

STAFF REPORT
COUNCIL MEETING DATE
November 26, 2012

ITEM FOR COUNCIL CONSIDERATION

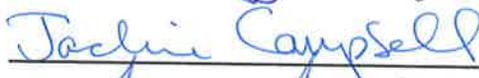
**MISSION TERRACE ESTATES ANNUAL DEVELOPMENT AGREEMENT COMPLIANCE REVIEW
AND TERMINATION OF THE DEVELOPMENT AGREEMENT
CASE No. 03-1122-DP/TM/VAR/MOD/CDP/DA
M. TIMM DEVELOPMENT INC.**

Report prepared by: Steve Goggia, Senior Planner
Department: Community Development



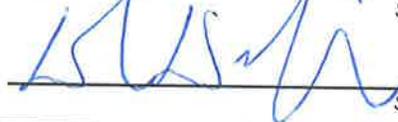
Signature

Reviewed by: Jackie Campbell
Community Development Director



Signature

City Manager: Dave Durlinger



Signature

STAFF RECOMMENDATION

Action Item X Non-Action Item _____

Recommendation:

Find that the Mission Terrace Estates project is in substantial compliance with the terms and conditions of the Development Agreement, dated February 28, 2005, reserving all rights thereunder, and record a Notice of Termination of the Development Agreement.

Motion: I move to:

1. Find that the Mission Terrace Estates project is in compliance with the terms and conditions of the Development Agreement, dated February 28, 2005; and
2. Direct the City to record a Notice of Termination of the Development Agreement.

I. BACKGROUND

On February 14, 2005, the City Council approved the Mission Terrace Estates project that included a Development Agreement to allow for the construction of a 27-unit residential development with 24 market rate and three affordable residences on a 5.89-acre parcel. Project approval included the construction of sidewalks, drainage systems and public access provisions (including a footbridge over Franklin Creek, a pathway through the site crossing over the footbridge and a pathway off-site through Franklin Creek Park to Sterling Avenue). Traffic calming and control measures along Linden Avenue were also a part of the project approval. The Development Agreement and Conditions of Project Approval are included as Attachment A to this staff report. A reduced copy of the Development Site Plan is included as Attachment B. Recent photos of the development are included in Attachment C.

Subsequent to an appeal to the California Coastal Commission, a revised project was approved by the Coastal Commission on January 13, 2006. The revised project created a separate open space lot incorporating the Franklin Creek buffer to be owned by the Homeowners' Association, subject to an additional set of Special Conditions.

Pursuant to Section 8.09 of the Development Agreement, two Operating Memoranda have been approved. The first, recorded on December 19, 2007, allowed four homes to begin construction before plans for the footbridge and Linden Avenue traffic calming measures had been fully approved as required under Section 4.01.03.01.

The second, recorded on November 24, 2008, was to clarify that the term of the Development Agreement would be as specified in Section 7.06, rather than attempt to predict a date for project completion as contemplated by Section 5.02. Pursuant to this Operating Memorandum, the Development Agreement is to terminate when the property has been fully developed, and when all of Owner's obligations in connection with the Project are satisfied, as determined by City. The two Operating Memoranda are included as Attachments D and E respectively.

Construction of the homes has progressed as individual lots have been sold since that time. To date, 25 residences have been completed and one is under construction. While the original approvals included 15 two-story homes, buyer preference for the smaller single-story homes has reduced the number of two-story homes to 11. In addition, the floor plans and elevations of several residences have also been modified. All changes have been approved by the Coastal Commission and the Community Development Department. One lot remains undeveloped; however, all adjacent public improvements, i.e. curbs, gutters and sidewalks have been completed.

II. ANALYSIS

Pursuant to Section 7.02 of the Development Agreement, a review conducted by the City Council is required each year during the period of the Agreement. During this review, Mission Terrace Estates, LLC is required to demonstrate compliance with the terms of the Agreement. The City Council is to make written findings and

determinations, on the basis of substantial evidence, as to whether or not the owner has complied with the terms and conditions of the Agreement.

The following analysis describes how the project is in substantial compliance with the terms of the Development Agreement including the project conditions of approval and the 17 special conditions required by the Coastal Commission.

The project has been developed consistent with the conditions of approval, including measures to reduce noise, dust and water quality impacts as required under Development Agreement Sections 4.01.01 and 4.01.02, respectively.

All on and off-site public improvements including street frontage improvements, traffic control and calming devices, Franklin Creek footbridge, public access path improvements, landscape improvements on both sides of Franklin Creek, public access signs, dog waste bag dispenser, trash container and the sign regarding keeping Franklin Creek clean as required by Coastal Commission Special Condition #2 and the City's Condition #42, have been installed as required by Development Agreement Section 3.07.03, 3.07.04 and 4.01.03.

Staff notes that at last year's annual review, a member of the Carpinteria Watershed Coalition commented that several of their members had recently reviewed the plans for the planting in the common lot area adjacent to Franklin Creek and would prefer to see some of the plant types replaced with local natives. They also felt that overall, there was an overabundance of plant types specified, and that the plant count should be reduced.

The developer was keen on the idea to allow the Watershed Coalition to suggest revisions to the planting plan in this area. The Coastal Commission also gave approval to the proposed revisions which were installed in April of this year. In accordance with Coastal Commission Special Condition #2, it is the responsibility of the Homeowners' Association to submit annual biological reports analyzing the condition of the creek setback area to the City. Reporting will begin in April of next year and will continue for the life of the project after the termination of the Development Agreement.

The applicant has provided evidence to the City that the general liability and workers' compensation insurance requirements have been maintained throughout 2012, (although the applicant did not purchase the additional automobile and umbrella coverages required under Section 8.04. b and c for calendar year 2012). The applicant indicates that these substantial (and expensive) insurance requirements with the City included as a named insured were no longer necessary now that all the public improvements have been completed and accepted by the City. Although technically this coverage should have been maintained under the provisions of the Development Agreement for so long as the DA was in effect, staff does not recommend treating it as a default at this time since the City has not received any evidence that liability claims regarding the Mission Terrace public improvements have occurred or will occur for calendar year 2012. The City reserves its rights under the provisions of the Development Agreement should such a claim be made in the future.

As all of the public improvements required under the Development Agreement have been implemented, the applicant has requested that the Development Agreement be terminated at this time and not upon occupancy of the remaining lot to be sold and the residence constructed pursuant to Section 7.06 (Attachment F).

Staff supports the termination of the Development Agreement now as all public improvements required under the Development Agreement have been completed and accepted by the City, the grading of the last lot has been completed and construction of the last residence will occur when the lot is sold. Staff notes that compliance with the project conditions of approval will still be required subsequent to termination of the Development Agreement.

Pursuant to the analysis presented above, the City Council may find that the project has been constructed in substantial compliance with the terms and conditions of the Development Agreement and that the Development Agreement may be terminated at this time.

III. FINANCIAL CONSIDERATIONS

Staff's time to review the Development Agreement and prepare the Annual Compliance Review staff report is paid for by the applicant and therefore it does not result in costs to the City.

IV. LEGAL ISSUES

The City Attorney has reviewed and approved the analysis presented in this staff report.

V. OPTIONS

1. Find that the project is in substantial compliance with the terms and conditions of the Development Agreement and authorize termination of the Development Agreement (staff's recommendation).
2. Find that the project is not in compliance with the Development Agreement and direct staff to take an alternate action including maintaining the Development Agreement until occupancy clearance has been obtained for the remaining residence to be constructed. If this option is selected, the City Council should consider whether to require the applicant to reinstate automobile and umbrella coverage for so long as the Development Agreement remains in effect.

VI. ATTACHMENTS

- | | |
|--------------|---|
| Attachment A | Mission Terrace Estates, LLC Development Agreement and Conditions of Project Approval |
| Attachment B | Mission Terrace Estates Site Plan |
| Attachment C | Recent Construction Photos |
| Attachment D | Operating Memorandum No. 1 to the Development Agreement |
| Attachment E | Operating Memorandum No. 2 to the Development Agreement |
| Attachment F | Applicant's request to terminate the Development Agreement |

Attachment A

**Mission Terrace Estates, LLC Development Agreement
and Conditions of Project Approval**

**Mission Terrace Estates Annual DA Review and Termination
November 26, 2012**

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jayne Diaz, City Clerk
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, California 93013

DEVELOPMENT AGREEMENT BY AND BETWEEN:

***CITY OF CARPINTERIA, AND MISSION TERRACE ESTATES, LLC,
A CALIFORNIA LIMITED LIABILITY CORPORATION***

Dated: February 28, 2005

* * * * *

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DEVELOPMENT AGREEMENT BETWEEN

CITY OF CARPINTERIA MISSION TERRACE ESTATES, LLC

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered as of this 28th day of February, 2005, by and between **MISSION TERRACE ESTATES, LLC, a California limited liability corporation** ("Owner"), with the **CITY OF CARPINTERIA**, a Body Politic ("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 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 the real property located at 1496 Linden Avenue, Carpinteria, California (APN 004-005-009) and more particularly described in Exhibit A attached hereto and incorporated herein by this reference ("Property").
- C.** Under Government Code § 65865, the City has adopted a resolution establishing procedures and requirements for consideration of a development agreement for the Property ("Enabling Resolution").
- D.** Appropriate proceedings have been taken to consider a development agreement for the Property ("Development Agreement"), in accordance with the City's rules and regulations and the Enabling Resolution.
- E.** The City Council has found that the Development Agreement is consistent with its General Plan, and in particular that the provision of affordable housing units targeted as provided for herein meets specific community needs as identified by the City.
- F.** Owner's proposed development of the Property is generally described as the construction of a 27 unit single-family subdivision on a 6.05-acre site, as reflected in Project Application No. 03-1122-DP/TM/VAR/ MOD/CDP/ DA and in those exhibits referenced in Exhibit B hereto ("Project").
- G.** The City has conducted an environmental review of the Project and of the parties' proposed execution of a Development Agreement, as reflected in the environmental document identified as Mitigated Negative Declaration for Project Application No. 03-1122-DP/TM/VAR/MOD/CDP/ DA, dated June 3, 2004 ("Environmental Document").

H. On November 1, 2004, the Planning Commission of the City recommended approval of the Project, the Environmental Document, and this Development Agreement to the City Council.

I. On February 15, 2005, the City Council of the City certified the Environmental Document. On February 28, 2005, the City Council adopted Ordinance No. 604 approving the development agreement, with the ordinance becoming effective on March 30, 2005.

J. This 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. 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) "Agreement" shall mean this Development Agreement.
- (b) "Applicable Law of the Project" shall mean all of the ordinances, rules, regulations and official policies of the City in effect as of the effective Date of the Ordinance referenced in Recital I, except as otherwise specifically provided herein.
- (c) "CEQA" shall mean the California Environmental Quality Act, California Public Resources Code § 21000 et seq.
- (d) "Conditions of Approval" shall mean those Conditions of Approval applicable to the Project and contained in Exhibit "C" hereto.
- (e) "City" shall mean the City of Carpinteria, State of California, or its successors in interest.
- (f) "Owner" shall collectively mean Mission Terrace Estates, LLC, or its successors in interest and assignees pursuant to this Agreement.

- (g) "Development Plans" shall mean the development plans for the Project as defined in Recital F above.
- (i) "Effective Date" shall mean the 30th day following the date of adoption by the City Council of Ordinance No. 604 approving this Agreement.
- (j) "Environmental Document" shall mean the Mitigated Negative Declaration prepared for the Project.
- (k) "Modification" shall mean that modification from City requirements as described in Recital F.
- (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 F 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 the Environmental Document and approval of the project applications, i.e., Tentative Tract Map 25169, Development Plan, Coastal Development Permit, and Variance/Modification, subject to the Conditions of Approval. A list of exhibits and conditions reflecting the Project approvals is attached hereto as Exhibits B and C.
- (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 that the City agrees to grant pursuant to Section 4.02.01 below.
- (q) "Tract Map" shall mean Tentative Tract Map 25169 for the Property as described in Recital F.

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. In particular, the Project shall contain the following elements, in compliance with Government Code § 65865.2:

3.01.01. Permitted uses of the Property are limited to the following: single-family residential development, and buildings, structures and uses accessory and customarily incidental to such residential use.

3.01.02. Maximum density (intensity of use): consistent with Exhibits B and C.

3.01.03. Maximum height for each of the proposed buildings: consistent with Exhibits B and C.

3.01.04. Maximum size for each of the proposed buildings: consistent with Exhibits B and C.

3.01.05. The following reservations (dedications) of land shall be made for the public purposes specified: those reservations and dedications consistent with Exhibits B and C, including but not limited to dedication of a public access easement through the Project from Linden Avenue to the location of a foot bridge to be constructed across the Flood Control Drainage Channel westerly of the Project.

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 Development Agreement shall supersede any inconsistent ordinances, rules, regulations or official policies of City which either currently exist or may be enacted in the future, except as specifically set forth herein.

3.03 Applicable Rules, Regulations and Policies. Except as otherwise provided in this Agreement, the ordinances, rules, regulations, and official policies of City governing 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. Nothing contained herein shall limit the ability of the City to exercise its power of eminent domain on the Property or any portion thereof, in accordance with applicable law.

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, 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. Construction of the Project may proceed upon satisfaction of the Conditions of Approval. The Project will be developed in the following sequence:

3.07.01 Tract Map 25169. Owner and City agree to cooperate to facilitate the processing and recording of final Tract Map and related permits. Owner agrees to obtain the final Tract Map within (12) months of the Effective Date of this Agreement.

3.07.02 Housing Units. Construction of the Affordable Housing Units, as defined herein, shall be completed in the normal phasing of housing construction on-site, which shall proceed from east to west across the site. Each individual housing unit shall be completed within twelve (12) months of the commencement of construction of the housing unit.

3.07.03 On-Site and Off-Site Improvements. Within one (1) year of recordation or prior to City's authorization for occupancy of any residence on the project site, whichever is sooner, construction of all public off-site and on-site improvements required herein, including but not limited to street frontage, traffic control and calming devices, the public access path improvements, and Franklin Creek Park landscape improvements, all as specified in Section 4.01.03, shall be completed and accepted by City. Completion of the foot bridge improvements specified in Section 4.01.03 may be deferred until the earlier of completion of construction of those residences immediately adjacent to the pedestrian access easement and closest to the foot bridge, or one (1) year following City's authorization for occupancy of the first residence in the Project. In either case, the footbridge improvements will be coordinated by Owner such that they are completed by the time of completion of the construction as specified above. Completion of construction shall be determined by City.

If Owner so defers construction of the foot bridge improvements, Owner shall make a cash deposit with City in an amount equal to the engineer's estimate of the cost of completion of the foot bridge improvements, which shall be held by City in an interest bearing account. The cash deposit shall be made prior to the initiation of Project development and shall be returned (with any accrued interest) upon Owner's completion of construction of the footbridge improvements. Owner's failure to complete construction of the footbridge within the original term of this Agreement shall constitute a default under this Agreement; in the event of such default, City may, but shall not be obligated to, apply the cash deposit toward City's completion of the footbridge improvements.

3.07.04 Public Access Easement.. Upon recordation of the final map, Owner shall dedicate to City a public access easement in perpetuity for the public access path from Linden Avenue to the footbridge location. Said easement shall be as located on Tentative Map 25,169. The dedication shall be in a form approved by City.

3.08 Fees, Conditions and Dedications. Owner shall be obligated to pay those fees, charges and assessments (hereafter "fees") and to make those dedications and improvements as are prescribed in this Agreement and in the Conditions of Approval contained in Exhibit C to this Agreement. For the term of this Agreement, the Project shall be required to pay all fees, including development impact fees, generally applicable to projects in the City, as provided in City fee ordinances and resolutions as such ordinances and resolutions may be adopted and/or amended from time to time, on a City-wide basis. The amount and date of calculation of said fees to be paid by Owner shall be determined as set forth in City fee ordinances and resolutions as the same shall be in effect throughout the life of the Project. In addition, the City may charge the processing fees for land use permit approvals, building permits and other similar permits and entitlements which 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 and assessments.

