



Agenda Item B.7
CONSENT CALENDAR
Meeting Date: June 17, 2008

TO: Mayor and Councilmembers
Chair and Agency Members

FROM: Dan Singer, Executive Director

CONTACT: Brian A. Pierik, Assistant City Attorney and Agency Counsel
Vyto Adomaitis, Redevelopment, Neighborhood Services, and Public
Safety Director

SUBJECT: Sumida Gardens Residential Project

RECOMMENDATION:

Approve the Assignment and Assumption Agreement between Sumida Family Limited Partnership and Sumida Gardens, L.P.

BACKGROUND:

On November 19, 2007, the City of Goleta and Sumida Family Limited Partnership entered into a Development Agreement regarding the Sumida Gardens Residential Project, Section 8.3.2 of that Agreement provides for a permissible transfer of the interests of Sumida Family Limited Partnership to Sumida Gardens, L.P.

On November 19, 2007, the Goleta Redevelopment Agency and Sumida Family Limited Partnership entered into an Affordable Housing Assistance Agreement regarding the Sumida Gardens Residential Project. Section 6.1.1 of that Agreement provides for a permissible transfer of the interest of Sumida Family Limited Partnership to Sumida Gardens, L.P.

On November 19, 2007, the Goleta Redevelopment Agency and Sumida Family Limited Partnership entered into a Rental Restrictive Covenant which provided in Section VI.A.1 for a permissible transfer of the interests of Sumida Family Limited Partnership to Sumida Gardens, L.P.

DISCUSSION:

On May 28, 2008, Peter Brown (attorney for Sumida Gardens) submitted to the City Clerk a Notice that Sumida Gardens Family Limited Partnership has assigned its rights and obligations under the Development Agreement, Rental Restrictive Covenant and

Affordable Housing Assistance Agreement for the Project to Sumida Gardens together with a copy of the Assignment and Assumption Agreement effective January 22, 2008. A copy of that Notice and Agreement are attached to this staff report.

The proposed action for the Council and Redevelopment Agency is to execute the Assignment and Assumption Agreement and thereby consent to the assignment from Sumida Gardens Family Limited Partnership to Sumida Gardens, L.P. which is consistent with the terms of the Development Agreement, Affordable Housing Assistance Agreement and Rental Restrictive Covenant.

ALTERNATIVES:

None

FISCAL IMPACTS:

None

LEGAL REVIEW:

The attached Assignment and Assumption Agreement has undergone legal review by the City Attorney's Office.

Submitted By:

Reviewed by:

Brian A. Pierik
Agency Counsel

Vyto Adomaitis
RDA, NS & Public Safety
Director

Reviewed by:

Approved By:

Michelle Greene
Administrative Services
Director

Daniel Singer
Executive Director

ATTACHMENTS:

1. Notice and Assignment and Assumption Agreement

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:
(Document exempt from recording fees
pursuant to Cal. Gov. Code § 6103)

THE CITY OF GOLETA
Attn: City Manager
130 Cremona Drive, Suite B
Goleta, CA 93117
ATTN: CITY CLERK

REDEVELOPMENT AGENCY FOR THE
CITY OF GOLETA
Attn: Executive Director
130 Cremona Drive, Suite B
Goleta, CA 93117

SEND ANOTHER COPY TO:

Sumida Gardens, L.P.
c/o Mr. Michael Towbes
Michael Towbes Construction & Development,
Inc.
21 East Victoria Street
Santa Barbara, CA 93101

THIS SPACE RESERVED FOR RECORDER ONLY
(Gov. Code § 27361.6)

ASSIGNMENT AND ASSUMPTION AGREEMENT

SUMIDA GARDENS APARTMENTS
APN 071-330-012

BY AND BETWEEN

SUMIDA FAMILY LIMITED PARTNERSHIP

AND

SUMIDA GARDENS, L.P.

