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**DRAFT 11-14-08 -- CLEAN VERSION**

***DEVELOPMENT AGREEMENT BY AND BETWEEN:  
CITY OF GOLETA AND OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP***

Dated: \_\_\_\_\_, 2008

\* \* \* \* \*

## TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
Section 1    Incorporation of Recitals	3
Section 2    Definitions	3
2.01    Defined Terms	3
2.02    Additional Defined Terms	4
Section 3.    Project and Property Subject to This Agreement; Applicable Regulations	4
3.01    Permitted Uses; Terms and Conditions of Development	4
3.02    Vested Rights to Develop; Effect of Agreement	4
3.03    Applicable Law of the Project	5
3.04    Exception for Uniform Codes	5
3.05    Subsequent Enactment	5
3.06    State and Federal Laws	5
3.07    Development Timing	6
3.08    Fees, Conditions and Dedications	6
3.09    Reimbursement	7
3.10    Amendments to Entitlements	8
Section 4.    Obligations of the Parties	8
4.01    Obligations of Owner	8
4.02    Obligations of City	10
Section 5.    Implementation of this Agreement	12
5.01    Effective Date	12
5.02    Term	12
Section 6.    Amendment of Agreement and Discretionary Permits	12
6.01    Amendment of Agreement	12
6.02    Minor Amendments	12
Section 7.    Default and Remedies; Annual Review; Impossibility of Performance; Cooperation in the Event of Legal Challenge; Applicable Law; Termination Upon Completion of Development;	

Processing During Third Party Litigation	13
<b><u>TABLE OF CONTENTS (Continued)</u></b>	

	<b><u>Page</u></b>
7.01 Default; General Provisions	13
7.02 Annual Review	14
7.03 Impossibility of Performance	15
7.04 Cooperation in the Event of Legal Challenge; City's Indemnification	15
7.05 Agreement Constitutes Legislative Act	16
7.06 Termination Upon Completion of Development of Project	16
7.07 Termination of Agreement for Completed Units	16
7.08 Processing During Third Party Litigation	16
 Section 8. General and Miscellaneous Provisions	 16
8.01 Covenants Running with the Land	16
8.02 Mortgagee Rights and Protections	17
8.03 Assignments and Transfers of Ownership	18
8.04 Insurance	20
8.05 Severability	21
8.06 Relationship of Agreement and Project Approvals	21
8.07 Further Actions	21
8.08 Operating Memoranda	22
8.09 Construction	22
8.10 Notices	22
8.11 Estoppel Certificate	23
8.12 Owner's Interest	24
8.13 No Third Party Beneficiary	24
8.14 Relationship of Parties	24
8.15 Waiver	24
8.16 Applicable Law	24
8.17 Time of Essence	24
8.18 Recordation	24
8.19 Entire Agreement and Amendment	24
8.20 Section Headings	24
8.21 Counterparts and Exhibits	25
8.22 Facsimile Signatures	25
8.23 Signatures	25

**DEVELOPMENT AGREEMENT BETWEEN**  
**CITY OF GOLETA AND**  
**OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2008, by and between Oly Chadmar Sandpiper General Partnership, a Delaware general partnership ("Owner"), and the City of Goleta, a municipal corporation ("City") pursuant to the authority of Sections 65864 et seq. of the Government Code of the State of California.

**RECITALS**

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

- A.** Government Code Sections 65864-65869.5(the "Development Agreement Statute") authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.
- B.** Owner has requested the City to consider entering into a development agreement regarding an approximate 14.46 acre parcel of real property located in the City of Goleta, commonly known as APN 79-210-049 and more particularly described in Exhibit A and depicted in Exhibit B attached hereto and incorporated herein by this reference (the "Property").
- C.** On March 4, 2008, the City Council authorized initiation of a development agreement regarding Owner's proposed development of the Property.
- D.** Appropriate proceedings have been taken to consider a development agreement for the Property, in accordance with the City's rules and regulations.
- E.** The City Council has found that the development agreement is consistent with the applicable General Plan provisions.
- F.** The City has conducted an environmental review of the Project and of the parties' proposed execution of a development agreement, as reflected in the EIR Addendum identified as \_\_\_\_\_ (the "Environmental Document").
- G.** Owner's proposed development of the Property (the "Project") will be known as "Haskell's Landing" and is generally described as: the development of 101 homes consisting of a variety of housing opportunities such as single family , detached, and

duplex configurations and attached townhomes as depicted on Exhibit "B" hereto and as more particularly described in Owner's Project Application (Case 07-102-GP, -TM, -DP, -DRB) and in the Environmental Document, the Project Approvals as defined below, and in those exhibits identified in Exhibit B hereto (the "Project").

**H.** Development of the Project will further the comprehensive planning objectives contained within the City's General Plan/Coastal Land Use Plan and will result in public benefits, including, among others, the following:

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

2. Providing 20 housing units in the affordable range, which units will provide a variety of unit types from studio to two-bedroom units, and will be subject to a 55-year resale restriction;

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

4. Providing fiscal benefits to City's General Fund in terms of increased property taxes;

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

6. In accordance with the provisions of Section 4.01.03.01 below, Owner's making a contribution of One Million Five Hundred Thousand Dollars (\$1,500,000) to City to be earmarked for the funding of the construction of Fire Station No. 10.

**I.** On \_\_\_\_\_, 2008, the City Planning Commission of the City of Goleta held a duly noticed public hearing and recommended: certification of the Environmental Document, approval of Owner's Project Application(Case 07-102-GP, -TM, -DP, -DRB) and adoption of this Development Agreement.

**J.** On \_\_\_\_\_, 2008, the City Council of the City of Goleta held a duly noticed public hearing, certified the Environmental Document, adopted Ordinance No. \_\_\_\_\_. approving this Development Agreement, approved Owner's Project Application(Case 07-102-GP, -TM, -DP, -DRB) and approved the other Project Approvals (as defined herein) associated with the Project.