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 Environmental Mitigation Measures. Pursuant to the requirements of the California Environmental Quality Act (CEQA), an Environmental Document was prepared for the Project. Mitigation measures were included in the Environmental Document. All terms and provisions of the Environmental Document shall be adhered to by the Owner and are incorporated herein by this reference.

4.01.03 Construction of On-Site and Off-Site Improvements: In addition to any improvements the construction of which is required by the Project Approvals, Conditions of Approval, and environmental mitigation measures, Owner shall construct, at Owner's sole cost and expense, the following On-Site and Off-Site Improvements, all as depicted on plans approved by City as part of the Project Approvals:

4.01.03.01 Owner shall construct a footbridge spanning the Franklin Creek flood control channel, consistent with a design and specifications approved by City as part of the Project Approvals. Owner shall be responsible for gaining all permits required by governmental agencies with jurisdiction over said improvements. Final plans for said improvements shall be submitted to and approved by the Community Development Department and Public Works Department prior to issuance of the first Coastal Development permit/building permit for the Project. Construction shall be completed as set forth in Section 3.07.03 hereof.

4.01.03.02 Owner shall construct landscape improvements in Franklin Creek Park, consistent with a design and specifications approved by City and as specified in the project Landscape Plan approved as part of the Project Approvals. Final plans for said improvements shall be submitted to and approved by the Community Development Department and Public Works Department prior to issuance of the first Coastal Development permit/building permit for the Project. Construction shall be completed as set forth in Section 3.07.03 hereof.

4.01.03.03 Owner shall construct a public access path/easement from Franklin Creek Park to Linden Avenue through the Project, consistent with a design and specifications approved by City

as part of the Project Approvals. Final plans for said improvements shall be submitted to and approved by the Community Development Department and Public Works Department prior to issuance of the first Coastal Development permit/building permit for the Project. Construction shall be completed as set forth in Section 3.07.03 hereof.

- 4.01.03.04** Owner shall construct traffic control and calming devices in the area of the Project site on Linden Avenue between Malibu Drive and El Carro Lane, generally in accordance with the schematic drawings of traffic control measures included as part of the Project Approvals. Final plans for said improvements shall be submitted to and approved by the Community Development Department and Public Works Department prior to issuance of the first Coastal Development permit/building permit for the Project. Construction shall be completed as set forth in Section 3.07.03 hereof.

The construction of all on and offsite improvements shall be the subject of the City's standard Land Development Improvement Agreement including but not limited to those provisions relating to obligations of the developer, insurance requirements, performance guarantee, liability and indemnification. With the exception of the timing of construction of the pedestrian footbridge as described above, nothing in this Section 4.01.03 shall be construed to provide exemption from, or supercede, the provisions of the Land Development Improvement Agreement.

4.01.04 Provision of Housing Affordable to Specified Economic Segments of the Community. To address the lack of housing affordable to all segments of the community in Carpinteria, with particular reference to housing impacts associated with the Project, Owner shall designate within the Project three (3) above-moderate (targeted to 160% of the median income¹) units ("Affordable Housing Units"), which shall be available for purchase by qualified applicants earning between 160% and 200% of the area median income. The Affordable Housing Units shall be Plan 7 and 7a unit types as identified more specifically on Exhibit B. The sales price and maximum incomes for qualified buyers within the above targeted income range and other administrative procedures shall be set in the City's Affordable Housing Guidelines or based upon the methodology established within the City of Santa Barbara's "Affordable Housing Policies & Procedures Handbook", and the related current calculation sheet for the Maximum Sale Price for Single Family Homes, as determined by City. The location for all Affordable Housing Units shall be depicted on the Tract Map. Said Affordable Housing Units shall be maintained at such affordability levels for a period of not less than thirty (30) years; such affordability shall be memorialized in an affordability covenant in a form provided by the City, which shall be recorded as to each affordable unit. Said covenant may include, among other things, restrictions on the

¹ As established for Santa Barbara County.

transfer, use, and further encumbrance of the Affordable Housing Units and an Option to Purchase in favor of City or its designee at the specified affordable sales price. In administering the affordability covenant, City may provide that the thirty (30) year affordability period shall recommence on each transfer or conveyance of a Unit during the term of said covenant but not to exceed a total of ninety (90) years.

The transfer or conveyance of all Affordable Housing Units shall be administered/managed by City, with the assistance of Owner as requested by City. Owner will be financially responsible for the application, selection, and qualification process for identifying and assisting potential purchasers ("management services") in all initial sales. City may contract with a consultant or other public agency (e.g., the City of Santa Barbara) for administration and management services for Affordable Housing Units, including but not limited to management services for initial sales. Owner shall cooperate with City or City's contract consultant in the administration and management of all sales, including determination of eligibility for priority purchase pursuant to Section 4.01.05 below. Owner shall reimburse City for all costs incurred by City in establishing the administrative program and in administering the sales of the Affordable Housing Units until all Affordable Housing Units have been initially sold. To assist City in administering sales of Affordable Housing Units after the initial sales of units, as well as in complying with annual reporting requirements, Owner shall pay City the sum of \$2,500 prior to issuance of the first building permit for the Project.

In addition, Owner shall pay to City a fee to assist in the production and management of affordable housing in the City in the amount of Forty-Six Thousand Four Hundred and Forty-Nine Dollars (\$46,449). Such fee shall be paid to City prior to issuance of the first building permit for the project.

The requirements of this Section 4.01.04 shall survive termination of the Development Agreement.

4.01.05 Marketing Plan for Residential Units. Prior to the date of commencement of construction for the Project, Owner shall submit a Marketing Plan for approval by the City. The goal of the marketing plan shall be to: (1) notify the general public and certain target groups of the new residential units; (2) educate the general public and target groups of the eligibility requirements for the Affordable Housing Units and certain preferred purchasing periods; and (3) identify potential purchasers that qualify for the Affordable Housing Units and preferred purchasing periods. The marketing plan shall require, among other things, that no later than the commencement of construction of the first residential unit, Owner shall begin advertising the Project, including the location, anticipated Affordable Housing Unit, prices, amenities, affordable housing component and general eligibility standards, and limited time exclusive offer of residential units to certain target groups, including the specific dates of said exclusive offer. Owner shall advertise the Project, with particular emphasis on the Affordable Housing Units, in the Coastal View at least two (2) times prior to the first housing unit becoming available for purchase. Owner shall provide a telephone number on all marketing materials that members of the public may call to receive additional informa-

tion about the Project and request applications. Marketing materials shall be provided in both Spanish and English.

A. Eligibility and Prequalification of Applicants.

Owner shall, based on prescreening of applicants from the targeted groups, establish a list of potentially eligible purchasers ("Eligible Purchasers") for both the Affordable Housing Units and market rate units, to be contacted and provided the exclusive opportunity to purchase units prior to their being available to the general public. Owner shall provide at least 30 days for applicants to qualify for said list prior to the units being available for purchase. In preparing its list of Eligible Purchasers, Owner shall utilize the standard application form, and qualification and selection criteria provided by City. Owner shall also provide to any Eligible Purchaser that is offered an Affordable Housing Unit a copy of the affordability covenant, which shall be provided by the City and which any purchaser of said Unit will be required to execute prior to gaining title to said unit. Additional details of the process for notice and sales, including the process for development of priority lists by lottery or other similar method and the financial pre-qualification package for Eligible Purchasers, will be developed through the Marketing Plan, subject to review and approval by City. Owner shall use care and due diligence in determining that any Eligible Purchaser is qualified to be offered a housing unit in any of the categories listed below (Sections 4.01.05 B & C) and has pre-qualified for financing and met other requirements as are typical for a pre-qualified buyer. Owner shall prepare a list of all such Eligible Purchasers, which shall be reviewed and approved by the City and shall require Eligible Purchasers to demonstrate their eligibility through appropriate documentation. No default under the provisions of the Marketing Plan or this Agreement shall occur in the event an Eligible Purchaser chooses to purchase a residential unit and, after executing a purchase agreement with Owner, changes his or her employment status or full-time City residency status, prior to or after the close of escrow. In such an event, Owner shall remain obligated to sell the unit to the buyer identified in the purchase agreement.

A unit shall be considered "available for purchase" on such date as Owner advises those on the list of Eligible Purchasers of such availability. Owner shall give the City ten (10) days written notice prior to offering any housing unit for sale, and will include with said notice the following:

- (i) Copy of the California Department of Real Estate Public Report (White Slip) giving Owner the right to sell individual parcels within the residential component.
- (ii) A parcel map highlighting the location of the housing unit.
- (iii) The date on which the housing unit will be offered to the persons referenced in Sections B and C below, and a copy of the then current list of Eligible Purchasers.

For purposes of this Agreement, a person who is "employed" shall be defined as any person employed or engaged as an independent contractor for a minimum of twenty (20) hours per week by a business or at a place of employment identified in Sections A or B below.

B. Marketing Plan for Affordable Housing Units.

With respect to the Affordable Housing Units, said Units shall be made available for purchase exclusively to the persons, and for the period of time, described below prior to being made available to the general public:

- (i) During the first forty-five (45) days in which any Affordable Housing Unit is available for purchase ("Initial Affordable Period"), said Unit shall be exclusively available to Eligible Purchasers who are either employed within the City of Carpinteria or maintain full-time residency within the City of Carpinteria and who are not already the owner of any residential property, and who earn between 160% and 200% of the area median income ("City Affordable Purchasers"). A priority ranking list ("Initial Affordable List") shall be developed from all City Affordable Purchasers. The first Affordable Housing Unit made available for purchase under this section shall be offered to a person selected from the Initial Affordable List who, in addition to meeting all of the above criteria, is employed as a law enforcement officer, firefighter, or teacher, by a public agency in the City of Carpinteria. Owner shall offer the highest priority City Affordable Purchaser the opportunity to purchase an Affordable Housing Unit during the Initial Affordable Period. Should the highest priority Eligible Purchaser be unable to complete the purchase of the property, Owner shall offer the Affordable Housing Unit to the next person from the priority list who meets the qualifications of this Section 4.01.05B(i), and shall continue to do so until the Initial Affordable List has been exhausted.
- (ii) During the thirty (30) days following exhaustion of the Initial Affordable Priority List, ("Second Affordable Period"), if an Affordable Housing Unit is still available for purchase, it shall next be available exclusively to those persons selected from the list of Eligible Purchasers who either are employed within the greater Carpinteria Valley or maintain full-time residency within the greater Carpinteria Valley ("Valley Affordable Purchasers") and who are not already the owner of any residential property and who earn between 160% and 200% of the area median income. For purposes of this Section, the greater Carpinteria Valley shall include the area of Santa Barbara County that is east of Nidever Road and south of the Los Padres National Forest. A priority ranking list ("Secondary Affordable List") shall be developed from all Valley Affordable Purchasers. Owner shall offer the highest priority Valley Affordable Purchaser the opportunity to purchase the Affordable Housing Unit during the Second Af-

fordable Period. Should the highest priority Valley Affordable Purchaser be unable to complete the purchase of the Affordable Housing Unit, Owner shall offer said Unit to the next person from the list of Valley Affordable Purchasers who meets the qualifications of Section 4.01.05B(i) or (ii), and shall continue to do so until the Secondary Affordable List has been exhausted.

- (iii) If the lists of eligible purchasers set forth in Sections 4.05(B)(i) and (ii) has been exhausted and any Affordable Housing Unit is still available for purchase, said unit shall be available to those members of the general public that meet all qualifying criteria other than the residency and employment requirements of Sections 4.01.05(B)(i) and (ii) above.

C. Marketing Plan for Residential Units Other Than Affordable Housing Units.

With respect to all housing units other than Affordable Housing Units, each unit for sale in the Project shall be made available for purchase exclusively to the persons, and for the period of time, described below prior to being made available to the general public.

- (i) During the first ten (10) days in which said housing units are available for purchase ("Initial Market Unit Period"), said units shall be exclusively available to persons selected from the list of Eligible Purchasers who are either employed within the City limits of the City of Carpinteria or maintain a full-time residency within the City limits of the City of Carpinteria ("City Market Unit Purchasers"). A priority ranking list ("Initial Market Unit List") shall be developed from all City Market Unit Purchasers. Owner shall offer the highest ranking City Market Unit Purchaser the opportunity to purchase said unit during the Initial Market Unit Period. Should the highest ranking purchaser be unable to complete the purchase of the unit, Owner shall offer the unit to the next person from the list who meets the qualifications of this Section 4.01.05C(i), and shall continue to do so until the Initial Market Unit List has been exhausted.
- (ii) During the subsequent ten (10) days following exhaustion of the Initial Market Unit List ("Second Market Unit Period"), units shall next be made available to those persons selected from the list of Eligible Purchasers who are either employed within the greater Carpinteria Valley or maintain a full-time residency within the greater Carpinteria Valley ("Valley Market Purchasers"). For the purposes of this section, the greater Carpinteria Valley shall include the area of Santa Barbara County that is east of Nidever Road and south of Los Padres National Forest. A priority ranking list ("Secondary Market Unit List") shall be developed from all Valley Market Purchasers. Owner shall offer the highest ranking Valley Market Purchaser the opportunity to purchase said units during the Second Mar-

ket Unit Period. Should the highest ranking Valley Market Purchaser be unable to complete the purchase of the unit, Owner shall offer the unit to the next person from the Secondary Market Unit List who meets the qualifications of this Section 4.01.05C(ii), and shall continue to do so until this list of eligible purchasers has been exhausted.

- (iii) After the Initial Market Unit Period and Second Market Unit Period, any units other than Affordable Housing Units that are still available for purchase may be made available to members of the general public.

The requirements of this Section 4.01.05 shall survive termination of the Development Agreement.

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, payment of all appropriate processing fees as provided in this Agreement, and Owner's compliance with all conditions of approval, 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), use and land use permits, site clearance or demolition permits, grading plans and permits, landscape plans, Architectural Review Board approvals, and certificates of occupancy (the "Subsequent Approvals"). Owner and City agree that City reserves its full discretion in review of final plans for construction, grading and the like and the imposition of conditions on such final plans consistent with the Project Approvals. City shall have full discretion to determine that final documents required by the Project Approvals, including but not limited to any conditions, covenants and restrictions or other legal documents, conform to the Project 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 planners, engineers and all other consultants to submit in a timely manner all required materials and documents therefore.

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 be designed to implement this Agreement.

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 (CEQA). 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 Building and Grading Permits. Upon application by Owner, and Owner's compliance with all conditions of approval, City shall issue building permits to Owner consistent with the Development Plan. 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. 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. Such permits include, but are not limited to, such permits as may be required by the Carpinteria Sanitary District, Carpinteria Water District, and the Carpinteria-Summerland Fire District. 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 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 third (3rd) anniversary of the Effective Date. 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 im-

provements pose a substantial impediment to Owner's ability to complete construction of the Project within the Term.

Section 6. Amendment of Agreement and Development Plan.

6.01 Amendment of Agreement. This 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 Development Plan 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 Community Development Department for the City 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 Community Development 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 Commission for action thereon, along with his/her recommendation for action thereon. The Planning Commission shall approve or deny the proposed amendment in conformity with the applicable law of the Project, and may require a new discretionary permit for proposed amendments which do not constitute Minor Amendments.

Decisions of the Community Development Director and/or Planning Commission shall be subject to the procedures for appeal set forth in Carpinteria Municipal Code Chapter 14.78.

Section 7. Annual Review, Default, and Remedies; Legal Actions; Termination Upon Completion of Development.

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 or has not completed construction of the Project as required by 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, provided, however, that in no event shall City or its officers, agents, employees or representatives be liable to Owner in damages for any alleged default under this Agreement or for City's termination thereof.

7.02 Annual Review. Each year during the term of this Agreement beginning in 2006, the City shall review the compliance by Owner with the terms of this Agreement. This review shall be conducted by the City Council, with such advisory review by the Planning Commission and/or Architectural Review Board as the City Council may deem appropriate, and shall be limited to compliance with the terms of this Agreement pursuant to California Government Code section 65865.1.