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") dated as of January 22, 2008 ("Effective Date"), is by and between SUMIDA FAMILY LIMITED PARTNERSHIP, a California limited partnership ("SFLP"), and SUMIDA GARDENS, L.P., a California limited partnership ("SG"). For good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Assignment of Agreements.** As of the Effective Date, SFLP hereby assigns and transfers to SG all of its rights, title, interests and obligations with regard to the property identified in Exhibit A hereto arising under the following agreements (collectively, "Assignment"):

(a) Development Agreement by and between the City of Goleta and Sumida Family Limited Partnership, dated November 19, 2007 ("Development Agreement");

(b) Affordable Housing Assistance Agreement for Sumida Gardens Apartments APN 071-330-012 by and between the Redevelopment Agency for the City of Goleta and Sumida Family Limited Partnership, dated November 19, 2007 ("Affordable Housing Assistance Agreement"); and

(c) Rental Restrictive Covenant for Sumida Gardens Residential Project between the City of Goleta, the Redevelopment Agency for the City of Goleta, and Sumida Family Limited Partnership, dated November 19, 2007 ("Rental Restrictive Covenant").

2. **Assumption.** As of the Effective Date, SG accepts the Assignment and irrevocably and unconditionally assumes and agrees to faithfully perform all of SFLP's obligations and agrees to be bound by all of the provisions of such Assignments, as if it were the original signatory thereto.

3. **Consent.** This Assignment is a permitted transfer, having been pre-approved by the City of Goleta and the Redevelopment Agency for the City of Goleta, as applicable, as referenced in section 8.3.2 of the Development Agreement, section 6.1.1 of the Affordable Housing Assistance Agreement, and section VI.A.1 of the Rental Restrictive Covenant.

4. **Miscellaneous.**

(a) **Successors.** This Agreement shall be binding on and inure to the benefit of the parties and their respective successors, heirs and assigns.

(b) **Entire Agreement.** This Agreement represents the entire agreement between the parties hereto and supersedes all prior negotiations, discussions, offers, understandings, representations and agreements (whether written or oral) with respect to the matters herein.

(c) **Counterparts.** This Agreement may be executed in counterparts and shall constitute an agreement binding on all parties notwithstanding that all parties are not signatories to the original or the same counterpart provided that all parties are furnished a copy or copies thereof reflecting the signature of all parties.

(d) **Further Assurances.** Each of the parties hereto shall deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

(e) **Amendment; Waiver.** This Agreement may not be changed, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought. No delay, failure or discontinuance in exercising any right, remedy, power or privilege hereunder shall affect or operate as a waiver of such right, remedy, power or privilege hereunder.

(f) **Authority.** Each individual executing this Agreement represents that he or she is duly authorized to execute and deliver this Agreement on behalf of the party for which he or she is signing, and that this Agreement is binding upon the party for which he or she is signing in accordance with its terms.

(g) **Governing Law.** This Agreement was made in and is to be performed entirely within the State of California, and its interpretation, its construction and the remedies for its enforcement or breach are to be applied pursuant to, and in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SFLP:

**SUMIDA FAMILY LIMITED
PARTNERSHIP**, a California limited
partnership

By: _____

Hilton M. Sumida, Trustee Sumida
Management Trust U/A 2/5/98
Its: General Partner

SG:

SUMIDA GARDENS, L.P., a California
limited partnership

By: Michael Towbes Construction &
Development, Inc.

By: _____

Michael Towbes
Its: President

ALL SIGNATURES MUST BE NOTARIZED

The City and Redevelopment Agency consent to the above-referenced Assignment and Assumption.

CITY OF GOLETA

**REDEVELOPMENT AGENCY FOR THE
CITY OF GOLETA**

By: _____
Michael T. Bennett
Mayor

By: _____
Roger S. Aceves
Agency Chair

APPROVED AS TO FORM

Brian A. Pierik
Assistant City Attorney and Agency
Assistant General Counsel

ALL SIGNATURES MUST BE NOTARIZED

ALL PURPOSE ACKNOWLEDGEMENT

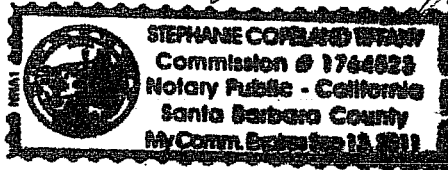
State of California)
County of Santa Barbara) ss.

On May 16, 2008, 2008 before me, Stephanie Copeland Tiffany, Notary Public, personally appeared Hilton Sumida, 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 persons(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.

Stephanie Copeland Tiffany



ALL PURPOSE ACKNOWLEDGEMENT

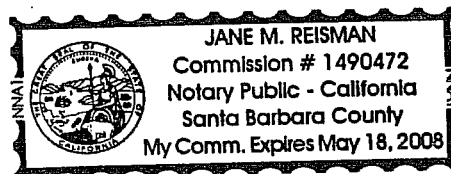
State of California)
County of Santa Barbara) ss.