**K.** This Development Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Statute and the Enabling Resolution, and, in that connection, will, among other things, assure Owner that the Project can be completed in accordance with the "Applicable Law of the Project" (as hereinafter defined) and for the uses and to the density and intensity of

development set forth in the Project Approvals and this Development Agreement. The City and the Owner have taken all actions mandated by and have fulfilled all requirements set forth in the Development Agreement Statute and the Enabling Resolution.

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

**Section 1. Incorporation of Recitals.**

The parties agree the foregoing Recitals are true and correct.

**Section 2. Definitions.**

**2.01 Defined Terms.** The following terms used in this Agreement, unless the context otherwise requires, shall have the following meanings:

(a) "Affordable Range" shall mean:

(1) 10 of the affordable units at moderate income level(affordable to households earning 125-150% of median income). The units at this range shall include two(2) two bedroom units, two(2) one bedroom units and six(6) studio units.

(2) 10 of the affordable units at upper moderate income level(affordable to households earning 150-200% of median income) where at least one member of the qualifying household is employed within the Goleta. The units at this range shall include six(6) two bedroom units and four(4) one bedroom units.

(b) "Agreement" shall mean this Development Agreement.

(c) "Applicable Law of the Project" shall mean all of the statutes, ordinances, rules, regulations and official policies applicable to the Project as defined in Section 3.03 hereof.

(d) "CEQA" shall mean the California Environmental Quality Act, California Public Resources Code § 21000 et seq.

(e) "Conditions of Approval" shall mean those Conditions of Approval applicable to the Project and contained in Exhibit "C" hereto.

(f) "City" shall mean the City of Goleta, California, or its successors in interest.

(g) "Development Agreement Statute" shall mean California Government

Code Sections 65864-65869.5.

(h) “Owner” shall collectively mean Oly Chadmar Sandpiper General Partnership, or its successors in interest and assignees pursuant to this Agreement.

(i) “Development Plans” shall mean the development plans for the Property as defined in Recital G above and in Section 2.01(l) below.

(j) “EIR” shall mean that certain EIR Addendum identified as \_\_\_\_\_ prepared in connection with the adoption of this Agreement.

(k) “Effective Date” shall mean the 30th day following the date of adoption by the City Council of Ordinance No. \_\_\_\_ approving this Agreement.

(l) “Mortgagee” shall mean the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Property or any successor or assignee of any such mortgage holder or beneficiary, provided that such mortgage holder or beneficiary has delivered written notice to the City stating its desire to receive notices of default pursuant to Section 8.02.

(m) “Project” shall mean the development of the Property as defined in Recital G above.

(n) “Project Approvals” shall mean those certain entitlement approvals issued by City for the Project concurrently with approval of this Agreement, including but not limited to certification of the Environmental Document and approval of the General Plan Amendments, Vesting Tentative Map (\_\_\_\_\_), Development Plan (\_\_\_\_\_), and Road Naming Application (\_\_\_\_\_), subject to the Conditions of Approval. A list of exhibits reflecting the Project Approvals is attached hereto as Exhibit B.

(o) “Property” shall mean that certain real property as defined in Recital B, above.

(p) “Subsequent Approvals” shall mean those certain future approvals for the Project which the City agrees to grant pursuant to Section 4.02.01 below.

(q) “Tentative Map” shall mean that Vesting Tentative Map for the Property as described in Section 2.01(n) above.

**2.02 Additional Defined Terms.** To the extent that any capitalized terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them in this Agreement.

**Section 3. Project and Property Subject to This Agreement; Applicable Regulations.**

**3.01 Permitted Uses; Terms and Conditions of Development.** All of the Project and the Property shall be subject to this Development Agreement. The permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, and other standards of Project design applicable to the Property shall be those set forth in the Project Approvals.

**3.02 Vested Right to Develop; Effect of Agreement.** Owner shall have the vested right to develop the Project on the Property in accordance with the Project Approvals and the provisions of this Development Agreement. The parties agree that the purpose and effect of this Agreement is to authorize the development of the Project pursuant to the Project Approvals and subject to the Applicable Law of the Project. The Project Approvals, Applicable Law of the Project, and this Agreement shall supersede any inconsistent ordinances, rules, regulations or official policies which either currently exist or may be enacted in the future, except as specifically set forth herein. The Project Approvals, once granted by City, shall remain valid for the Term of this Agreement, notwithstanding any City regulation or provision of law to the contrary. By way of example only, the Tentative Map shall remain valid for the Term of this Agreement, regardless of the timing of filing of the final map.

**3.03 Applicable Law of the Project.** Except as otherwise provided in this Agreement, the statutes, ordinances, rules, regulations, and official policies of City governing permitted uses of the Property, governing density and governing design, improvement and construction standards and specifications applicable to development of the Property – including, but not limited to, the law governing the issuance of permits and approvals for the Project and the zoning and General Plan applicable to the Project – shall be those ordinances, rules, regulations, fees, and official policies in effect on the date of City’s approval of this Agreement, except as otherwise specifically provided herein (Applicable Law of the Project). The City agrees that the Project as conditioned meets the requirements of and complies with the Applicable Law of the Project.

**3.04 Exception for Uniform Codes.** The provisions of Section 3.03 shall not govern the application to the Project of the Uniform Building Code, Uniform Fire Code and other uniform construction codes, and other codes, ordinances and regulations enforced by City relating to building or construction standards, which shall apply to the Project as in force and effect at the time of building permit or construction permit issuance.

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



3.05 shall not affect City's compliance with moratoria mandated by other governmental agencies or orders from a court of competent jurisdiction.

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

To the extent that any (i) actions of Federal or State agencies, (ii) actions of regional and local agencies, including the City, required by Federal or State agencies, or (iii) actions of the City taken in good faith in order to prevent adverse impacts upon the City by actions of Federal or State agencies have the effect of preventing, delaying or modifying development of the Project or any portion thereof, the City shall not in any manner be liable for such prevention, delay or modification of said development.

**3.07 Development Timing.** Commencement of construction framing for the Project shall occur within five(5) years of approval of the Coastal Development Permit by the California Coastal Commission and the building permit for the final unit shall be issued within ten(10) years of approval of the Coastal Development Permit by the California Coastal Development Permit. Construction of the Project may proceed upon satisfaction of the Conditions of Approval. It is the parties' specific intent that this Agreement shall prevail over any later-adopted initiative that might otherwise have the effect of restricting or limiting the timing or sequencing of development of the Project.