During this review, Owner shall be required to demonstrate compliance with the terms of this Agreement. At the conclusion of this review, the City Council shall make written findings and determinations, on the basis of substantial evidence, whether or not Owner or its successor in interest has complied with the terms and conditions of

this Agreement. If the City Council finds and determines that Owner has not complied with such terms and conditions, then the City may deliver to Owner a 30-day notice of an event of default pursuant to Section 7.01 above. The City may exercise its rights and remedies relating to any such event of default only after the period for curing a default as set forth in Section 7.01 has expired without cure of the default. The costs incurred by City in connection with the annual review process shall be borne by Owner. Within ten (10) days of the date of any invoice for such costs, Owner may file with City a written request that the City Council review the costs to determine if they were necessary and appropriate.

The City shall make available to Owner a copy of any public staff report and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Owner's performance hereunder, at least four (4) days prior to any such periodic review. Owner shall be permitted an opportunity to respond to the City's evaluation of its performance, either orally at a public hearing and/or in a written statement, at Owner's election. Such response shall be made to the City Council or its designee to address Owner's compliance with this Agreement.

In the event City fails to either (1) conduct the annual review or (2) notify Owner (following the time during which the review is to be conducted) of the City's determination as to compliance or non-compliance with the terms of this Agreement, and such failure remains uncured as of December 31 of any year during the term of this Agreement, such failure shall be deemed an approval by City of Owner's compliance with the terms of this Agreement for the applicable year.

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 after all requirements for such issuance 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 approval of the Project or this Agreement or any component thereof, or the issuance of a court order preventing development of the Project. If performance has been delayed by any such cause, this Agreement may be extended for the period of the delay, as mutually agreed by Owner and City in writing, in a period not to exceed a total of two (2) years for all such delays, with such period commencing to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Owner and City pursuant to mutual agreement.

7.04 Cooperation in the Event of Legal Challenge; City's Indemnification. If any legal or equitable action or other proceeding is brought by any party, governmental entity or official challenging the validity of any provision of this Agreement, the parties shall cooperate in defending such action or proceeding. City, at its sole option, may tender the complete defense of any third party challenge to this Agreement or to any

action pursued to Owner. Owner shall reimburse City for all its costs and attorneys' fees incurred in defending this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, to the extent permitted by law, to consider modifications to this Agreement to render it valid and enforceable. If this Agreement is adjudicated or determined to be unenforceable, Owner shall reimburse City for all fees and/or costs assessed against the City by the Court.

(a) Owner, on behalf of themselves and their successors and assigns, shall defend and hold harmless City, its council, boards, commissions, officers, attorneys, agents, employees, representatives, and consultants from and against any claims, demands, actions, suits, liabilities, and judgments of every kind and nature regardless of the merit of same arising out of or in any way related to the approval by City of this Agreement (specifically including Section 4.01 hereof), entitlements, and development permits necessary to the development of the Property, including costs of investigations, attorneys' fees and court costs in the defense of any actions. Owner's obligations hereunder shall survive termination of this Agreement and shall not be undermined or superceded by the insurance obligations of Owner herein.

(b) If Owner assumes the defense of any such claim or proceeding, Owner shall select counsel reasonably acceptable to City to conduct the defense of such claim or proceeding, shall take all steps reasonably necessary in the defense or settlement thereof and shall at all times bear all costs and expenses in connection with defending against such claim or proceeding. At its sole discretion, City shall be entitled to participate in the defense of any such action, with its own counsel and at Owner's expense.

(c) If Owner shall have assumed the defense of any claim or proceeding in accordance with this Agreement, Owner may consent to a settlement of, or the entry of any judgment arising from, any such claim or proceeding only with the prior written consent of City which consent shall not be unreasonably withheld; provided, however, that Owner shall pay or cause to be paid all amounts arising out of such settlement or judgment either concurrently with the effectiveness thereof or shall obtain and deliver to City, prior to the execution of such settlement, a general release executed by the person not a party hereto, which general release shall release City from any and all liability in such matter; provided, further, that Owner shall not be authorized to encumber any of the assets of City or to agree to any restriction that would apply to City or to its conduct of business; and provided, further, that a condition to any such settlement shall be a complete release of City, its council, boards, commissions, officers, attorneys, agents, employees, representatives, and consultants, with respect to any such claim.

(d) If Owner does not assume the defense of any claim or proceeding resulting from or arising out of any claim or proceeding against City, in accordance with the terms of this Agreement, City may defend against such claim or proceeding in such a manner as it may deem appropriate, including settling such claim or proceeding after giving notice of the same to Owner, on such terms as City may deem appropriate. The cost of such defense shall, upon written demand by City, be fully reimbursed to

City by Owner on a monthly basis as costs are incurred. If Owner seeks to question the manner in which City defended such claim or proceeding or the amount of or nature of any such settlement, Owner shall have the burden to prove by a preponderance of the evidence that City did not defend such claim or proceeding in a reasonably prudent manner.

7.05 Applicable Law. 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, approval and acceptance of infrastructure improvements, 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 Prevailing Wages. Owner shall comply with all applicable regulations regarding the payment of prevailing wages pursuant to statute and to regulations of the State Department of Industrial Relations, to the extent such are applicable, and will indemnify, defend and hold harmless City, its officers, agents, employees, and representatives from all costs, damages, attorneys' fees (including special counsel fees), and expenses associated with the payment of prevailing wages as well as all applicable federal, state and local labor laws applicable to Owner's development of the Project.

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 Agree-

ment 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, provided, however, this Agreement and any portion thereof shall not be assigned except in connection with Owner's transfer of fee title in the Property or portion thereof for which assignment is sought, nor shall any of Owner's rights, duties or obligations be assigned without the written consent of City as provided in Section 8.03.02. Any attempt to assign or delegate this Agreement without the written consent of City shall be void and of no force and effect. A consent by City to one assignment shall not be deemed to be a consent to any subsequent assignment. Owner shall reimburse City for all costs incurred by City in reviewing the proposed assignment pursuant to Section 8.03.02.

8.03.02 Consent to Assignment. Owner's rights, duties and obligations under this Agreement shall not be assigned without the written consent of City. Any proposal by Owner to assign pursuant to Section 8.03.01 hereof shall be made in strict compliance with conditions precedent (i) - (v) below. City shall provide Owner with written consent to assignment upon Owner's compliance with conditions precedent (i) - (v):

- (i) Owner (or Assignor) is not in default under this Agreement at the time of the assignment with respect to the assigned portion,
- (ii) Owner has provided to City written request for consent to assignment,
- (iii) Owner and the party to whom the rights are assigned (Assignee) have signed an Assignment and Assumption Agreement in a form and content acceptable to City,
- (iv) Owner has provided evidence to City, and City has determined, in its sole discretion, that the proposed Assignee has the experience, capability, competence, and financial ability to carry out and complete development of the Project in accordance with the terms of this Agreement (hereinafter "Competent Assignee"); and
- (v) The Assignee has signed all required agreements, and posted required bonds and insurance, to complete all required subdivision improvements and other improvements required by the Project Approvals and this Agreement.

A default by any Assignee shall only apply to that portion of the Property owned by such Assignee and shall not cancel or diminish in any way Owner's rights hereunder with respect to any portion of the Property not owned by such Assignee, except to the

extent such default affects the portion of the Property owned by Owner. The Assignee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such Assignee, and any amendment to this Agreement between City and Assignee shall only affect the portion of the Property owned by such Assignee.

8.03.03 Release of Transferring Owner. As of the effective date of the Assignment, City shall 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 that 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, insurance to cover Owner, its agents, representatives, contractors, subcontractors, and its employees in connection with the Property, Project and this Agreement at the minimum levels set forth herein, in furtherance of the indemnification heretofore provided the City, with the City being an additional insured on all such coverage. Such coverages herein identified shall be in addition to any insurance coverage under any subsequent Agreement for Land Development Improvements to be executed by the parties (Land Development Coverage); the Land Development Coverage shall also be applicable to the Project under this Agreement but shall not supercede or be superceded by any of the requirements set forth below. Once in place, the coverages identified within the two agreements, this Agreement and the Agreement for Land Development Improvement, shall be complimentary with all the coverages within the agreements so as to be of the highest level, quality and specification indicated for the benefit of the City and with no coverage eliminated or superceded by any other coverage.

(b) **Commercial General Liability.** Commercial General Liability insurance with coverage at least as broad as ISO occurrence form CG 00 01 (or exact equivalent) and with defense costs paid in addition to policy limits shall be gained and maintained. Such policy shall not contain any exclusions or restrictions of the basic policy coverage grant with respect to claims arising out explosion, collapse, underground hazard, pollution liability or contractual liability assumed; all other limitations, exclusions and restrictions of the coverage shall be approved by the City in its sole discretion. Coverage shall be maintained in an amount not less than \$2,000,000.00 general aggregate and \$1,000,000.00 per occurrence for general liability, bodily injury, personal injury, and property damage.

(c) **Business Auto Coverage.** Business Automobile Liability insurance with coverage at least as broad as ISO form CA 00 01 0692 including symbol 1("any auto") shall be gained and maintained, in an amount not less than \$1,000,000.00 per accident for bodily injury and property damage, covering all vehicles associated with the

Owner (personal, company) and its contractors, employees, etc 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, be provided on a "pay on behalf" basis, with defense costs in addition to policy limits. The excess coverage shall be no less than \$5,000,000 per occurrence and in the aggregate.

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

(f) Endorsements. Owner shall obtain endorsements/coverage in addition to the foregoing coverages, as follows:

(1) Additional Insureds. City of Carpinteria, any independent engineering consultant, and each of their officers, elected officials, employees (including without limitation permanent, temporary and contract employees, agents, representatives and volunteers) shall each be additional insureds in regard to liability arising out of the conduct of the named insured, all without additional cost to the City or the other names above. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another.

(2) Waiver of Subrogation. Owner's insurance shall waive any and all transfer rights for coverage (subrogation) that it may have against the Additional Insureds described above or any other additional insureds.

(3) Primary. Owner's insurance shall be primary as to the Additional Insureds and any other insurance, self-insurance, or other coverage maintained by the Additional Insureds, including the City, scheduled above shall be in excess of Owner's insurance and shall not be called upon to contribute in the event of a loss.

(4) Compliance. Any failure to comply with reporting or other provisions of Owner's insurance, including but not limited to any breaches of warranty, shall not affect coverage provided to the Additional Insureds.

(5) Separation of Insureds. Owner's insurance shall include separation of insureds and shall apply as if each named insured were the only named insured and separately to each insured against whom claim is made or suit is brought except with respect to the total limits of Owner's Insurer's liability.

(g) Notice of Cancellation. Owner's insurer shall give the City at least thirty (30) calendar days written notice of cancellation prior to cancellation, material alteration, non-renewal, or reduction of coverage or limits in the policy. All liability coverage provided according to these requirements must be endorsed to provide a separate aggregate limit for the Project.

(h) **Authorized Insurers.** All insurance companies providing coverage to Owner shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California and be approved by the City as responsible carriers.

(i) **Insurance Certificate.** Owner shall provide evidence of compliance with the insurance requirements listed above by providing a certificate of insurance, in a form satisfactory to the City Attorney, with evidence of all required endorsements.

(j) **Substitute Certificates.** No later than thirty (30) days prior to the policy expiration date of any insurance policy required by this Agreement, Owner shall provide a substitute certificate of insurance.

(k) **Owner's Obligation.** Maintenance of insurance by Owner as specified in this Agreement shall in no way be interpreted as relieving Owner of any responsibility whatsoever (including indemnity obligations under this Agreement), and Owner may carry, at its own expense, such additional insurance as it deems necessary. Insurance provided by Owner is not intended to be limited to providing coverage for the vicarious liability of the City or to the supervisory role of the City; all insurance coverage by Owner is intended to apply to the fullest extent of the policies involved, irrespective of the fact that the City is a governmental entity.

8.05 Waiver of Protest Rights. Owner hereby waives any protest rights, covenants not to sue, and releases City, its officers, agents and employees from any and all claims, demands, rights and causes of action of any kind that the undersigned may have on account of or in any way growing out of, the calculation, and use of development impact fees identified in this Agreement. This waiver shall include, but not be limited to, any such rights set forth in California Government Code §§ 66000 *et seq.*

8.06 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.

8.07 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 Agree-

ment and all Project Approvals shall be reviewed by City for reconsideration of said Agreement and Project Approvals.

8.08 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.

8.09 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 through operating memoranda approved by City 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.

8.10 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.

8.11 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, Community Development Department
City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

With a Copy to:

City Attorney
City of Carpinteria
Hatch & Parent
21 East Carrillo Street
Santa Barbara, CA 93101

To Owner, to:

Matt Easter
Mission Terrace Estates, LLC
c/o M. Timm Development
233 E. Carrillo Street
Santa Barbara, CA 93101

With a Copy to:

Clyde E. Wullbrandt
c/o Price, Postel & Parma LLP
200 E. Carrillo Street
Santa Barbara, CA 93101

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.

8.12 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 Mission Terrace Estates, LLC, 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 that 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.

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

8.14 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.

8.15 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, on the one hand, and City, on the other, 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.

8.16 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.

8.17 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.

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

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

8.20 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 and by no other means. Each party waives their right to claim, contest or assert that this Agreement was modified, cancelled, superceded, or changed by oral agreement, course of conduct, waiver or estoppel.

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 sixty-eight (68) pages, including notary acknowledgment forms, title page and table of contents and three (3) exhibits that 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
- Exhibit B: List of Exhibits: Project Approvals
- Exhibit C: Conditions of Approval

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ACKNOWLEDGMENT

State of California

County of Santa Barbara

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) ss
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On Aug 30, 2007 before me, Julie Joy,
a notary public in and for the State of California, personally appeared

MILAN E. TIMM

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature 

(SEAL)

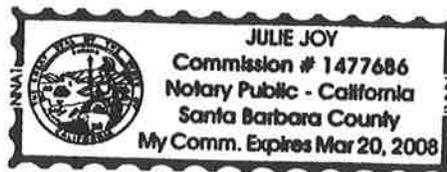


EXHIBIT A

THAT PORTION OF THE OUTSIDE PUEBLO LANDS OF THE CIT OF CARPINTERIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON A MAP ATTACHED WITH THE GRANT OF SAID LANDS TO THE CITY OF SANTA BARBARA, RECORDED IN BOOK A. PAGE 91 OF PATENTS (A-92, APRIL 8, 1890), RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING ON A SPIKE AND TIN IN THE CENTER LINE OF LINDEN AVENUE, VARIOUS WIDTHS, AT THE SOUTHEASTERLY CORNER OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON OCTOBER 13, 1937 IN BOOK 417, PAGE 97 OF OFFICIAL RECORDS, SAID SPIKE AND TIN SHOWN ON THE MAP OF CANALINO VILLAGE NO. 1 FILED IN BOOK 40, PAGES 65 AND 66 OF MAPS; THENCE 1ST, ALONG THE SOUTHERLY LINE OF SAID SALVESTRIN TRACT (BEING ALSO THE NORTHERLY LINE OF SAID CANALINO VILLAGE NO. 1: THE NORTHERLY LINE OF CANALINO VILLAGE NO. 2 AS SHOWN IN BOOK 45, PAGES 13, 14 AND 15 OF MAPS; AND THE NORTHERLY LINE OF TRACT NO. 10.166 AS SHOWN IN BOOK 59, PAGES 75 AND 76 OF MAPS, RECORDS OF SAID COUNTY), NORTH 75°14'30" WEST 1515.90 FEET TO A 2 INCH IRON PIPE AT THE SOUTHWESTERLY CORNER OF SAID SALVESTRIN TRACT: THENCE 2ND, ALONG THE WESTERLY LINE OF SAID SALVESTRIN TRACT TO AND ALONG THE WESTERLY LINE OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON APRIL 27, 1945 IN BOOK 641, PAGE 416 OF OFFICIAL RECORDS, NORTH 14°34'00" EAST 514.87 FEET TO THE NORTHWESTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 3RD, ALONG THE NORTHERLY LINE OF SAID LAST MENTIONED SALVESTRIN TRACT SOUTH 73°20'20" EAST 1507.76 FEET TO A POINT IN THE CENTER LINE OF LINDEN AVENUE, BEING THE NORTHEASTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 4TH, ALONG THE EASTERLY LINE OF SAID SALVESTRIN TRACT (BEING THE CENTER LINE OF LINDEN AVENUE) SOUTH 13°26'20" WEST 464.91 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE LAND GRANTED TO LEONARD J. HINES, ET AL., BY DEEDS RECORDED JANUARY 22, 1965 AS INSTRUMENT NO. 2314 IN BOOK 2088, PAGE 828 OF OFFICIAL RECORDS, AND APRIL 23, 1965 AS INSTRUMENT NO. 14534 IN BOOK 2102, PAGE 580 OF OFFICIAL RECORDS.

