction or work of improvement upon the Premises. Pursuant to California Civil Code Section 1938, Licensor hereby notifies Licensee that the Premises have not undergone inspection by a Certified Access Specialist. A Certified Access Specialist (CASP) can inspect the subject Premises and determine whether the subject Premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject Premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject Premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the Premises. Accordingly, the parties hereby agree that Licensee shall, at Licensee's sole cost and expense, assume the full responsibility for: (a) obtaining a CASp inspection of the subject Premises in the event Licensee elects to obtain such an inspection, or if such an inspection is or becomes required in order to comply with Laws; and (b) perform any such repairs necessary to correct violations of construction-related accessibility standards within the Premises. Licensee shall obtain Licensor's prior written approval as to both the time and manner of any such CASp inspection and any such repairs.

6. ALTERATIONS, REPAIRS AND MAINTENANCE.

Licensee agrees not to make or permit any alterations or modifications to the Premises or other portions of the Property. During the Term of this License, Licensee shall maintain and keep the entire Premises in the same condition as it existed immediately prior to Licensee's use thereof, and Licensee shall keep the Premises neat, clean and orderly during the Term of this License. Licensee shall repair any damage Licensee causes to the Premises or other portions of the Property, or in lieu of requiring Licensee to make repairs, Licensor shall have the right (but not the obligation) to perform such

repairs itself, in which case, all repair costs shall be payable by Licensee upon Licensors request. Upon the expiration or termination of the Term of this License: (a) Licensee shall cease using the Premises and the Property; (b) Licensee shall remove all of Licensee's equipment, vehicles and personal property from the Premises and the Property; and (c) Licensee shall deliver the Premises to Licensors in the same condition as it existed immediately prior to Licensee's use thereof.

7. INDEMNITY, RELEASE AND INSURANCE.

- (a) Licensee shall defend, indemnify, protect and hold harmless Licensors and Licensors's directors, officers, partners, employees, representatives and agents (the "**Protected Parties**") from and against any and all losses, damages, liability, claims, demands, obligations, causes of action, judgments, costs, settlements or expense of any kind or character (including attorney's fees and costs for mediation, arbitration, litigation and/or settlement) for any loss or damage, bodily injury, including death, damage to or loss of use of property caused by Licensee's Permitted Use arising from: (i) Licensee's entry upon or use of the Property or anything done, permitted, suffered or omitted by Licensee or any of Licensee's employees, agents, officers, consultants, contractors or invitees in or about the Property; and/or (ii) any breach or default by Licensee hereunder. Licensee's obligation to indemnify Licensors shall apply to the fullest extent permitted by Laws, except to the extent that any such loss or damage is caused by the negligence or willful misconduct of Licensors. Licensee's obligation to indemnify Licensors shall survive the expiration or sooner termination of the Term of this License. As a material part of the consideration to Licensors under this License, except for any injuries or property damage resulting from the negligence or willful misconduct of Licensors, Licensee hereby assumes all risk of damage to property or injury to persons on or about the Property from any cause whatsoever that occurs during the Term of this License, and Licensee waives all claims against Licensors and the other Protected Parties on account of the same.
- (b) Commencing on the Commencement Date, Licensee is required to maintain in full force and effect throughout the Term and at its sole expense, a primary self-insurance policy of \$30 million and an excess policy of \$20 million, both with California Joint Powers Insurance Authority. Any insurance provided by Licensors and applicable to the Premises shall apply in excess of, and shall not contribute with the insurance provided by Licensors. Upon request, Licensee shall provide to Licensors written evidence reasonably satisfactory to Licensors that the requirements of this Section 7(b) have been met.
- (c) Licensors shall not be liable for any damage to the property of Licensee, or of others, located in, on or about the Premises, nor for the loss of any property of Licensee or of others by theft or otherwise. Licensors shall not be liable to Licensee, Licensee's employees, agents, contractors or representatives for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain or leaks from any part of the Premises or from the pipes, appliances or plumbing works or from the roof, street or sub-surface or from any other places or by dampness or by any other cause of whatsoever nature. Licensors shall not be liable to Licensee, Licensee's employees, agents, contractors or representatives for any such damage caused by other tenants or persons in the Premises or on the Property. Licensors shall not be liable for any

latent defects in the Premises or on the Property. All property of Licensee kept or stored on the Premises shall be so kept or stored at the sole risk of Licensee, and Licensee shall hold Licensors harmless from any claims arising out of damage to the same, including subrogation claims by Licensee's insurance carriers. Licensee shall give immediate notice to Licensors in case of fire or accidents in or upon the Premises or of any damage or defects in or upon the Premises or any fixtures or equipment therein or thereon.