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

Notwithstanding the provisions of this Section 3.08, to the extent any federal or state law or regulation, adopted subsequent to the date of execution of this Agreement,

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

In addition the City may charge processing fees for land use permit approvals, building permits, and other similar permits and entitlements as the same are in force and effect on a City-wide basis at the time application is submitted for such permits and entitlements. This section shall not operate to exempt the Project from the payment of uniform property taxes.

**3.08.01 Goleta Transportation Impact Mitigation Fees.** Owner shall pay City's Transportation Impact Mitigation fee on a building by building basis, as indicated in Exhibit E attached hereto, prior to the issuance of building permits for each residential unit, except for the affordable units for which the Transportation Impact Mitigation fee shall be paid upon the date of final inspection or the date the final certificate of occupancy is issued, whichever occurs first. Certain costs that Owner shall incur to construct improvements that are required to mitigate certain Project-specific impacts shall be treated as a credit against the Transportation Impact Mitigation fees that Owner is required to pay to City. The parties agree that Owner shall be entitled to such a credit for costs incurred by Owner for the widening and improvements of Las Armas Way and Hollister Avenue.

**3.08.02 Construction of Improvements; Reimbursement Agreements.** Pursuant to the conditions of approval and as provided in the Environmental Document, the public improvements must be constructed prior to issuance of certificates of occupancy of the Project as set forth in the Project's Conditions of Approval contained in Exhibit "C" hereto.

The public improvements shall be constructed by Owner. The cost of the roadway improvements shall be treated as a credit against the total Transportation Impact Mitigation fees that Owner is required to pay to City. City will cooperate in Owner's construction of the public improvements by, without limitation, timely issuance of all required permits and consultation with Owner regarding appropriate construction cost containment measures.

**3.08.03 Park Fees.** City's Recreation (Parks) – Quimby fees for the market rate residential units shall be paid upon the recordation of the Final Map. The fee shall be paid in accordance with Exhibit F attached hereto and shall be indexed monthly based on the Consumer Price Index (the "CPI Index") – All Urban Consumers for Los Angeles-Riverside-Orange County.

**3.09 Amendments to Entitlements.** It is contemplated by City and the Owner that Owner may, from time to time, seek amendments to one or more of the Project Approvals. Any such amendments are contemplated by City and Owner as being within

the scope of this Agreement as long as they are consistent with the Applicable Law of the Project and shall, upon approval by the Director of the Planning and Environmental Services Department for the City, continue to constitute the Project Approvals as referenced herein. The parties agree that any such amendments shall not constitute an amendment to this Agreement nor require an amendment to this Agreement.

#### **Section 4. Obligations of the Parties.**

**4.01 Obligations of Owner.** Owner shall satisfy the following obligations in its development of the Project:

**4.01.01 Compliance with Conditions.** Owner shall comply with the Project Approvals, including but not limited to the payment of any and all fees and the construction of all on-site and off-site improvements required thereunder.

**4.01.02 Compliance with Mitigation Monitoring Program.** Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Environmental Document was prepared for the Project and certified by the City. Mitigation measures were included in the Environmental Document, and a corollary Mitigation Monitoring Program was adopted. All terms and provisions of the Project Mitigation Monitoring Program shall be adhered to by the Owner and are incorporated herein by this reference.

**4.01.03 Provision of Extraordinary Benefits to City.** Owner will provide the following extraordinary benefits to City beyond those mitigation measures and conditions otherwise permitted by applicable law:

**4.01.03.01** Owner shall make a contribution of One Million Five Hundred Thousand Dollars (\$1,500,000) to City to be earmarked for the funding of the construction of Fire Station No. 10. Said contribution shall be due and payable at the time the first building permit is issued. In consideration of Owner's very substantial contribution to the funding of the construction of Fire Station No. 10, the City has been advised that the County of Santa Barbara has represented the County shall waive fire related plan check and inspection fees for the Project. Said contribution of \$1,500,000 shall be a firm financial obligation such that Owner shall not be required to pay any additional amount for Fire Station No. 10, nor shall Owner receive any reimbursement for said contribution.

**4.01.03.02** The Project will provide 20 housing units in the affordable range, which units will provide a variety of unit types from studio to two-bedroom units, and will be subject to a 55-year resale restriction. (

**4.01.03.03** The Project applicant will conduct affordable housing workshops to inform the public of the parameters of the Project's affordable units and to facilitate, correct and complete applications.

**4.01.03.04** The Project will provide 81 for sale market rate housing units including multiplex and detached units resulting in a positive impact to the housing inventory in the City of Goleta and the South Coast Housing Market area.

**4.01.03.05** The Project's housing will help to satisfy the City's obligation to meet its share of regional housing needs.

**4.01.03.06** The Project will provide additional homes to the City of Goleta's housing inventory to contribute to the improvement of the job/housing imbalance thereby potentially reducing overcrowding, long distance commuting between regions, and the resulting negative effects on families within the City of Goleta.

**4.01.03.07** A total of approximately 3.48 acres onsite, comprising currently degraded riparian, wetland and grassland resources, will be restored, enhanced and maintained in perpetuity as protected open space.

**4.01.03.08** The Project will provide a pedestrian connection to a certain adjacent parcel of property described as APN 79-210-048 and will further provide safe access to Ellwood Elementary School for Project residents.

**4.01.03.09** Las Armas Way and Hollister Avenue shall be widened and improved.

**4.01.03.10** The Project applicant shall cooperate with the Union Pacific Railroad in Union Pacific's efforts to reconnect Devereux Creek hydrologically to its upstream source. Diversion of clean surface waters into the Creek and reconnection of stream flows would enhance recovery of the Devereux Creek system on site.