SAID LAND IS ALSO SHOWN AS PARCEL B ON A MAP RECORDED IN BOOK 69, PAGE 12 OF RECORD OF SURVEY.

EXHIBIT B

LIST OF EXHIBITS REFLECTING PROGRAM APPROVALS

DEVELOPMENT PLAN/COASTAL DEVELOPMENT PERMIT

- Site Plan (dated 2/25/06)
- Floor Plans and Elevations for Plans 1, 2, 3 mod, 6, 7, 7a, 9a, 9b, 9d, 11, 12, 13, 14, 15 (dated 2/20/06)
- Landscape Plans, sheets L1-L7 (dated 2/25/06)
- Subdivision Improvement Plans (dated 4/19/07)
- Pedestrian Bridge and Access Exhibit (dated 7/6/07)
- Existing and Proposed Conditions – Linden Ave. from Malibu Drive to El Carro Lane Traffic Calming Plans (dated 8/2/07)

TENTATIVE TRACT MAP

- Tentative Tract Map No. 25,169 (dated 4/4/06)

VARIANCE

- Site Plan (dated 2/25/06)
- Subdivision Improvement Plans (dated 4/19/07)

MODIFICATION

- Site Plan (dated 2/25/06)
- Subdivision Improvement Plans (dated 4/19/07)

EXHIBIT C .

CONDITIONS OF APPROVAL

MISSION TERRACE COMPLETE LIST OF CONDITIONS

Coastal Commission Conditions: CDP No. A-4-CPN-05-040

Project Description: On January 13, 2006, the California Coastal Commission approved Coastal Development Permit No. A-4-CPN-05-040, requested by M. Timm Development Corporation, subject to the attached conditions, for development consisting of: Subdivision of a 5.89-acre parcel into 27 residential lots and the development of 27 single family residences, including 24 market-rate and three affordable residences. The proposed lots range in size from 4,662 sq. ft. to 13,030 sq. ft., with one 32,275 sq. ft. subdivision improvement lot to be developed as a private street that provides a non-motorized public access easement. The structures include 12 single-story single family residences, maximum 18 feet in height (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 15 two-story residences, maximum 26 feet in height (with the exception of those on lots 3, 4, 8 & 9, which are 28 feet in height), with 14 separate floor plans ranging from 1,676 sq. ft. to 3,600 sq. ft. Additionally, the project includes the construction of sidewalks; utilities; drainage system, including vegetated drainage swale; public access provisions including a ten foot wide footbridge over Franklin Creek, a five foot wide pathway through the site crossing over the footbridge, and the construction of a five foot wide pathway off-site through Franklin Creek Park to Sterling Avenue; traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue; native riparian landscaping in the 50 foot buffer area along Franklin Creek and offsite in Franklin Creek Park; other landscaping; submittal of annual biological reports on the creek setback area, and payment of an annual processing fee to allow City review of the reports; and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping. This permit is more specifically described in the application on file in the Commission offices. Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

COASTAL COMMISSION SPECIAL CONDITIONS:

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE VENTURA OFFICE, AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY OF THIS FORM. WHEN YOU RECEIVE THE DOCUMENTS, IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE SOUTH CENTRAL COAST OFFICE AT (805) 585-1800.

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic report ("Geotechnical Engineering Report," Earth Systems Southern California, June 2002). These recommendations, including those concerning construction, foundations, grading, retaining walls, and additional services, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, retaining walls, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Landscape Plans

- A. Prior to issuance of the Coastal Development Permit, the applicants shall submit two (2) sets of landscaping plans for all landscaped areas to be installed by the permittee and landscape guidelines prepared by a landscape architect or other qualified specialist for review and approval by the Executive Director. The plans shall incorporate the following criteria:
- (1) All areas disturbed and/or denuded by the development shall be re-vegetated and maintained to prevent erosion into coastal waters. To minimize the need for irrigation all landscaping shall consist primarily of drought resistant, non-invasive plants. Irrigated lawn may be planted within the individual residential lots. Such lawn shall be selected from the most drought tolerant species or subspecies.
 - (2) The required creek setback area, as shown in **Exhibit 12**, (with the exception of the required Santa Barbara County Flood Control easement), shall be planted with appropriate native riparian landscape materials that have been obtained from local genetic stock. The plantings shall include riparian native tree species and shrubs of sufficient density and height to screen the proposed residences as viewed from Franklin Creek Park and to restrict access within the setback area to the proposed trail. Plantings shall be completed within 90 days of the completion of construction on Lots 14 through 18.
 - (3) The proposed plantings in Franklin Creek Park shall consist of appropriate native riparian tree and shrub species.

- (4) No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the private residential lots.
 - (5) The use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance shall be prohibited, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.
 - (6) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
 - (7) Final landscaping guidelines for residential lots shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that landscaping shall be installed by the landowner consistent with the guidelines within 180 days of initial occupancy of each residence approved by this permit. The guidelines shall be consistent with the requirements of this coastal development permit.
 - (8) The proposed trail within the creek setback, on the subject property and in Franklin Creek Park, shall be no greater than five feet in width.
- B. Prior to issuance of the coastal development permit, the permittee shall submit landscape palette lists to be incorporated into the landscaping guidelines, subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a representative list of the non-native, non-invasive common garden plant species that may be planted in the residential lots; and 3) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the lists of approved plants as reviewed and approved by the Executive Director. These lists shall remain available for public consultation at the California Coastal Commission, the City of Carpinteria, and the homeowners association established for the development. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- C. Prior to issuance of the coastal development permit, the permittee shall submit for review and approval by the Executive Director final landscaping plans for all common areas of the residential development area. The plans shall be modified in accordance with the requirements of the special conditions of this permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all landscaping be consistent with the landscaping

guidelines approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.

- E. Five years from the date of the receipt of the Certificate of Occupancy for the first residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.
- F. In order to implement the applicant's proposal to submit and fund City of Carpinteria review of annual monitoring reports for the creek setback area, the applicant shall submit to the City, on an annual basis for the life of the proposed project, beginning one year from the date of installation of native riparian landscaping in the creek setback area (Lot A), a biological report analyzing the condition of the creek setback area (Lot A). The reports shall be prepared by a City approved biologist and shall document the condition of the native riparian habitat, including the health of native trees and other plants. The reports shall also address compliance with the Creeks Preservation Program, including evidence of any disturbance or development within the creek setback area. The reports shall include recommendations for any necessary corrective action to ensure compliance with the Creeks Preservation Program and the final landscape plan approved pursuant to this special condition. The Homeowners Association associated with the subject development shall pay an annual processing fee to the City of Carpinteria to allow the City to review the annual biological reports.

3. Erosion and Sediment Control Plan (Construction Phase)

- A. Prior to issuance of a coastal development permit, the permittee shall submit two (2) sets of an erosion and sediment control plan, prepared by a qualified engineer, for review and approval by the Executive Director. The plan shall incorporate the following criteria:
 - (1) The plan shall include controls on grading (i.e. timing and amounts), best management practices for staging, storage, and disposal of construction and excavated materials, design specifications for sediment basins and other erosion control measures, and landscaping /revegetation of graded or disturbed areas as required below.
 - (2) The plan shall include a site-specific polluted runoff control plan that demonstrates how runoff will be conveyed from impermeable surfaces into permeable areas of the property in a non-erosive manner, and how development will treat or infiltrate stormwater prior to conveyance off-site during construction. The plan shall specify that should grading take place during the rainy season (November 1 – April 15) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate

cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Water Quality Management Plan (WQMP)

- A. Prior to issuance of the coastal development permit, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall include the following information and shall be in substantial conformance with the following requirements:
 - (1) Pre-development and expected post-development peak runoff rate and average volume. Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
 - (2) Site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff. Appropriate structural and non-structural BMPs shall be designed and implemented to minimize water quality impacts to surrounding coastal waters.
 - (3) Drainage improvements (e.g. locations of diversion/conveyances for upstream runoff).
 - (4) Potential flow paths where erosion may occur after construction.
 - (5) Methods to accommodate onsite percolation. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.
 - (6) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized.

- (7) All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
 - (8) Measures to treat, infiltrate, and/or filter runoff from impervious surfaces on the subject parcels and to discharge the runoff in a manner that avoids erosion, gullyng on or downslope of the subject site, the need for upgrades to municipal stormdrain systems, discharge of pollutants to coastal waters, and other potentially adverse impacts. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
 - (9) Information describing how the post-construction BMPs have been designed to meet the following standard: BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
 - (10) A long-term plan and schedule for the monitoring and maintenance of all BMPs. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to September 30th each year; (2) during each month between September 30th and April 30th of each year and, (3) at least twice during the dry season.
 - (11) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- B. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications. As soon as a homeowner's association (HOA) or similar entity comprised of the individual owners of the proposed residential lots is created, responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications shall be transferred to the HOA.
 - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
 - D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all development be carried out in accordance with the Water Quality Management Plan approved by the Executive Director.

5. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for

all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

6. Construction Mitigation Plan

A. All construction plans and specifications for the project shall indicate that impacts to Franklin Creek shall be avoided and that the California Coastal Commission has not authorized any development in Franklin Creek. Said plans shall clearly identify Franklin Creek and its associated buffer zone. Prior to issuance of the coastal development permit, the permittee shall submit a final construction mitigation plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to Franklin Creek consistent with this approval. The plan shall include the following requirements and elements:

- (1) Construction equipment, materials, or activity shall not be placed in any location that would result in discharge of material into Franklin Creek or its designated buffer.
- (2) No construction materials, debris, or waste shall be placed or stored where it may enter storm drains or be subject to wind erosion and dispersion;
- (3) No construction equipment shall be stored within Franklin Creek and its designated buffer zone.
- (4) The plan shall include, at a minimum, a site plan that depicts the following components: limits of the staging area(s); construction corridor(s); construction site; location of construction fencing and temporary job trailers with respect to Franklin Creek.
- (5) The plan shall indicate that construction equipment, materials or activity shall not occur outside the designated staging area(s) and construction zone and corridors identified on the site plan required by this condition.
- (6) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include the construction site and any temporary access roads, construction corridor(s), staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
- (7) Protective fencing shall be placed around the outermost limits of the protected zones of native trees within and adjacent to the construction area prior to the commencement of construction activities, and shall be maintained in place for the duration of all construction. The protected zone of a native tree shall extend five feet from the dripline or 15 feet from the trunk of the tree, whichever is greater. No construction, grading, or materials storage shall be allowed within the fenced exclusion areas, or within the protected zones of any on-site native trees. Any development approved within the protected zone of a native tree shall be constructed using only hand-held tools.
- (8) The use of herbicides shall be minimized by using manual removal methods to eliminate undesired vegetation whenever possible.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, erosion, flooding, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Lighting and Noise Restrictions

- A. The only outdoor night lighting allowed on Lots 14, 15, 16, 17, and 18 is limited to the following:
1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
 2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
 3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
- B. No lighting around the perimeter of Lots 14, 15, 16, 17, and 18 and no lighting for aesthetic purposes is allowed.
- C. Loud, stationary equipment (e.g. air conditioners, etc.) on Lots 14, 15, 16, 17, and 18 shall be located away from the riparian setback area or provided with enclosures to minimize impacts to wildlife.
- D. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all lighting and loud, stationary equipment be consistent with the plans approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.

9. Covenants, Conditions, and Restrictions (CC&R's)

Prior to issuance of the coastal development permit, and prior to recordation of any covenants, conditions and restrictions (CC&R's) associated with the subdivision approved by this Permit, said CC&R's shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of insuring compliance with the standard and special conditions of this coastal development permit. The CC&R's shall include the following:

- (1) The permittee shall establish covenants, conditions and restrictions (CC&R's) for the proposed residential lots located within the subdivision. The CC&R's shall reflect the requirements of all special conditions of this coastal development permit.
- (2) The CC&R's for the proposed subdivision shall indicate that Lot A within the subdivision shall be maintained by a common entity (e.g. master homeowner's association) in accordance with the special conditions of this permit.

Prior to issuance of the Certificate of Occupancy for the first residence, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The CC&Rs shall state that the Special Conditions of this Coastal Development Permit and City of Carpinteria Conditions of Approval shall not be eliminated or changed without authorization from the Coastal Commission.

10. Residential Area Height Restrictions

The heights of residential structures and appurtenances shall be as identified in the final plans approved by the Executive Director consistent with the following maximum heights shown in **Exhibit 16**: 15 to 18 feet for the 12 single story residences (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 23.5 to 26 feet for the 15 two story residences (with the exception of the residential units on lots 3, 4, 8, & 9, which are 28 ft. in height). Future development shall conform to the heights shown in **Exhibit 16** unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.

11. Buyer'(s) Acknowledgment

- A. Prior to issuance of this coastal development permit, the owner(s) of the property that is the subject of this permit shall agree that before any sale or transfer of any of that property or any interest in that property that occurs before completion of all public amenities required in this permit ("Improvements"), the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- B. Subsequent to the issuance of this coastal development permit, and prior to the sale or transfer of any of the property or any interest in the property that is the subject of this permit that occurs before completion of all of the Improvements, the owner of the property being sold shall secure a letter from the buyer (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is therefore restricted by the special conditions of this permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the opening to the public of public trails and other public access and recreation amenities, and furthermore, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets

and trails; and (2) agreeing that, prior to close of escrow on any further sale or transfer of any of the property or any interest in the property that occurs before completion of the improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.

- C. A copy of such letter(s) shall be provided to the Executive Director of the Commission and the Community Development Director of the City of Carpinteria before close of escrow.

12. Open Space Restriction

- A. No development, as defined in Section 30106 of the Coastal Act, or agricultural activities, shall occur within Lot A as shown on the Final Tract Map approved pursuant to **Special Condition Fifteen (15)** and as described and depicted in **Exhibit 12** attached to the findings in support of approval of this permit except for the following activities, if approved through a separate coastal development permit:

1. Habitat restoration, including maintenance of native riparian habitat and restoration of the banks of Franklin Creek;
2. Installation, repair, or upgrading of utilities;
3. Construction or maintenance of water quality management structures;
4. Construction and maintenance of public trails and bridges and associated appurtenances;
5. Existing easements for roads, trails, flood control, and utilities.

13. Signage & Education Program

- A. Prior to the issuance of the Certificate of Occupancy for the first residence, the permittee shall submit, for the review and approval of the Executive Director, plans showing the location, size, design, and content of all signs to be installed.
- B. Within thirty (30) days of issuance of the certificate of occupancy for the first residence by the City of Carpinteria, the permittee shall install permanent signage that notifies the public's right for pedestrian and bicycle access through the new subdivision as shown in **Exhibit 11**.
- C. Animal waste control measures (e.g., mutt-mitt dispensers) shall be implemented. Mutt-mitt dispensers shall be installed and maintained by the Developer/Homeowner's Association at the proposed trailhead within the development. Educational displays/signs and a trash receptacle shall be installed at the trailhead to provide information about water quality in Franklin Creek and the downstream Carpinteria Salt Marsh, and appropriate education materials shall be incorporated into the Homeowners' Association CC&Rs. The displays and/or signs shall include information pertaining to animal waste and surface water pollution prevention.
- D. The required signs shall be maintained in good condition and replaced when necessary.