On May 16th, 2008 before me, Jane M. Reisman, Notary Public, personally appeared Michael Touber, 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 persons(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.

Jane M. Reisman



ALL PURPOSE ACKNOWLEDGEMENT

State of California)
) ss.
County of Santa Barbara)

On _____, 2008 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(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.

ALL PURPOSE ACKNOWLEDGEMENT

State of California)
) ss.
County of Santa Barbara)

On _____, 2008 before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the persons(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.

EXHIBIT "A"

LEGAL DESCRIPTION OF SUMIDA GARDENS PROJECT PROPERTY

APN: 071-330-012

Property: 5505-5585 OVERPASS ROAD, GOLETA, CA 93111

THOSE PORTIONS OF RANCHO LA GOLETA, IN THE CITY OF GOLETA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE NORTHERLY LINE OF HOLLISTER AVENUE, DISTANT WESTERLY THEREON NORTH 86°45'06" WEST, 1026.55 FEET FROM CORNER NO. 47, AS SHOWN ON THE PARTITION MAP OF THE SUBDIVISION OF THE LANDS OF DANIEL A. "HILL, DECEASED (FILED IN THE OFFICE OF THE CLERK OF THE SUPERIOR COURT OF SAID COUNTY IN SAID MATTER); THENCE CONTINUING WESTERLY THEREON, NORTH 86°45'06" WEST A DISTANCE OF 446.87 FEET TO THE WESTERLY LINE OF TRACT NO. 1 OF TRACT A AS SHOWN ON MAP FILED IN BOOK 11, PAGE 172 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE NORTHERLY ALONG SAID WESTERLY LINE NORTH 5°27'54" EAST A DISTANCE OF 467.51 FEET TO A POINT IN THE LINE BETWEEN CORNER NOS. 48 AND 62 OF SAID PARTITION MAP AS SHOWN ON MAP FILED IN BOOK 16, PAGE 16 OF MAPS AND SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID POINT BEING THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION;

THENCE 1ST, CONTINUING NORTHERLY ALONG SAID WESTERLY LINE NORTH 5°27'54" EAST A DISTANCE OF 561.52 FEET TO THE NORTHERLY LINE OF THE LAND DESCRIBED IN DEED TO JOSEPH SEXTON RECORDED MAY 22, 1868 IN BOOK G, PAGE 126 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID NORTHERLY LINE ALSO BEING THE NORTHERLY LINE OF SAID TRACT NO. 1;

THENCE 2ND, EASTERLY ALONG SAID NORTHERLY LINE SOUTH 85°32'30" EAST A DISTANCE OF 446.60 FEET TO THE NORTHEASTERLY CORNER OF SAID LAND DESCRIBED IN DEED TO JOSEPH SEXTON, SAID CORNER ALSO BEING THE NORTHEASTERLY CORNER OF SAID TRACT NO. 1, SAID CORNER ALSO BEING A POINT IN THE SOUTHERLY LINE OF PARTITION OF MAP OF THE LANDS OF J.D. PATTERSON, AS SHOWN ON MAP FILED IN BOOK B, PAGE 500 OF MISCELLANEOUS RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;

THENCE 3RD, EASTERLY ALONG SAID SOUTHERLY LINE SOUTH 85°32'30" EAST A DISTANCE OF 365.68 FEET TO A POINT IN SAID LINE DISTANT THEREON NORTH 85°32'30" WEST, 657.37 FEET FROM THE SOUTHEASTERLY CORNER OF SAID LANDS OF J.D. PATTERSON;

THENCE 4TH, SOUTHERLY ALONG A LINE PARALLEL WITH SAID WESTERLY LINE OF TRACT NO. 1, SOUTH 5°27'54" WEST A DISTANCE OF 538.73 FEET TO A POINT IN SAID LINE BETWEEN CORNER NOS. 48 AND 62;

THENCE 5TH, WESTERLY ALONG SAID LINE NORTH 87°08'53" WEST A DISTANCE OF 813.00 FEET TO THE POINT OF BEGINNING SAID LAND IS ALSO SHOWN AS PARCEL 2 OF LOT LINE ADJUSTMENT NO. 00-LA-002 RECORDED JULY 8, 2002 AS INSTRUMENT NO. 02-65586 OF OFFICIAL RECORDS.