**4.01.03.11** The Project will create short-term employment opportunities during its construction.

**4.01.03.12** The Project will provide fiscal benefits to the City's General Fund in terms of increased property taxes.

**4.01.03.13** Any new electric power lines crossing the Project site will be undergrounded.

**4.01.03.14** The Project will incorporate sprinklers in all residential structures regardless of size.

**4.01.03.15** The Project will implement "green" building design and greenhouse gas emission reduction standards.

**4.02 Obligations of City.** City shall satisfy the following obligations in its review of the

Project pursuant to this Agreement:

**4.02.01 Processing and Approvals.** Provided that Owner is not in default under this Agreement, upon submission by Owner of all completed applications for permits and approvals for the Project and payment of all appropriate processing fees as provided in this Agreement, City shall commence and complete with reasonable diligence all steps necessary to issue, and shall issue, all permits or approvals required for development of the Project, as contemplated by the Project Approvals and Applicable Law of the Project including but not limited to (a) the holding of all required public hearings and provision of notice for such public hearings, and (b) the granting of the requested permit or approval if the City determines that it complies with this Agreement and the Project Approvals. Such permits and approvals shall include, but not necessarily be limited to building permits (including building permits for tenant improvements), road encroachment permits, use and land use permits, site clearance or demolition permits, grading plans and permits, landscape plans, Design Review Board review, and certificates of occupancy (the "Subsequent Approvals").

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

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

- (a) No entities or persons are available or qualified to perform the services; or
- (b) City would be able to perform services in a more rapid fashion by modifying its own work schedule than would any available qualified entities or persons.

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

City shall not require Owner to obtain any further approvals or permits for the development of the Project during the Term of the Agreement unless such permits

or approvals are required by the Applicable Law of the Project. The City agrees that any conditions of approval or departmental conditions imposed upon the issuance of such further approvals or permits shall not be in conflict with this Agreement or with the Applicable Law of the Project, as defined above.

**4.02.02 Environmental Review.** In approving this Development Agreement and the Project, City has taken whatever actions are reasonably required by the California Environmental Quality Act. City agrees that in reviewing subsequent land use applications by Owner that are in conformance with the Project, it will be performing a ministerial act for which no further environmental analysis will be required unless otherwise required under applicable law.

**4.02.03 Land Use, Building and Grading Permits.** Upon application by Owner, City shall issue building permits to Owner consistent with the Project Approvals. In addition, upon application by Owner, City shall issue site clearance permits, rough and final grading permits, demolition permits, permits for installation of storm drains, utilities, offsite improvements, and similar improvements, and grading permits of any type required by Owner for grading or development operations of any type consistent with this Agreement. The above permits shall be issued in conformity with the Applicable Law of the Project and with Section 4.02.01 hereof.

**4.02.04 Other Governmental Permits.**

City shall provide Owner a Final Action Letter in a timely manner, including findings, permit conditions, CEQA documents and other such documents as appropriate, should the Project receive City Council approval. Owner shall be responsible for applying, and shall apply from time to time, and for gaining other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project, at Owner's sole cost, in connection with the development of, or provision of services to, the Project. Owner shall also be responsible for coordinating with all non-City providers of utilities to ensure the proper installation and construction of said utilities.

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

**Section 5. Implementation of this Agreement.**

**5.01 Effective Date.** This Agreement shall be approved by City Ordinance pursuant to Government Code section 65867.5, and shall be deemed in full force and effect on the Effective Date.

**5.02 Term.** The Term of this Agreement shall commence upon the Effective Date and shall extend until the twentieth (20th) anniversary of the Effective Date. The running of this Term shall be automatically stayed for the period of time during which the parties apply to a court of competent jurisdiction for relief or further proceedings pursuant to this Agreement, provided that the issue that is the subject of the requested relief or further

proceedings is one of substantial materiality to the Development Agreement as a whole. The parties further agree to consult regarding possible tolling of the Term should delay in permit processing or review by a public agency with jurisdiction over the Project or its improvements pose a substantial impediment to Owner's ability to complete construction of the Project within the Term.

## **Section 6. Amendment of Agreement and Discretionary Permits.**

**6.01 Amendment of Agreement.** This Agreement and the underlying discretionary permits (hereinafter "Agreement") may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with California Government Code section 65868, with City costs being paid by Owner. Amendments to this Agreement and any exhibits thereto shall be governed by the Applicable Law of the Project.

**6.02 Minor Amendments.** Any amendment to this Agreement which does not relate to the Term of this Agreement, the payment of fees, or the permitted uses set forth in the Project Approvals may be processed and approved by City as a "Minor Amendment." Examples of Minor Amendments include, without limitation, substitution of comparable landscaping for any landscaping shown on any development plan or any landscape plan, variations in the location or installation of utilities and other infrastructure connections and changes which do not substantially alter the design of the Project considered as a whole.

Upon the written request of Owner for a Minor Amendment, the Director of the Planning and Environmental Services Department for the City (the "Director") shall determine whether the requested amendment is a Minor Amendment and whether it is consistent with the Applicable Law of the Project. The determination whether such amendment is a Minor Amendment shall refer to whether the change in this Agreement is minor and not material in the context of the overall Project, is in substantial conformity with the Project Approvals, is consistent with the findings adopted by the City in approving the Project, and does not have the potential to create greater environmental impacts than those identified in the Environmental Document. If the Director finds that the proposed amendment is a Minor Amendment and consistent with the Applicable Law of the Project, he/she may approve said Minor Amendment without notice and public hearing. If he/she determines that the proposed amendment is not a Minor Amendment or is inconsistent with the Applicable Law of the Project, he/she shall forward the proposed amendment to the Planning Agency, along with his/her recommendation for action thereon. The Planning Agency shall approve or deny the proposed amendment in conformity with the Applicable Law of the Project.

Decisions of the Director and/or Planning Agency shall be subject to the procedures for appeal set forth in Goleta Municipal Code Inland Zoning Ordinance, Article III, Chapter 35-327.



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

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

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

**7.01.02 Default of City.** The City shall be in default under this Agreement if it fails to comply with any material term or condition of this Agreement applicable to City. In the event of default by City, Owner, at its sole discretion and without obligation to do so, may apply for and process permits and seek development approval under the City's Land Use Planning process then in effect as applicable to the Property. The enactment of any' ordinances, rules, regulations and official policies other than the Applicable Law of the Project shall in no manner restrict the specific enforceability of this Agreement.