14. Revised Project Plans

Prior to issuance of the coastal development permit, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of final revised vesting tentative tract map

and project plans. The revised final vesting tentative tract map and project plans shall reflect the following:

- A. The required creek setback area, as shown in **Exhibit 12**, shall be included as a separate lot, Lot A, of the proposed subdivision;
- B. Lots 14, 15, 16, 17, and 18 shall be reconfigured to reflect the incorporation of the creek setback area into a separate lot, Lot A, as described above.
- C. The proposed chain-link and split-rail fence with gates shall be replaced by a continuous six-foot high solid wall, which shall be constructed along the entire length of the boundary between the required riparian setback area and the backyards of Lots 14, 15, 16, 17, and 18, with the exception of the five foot wide trail access easement, in order to help contain domestic animals and backyard activities within the residential area. No gates in the wall shall be allowed. Prior to issuance of the coastal development permit, the permittee shall submit final revised plans showing the location, design, height and materials of all such walls for the review and approval of the Executive Director.
- D. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- E. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall incorporate the backyard enclosure/fencing restrictions required by this special condition for Lots 14, 15, 16, 17, and 18.

15. Final Tract Map

Recordation of the Final Tract Map for the subdivision authorized herein shall only occur following issuance of the coastal development permit. Prior to recordation of the Final Tract Map for the subdivision authorized herein, the applicant shall submit to the Executive Director, for review and approval, a copy of such map. The Final Tract Map shall reflect the requirements imposed by **Special Condition Fourteen (14)** above and shall state on the map that Lot A is restricted to use as open space and may not be modified or eliminated without authorization from the California Coastal Commission. The Final Tract Map shall include an informational sheet to be recorded with the map that shall include all of the mitigation measures, conditions, agreements, and specific plans required by the Commission and the City of Carpinteria for approval of the project.

Prior to implementation of the Development Plan for this project, the applicant shall submit to the Executive Director, for review and approval, evidence that the Final Tract Map was executed and recorded in conformance with the requirements outlined above and specified in the City of Carpinteria's conditions of approval.

16. City of Carpinteria's Conditions

The applicant shall comply with all of the City's conditions attached to the City of Carpinteria approval of 99-881-DP/CDP as shown in **Exhibit 2**. Prior to the issuance of Coastal Development Permit A-4-CPN-05-040, the applicant shall submit evidence of such condition

compliance for the review and approval of the Executive Director. Should any conflict arise between the City's conditions of approval and **Special Conditions One (1) through Fifteen (15)** set forth above, **Special Conditions One (1) through Fifteen (15)** shall prevail and shall supercede the conflicting requirement(s) of the City's condition(s).

The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans as described in this staff report shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

17. Santa Barbara County Flood Control District Review

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, of final approval for the development from the Santa Barbara County Flood Control District. Should the Flood Control District require any substantial changes to the development, such as additional grading or other flood control measures, an amendment to the permit shall be required. The Executive Director shall determine if any required changes to the development are substantial and require an amendment to the Coastal Development Permit.

City of Carpinteria Conditions from the Council hearing of February 14, 2005

The Conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on the owner (applicant, developer) by this permit

GENERAL:

1. This Tract Map, Development Plan, Variance, Modification, Coastal Development Permit, and Development Agreement approval is restricted to APNs 004-011-043 and 004-011-044 located at 1497 Linden Avenue, and is for the development of a single-family residential project consisting of: 27 dwelling units; a private street; a six to eight-foot wide footbridge over Franklin Creek Channel; a five-foot wide pathway through the site crossing over the footbridge; a six to eight-foot wide pathway through Franklin Park to Sterling Avenue; traffic calming and control measures/devices along Linden Avenue; a landscaped buffer on the western site edge of 50 feet from the top of the Franklin Creek Channel; and various other landscaping on site. The project shall be constructed in compliance with the exhibits in Attachment B of the Resolution of Approval (Site Plan dated 12-29-04; Floor Plans and Elevations for Plans 1, 2, 3, 6, 7, 7a, 9a, 9b, 9d, 11, 12, 13, 14; Tentative Tract Map dated 12-21-04; Preliminary

Subdivision Improvement Plan dated 2-3-05; Pedestrian Bridge and Access Exhibit dated 12-21-04; Existing and Proposed Conditions – Linden Avenue from Malibu Drive to El Carro Lane (Traffic Calming Plan)– dated February 2005; and Landscape Plans Sheets L1, L2 and L3 – dated 12-28-04) with conditions provided in Attachment C, as listed below. As a part of this approval, a modification of Carpinteria Municipal Code Sections 14.12.050, 14.20.070, 16.16.090 is hereby granted to allow for a reduction in the front yard setbacks for Lots 2, 3, 4, 16, 26, 27, 19, 8, 9, 20, 21, 22, 23, 10, and 17; a reduction in the minimum parcel size for Lots 3, 8 and 9; and a reduction in the minimum net lot width for Lots 3 and 9. As a part of this approval, a variance for Carpinteria Municipal Code Sections 14.20.070 and 16.16.090 is hereby granted to allow for a reduction in the required setback on Lot 25 (flag lot) and reduction in the required width of the staff of the flag lot (Lot 25).

2. The conditions of this approval supercede all conflicting notations, specifications, dimensions, and the like that may be shown on submitted plans.
3. All project conditions and mitigation measures shall be listed on a sheet included as part of the construction plans submitted for review and approval by the City prior to issuance of a Building Permit/Grading Permit. The approved set of plans shall be retained at the construction site for review by the Building Inspector during the course of construction.
4. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitations period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
5. All requirements of the City of Carpinteria (including but not limited to public improvements as defined in the City of Carpinteria Municipal Code (CMC) Section 15.16.110), and any other applicable requirements of any law or agency of the State and/or any government entity or District, shall be met.
6. The applicant agrees to pay any and all City costs, permits, attorney's fees, engineering fees, license fees and taxes arising out of or concerning the proposed project, whether incurred prior to or subsequent to the date of approval and that the City's costs shall be reimbursed prior to this approval becoming valid. In addition, the applicant agrees to indemnify the City for any and all legal costs in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City in its defense of the project approval.
7. Any minor changes may be approved by the City Manager and/or Community Development Director. Any major changes will require the filing of a modification application to be considered by the Planning Commission.

8. In addition to the conditions within the City Council's Resolution to approve the project, the project shall conform to the provisions of the Development Agreement, dated February 28, 2005. The Development Agreement shall be approved by Ordinance pursuant to Government Code Section 65867.5, and shall be deemed in full force and effect on the effective date. The term of the Development Agreement shall commence upon the effective date and shall extend until the third anniversary of the effective date.
9. When not specified herein or in the Development Agreement, all conditions shall be satisfied prior to the issuance of Building Permits or prior to occupancy when allowed by the Community Development Director.

COMMUNITY DEVELOPMENT - GENERAL:

10. All buildings, roadways, parking areas, landscaping and other features shall be located substantially as shown on the attached exhibits, and as amended by these conditions.
11. Water conserving fixtures shall be utilized on all faucets, sinks, water closets and other water outlets throughout the project to reduce water demands and as required to be consistent with the Uniform Building Code and CMC 15.32.020 (L), Water Saving Devices.
12. Any and all damage or injury to public property resulting from this development, including without limitation, City streets, shall be corrected or result in being repaired and restored to its original or better condition.
13. The standards defined within the City's adopted model Building Codes (UBC; NEC; UMC; UFC; UPC; UHC) relative to the building and occupancy shall apply to this project.
14. The applicant shall comply with the mitigation measures of the attached environmental document pursuant to the California Environmental Quality Act, which are incorporated herein as conditions of approval.
15. An approval granted by the Planning Commission does not constitute a building permit authorization to begin any construction. An appropriate permit issued by the Building or Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
16. Prior to issuance of a Building Permit or Grading Permit, all plans included as Attachment B to the Resolution of Approval shall be provided in an electronic format acceptable to the City, such as a pdf or tif file.
17. This approval shall not be effective for any purposes unless the applicant/developer and the owner of the property involved (if other than the owner) shall file with the office of

the Community Development Department prior to issuance of a Building Permit or Grading Permit a recorded affidavit stating that the applicant/developer and the owner are aware of and agree to accept all conditions of approval. Prior to recordation of the map and subject to City approval as to form and content, the applicant shall include all of the conditions of approval required by this project approval on a separate informational sheet to be recorded with the Final Map.

18. Prior to recordation of the map, the applicant shall complete (to the satisfaction of the Community Development Director) a separate informational sheet to be recorded with the map listing all of the mitigation measures, conditions, agreements and specific plans associated with or required by this project approval. These requirements shall be graphically illustrated where necessary for clarification.
19. Subject to the provisions of the Development Agreement, if, at any time, the City or Planning Commission determines that there has been, or may be, a violation of the findings or conditions of this Development Plan/Tract Map/Modification/Variance/Coastal Development Permit/Development Agreement, or of the Municipal Code regulations, a public hearing may be held before the City Council to review this permit. At said hearing, the City Council may add additional conditions, or recommend enforcement actions, or revoke the permit entirely, as necessary to ensure compliance with the Municipal Code, and to provide for the health, safety, and general welfare of the City. The applicant shall reimburse the City for all costs associated with gaining compliance with the original conditions of approval.
20. If the construction site is graded and left undeveloped for over three weeks, the following methods shall be employed immediately to inhibit dust generation: (1) seeding and watering to revegetate graded areas; (2) spreading of soil binders, and/or (3) any other methods deemed appropriate by the City or County Air Pollution Control Board (APCD).
21. No construction-related debris (mud, dust, paint, lumber, rebar, etc.) shall leave the project site unless transported to an approved disposal site. During the construction period, washing of concrete, paint, and/or equipment shall be allowed only in areas where polluted water and materials can be contained for subsequent removal from the site.
22. Washing of equipment shall not be allowed near sensitive biological resources. The applicant shall designate a "wash-off area" on the construction plans and install such an area prior to the commencement of any construction activities.
23. Any unanticipated damage that occurs to trees or sensitive habitats during construction activities shall be mitigated by either: (1) tree replacement, or bonding for tree replacement; (2) hiring (at applicant expense) a qualified biologist or botanist to assess the damage and recommend mitigation, which mitigation shall be completed by applicant at its sole cost and expense.

24. To allow time for the Gas Company and other utilities to locate and mark their facilities for the contractor, please telephone Underground Service Alert (USA) toll free at 1-800-227-2600 a minimum of forty-eight (48) hours prior to the start of construction. For best response, provide as much notice as possible, up to ten (10) working days.
25. The applicant is required to complete a School District sign-off form, which may include payment of applicable School Mitigation Fees, prior to issuance of Building Permit.
26. In accordance with Chapter 15.80 of the Carpinteria Municipal Code, the applicant shall pay the Development Impact Fee(s) (DIFs) for the entire project prior to the date of final inspection of the first dwelling unit. The amount of the fee shall be that in effect at the time of Building Permit issuance. Current estimates can be obtained from the Community Development Department. All fees and charges paid are subject to protest per Government Code Section 66020.
27. The project is subject to City parks improvement, aquatic facility and parks acquisition fees pursuant to Chapters 15 and 16 of the City's Municipal Code. These fees shall be paid to the City prior to issuance of a Building Permit.
28. The project is within the boundaries of the City of Carpinteria Parks Maintenance District, and a fee, calculated by the City Parks & Recreation Department, shall be levied upon each residential unit on an annual basis.

COMMUNITY DEVELOPMENT - SPECIAL:

29. No signs are approved as part of this project, except as specifically indicated.
30. The hedge shown along the edge of Franklin Park shall be riparian species. The revised landscape plan shall be provided for final ARB review.
31. A qualified native riparian plant specialist shall review all proposed landscape plans in the 50-foot setback to ensure they are consistent with the Creeks Preservation Program, and that the site conditions are appropriate to such species. A brief report prepared by the specialist, with any recommended palette changes, shall be provided to the City prior to scheduling the project for final ARB review of the landscape plans. Any resulting changes to the vegetation shall be shown on the landscape plans brought before the ARB for final review.
32. Lighting on the footbridge shall be low intensity and directed downwards so as to minimize light spillover and glare.
33. The footbridge width shall be the same as that of the pathway proposed in Franklin Park, approximately six to eight feet. This dimension shall be called out on the final plans. The footbridge shall be designed in accordance with the plans approved as part

of this project, shall be designed to ADA standards and Building Code standards, and shall be acceptable to the City's Community Development Department, Public Works Director, and City Engineer, as well as the Flood Control District. The footbridge shall be constructed per Section 3.070.03 of the Development Agreement.

34. The developer/owner shall obtain the necessary permits and approvals from the Flood Control District for construction of the pathway west of the footbridge, on Flood Control District property, and provide them to the City prior to issuance of a Grading Permit or Building Permit.
35. The developer/owner shall submit proof of all Flood Control District permits and other necessary District approvals, including that for storm drain improvements, pathways and the footbridge, prior to issuance of a Grading Permit or Building Permit.
36. A maximum three-foot tall post and rail wood or "woodcrete" fence shall be provided along the pathway connecting to the footbridge between Lots 14 and 15 to provide some measure of privacy and delineation of public space. The specific fence design shall be submitted to the ARB for final review. Maintenance of the fence and pathway shall be the responsibility of the proposed homeowners' association, and provided in the CC&Rs.
37. No fence shall be placed in Franklin Park as a part of this project.
38. In accordance with the Carpinteria Creeks Preservation Program, no structures or other development are allowed within the 50-foot setback from the top of the Franklin Creek Channel, including on Lots 14-18, with the exception of the following: (1) Patios of stone pavers are allowed in the 50-foot setback providing that the patios are permeable, allow grass or other vegetation to grow in between the pavers, and that no solid foundation is used. The patios in the 50-foot setback on Lots 14-18 shown on the construction plans submitted for a Building Permit shall conform to the size and shape as those shown on the landscape plans approved as part of this project; (2) The wooden fence proposed in the 50-foot setback from the top of the Franklin Creek Channel shall not exceed 40 inches tall, and the bottom rail shall be at least 14 inches above the ground to encourage passage of wildlife. This 14-inch gap shall be left unobstructed throughout the life of the development. The wooden planks shall be separated by gaps approximately three inches wide, or as approved by the Community Development Department; and (3) All plant species proposed in Franklin Park and in the 50-foot setback from Franklin Creek Channel on the project site shall be regionally native and riparian, as directed by and consistent with the Carpinteria Creeks Preservation Program. Property owners of the individual lots shall maintain in perpetuity the landscape in the 50-foot setback. The trees and major vegetation proposed in this 50-foot setback shall be maintained for the life of the project. Any requests for replacement of, or changes to, species shall be considered by City staff to determine compliance with project conditions and applicable City policies. For Lot 15, this condition means that no building projections such as door landings or roof overhangs shall be located within the 50-foot setback. A covenant imposing the

condition specified herein on individual Lots 14, 15, 16, 17, and 18 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.