8. ASSIGNMENT AND SUBLICENSE.

Licensee shall not, without Licensors' prior written consent (which consent may be withheld in Licensors' sole and absolute discretion): (i) assign this License or any interest in this License; (ii) permit the use of the Premises by any person or persons other than Licensee and Licensee's employees, agents or contractors; or (iii) sublicense (sublease) all or any part of the Premises other than to the Santa Barbara Flood Control and Water Conservation District.

9. DEFAULT BY LICENSEE; LICENSORS' REMEDIES.

(a) The occurrence of any of the following shall constitute a default by Licensee under this License: (i) intentionally deleted; (ii) any assignment, sublicensing or encumbrance in violation of this License; (iii) the insolvency, or filing of any voluntary or involuntary proceeding under the Bankruptcy Code or similar State Laws providing for relief or protection from creditors by or against Licensee, or the making of an assignment for the benefit of creditors by Licensee; (iv) if a receiver or trustee shall be appointed for all of the Premises or for all or substantially all of the assets of Licensee; or (v) the failure by Licensee to perform any non-monetary provision of this License if the failure to perform is not cured within thirty (30) days after written notice of such failure has been given to Licensee; provided that if the non-monetary default cannot reasonably be cured within thirty (30) days, Licensee shall not be in default of this License if Licensee commences to cure the default within the thirty (30) day period and diligently and in good faith continues to cure the default.

(b) Licensors shall have the following remedies if Licensee commits a default. These remedies are not exclusive; they are cumulative and in addition to any remedies now or later allowed by Law.

(i) Intentionally deleted.

(ii) Licensors may elect to terminate this License and Licensee's right to possession of the Premises. If Licensors elects to do so, Licensors shall have all of the rights and remedies of a landlord provided by California Civil Code Section 1951.2, or successor code section.

10. NOTICES.

Any notices required or permitted to be given by one party to the other party under this License shall be given by reputable courier service which provides for written evidence of delivery, or by certified or registered mail, postage prepaid, addressed to Licensors or Licensee at its address set forth below in this Section 11, or at such other address as

Licensor or Licensee may designate by written notice to the other party pursuant to this Section 11. Any notice given by courier service or by mail shall be deemed effective upon receipt, or attempted delivery.

Licensor's Address:

Goleta Gardens LLC
c/o Bill Vierra, SyWest Development
150 Pelican Way
San Rafael, CA 94901
Attention: Candice Ramirez

Licensee's Address:

City of Goleta
130 Cremona Drive, Suite B
Goleta, CA 93117
Attention: Charlie Ebling
805-961-7569
cebling@cityofgoleta.org

11. INTERPRETATION.

- (a) This License shall be governed by the laws of the State of California, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assigns. This License contains the entire agreement of the parties relating to Licensee licensing the Premises from Licensor for Licensee's Permitted Use. Any oral understanding or oral agreement, if any, between Licensor and Licensee, which is not incorporated herein, shall not be binding on Licensor or Licensee. This License cannot be amended, or any right or provision waived, except by a written document signed by both parties.
- (b) All obligations, liabilities, indemnities, waivers and releases hereunder, as well as the attorneys' fees provision hereof, shall survive the expiration or termination of the Term of this License.

12. LIMITATION ON LIABILITY.

Redress for any claim against Licensor under this License shall be limited to and enforceable only against and to the extent of Licensor's unencumbered interest in the Property. The obligations of Licensor under this License are not intended to and shall not be personally binding on the Protected Parties. No claims, demands or actions by Licensee shall be made against the Protected Parties or against any of the private properties of the Protected Parties.

13. BROKERS.

Licensee and Licensors warrant that they have had no dealings with any broker or agent in connection with this License. Licensors and Licensee each covenant to hold harmless and indemnify and defend the other from and against any and all cost, expense or liability for any compensation, commissions and charges claimed by any broker or agent to have been engaged to be representing such party with respect to this License or the negotiation hereof.

15. LICENSOR'S RIGHT OF ENTRY.

Licensors and its employees, agents, contractors and assigns may enter the Premises at all reasonable times: (a) to examine and inspect the Premises; (b) to perform any obligation of, or exercise any right or remedy of, Licensors under this License; (c) to make repairs, alterations, improvements or additions to the Premises, or to other portions of the Property as Licensors deem necessary; (d) to perform work necessary to comply with Laws or any requirements of any insurance underwriter; (e) to show prospective tenants the Premises; (f) to show prospective purchasers the Premises at any time during the Term; and (g) to post leasing signs on the Premises. Licensors may take such reasonable steps as required to accomplish the stated purposes. Licensee hereby waives any claims for damages or for any injuries or inconvenience to or interference with Licensee's loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by Licensors' entry into or upon the Premises pursuant to this Section 15.