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

**7.01.04 Reference.** Pursuant to Code of Civil Procedure Section 638, et seq., all legal actions shall be heard by a referee who shall be a retired judge from either the Santa Barbara County Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and City shall agree upon a single referee who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and City are unable to agree on a referee within ten days of a written request to do so

by either party hereto, either party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section 7.01.04 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Section 7.01.04, either party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement, or to enjoin the other party from an asserted breach thereof, pending the selection of a referee as provided in this Section 7.01.04, on a showing that the moving party would otherwise suffer irreparable harm.

**7.01.05 Compliance with the California Claims Act.** Compliance with the procedures set forth in this Section 7.01 shall be deemed full compliance with the requirements of the California Claims Act (Government Code §§900 et seq.), including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code §910.

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

**7.03 Impossibility of Performance.** Nonperformance by Owner or City hereunder shall not be deemed to be a default if such nonperformance is attributable to events beyond the reasonable control of Owner or City, such as acts of God, war, strikes, riots, floods, earthquakes, fires, casualties, acts of public enemy, other similar causes, the failure of any non-City governmental entity of competent jurisdiction (i.e., special districts) to issue permits required for the development of the Project or a commitment to serve the Project after all requirements for such issuance or commitment are met, the rescission or suspension of a commitment which has already been made to serve the Project by a public entity, litigation or administrative appeals to a governmental entity to

set aside any Project Approval or this Agreement or any component thereof, or the issuance of a court order preventing development of the Project or a recession(NEED TO INSERT DEFINITION/DETERMINATION OF RECESSION). If performance has been delayed by any such cause, the Term of this Agreement and times for performance under this Agreement shall be extended for the period of the delay, with such period commencing to run from the time of the commencement of the cause.

**7.04 Cooperation in the Event of Legal Challenge; City's Indemnification.** If any legal or equitable action or other proceeding (hereafter "actions") is brought by any person, private entity, governmental entity or official challenging the validity of any provision of this Agreement, the Project Approvals, or the Environmental Document, the parties shall cooperate in defending such action or proceeding. Owner agrees to hold harmless the City from any such actions and shall defend and indemnify the City for all attorneys' fees, litigation costs, settlement payments and judgments arising from or in any way related to such actions. Owner shall pay for the defense of the City, as the costs of defense are incurred, with counsel selected by the City, which counsel shall be subject to approval by Owner, such approval being not unreasonably withheld. If this Agreement is adjudicated or determined to be invalid or unenforceable, in whole or in part, City and Owner agree to seek a declaration from the Court as to the extent to which the Agreement is still valid and enforceable. After obtaining such declaration and after consultation with Owner, City agrees, to the extent permitted by law, to consider appropriate modifications to the Agreement, the intent of the parties being to accomplish the objectives of this Agreement, including development of the Property as conditioned by the City. If this Agreement is adjudicated or determined to be unenforceable or invalid, in whole or in part, Owner shall reimburse City for all fees and/or costs assessed against the City by the Court.

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

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

Agreement.

**7.07 Termination of Agreement for Completed Units.** This Agreement shall be terminated with respect to each residential unit within each separate building within the Project, without the execution or recordation of any further documents, when a certificate of occupancy has been issued for all of the residential units in such separate building in which such units are located.

**7.08 Processing During Third Party Litigation.** The filing of any third party actions against City or Owner relating to the Environmental Document, this Agreement, the Project Approvals or to other development issues affecting the Property shall not delay or stop the development, processing or construction of the Project or issuance of any Subsequent Approvals, unless the third party obtains a court order preventing the activity. City shall not stipulate to or cooperate in the issuance of any such order.

## **Section 8. General and Miscellaneous Provisions.**

**8.01 Covenants Running with the Land.** All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, or any interest therein, whether by sale, operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All of the provisions of this Agreement shall be enforceable during the Term hereof as equitable servitudes and shall constitute covenants running with the land pursuant to applicable law, including but not limited to Section 1468 of the Civil Code of the State of California. Each covenant to do or refrain from doing some act on the Property hereunder, or with respect to any City-owned property or property interest: (i) is for the benefit of such properties and is a burden upon such property, (ii) runs with such properties, and (iii) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and each person or entity having any interest therein derived in any manner through any owner of such properties, or any portion thereof, and shall benefit each party and its property hereunder, and each other person or entity succeeding to an interest in such properties.

### **8.02 Mortgagee Rights and Protections.**

**8.02.01 Notification of Mortgagee.** City shall notify any Mortgagee who has sent City a written request for such notice of any event of default by Owner under this Agreement and provide to any such Mortgagee the same opportunity to cure such event of default as is provided to Owner under this Agreement. Failure to so notify any Mortgagee shall not give rise to any liability on the part of City, provided that this Agreement shall not be terminated by City as to any Mortgagee to which either of the following is true:

- (a) the Mortgagee cures any default by Owner involving the payment of money within sixty (60) days after the notice of default;
- (b) as to defaults requiring title or possession of the Property or any portion thereof to effectuate a cure: (i) the Mortgagee agrees in writing, within ninety (90) days after the written notice of default, to perform the proportionate share of Owner's obligations under this Agreement allocable to that part of the Property in which the Mortgagee has an interest conditioned upon such Mortgagee's acquisition of the Property or portion thereof by foreclosure (including a trustee sale) or by a deed in lieu of foreclosure; (ii) the Mortgagee commences foreclosure proceedings to reacquire title to the Property or applicable portion thereof within said ninety (90) days and thereafter diligently pursues such foreclosure to completion; and (iii) the Mortgagee promptly and diligently cures such default after obtaining title or possession. Subject to the foregoing, in the event any Mortgagee records a notice of default as to its mortgage or deed of trust, City shall consent to the assignment of all of Owner's rights and obligations under this Agreement to the Mortgagee or to any purchaser of the Owner's interest at a foreclosure or trustee sale and Owner shall remain liable for such obligations unless released by City or unless the applicable portion of the Property is transferred in accordance with Section 8.03.