39. Pursuant to the Carpinteria Creeks Preservation Program, a Construction Mitigation Plan and Post-Construction Mitigation Plan to ensure protective measures are utilized during habitat restoration and revegetation in the 50-foot setback from the top of the Franklin Channel shall be submitted for review and approval to the Community Development Department prior to issuance of a Grading Permit or Building Permit.
40. A hedge along Linden Avenue shall be retained and maintained at approximately five and one-half feet along Lots 1, 25 and 27, with the hedge removed at the vehicle entrance to the site and in the portion of Lots 1 and 27 adjacent to the entrance, and shall be shown on the plans submitted for final ARB review. A covenant imposing the condition specified herein on individual Lots 1, 25 and 27 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.
41. The homes on the following lots shall be one story: 1, 2, 5, 6, 12, 13, 14, 15, 20, 22, 25, and 27. The homes on lots 1, 25, 27, 15, 14, 13, 12, 6, 5, 2 shall remain as single story. No second story additions shall be permitted for such houses. A covenant imposing the condition specified herein on individual lots 1, 25, 27, 15, 14, 13, 12, 6, 5, 2 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.
42. A sign shall be placed near the project entrance on Linden Avenue, indicating available pedestrian access to Franklin Creek Park via the subdivision. The sign design (including, size, materials, colors, wording, style) shall be presented to the Community Development Department for review and approval, and may require ARB review and approval.
43. The developer/owner shall install a six-eight foot wide ADA-compliant decomposed granite path in Franklin Park, from the footbridge to Sterling Avenue, as shown on the plans. The path terminating at Sterling Avenue shall be aligned with the existing cross walk at El Carro Road and Sterling Avenue. The path shall be stabilized with 6-inch x 6-inch concrete headers, per the City's standard trail specification, and a curb cut provided at Sterling Avenue per City standards. The path shall be constructed per Section 3.070.03 of the Development Agreement.
44. The developer/owner shall install all landscaping in Franklin Creek Park, as shown on the project plans. The landscaping shall be installed per Section 3.070.03 of the Development Agreement.

45. The private road shall consist of 16 feet of clear driving width and 8 feet of parking on each side of the road (total 16 feet of parking), along with a 5-foot wide sidewalk on each side of the road, all of which shall be designed and built to City standards.
46. All new residential units shall contain fire sprinkler systems, per the Fire District standards, and shall meet all requirements of the Fire District.
47. The location and specifications of the sewer pump station and sewer lines, as well as any required easements, shall be shown on the plans submitted to the City prior to the issuance of a Grading Permit or Building Permit, and shall be acceptable to the Carpinteria Sanitary District (CSD), as well as the City's Community Development and Public Works Departments. The Public Works Department shall obtain comment on said plans from the Santa Barbara County Flood Control and Water Conservation District. The pump station shall be below grade, although a standard utility panel may be sited above ground. The station shall not be installed in a street, or within the 50-foot setback from the Franklin Creek Channel, or directly adjacent to the top of bank of the southerly drainage ditch along the property. The developer/owner shall dedicate an easement to the CSD for access to all facilities, and shall dedicate the pump station and appurtenances to the CSD.
48. An easement shall be dedicated to the City in perpetuity, granting a public right of passage on the private street and sidewalk for the purposes of accessing the footbridge. The easement shall be in a form acceptable to the City Attorney and City's Community Development and Public Works Departments, and shall be recorded prior to the issuance of the first Grading Permit or Building Permit.
49. Channel access gates for Flood Control District purposes proposed at the end of the footbridge, in Flood Control District property, shall be constructed by the developer/owner, and shown on the Final Tract Map, Subdivision Improvement Plan, Pedestrian Bridge and Access Exhibit, and Site Plan prior to issuance of a Building Permit or Grading Permit. The design of the gates shall be reviewed by the ARB at final review. Maintenance of the gates shall be the responsibility of the proposed homeowners' association, and identified in the CC&Rs.
50. A metal or wrought iron vehicle access gate acceptable to the Flood Control District, Carpinteria Sanitary District (CSD), and the City shall be provided along Linden Avenue at the entrance to the Flood Control/CSD access road traversing the southern site edge, and shall be shown on the plans submitted prior to issuance of a Grading or Building Permit. Maintenance of the gates shall be the responsibility of the proposed homeowners' association, and identified in the CC&Rs.
51. The vehicular access to the site at Linden Avenue and El Carro Lane shall not be gated.

ARCHITECTURAL REVIEW – GENERAL

52. Prior to the issuance of any Building Permits, the applicant shall return to the Architectural Review Board for review and approval of final plans to include detailed plot plans, elevations, signs, lighting, landscaping and irrigation. All required plans shall be submitted as a part of a single application.
53. Prior to the issuance of any building permits, the applicant shall post a landscape maintenance bond equaling \$500.00, or \$0.03 per square foot of landscaped area, whichever is greater; the landscaping at Franklin Park shall be maintained in good condition for one (1) year, at which time the bond will be released; the Linden Avenue landscaping, landscaping along the pathway leading to the bridge, and the front yard landscaping including street trees shall be maintained in good condition with a bond equaling \$500.00 or \$0.03 per square foot of landscaped area, whichever is greater posted by the applicant to ensure the landscaping is maintained in good condition until the homeowner's association is established; where feasible, locally adapted native plants shall be required; prior to occupancy, all landscaping and planting shall be installed; a raised six-inch curb shall protect all landscaped areas located within parking areas; any curb carrying water along its face shall be curb and gutter; specimen trees shall be appropriate to the site and shall be maintained in good condition so as to attain a full and healthy mature appearance; and the removal, topping of or otherwise interference with the specimen tree(s) ability to continue its growth and attain full maturity shall be a violation of these conditions of approval and shall require replacement of the damaged tree.
54. If determined applicable by the City, the project shall comply with the requirements of the City's Water Efficient Landscape Ordinance (Chapter 15.90, Carpinteria Municipal Code).
55. Any mechanical equipment, including roof mounted (i.e., air conditioning fans, blowers, and vent stacks, etc.) shall be visually screened from all views. Screening shall be compatible with the style and color of the main structure and shall be approved by the Architectural Review Board at final review.
56. All materials and colors used in construction and all landscape materials shall be as represented to or as specified by the Architectural Review Board and any deviation will require the express approval of the Board.

ARCHITECTURAL REVIEW - SPECIAL:

57. The landscape plan shall be provided for final ARB review and approval.
58. Restudy the plantings proposed along Linden Avenue, particularly with traffic visibility and safety issues prior to final ARB review.

59. Lighting location and details, including but not limited to footbridge, streetlights, and building lights, shall be provided for ARB final review.
60. Show the design and specific location of the channel access gates for Flood Control District purposes, which should be decorative to match the architecture of the development.
61. Provide further footbridge design details, particularly relating to the transitional ramp, and identify the low lighting along the bridge.
62. The specific materials of the footbridge, weathered steel, shall be identified on the plans submitted for final ARB review.

ENGINEERING - GENERAL:

63. The applicant shall submit grading, drainage and street improvement plans prepared by a California Registered Civil Engineer. Said plans shall include but not be limited to grading, street, utility, and storm drain improvements and shall be submitted to the Community Development Department for review and approval prior to recordation of the Tract or Parcel Map.
64. An engineering cost estimate shall be submitted with the grading and improvement plans. Each page of the cost estimate shall be signed and stamped by the applicant's engineer.
65. Using a rain frequency of a twenty-five year storm, hydrology/hydraulic calculations shall be submitted by the applicant's engineer to the Community Development Department for review, using the Santa Barbara County Engineering Design Standards. Storm drainage run-off shall be conducted to the street in a safe and adequate manner per Santa Barbara County Standards. Easements required for drainage shall be described and shown on the improvement plans and Final Tract or Parcel Map.
66. Prior to issuance of a Building Permit, the applicant shall submit plans and calculations as required to apply for all necessary Engineering permits. Said permits include, but are not limited to, Street Construction, Excavation in the public right-of-way, Grading and/or Encroachment.
67. Prior to recordation of the Final Tract Map, Faithful Performance and Labor and Material bonds (each to be 100 percent of the City Engineer's estimate) shall be filed with the City to cover all public improvements and any on-site grading, drainage and retaining walls. A cash deposit in the amount of ten percent of the bond amount shall be submitted with each bond.
68. All service lateral utilities shall be installed underground.

69. All underground utility (gas, electrical, telephone, cable TV, water, sewer, storm drainage, etc.) service installations and/or enlargements are to be completed-prior to any paving required for this project.
70. All utilities shall be provided to all lots in the subdivision (units) prior to occupancy.
71. All utility easements shall be described adequately on submitted plans, and shown on the Final Tract Map.
72. Portions of the project's Linden Avenue frontage shall be improved in accordance with the requirements of the City Engineer and with the standards, specifications and policies of the City of Carpinteria, which shall include: (1) Monolithic 6" curb and 18" or 24" gutter, and 5' wide sidewalk, as applicable, handicapped ramp, and driveway approaches shall be constructed per the Santa Barbara County Standard Details at the locations shown on the improvement plans; and (2) Prior to commencement of any work in the public right-of-way, a street construction and/or excavation encroachment permit shall be obtained from the City Engineer.
73. Asphalt street areas, curbs, gutters, and sidewalks shall transition into existing public improvements subject to review and approval by the City Engineer.
74. No persons shall occupy any structure until the City Engineer has approved all improvements and, on-site construction has received final approval from the Building Inspector and a Certificate of Occupancy has been obtained from the Community Development Department.
75. All streetlights shall be installed outside of the sidewalk in accordance with City standards and practices approved by the City Engineer.
76. Prior to performing any grading, the developer shall obtain a Grading Permit from the City Engineer, in accordance with Chapter 8.36 of the Carpinteria Municipal Code, and pay the required grading permit deposits/fees.
77. At the time of final acceptance of improvements, the applicant shall submit a set of "Record Drawings" of all public improvements. The "Record Drawings" shall be the original or permanent mylars of a quality acceptable to the City Engineer.
78. Prior to occupancy, a Notice of Completion for all public improvements shall be accepted by the City Council.

ENGINEERING – SPECIAL:

79. The Developer shall provide engineering details of the cross lot drainage between Lots 13 and 14, including overland flow swale, storm drain pipe, and the storm drainage outlets into the southern drainage ditch and Franklin Creek Channel, which shall be addressed as part of the grading plans submitted for review and approval by the City

Engineer, prior to issuance of a Grading Permit. Appropriate cross lot drainage easements shall be provided. In addition, a maintenance easement to the proposed homeowners' association shall be shown on the plans (Tract Map, Subdivision Improvement Plan, Site Plan) submitted prior to Building Permit or Grading Permit issuance.

80. The Developer shall provide engineering details of the cross lot drainage for Lots 9 and 10, and Lots 3 and 4. The design shall include a drainage swale or some other mechanism, distinct from the proposed yard turf areas, to clearly delineate the drainage course so that it is not inadvertently covered, and proper drainage inhibited. Details of the drainage in these areas shall be shown on the project plans and reviewed and approved by the City Engineer prior to issuance of a Grading Permit. Easements shall be shown on the grading plans and Final Tract Map for said cross lot drainage.
81. Except as otherwise noted in these Conditions of Approval, all electrical transformers and utility boxes shall be undergrounded within a vault or made flush with the ground, with final location submitted to the Community Development and Public Works Departments for review and approval.
82. Pursuant to the applicant's agreement as contained in the project description, the applicant shall design, engineer and install traffic control and calming devices (including signage, median landscaping and/or decorative paving, as determined by the City) in the area of the project site, on Linden Avenue approximately between Malibu Drive and El Carro Lane, consistent with the drawings of traffic calming measures included as Attachment B to this Resolution of Approval, with the exception of speed humps. Final Engineering plans for such improvements shall be submitted to the Community Development and Public Works Departments for review and approval prior to issuance of a Grading Permit. The measures/devices shall be constructed as set forth in Section 3.07.03 of the Development Agreement. Such traffic calming and control measures/devices shall not result in significant traffic impacts as set forth in the City's CEQA Threshold Guidelines. The applicant shall provide a deposit, or other security, in an amount to be determined by the City, and held by the City for three years for design and construction costs. At the end of this time, if the funds are unused, they shall be refunded to the applicant.
83. Final traffic calming improvement plans for the Linden Avenue segment near the project site shall include signage, landscaping and/or decorative paving, as determined by the City, in the medians and along the curbs.

TRACT MAP:

84. The Tract Map shall be subject to the Subdivision Ordinance of the City of Carpinteria and the Subdivision Map Act and fully comply with all relevant provisions.

85. The Final Map shall be substantially in compliance with the Tract Map as herein approved, and any substantial changes shall require the approval of the City's Planning Commission.
86. Prior to recordation of the Final Map, and in accordance with the Subdivision Ordinance, the developer shall prepare plans and specifications for review and approval by the City Engineer, and shall enter into a Subdivision Improvement Agreement with the City to install improvements. Along with recordation of the Final Map, separate instruments will be recorded describing each of the easements shown on the Tract Map and their purpose, and legal description and sketch of each said instruments shall be approved by the City prior to recordation.
87. Covenants, Conditions and Restrictions (CC&Rs) for the project shall be submitted for review to the Community Development Department and City Attorney and approved by the City Council prior to acceptance of the Final Map. The CC&Rs shall be recorded concurrently with the Final Map. Further, the Community Development Department, Public Works Department, and City Attorney may require additional restrictions within the CC&Rs as found to be appropriate by City in conformity with the conditions of approval. The CC&Rs shall provide the following: (1) parking requirements, including that no recreational vehicle/ boat/boat trailer parking shall be allowed on the street or on driveways; (2) maintenance of the private street and sidewalk; (3) maintenance of swales and drainage easements for cross lot drainage shall be the responsibility of the proposed homeowners' association; (4) maintenance of the landscaping along the pathway on the subject site leading to the footbridge, and any landscaping proposed as part of a parkway along Linden Avenue and the private street trees shall be the responsibility of the proposed homeowners' association, with the requirement that any requested replacement or changes to said landscaping be made to the Community Development Department for consideration; (5) maintenance of the pathway on the subject site leading to the footbridge in perpetuity and any fence leading from the site to the footbridge, as well as any access gates, shall be the responsibility of the proposed homeowners' association; (6) enforcement of the Creeks Preservation Program in the 50-foot setback shall be the responsibility of the proposed homeowners' association; (7) the owners of Lots 14-18 along the Franklin Creek Channel shall maintain in perpetuity the landscape in the 50-foot setback consistent with the approved plans; and the homeowners' association shall have the right to compel all such maintenance where parties other than the homeowners' association are required to maintain improvements or landscaping; and the City shall have the right to compel enforcement of the CC&Rs as to all obligations contained in these conditions of approval; and the homeowners' association shall regularly inspect the areas within the 50-foot buffer and provide a summary report to the Community Development Department every two years demonstrating compliance with the requirements of the Creeks Preservation Program, the approved plans, and the conditions set forth herein; (8) the vehicular access to the site at Linden Avenue and El Carro Lane shall not be gated; (9) conditions of approval 36-40 specified herein shall be complied with; (10) best management practices to minimize potential for pollutants to enter the storm drain system per Condition of Approval 103 shall be maintained; drain shall be cleaned on a

regular basis, at least every six months; and (11) the Construction and Post-Construction Mitigation Plans to ensure protective measures are utilized in revegetation and habitat restoration efforts within the 50-foot buffer from the Franklin Creek Channel top of bank, as described in the Carpinteria Creeks Preservation Program, shall be implemented. The CC&Rs shall itemize those provisions that are required by these conditions of approval and shall provide that no such provisions shall be deleted or amended without prior consent of the City Council.

88. The applicant shall submit two copies of the Final Map to the Community Development Department for review. A California Registered Civil Engineer or Licensed Land Surveyor shall prepare said map. Closure calculations shall be submitted with the Final Map along with adequate reference data and a current title report.
89. The applicant shall pay all engineering fees and all other fees and deposits prior to City Council approval of the Final Map.
90. No Building Permits shall be issued prior to recordation of the Final Map.
91. Within 30 days after the Final Map is filed with the County Recorder, and prior to receiving a Building Permit, the applicant shall deliver one set of reproducible mylars of the recorded map to the Community Development Department.

ENVIRONMENTAL/MITIGATED NEGATIVE DECLARATION:

92. AES-1. The ARB shall review the project with regard to neighborhood compatibility and the appropriateness of the design. The ARB shall consider the height of the proposed buildings in relation to adjacent developed properties. All recommendations of the ARB shall be forwarded to the Planning Commission for consideration, followed by the City Council. Any conditions of approval proposed by the City decision-making body pertaining to neighborhood compatibility, building height and appropriateness of the design, shall be incorporated into the project plans.
93. AES-2. All exterior lighting shall be directed downward and designed so as to minimize the potential for glare and light spillover.
94. AQ-1. Dust generated by the development activities shall be retained onsite and kept to a minimum by following the dust control measures listed below. Reclaimed water shall be used whenever possible. (1) During clearing, grading, earth moving or excavation, water trucks or sprinkler systems are to be used in sufficient quantities, after each day's activities cease, to prevent dust from leaving the site and to create a crust. (2) After clearing, grading, earth moving or excavation is completed, the disturbed areas must be treated by watering or revegetating; or by spreading the soil binders until the area is paved or otherwise developed so that dust generation will not occur. (3) During construction, water trucks or sprinkler systems are to be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a

minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph.