16. ATTORNMEN AND SUBORDINATION.

Licensee shall, in the event any proceedings are brought for the foreclosure of, or in the event of exercise of the power of sale under any mortgage made by Licensors covering the Premises, attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Licensors under this License, provided that any such purchaser shall recognize this License as remaining in full force and effect, so long as Licensee observes and performs the terms, covenants and conditions of this License to be observed and performed by Licensee. This License shall be subject and subordinate to the lien of any mortgage, trust deed or other encumbrances now or hereafter in force against the Property or any part thereof, if any, and to all renewals, extensions, modifications, consolidations and replacements thereof, and to all advances made or hereafter to be made upon the security of such mortgages or trust deeds, unless the holders of such mortgages, trust deeds or other encumbrances require in writing that this License be superior thereto. Further, in the event Licensors shall sell, convey, transfer or exchange the Premises or the Property, Licensee agrees to recognize and attorn to the purchaser or transferee, as the Licensors hereunder and Licensors shall be relieved and released from any liability under any and all of its covenants and obligations under this License arising out of any act, occurrence or event after such sale, conveyance, transfer or exchange. Licensors' title is subject to: (a) the effect of any covenants, conditions, restrictions, easements, development agreements, mortgages or deeds of trust, ground leases, rights of way, and other matters or documents of record now or hereafter recorded against Licensors' title to the Property; and (b) the effects of any zoning Laws of the city, county and state where the Property is situated. Licensee agrees that it will conform to and will not violate any matters of record, and that this License is and shall be subordinate to said matters of record and any amendments or modifications thereto.

17. DAMAGE AND CONDEMNATION.

In the event that any portion of the Premises is damaged, or in the event that twenty-five percent (25%) or more of the square footage on the Property is damaged or destroyed by fire or other casualty notwithstanding that the Premises may be undamaged by such fire or other casualty, Licensors shall have the ongoing right to terminate the Term of this License by notice thereof from Licensors to Licensee. Upon the giving of such notice to Licensee, the Term shall terminate on the date set forth in such notice, and Licensee shall vacate the Premises and surrender the same to Licensors in the condition required under this License. If any portion of the Premises is acquired for any public or quasi-public use or purpose or taken by eminent domain, then the Term shall cease and terminate as of the date possession or title is given to such condemning authority in any proceeding. In the event that twenty-five percent (25%) or more of the square footage of space on the Property is acquired for any public or quasi-public use or purpose or taken by eminent domain notwithstanding that no portion of the Premises may be so acquired or taken, or if any of the parking or access areas on the Property may be so acquired or taken notwithstanding that no portion of the Premises may be so acquired or taken, then the Term shall cease and terminate as of the date possession or title is given to such condemning authority in any proceeding.

18. HOLDING OVER.

No holding over by Licensee shall operate to extend the Term. If Licensee remains in possession of the Premises after the expiration or termination of this License, Licensee shall become a tenant at sufferance upon all the applicable terms and conditions of this License, and such holding over shall constitute a default by Licensee under this License.

19. SALE OF PREMISES OR PROPERTY.

In the event Licensors shall sell, convey, transfer or exchange the Property, Licensee agrees to recognize and attorn to the purchaser or transferee as the Licensors hereunder, and Licensors shall be thereby relieved and released from any liability under any and all of its covenants and obligations under this License arising out of any act, occurrence or event arising after such sale, conveyance, transfer or exchange.

20. SECURITY DEPOSIT.

Licensee shall have no obligation to deposit with Licensors any sum as a security deposit.

IN WITNESS WHEREOF, Licensors and Licensee have executed this License as of the date first written above. The individual(s) signing on behalf of Licensee warrants and represents that he/she has the authority to bind Licensee to the provisions of this License.

LICENSORS:

Goleta Gardens LLC

By: SyWest Holdings LLC,
a California limited liability company
Its: Member/Manager

By: Syufy Enterprises,
a California limited partnership
Its: Member/Manager

By: Syufy Properties, Inc.,
a California corporation
Its: General Partner

By: _____
William Vierra
Its: Senior Vice President

LICENSEE:

City of Goleta

Michelle Greene
City Manager

Attest:

Deborah S. Lopez, City Clerk

APPROVED AS TO FORM:

Michael Jenkins, City Attorney

EXHIBIT A - SITE PLAN SHOWING THE PREMISES