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

### **8.03 Assignments and Transfers of Ownership.**

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

**8.03.02 Assignment to Owner's Affiliated Entities.** Owner shall have the absolute right to assign its rights, duties and obligations under this Agreement to any entity in which one of the following entities is a managing member: (a) W/S Chadmar, LLC, a California Limited Liability Company ("W/S Chadmar"), Chadmar SB Partners, LLC, a Delaware Limited Liability Company ("Chadmar SB"), W/S Realty Advisors, LLC, a California Limited Liability Company ("W/S Realty"), or an affiliate of W/S Chadmar, Chadmar SB or W/S Realty, or Calvest Advisory Fund III, Inc., a California Corporation ("Calvest"), or an affiliate of Calvest, or Oly Real Estate Partners II, a Texas Limited Partnership ("Olympus"), or an affiliate of Olympus or (b) in which W/S Chadmar, Chadmar SB, W/S Realty, Calvest, Olympus or affiliates thereof are responsible for the development of the property. As used in this Agreement, the term "affiliate" shall mean an entity controlling, controlled by or under common control with the entity to which the term applies, whether by ownership, contract or voting control. Owner and the entity to whom the rights are to be assigned (the "Assignee") shall sign an Assignment and Assumption Agreement in the form of Exhibit "D" attached hereto ("Assignment and Assumption Agreement") and Owner shall provide City with a signed copy of the Assignment and Assumption Agreement.

**8.03.03 Assignment to Qualified Developers.** Owner shall have the absolute right to assign its rights, duties and obligations under this Agreement upon satisfaction of the following conditions:

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

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

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

(iv) The Assignee, or an affiliate of the Assignee, has the financial capability to construct that portion of the Project which is being transferred to the Assignee as evidenced by the Assignee (and/or the Assignee's affiliate) either (a) having a net worth of at least Seven Million Dollars (\$7,000,000) (as evidenced by a statement of financial condition dated not more than ninety (90) days prior to the date of transfer, which is accompanied either by an opinion of a certified or chartered public accountant or by a certificate by the chief financial or accounting officer of the Assignee confirming the statement fairly represents the financial condition of the transferee) or (b) having furnished Owner with evidence of a term sheet issued by a financial institution, which term sheet reflects equity and/or debt financing sufficient to complete the portion of the Property being acquired by the Assignee; and

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

**8.03.04 Assignment to Other Developers.** Except as set forth in Section 8.03.02 and 8.03.03, no assignment shall be valid without the City's prior written consent which consent shall not be unreasonably withheld, conditioned or delayed. In order to obtain that consent, Owner shall provide City with all reasonable information required by City and shall reimburse City for all reasonably legal costs incurred by it in reviewing a request for a proposed assignment. A consent by City to one assignment shall not be deemed to be a consent to any subsequent assignment.

**8.03.05 Events Not Constituting an Assignment.** The following shall not be considered assignments for the purpose of this Agreement:

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

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

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

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

(v) Any foreclosure of the Property by a lender of record or the acquisition of the Property by a lender of record pursuant to a deed in lieu of foreclosure.

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

**8.03.07 Release of Owner.** Upon any transfer of any portion of the Property in accordance with the provisions of this Section 8.03, City agrees to look solely to the Assignee for compliance by the Assignee with the provisions of this Agreement as such provisions relate to the portion of the Property acquired by Assignee. Following any assignment, City shall, if requested by Owner, provide the Owner with a release in

writing of Owner's obligations under this Agreement arising subsequent to the effective date of the assignment with respect to that portion of the Property which is subject to the assignment.

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

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

(a) **General.** Owner shall, throughout the duration of this Agreement, maintain, or cause to be maintained, the insurance specified below, to insure Owner and its employees for liability arising out of the work in connection with the Property, Project and this Agreement at the minimum levels set forth herein, with the City being an additional insured on the Commercial General Liability and excess or umbrella liability insurance.

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

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

(d) **Excess or Umbrella Liability Insurance (Over Primary Coverage).** Such excess coverage shall be at least as broad as the underlying coverage and be provided on a "pay on behalf" basis. The excess or umbrella coverage shall be no less than \$2,000,000 per occurrence/annual aggregate.

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

(f) **Insurance Coverage to be Maintained by Owner's Contractors and Subcontractors.** Owner shall require by contract that its contractors and subcontractors maintain the same CGL, business auto, excess or umbrella liability and workers' compensation insurance as set forth in subsections (b) through (e), inclusive, hereof, except that the required minimum limits for the CGL coverage shall be



\$1,000,000 general aggregate, \$1,000,000 per occurrence and \$1,000,000 products/completed operations, with excess or umbrella liability insurance in the amount of \$1,000,000 per occurrence/annual aggregate. The CGL policy shall include contractual liability insurance (subject to the policy terms, conditions, definitions and exclusions).

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

**8.06 Relationship of Agreement and Project Approvals.** This Agreement and the Project Approvals were approved by City as a single interdependent group of approvals for development of the Property, each of which depends on the others for its effectiveness. In the event that Owner challenges this Agreement, the Project Approvals, or any portion thereof, in an action filed in a court of law, which action is brought within the time period provided for by law, this Agreement and the Project Approvals shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any portion of this Agreement or the Project Approvals is invalidated by a court of law in a manner which impairs the application of this Agreement as intended by the parties, the entire Agreement and all Project Approvals shall be reviewed by City for reconsideration of said Agreement and Project Approvals.

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

**8.08 Operating Memoranda.** The provisions of this Agreement require a close degree of cooperation between City and Owner, and the refinements and further development of the Project may demonstrate that clarifications are appropriate with respect to the details of performance of City and Owner. If and when, from time to time, during the Term of this Agreement City and Owner agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications, without public notice or hearing, through operating memoranda approved by City (acting through its City Manager without City Council or Planning Commission action being required) and Owner. City, in its sole discretion, shall determine whether a requested clarification may be effectuated pursuant to this Section or whether the clarification is of such a character as to constitute an amendment hereof pursuant to Section 6 above. Each such operating memorandum shall become an attachment to this Agreement.