95. AQ-2. Importation, Exportation and Stockpiling of Fill Material: (1) Soil stockpiled for more than two days, or at the discretion of the Public Works Director, shall be covered, kept moist, or treated with soil binders to prevent dust generation; and (2) Trucks transporting fill material to and from the site shall be tarped from the point of origin.
96. AQ-3. Activation of Increased Dust Control Measures: The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to land use clearance for map recordation and land use clearance for finish grading of the structure, as well as to the City Community Development Department prior to issuance of a Grading Permit.
97. BIO-1. Prior to commencing any earth disturbing or other construction activities on the site, a temporary construction fence and silt fence shall be installed along the southern and western property edges to prevent debris, soil and equipment access into the southern drainage and Franklin Creek Channel. These fences shall remain in place through the end of construction. In areas where access to the channel and drainage is necessary to conduct storm water outlet, pathway, footbridge, and other approved improvements, temporary access through the fence shall be allowed, with the fence realigned along the work area. The particular type of fencing and its placement shall be approved by the City prior to issuance of a Grading Permit.
98. CR-1. A qualified archaeologist or Native American monitor shall be present during all earth disturbing activities. In the event that archaeological resources are unearthed during project construction, all earth disturbing work within the vicinity of the find must be temporarily suspended or redirected until an archaeologist has evaluated the nature and significance of the find. After the find has been appropriately mitigated, work in the area may resume. A qualified Native American representative shall monitor any mitigation work associated with prehistoric cultural material.
99. CR-2. If human remains are unearthed, State Health and Safety Code Section 7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission.
100. GEO-1. Project construction and grading shall comply with all recommendations

outlined in the Geotechnical Engineering Report (Earth Systems, June 2002), to the satisfaction of the City Engineer. These recommendations shall be reflected in the project construction plans submitted to the City prior to issuance of a Grading Permit.

101. HAZ-1. In the event that potentially hazardous materials are discovered during project construction, all earth disturbing work within the vicinity of the find must be temporarily suspended or redirected, and the City Public Works Director and the appropriate authorities at the Santa Barbara County Fire Department, Hazardous Materials Unit, are contacted. After the area has been appropriately mitigated and cleared, per Santa Barbara County requirements, work in the area may resume.
102. HAZ-2. An environmental site assessment to determine the potential for hazardous materials related to agricultural use to be located on the site shall be prepared by a professional Registered Environmental Assessor, or other qualified professional, and submitted for review and approval by the City Public Works Department prior to issuance of a Grading Permit. All recommendations of the study shall be incorporated into the project and shown on the construction plans to the satisfaction of the City Engineer, prior to issuance of a Grading Permit.
103. H-1. The applicant shall incorporate into the project design appropriate Best Management Practices (BMPs) to minimize the potential for pollutants to enter the storm drain system onsite during operation of the project. These may include, but not be limited to, storm drain catch basin inserts/biofilters to trap pollutants. Such facilities shall be maintained and cleaned on a regular basis, at least every six months. The construction plans and the BMPs shall be prepared by a registered civil engineer, and reviewed and approved by the Public Works Director prior to the issuance of a Grading Permit. Prior to issuance of a Grading Permit, the City shall ensure that the Covenants, Conditions and Restrictions for the project include a requirement that any BMP mechanisms be maintained and cleaned at least every six months. Additionally, all storm drain inlets shall be marked to clearly indicate that they drain to the ocean.
104. H-2. The overflow swale proposed at the southwestern property edge to provide an overland escape route shall be grass-lined, as opposed to the proposed concrete-lined, to provide for additional filtering of potential pollutants, as determined feasible by the City Engineer. This mechanism shall be shown on the plans submitted to the City for review and approval prior to issuance of a Grading Permit.
105. H-3. Prior to the issuance of a Grading Permit, information regarding the quantity of runoff attributed to the project to enter the southerly drainage and the Franklin Creek Channel shall be submitted for review and approval by the City Public Works Director and the Santa Barbara County Flood Control District, as necessary. The storm drainage system on the site shall be designed to the satisfaction of the City Engineer, and reflected on the construction plans submitted prior to the issuance of a Grading Permit.

106. N-1. Project construction activities shall be limited to weekdays, between the hours of 7:00 a.m. and 5:00 p.m.
107. The Owner/Developer shall comply with the Mitigation Monitoring and Reporting Program (MMRP) requirements, which are included as part of the IS/MND.

CARPINTERIA WATER DISTRICT

108. The proposed onsite water distribution system shall be reviewed and approved by the Carpinteria Valley Water District (CVWD) prior to issuance of any permit. The water line shall loop back to the south end of the project parcel, along the Franklin Creek Channel, or as otherwise directed by the CVWD.

CARPINTERIA/SUMMERLAND FIRE PROTECTION DISTRICT

109. Visible street addresses must be posted at driveways and on buildings.. Numbers shall be a minimum three inches high on a contrasting background.
110. Access to all structures shall conform to the requirements for private roads and driveways set forth in the Santa Barbara County Private Roads and Driveway Standards, Section 8.
111. Per 1997 Uniform Building Code and National Electric Code, smoke detectors must be installed in all residences.
112. Roof access must meet the requirements stated in the Carpinteria Municipal Code.
113. Any future changes, including further division, intensification of use, or increase in hazard classification, may require additional conditions in order to comply with applicable Fire District development standards.
114. Per Carpinteria-Summerland Fire District Ordinance pertaining to fees and service charges, a service charge is assessed on reviews of lot line adjustments, lot splits, and development review.
115. Pursuant to C.S.F.P.D. Ordinance, prior to issuance of a "Certificate of Occupancy", the Fire District mitigation fee must be paid.
116. All required access ways shall be installed and made serviceable prior to the erection of combustible materials.
117. When access ways are gated, a Fire District approved key box or switch shall be installed in an accessible location. Prior to installation, the Fire District shall approve the type and location.

118. Public fire hydrants supplying the required fire flow within the required driving distance from the structures shall be provided. Both the Fire District and the applicable Water District shall approve the type of hydrant and the exact location. The new fire hydrant(s) shall be installed and in-service prior to any construction. While the hydrants as shown meet the minimum requirements, a repositioning adjacent to driveway aprons may be more suitable. The Fire District retains final approval as to exact location prior to installation.
119. A roadway width of 32 feet minimum must provide a clear driving width of 16 feet. Parking allocation and all other construction standards shall be consistent with Santa Barbara County Road Standards, as determined appropriate by the City. The cul-de-sac radius of 40 feet provides the minimum clearance requirement for a fire apparatus turn around when no parking provisions are provided. The District will permit parking in both of the cul-de-sacs, provided that the driveway construction for the first 10 feet of each driveway on the cul-de-sac is in accordance with Santa Barbara County Structural Standards for private driveways. This requirement shall provide a design that will meet the minimum specifications for standard Hammerhead style turnarounds.

CARPINTERIA SANITARY DISTRICT

120. The owner of record, or authorized designee, shall obtain all necessary permits, submit fees due for inspection, and provide all required bonds to the Carpinteria Sanitary District (CSD) prior to issuance of the construction permit.
121. The subject property must be annexed to the Carpinteria Sanitary District (CSD) following the Local Agency Formation Commission (LAFCO) and CSD procedures and requirements. All applicable annexation fees shall be submitted with the annexation application.
122. The owner of record, or authorized designee, is required to submit a detailed sewer plan and profile to CSD for review, and the applicable plan check fees. The applicant shall design and construct sewer facilities to meet all CSD design standards and specifications.
123. The applicant is required to submit a detailed sewer improvement plan, prepared by a registered professional engineer, to CSD for review and approval. Applicable plan check fees shall be submitted to CSD with the sewer improvement plans.
124. The applicant shall design and construct sanitary sewer facilities necessary to serve the proposed development, in strict conformance with all CSD design standards and construction specifications. Based on a preliminary review of the site and the proposed improvements, the following infrastructure is anticipated to be required: (1) Gravity sewer mains, with appurtenant manholes, to collect and convey storm wastewater from individual parcels. All sewer laterals shall be owned and maintained by the owner up to and including the wye connection. (2) Duplex sewer lift station with submersible

pumps, controls and telemetry, dedicated electrical service, and portable back-up power supply, designed and constructed in accordance with CSD standards. The portable back-up power supply shall consist of a trailer-mounted generator stored at the CSD facility, and transported by CSD staff to the lift station for emergency power on a temporary basis. (3) Sewer force main between the lift station and the District's existing gravity sewer system located in Linden Avenue. If located within the existing flood control access easement on the southern perimeter of the property, surfacing requirements and other improvements may be imposed. (4) Four-inch (4") minimum lateral and building sewers of approved materials shall be installed for each single-family dwelling. The letter "S" shall be etched into the curb over the physical location of the sewer lateral for each parcel.

125. Prior to commencing construction, the contractor shall notify the District Inspector. A minimum of 48-hours advance notice is required. All work shall be inspected, tested, and televised in accordance with CSD standard requirements.
126. All costs and expenses associated with the installation of both public and private sewer facilities are the sole responsibility of the applicant. The applicant shall enter into an agreement with CSD that guarantees the construction of the sewer system and lift station.
127. The applicant shall provide required construction and maintenance bonds for the public sewer facilities.
128. The applicant shall prepare and grant permanent access and utility easements in favor of CSD for all publicly owned pipelines, lift stations, and other related infrastructure.
129. The applicant shall conduct a construction permit from CSD and pay associated fees prior to commencing connection.
130. A Development Impact Fee (DIF) shall be paid for each newly constructed "equivalent dwelling unit" (EDU). The current DIF is \$2,400 per EDU.

SANTA BARBARA COUNTY FLOOD CONTROL & WATER AGENCY

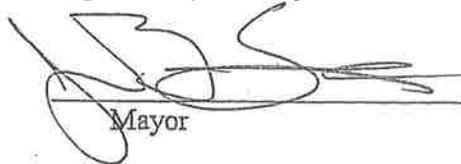
131. Prior to recordation of the Final Map, the applicant shall submit a copy of the Tract Map to the Flood Control District for review and approval, and shall comply with the Flood Control Standard Conditions of Approval.
132. Prior to the District's issuance of land use clearance, the applicant shall submit improvement plans and grading and drainage plans to the District for review and approval. The applicant shall obtain an Encroachment Permit from the District prior to commencing any work within the District right-of-way. A copy of the encroachment permit and any other District required approvals shall be submitted to the City prior to issuance of a Grading Permit or Building Permit.

133. Landscape screening shall be done within the Tract boundary rather than on the Flood Control District (District) parcel.
134. Grading for the proposed overland escape drainage swale off of El Carro Lane shall be done within the Tract boundary rather than on the District parcel.
135. The District access road along the eastern side of the Franklin Creek Channel shall maintain its existing width as much as possible. Any ramping or approach to the pedestrian bridge shall be designed and constructed so as to not preclude continued vehicular use of the Flood Control District easement.
137. All work proposed within the District parcel shall require District approval/signing of the plans and issuance of an Encroachment Permit prior to construction. The encroachment permit will likely require an inspection deposit.
138. The applicant shall pay the current plan check fee deposit at the time the plans and map are submitted for District review and approval.

CONDITIONS OF ACCEPTANCE

Written authorization to proceed and consent to conditions of approval by the legal owner of the property shall be provided to the City prior to building permit issuance.

Approved by the City Council on February 14, 2005



Mayor

3-21-07

Date

I HAVE READ AND UNDERSTOOD, AND I WILL COMPLY
WITH ALL ABOVE STATED CONDITIONS OF THIS PERMIT
M. TIMM DEVELOPMENT, INC

 V.P. 3/14/07

Applicant

MISSION TERRACE ESTATES, LLC



Property Owner

3-14-07

Date

MISSION TERRACE COMPLETE LIST OF CONDITIONS

Coastal Commission Conditions: CDP No. A-4-CPN-05-040

Project Description: On January 13, 2006, the California Coastal Commission approved Coastal Development Permit No. A-4-CPN-05-040, requested by M. Timm Development Corporation, subject to the attached conditions, for development consisting of: Subdivision of a 5.89-acre parcel into 27 residential lots and the development of 27 single family residences, including 24 market-rate and three affordable residences. The proposed lots range in size from 4,662 sq. ft. to 13,030 sq. ft., with one 32,275 sq. ft. subdivision improvement lot to be developed as a private street that provides a non-motorized public access easement. The structures include 12 single-story single family residences, maximum 18 feet in height (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 15 two-story residences, maximum 26 feet in height (with the exception of those on lots 3, 4, 8 & 9, which are 28 feet in height), with 14 separate floor plans ranging from 1,676 sq. ft. to 3,600 sq. ft. Additionally, the project includes the construction of sidewalks; utilities; drainage system, including vegetated drainage swale; public access provisions including a ten foot wide footbridge over Franklin Creek, a five foot wide pathway through the site crossing over the footbridge, and the construction of a five foot wide pathway off-site through Franklin Creek Park to Sterling Avenue; traffic calming and control measures and devices along Linden Avenue; dedication of additional 3,467 sq. ft. road right of way along Linden Avenue; native riparian landscaping in the 50 foot buffer area along Franklin Creek and offsite in Franklin Creek Park; other landscaping; submittal of annual biological reports on the creek setback area, and payment of an annual processing fee to allow City review of the reports; and 7,200 cu. yds. of grading (4,200 cu. yds. cut, 3,000 cu. yds. fill). The proposed project also includes removal of a nursery operation that currently occupies the site, including demolition of an existing residence, guesthouse, garage, maintenance building, nursery office, pavement, and non-native landscaping. This permit is more specifically described in the application on file in the Commission offices. Commission staff will not issue the CDP until the "prior to issuance" special conditions have been satisfied.

STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

COASTAL COMMISSION SPECIAL CONDITIONS:

NOTE: IF THE **SPECIAL CONDITIONS** REQUIRE THAT DOCUMENT(S) BE RECORDED WITH THE COUNTY RECORDER, YOU WILL RECEIVE THE LEGAL FORMS TO COMPLETE (WITH INSTRUCTIONS) FROM THE VENTURA OFFICE, AFTER YOU HAVE SIGNED AND RETURNED THE DUPLICATE COPY OF THIS FORM. WHEN YOU RECEIVE THE DOCUMENTS, IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE SOUTH CENTRAL COAST OFFICE AT (805) 585-1800.

1. Plans Conforming to Geologic Recommendations

By acceptance of this permit, the applicant agrees to comply with the recommendations contained in the submitted geologic report ("Geotechnical Engineering Report," Earth Systems Southern California, June 2002). These recommendations, including those concerning construction, foundations, grading, retaining walls, and additional services, shall be incorporated into all final design and construction, and must be reviewed and approved by the consultant prior to commencement of development.

The final plans approved by the consultant shall be in substantial conformance with the plans approved by the Commission relative to construction, foundations, grading, retaining walls, and drainage. Any substantial changes in the proposed development approved by the Commission that may be required by the consultant shall require amendment(s) to the permit(s) or new Coastal Development Permit(s).