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

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

To the City, to:

Director, Planning & Environmental Services  
City of Goleta  
130 Cremona Drive, Suite B  
PO Box 250  
Goleta, CA 93117

With a copy to:

City Attorney  
City of Goleta  
130 Cremona Drive, Suite B  
PO Box 250  
Goleta, CA 93117

To Owner:

Charles R. Lande  
Oly Chadmar Sandpiper General Partnership  
2716 Ocean Park Boulevard, Suite 1064  
Santa Monica, CA 90405

With a copy to:

Richard C. Monk, Esq.  
Hollister & Brace  
1126 Santa Barbara Street  
P.O. Box 630  
Santa Barbara, CA 93102

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

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

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

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

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

**8.14 Relationship of Parties.** It is understood that Owner is not an agent of the City and City is not an agent of Owner. It is specifically understood and agreed by and between the Parties hereto that the development of the Property is a separately undertaken private development. No partnership, joint venture, or other association of any kind between Owner and City is formed by this Agreement. The only relationship

between City and Owner is that of a governmental entity regulating the development of private property with Owner as Owner of such private property.

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

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

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

**8.18 Recordation.** The Agreement shall be recorded, at Owner's sole cost and expense, upon execution by the parties.

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

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

**8.21 Counterparts and Exhibits.** This Agreement is executed in four (4) duplicate counterparts, each of which is deemed to be an original. This Agreement consists of \_\_\_\_\_ pages, including notary acknowledgment forms, and, in addition, \_\_\_\_\_ exhibits which constitute the entire understanding and agreement of the parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Legal Description of the Property (OWNER TO PREPARE)

Exhibit B: Depiction of Residential Units (OWNER TO PREPARE)

Exhibit C: Conditions of Approval (CITY TO PREPARE)

Exhibit D: Form of Assignment and Assumption Agreement

Exhibit E: Estimated Goleta Transportation Impact ("GTIP") Mitigation Fees (CITY TO PREPARE)

Exhibit F: Estimated Park/Recreation/Quimby Fees (CITY TO PREPARE)

**8.23 Signatures.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Owner and City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

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

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

**OWNER**

**CITY**

**OLY CHADMAR SANDPIPER GENERAL PARTNERSHIP, a Delaware general partnership**

**CITY OF GOLETA, a municipal corporation**

\_\_\_\_\_  
By: Charles R. Lande  
Its: Authorized Representative

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_  
    \_Mayor\_\_\_\_\_

**APPROVED AS TO FORM**

**APPROVED AS TO FORM**

\_\_\_\_\_  
By: Richard C. Monk  
    Attorney for Owner

\_\_\_\_\_  
By: Tim Giles, City Attorney

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA            )

COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, [here insert the name and title of the officer] \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (Seal)

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, [here insert the name and title of the officer] \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (Seal)

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, [here insert the name and title of the officer] \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (Seal)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**



**LEGAL DESCRIPTION**

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

THAT PORTION OF THAT CERTAIN TRACT OF LAND IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, THE TITLE TO WHICH WAS CONFIRMED TO CATHERINE M. BELL BY THE DECREE MADE IN THE SUPERIOR COURT OF THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, IN THE ACTION OF JOSE MARIA HILL, ET LA., TRUSTEES OF THE ESTATE OF N.A. DEN, DECEASED VS. RICHARD S. DEN ET AL., A CERTIFIED COPY OF WHICH DECREE WAS RECORDED IN THE OFFICE OF THE RECORDER OF SAID SANTA BARBARA COUNTY IN BOOK 127, PAGE(S) 217, ET SEQ., OF DEEDS, RECORDS OF SAID COUNTY, SAID TRACT BEING KNOWN AS THE "CANADA DE LAS ARMAS TRACT" OF SAID CATHERINE M. BELL, DESCRIBED AS FOLLOWS:

BOUNDED ON THE NORTH BY THE SOUTHERLY LINE OF THE SOUTHERN PACIFIC RAILROAD RIGHT OF WAY, BOUNDED ON THE EAST BY THE EASTERLY LINE OF SAID "CANADA DE LAS ARMAS TRACT", AND BOUNDED ON THE SOUTHWEST BY THE NORTHEASTERLY LINE OF HOLLISTER AVENUE RIGHT OF WAY OF SAID AVENUE AS IN EXISTENCE AS OF JANUARY 1, 1966 AND AS DESCRIBED IN THE RIGHT OF WAY GRANT TO THE COUNTY OF SANTA BARBARA RECORDED MAY 8, 1968 AS INSTRUMENT NO. 14816 IN BOOK 2231 PAGE 528, OF OFFICIAL RECORDS.

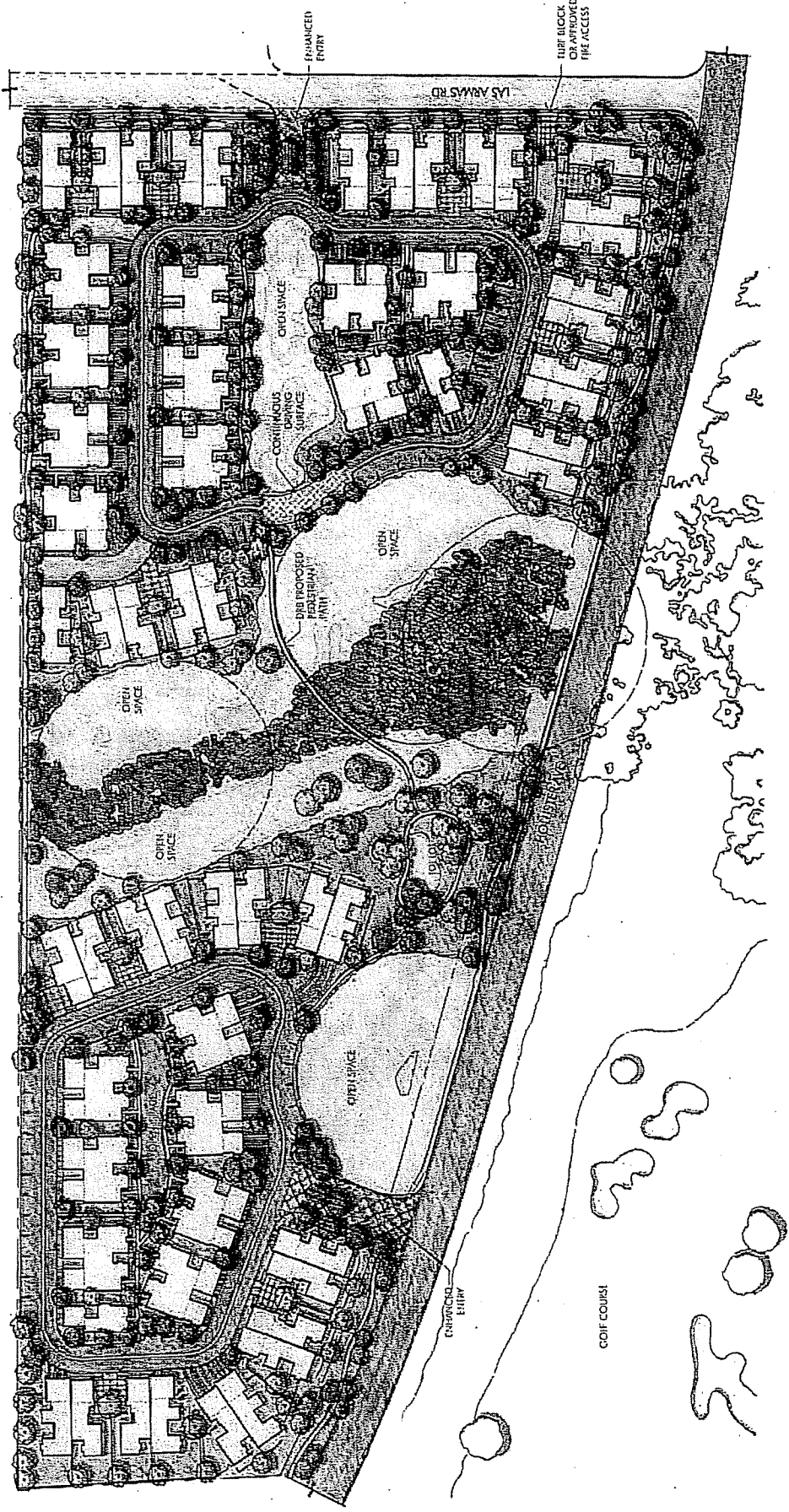
EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF SANTA BARBARA BY DEED RECORDED APRIL 3, 1900 IN BOOK 70, PAGE(S) 232 OF DEEDS, RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM "PARCEL 1" OF PARCEL MAP NO. 10732 RECORDED IN BOOK 3, PAGE 96 OF PARCEL MAP.

APN: 079-210-49

**EXHIBIT B**  
**DEPICTION OF RESIDENTIAL UNITS**

BASEBALL TRACKS



**EXHIBIT C**  
**CONDITIONS OF APPROVAL**

## EXHIBIT D

### FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

Recording Requested By and  
When Recorded Mail To:  
HOLLISTER & BRACE  
1126 Santa Barbara Street  
Santa Barbara, CA 93101  
Attn: Richard C. Monk, Esq.

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#### ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT ("Agreement") is made and entered into by and between Oly Chadmar Sandpiper General Partnership, a Delaware general partnership ("Assignor"), and \_\_\_\_\_, a \_\_\_\_\_ ("Assignee").

#### RECITALS

A. The City of Goleta ("City") and Assignor entered into that certain Development Agreement dated \_\_\_\_\_, 2008 (the "Development Agreement"), with respect to the real property located in the City of Goleta, State of California more particularly described in Exhibit "A" attached hereto (the "Property").

B. Assignor has obtained from the City certain development approvals with respect to the development of the Property, including, but not limited to, approval of General Plan amendments (\_\_\_\_\_ - \_\_\_\_\_ -GPA); Vesting Tentative Map No. \_\_\_\_\_ affecting lot \_\_\_\_\_ of Tentative Map \_\_\_\_\_; Development Plan for the development of the property (\_\_\_\_\_ -PD), including conditions of approval dated \_\_\_\_\_, 2008, for the Property (collectively the "Project Approvals").

C. Assignor intends to sell, and Assignee intends to purchase that portion, of the Property more particularly described in Exhibit "B" attached hereto ("Transferred Property").

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor's right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Transferred Property.

THEREFORE, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor's right, title and interest in and to the Development Agreement and the Project Approvals with respect to the Transferred Property. Assignee hereby accepts such assignment from Assignor.

2. Assumption. Assignee expressly assumes and agrees to keep, perform and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed and fulfilled by Assignor under the Development Agreement and the Project Approvals with respect to the Transferred Property, including but not limited to those obligations specifically allocated to the Transferred Parcel as set forth on Exhibit "C" attached hereto.

3. Effective Date. This Agreement shall be effective upon its recordation in the Official Records of Santa Barbara County, California.

4. Remainder of Project. Any and all rights and obligations pertaining to the Property, other than the Transferred Property, are expressly excluded from the assignment and assumption provisions set forth in Sections 1 and 2 above.

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

"ASSIGNOR"

OLY CHADMAR SANDPIPER GENERAL  
PARTNERSHIP, a Delaware general partnership

Date: \_\_\_\_\_

By: \_\_\_\_\_

Charles R. Lande

Its: Authorized Representative

"ASSIGNEE"

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, [here insert the name and title of the officer] \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (Seal)

**ACKNOWLEDGMENT**

STATE OF CALIFORNIA )

COUNTY OF SANTA BARBARA )

On \_\_\_\_\_, before me, [here insert the name and title of the officer] \_\_\_\_\_, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature (Seal)

**EXHIBIT E ESTIMATED GOLETA TRANSPORTATION IMPACT (“GTIP”)  
MITIGATION FEES**



**EXHIBIT F**

**ESTIMATED PARK/RECREATION/QUIMBY FEES**