2. Landscape Plans

- A. Prior to issuance of the Coastal Development Permit, the applicants shall submit two (2) sets of landscaping plans for all landscaped areas to be installed by the permittee and landscape guidelines prepared by a landscape architect or other qualified specialist for review and approval by the Executive Director. The plans shall incorporate the following criteria:
- (1) All areas disturbed and/or denuded by the development shall be re-vegetated and maintained to prevent erosion into coastal waters. To minimize the need for irrigation all landscaping shall consist primarily of drought resistant, non-invasive plants. Irrigated lawn may be planted within the individual residential lots. Such lawn shall be selected from the most drought tolerant species or subspecies.
 - (2) The required creek setback area, as shown in **Exhibit 12**, (with the exception of the required Santa Barbara County Flood Control easement), shall be planted with appropriate native riparian landscape materials that have been obtained from local genetic stock. The plantings shall include riparian native tree species and shrubs of sufficient density and height to screen the proposed residences as viewed from Franklin Creek Park and to restrict access within the setback area to the proposed trail. Plantings shall be completed within 90 days of the completion of construction on Lots 14 through 18.
 - (3) The proposed plantings in Franklin Creek Park shall consist of appropriate native riparian tree and shrub species.

- (4) No plant species listed as problematic and/or invasive by the California Native Plant Society, California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be utilized anywhere within the proposed development area, including the landscaping within the private residential lots. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized anywhere within the proposed development area, including the private residential lots.
 - (5) The use of insecticides, herbicides, or any toxic chemical substance for landscaping maintenance shall be prohibited, except for the purpose of eradicating invasive plant species, where no less environmentally damaging method exists.
 - (6) Plantings will be maintained in good growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements;
 - (7) Final landscaping guidelines for residential lots shall be completed and submitted for review and approval by the Executive Director prior to the issuance of the coastal development permit. The guidelines shall state that landscaping shall be installed by the landowner consistent with the guidelines within 180 days of initial occupancy of each residence approved by this permit. The guidelines shall be consistent with the requirements of this coastal development permit.
 - (8) The proposed trail within the creek setback, on the subject property and in Franklin Creek Park, shall be no greater than five feet in width.
- B. Prior to issuance of the coastal development permit, the permittee shall submit landscape palette lists to be incorporated into the landscaping guidelines, subject to the review and approval of the Executive Director, that identify: 1) the native plant species that may be planted in the development; 2) a representative list of the non-native, non-invasive common garden plant species that may be planted in the residential lots; and 3) the invasive plant species that are prohibited from use anywhere within the development. The landscape palette for the development shall be consistent with the lists of approved plants as reviewed and approved by the Executive Director. These lists shall remain available for public consultation at the California Coastal Commission, the City of Carpinteria, and the homeowners association established for the development. No deviations from the list shall occur in the plantings on the site without an amendment to this permit or a new coastal development permit unless the Executive Director determines that no amendment or new permit is required.
- C. Prior to issuance of the coastal development permit, the permittee shall submit for review and approval by the Executive Director final landscaping plans for all common areas of the residential development area. The plans shall be modified in accordance with the requirements of the special conditions of this permit. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all landscaping be consistent with the landscaping

guidelines approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.

- E. Five years from the date of the receipt of the Certificate of Occupancy for the first residence, the applicants shall submit, for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed landscape architect or qualified resource specialist that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this special condition. The monitoring report shall include photographic documentation of plant species and plant coverage. If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the applicants (or successors in interest) shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed landscape architect or qualified resource specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.
- F. In order to implement the applicant's proposal to submit and fund City of Carpinteria review of annual monitoring reports for the creek setback area, the applicant shall submit to the City, on an annual basis for the life of the proposed project, beginning one year from the date of installation of native riparian landscaping in the creek setback area (Lot A), a biological report analyzing the condition of the creek setback area (Lot A). The reports shall be prepared by a City approved biologist and shall document the condition of the native riparian habitat, including the health of native trees and other plants. The reports shall also address compliance with the Creeks Preservation Program, including evidence of any disturbance or development within the creek setback area. The reports shall include recommendations for any necessary corrective action to ensure compliance with the Creeks Preservation Program and the final landscape plan approved pursuant to this special condition. The Homeowners Association associated with the subject development shall pay an annual processing fee to the City of Carpinteria to allow the City to review the annual biological reports.

3. Erosion and Sediment Control Plan (Construction Phase)

- A. Prior to issuance of a coastal development permit, the permittee shall submit two (2) sets of an erosion and sediment control plan, prepared by a qualified engineer, for review and approval by the Executive Director. The plan shall incorporate the following criteria:
 - (1) The plan shall include controls on grading (i.e. timing and amounts), best management practices for staging, storage, and disposal of construction and excavated materials, design specifications for sediment basins and other erosion control measures, and landscaping /revegetation of graded or disturbed areas as required below.
 - (2) The plan shall include a site-specific polluted runoff control plan that demonstrates how runoff will be conveyed from impermeable surfaces into permeable areas of the property in a non-erosive manner, and how development will treat or infiltrate stormwater prior to conveyance off-site during construction. The plan shall specify that should grading take place during the rainy season (November 1 – April 15) the permittee shall install or construct temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, silt fencing, stabilize any stockpiled fill with geofabric covers or other appropriate

cover, install geotextiles or mats on all cut or fill slopes and close and stabilize open trenches as soon as possible. These erosion measures shall be required on the project site prior to or concurrent with the initial grading operations and maintained throughout the development process to minimize erosion and sediment from runoff waters during construction. All sediment should be retained on-site unless removed to an appropriate approved dumping location either outside the coastal zone or to a site within the coastal zone permitted to receive fill.

- (3) The plan shall also include temporary erosion control measures should grading or site preparation cease for a period of more than 30 days, including but not limited to: stabilization of all stockpiled fill, access roads, disturbed soils and cut and fill slopes with geotextiles and/or mats, sand bag barriers, silt fencing; temporary drains and swales and sediment basins. The plans shall also specify that all disturbed areas shall be seeded with native grass species and include the technical specifications for seeding the disturbed areas. These temporary erosion control measures shall be monitored and maintained until grading or construction operations resume.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

4. Water Quality Management Plan (WQMP)

- A. Prior to issuance of the coastal development permit, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a Final Water Quality Management Plan (WQMP) for the post-construction project site, prepared by a licensed water quality professional, and shall include plans, descriptions, and supporting calculations. The WQMP shall incorporate structural and non-structural Best Management Practices (BMPs) designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather flows leaving the developed site. In addition to the specifications above, the plan shall include the following information and shall be in substantial conformance with the following requirements:
 - (1) Pre-development and expected post-development peak runoff rate and average volume. Post-development peak runoff rates and average volumes shall not exceed pre-development conditions.
 - (2) Site design, source control and treatment control BMPs that will be implemented to minimize post-construction polluted runoff. Appropriate structural and non-structural BMPs shall be designed and implemented to minimize water quality impacts to surrounding coastal waters.
 - (3) Drainage improvements (e.g. locations of diversion/conveyances for upstream runoff).
 - (4) Potential flow paths where erosion may occur after construction.
 - (5) Methods to accommodate onsite percolation. Impervious surfaces, especially directly connected impervious areas, shall be minimized, and alternative types of pervious pavement shall be used where feasible.
 - (6) Irrigation and the use of fertilizers and other landscaping chemicals shall be minimized.

- (7) All waste containers anywhere within the development shall be covered, watertight, and designed to resist scavenging animals.
- (8) Measures to treat, infiltrate, and/or filter runoff from impervious surfaces on the subject parcels and to discharge the runoff in a manner that avoids erosion, gullyng on or downslope of the subject site, the need for upgrades to municipal stormdrain systems, discharge of pollutants to coastal waters, and other potentially adverse impacts. Runoff from all roofs, roads and parking areas shall be collected and directed through a system of structural BMPs including vegetated areas and/or gravel filter strips or other vegetated or media filter devices. The system of BMPs shall be designed to 1) trap sediment, particulates and other solids and 2) remove or mitigate contaminants through infiltration, filtration and/or biological uptake. The drainage system shall also be designed to convey and discharge runoff from the developed site in a non-erosive manner;
- (9) Information describing how the post-construction BMPs have been designed to meet the following standard: BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- (10) A long-term plan and schedule for the monitoring and maintenance of all BMPs. All BMPs shall be operated, monitored, and maintained for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired at the following minimum frequencies: (1) prior to September 30th each year; (2) during each month between September 30th and April 30th of each year and, (3) at least twice during the dry season.
- (11) Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
 - B. It is the permittee's responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications. As soon as a homeowner's association (HOA) or similar entity comprised of the individual owners of the proposed residential lots is created, responsibility to maintain the drainage system and the associated structures and BMPs according to manufacturer's specifications shall be transferred to the HOA.
 - C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
 - D. The applicable covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all development be carried out in accordance with the Water Quality Management Plan approved by the Executive Director.

5. Removal of Excess Graded Material

The applicant shall remove all excess graded material to an appropriate disposal site located outside of the Coastal Zone. Prior to the issuance of the coastal development permit, the applicants shall provide evidence to the Executive Director of the location of the disposal site for

all excess excavated material from the site. Should the dumpsite be located in the Coastal Zone, a coastal development permit shall be required.

6. Construction Mitigation Plan

- A. All construction plans and specifications for the project shall indicate that impacts to Franklin Creek shall be avoided and that the California Coastal Commission has not authorized any development in Franklin Creek. Said plans shall clearly identify Franklin Creek and its associated buffer zone. Prior to issuance of the coastal development permit, the permittee shall submit a final construction mitigation plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to Franklin Creek consistent with this approval. The plan shall include the following requirements and elements:
- (1) Construction equipment, materials, or activity shall not be placed in any location that would result in discharge of material into Franklin Creek or its designated buffer.
 - (2) No construction materials, debris, or waste shall be placed or stored where it may enter storm drains or be subject to wind erosion and dispersion;
 - (3) No construction equipment shall be stored within Franklin Creek and its designated buffer zone.
 - (4) The plan shall include, at a minimum, a site plan that depicts the following components: limits of the staging area(s); construction corridor(s); construction site; location of construction fencing and temporary job trailers with respect to Franklin Creek.
 - (5) The plan shall indicate that construction equipment, materials or activity shall not occur outside the designated staging area(s) and construction zone and corridors identified on the site plan required by this condition.
 - (6) The plan shall delineate the areas to be disturbed by grading or construction activities and shall include the construction site and any temporary access roads, construction corridor(s), staging areas and stockpile areas. The natural areas on the site shall be clearly delineated on the project site with fencing or survey flags.
 - (7) Protective fencing shall be placed around the outermost limits of the protected zones of native trees within and adjacent to the construction area prior to the commencement of construction activities, and shall be maintained in place for the duration of all construction. The protected zone of a native tree shall extend five feet from the dripline or 15 feet from the trunk of the tree, whichever is greater. No construction, grading, or materials storage shall be allowed within the fenced exclusion areas, or within the protected zones of any on-site native trees. Any development approved within the protected zone of a native tree shall be constructed using only hand-held tools.
 - (8) The use of herbicides shall be minimized by using manual removal methods to eliminate undesired vegetation whenever possible.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from liquefaction, erosion, flooding, and wildfire; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

8. Lighting and Noise Restrictions

- A. The only outdoor night lighting allowed on Lots 14, 15, 16, 17, and 18 is limited to the following:
1. The minimum necessary to light walkways used for entry and exit to the structures, including parking areas on the site. This lighting shall be limited to fixtures that do not exceed two feet in height above finished grade, are directed downward and generate the same or less lumens equivalent to those generated by a 60 watt incandescent bulb, unless a greater number of lumens is authorized by the Executive Director.
 2. Security lighting attached to the residence and garage shall be controlled by motion detectors and is limited to same or less lumens equivalent to those generated by a 60 watt incandescent bulb.
 3. The minimum necessary to light the entry area to the driveway with the same or less lumens equivalent to those generated by a 60-watt incandescent bulb.
- B. No lighting around the perimeter of Lots 14, 15, 16, 17, and 18 and no lighting for aesthetic purposes is allowed.
- C. Loud, stationary equipment (e.g. air conditioners, etc.) on Lots 14, 15, 16, 17, and 18 shall be located away from the riparian setback area or provided with enclosures to minimize impacts to wildlife.
- D. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall require that all lighting and loud, stationary equipment be consistent with the plans approved by the Executive Director. The requirements of this special condition shall be incorporated directly into the CC&R's.

9. Covenants, Conditions, and Restrictions (CC&R's)

Prior to issuance of the coastal development permit, and prior to recordation of any covenants, conditions and restrictions (CC&R's) associated with the subdivision approved by this Permit, said CC&R's shall be submitted to the Executive Director for review and approval. The Executive Director's review shall be for the purpose of insuring compliance with the standard and special conditions of this coastal development permit. The CC&R's shall include the following:

- (1) The permittee shall establish covenants, conditions and restrictions (CC&R's) for the proposed residential lots located within the subdivision. The CC&R's shall reflect the requirements of all special conditions of this coastal development permit.
- (2) The CC&R's for the proposed subdivision shall indicate that Lot A within the subdivision shall be maintained by a common entity (e.g. master homeowner's association) in accordance with the special conditions of this permit.

Prior to issuance of the Certificate of Occupancy for the first residence, the permittee shall record the covenants, conditions and restrictions approved by the Executive Director, against the property. The CC&Rs shall state that the Special Conditions of this Coastal Development Permit and City of Carpinteria Conditions of Approval shall not be eliminated or changed without authorization from the Coastal Commission.

10. Residential Area Height Restrictions

The heights of residential structures and appurtenances shall be as identified in the final plans approved by the Executive Director consistent with the following maximum heights shown in **Exhibit 16**: 15 to 18 feet for the 12 single story residences (with the exception of those on Lots 26 and 27, which are 20 and 22 feet high respectively) and 23.5 to 26 feet for the 15 two story residences (with the exception of the residential units on lots 3, 4, 8, & 9, which are 28 ft. in height). Future development shall conform to the heights shown in **Exhibit 16** unless such heights are changed by an amendment to this permit, unless the Executive Director determines that no amendment to this permit is required.

11. Buyer'(s) Acknowledgment

- A. Prior to issuance of this coastal development permit, the owner(s) of the property that is the subject of this permit shall agree that before any sale or transfer of any of that property or any interest in that property that occurs before completion of all public amenities required in this permit ("Improvements"), the owner-seller shall secure a letter from the buyer of the property (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is restricted by the special conditions of the permit and restrictions recorded on the property pursuant thereto, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets and trails; and (2) agreeing that, prior to any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that buyer-turned-seller shall secure from its buyer a letter to the same effect.
- B. Subsequent to the issuance of this coastal development permit, and prior to the sale or transfer of any of the property or any interest in the property that is the subject of this permit that occurs before completion of all of the Improvements, the owner of the property being sold shall secure a letter from the buyer (1) acknowledging (a) that the conditions imposed by this permit, as amended, run with the land, (b) that the use and/or development of the land is therefore restricted by the special conditions of this permit and restrictions recorded on the property pursuant thereto, and development of the property is contingent on the opening to the public of public trails and other public access and recreation amenities, and furthermore, (c) that pursuant to the special conditions of the permit and the special offers and/or grant deeds recorded pursuant thereto or otherwise required in this coastal development permit, the public has certain rights with respect to future use of project streets

and trails; and (2) agreeing that, prior to close of escrow on any further sale or transfer of any of the property or any interest in the property that occurs before completion of the Improvements, that that buyer-turned-seller shall secure from its buyer a letter to the same effect.

C. A copy of such letter(s) shall be provided to the Executive Director of the Commission and the Community Development Director of the City of Carpinteria before close of escrow.

12. Open Space Restriction

A. No development, as defined in Section 30106 of the Coastal Act, or agricultural activities, shall occur within Lot A as shown on the Final Tract Map approved pursuant to **Special Condition Fifteen (15)** and as described and depicted in **Exhibit 12** attached to the findings in support of approval of this permit except for the following activities, if approved through a separate coastal development permit:

1. Habitat restoration, including maintenance of native riparian habitat and restoration of the banks of Franklin Creek;
2. Installation, repair, or upgrading of utilities;
3. Construction or maintenance of water quality management structures;
4. Construction and maintenance of public trails and bridges and associated appurtenances;
5. Existing easements for roads, trails, flood control, and utilities.

13. Signage & Education Program

A. Prior to the issuance of the Certificate of Occupancy for the first residence, the permittee shall submit, for the review and approval of the Executive Director, plans showing the location, size, design, and content of all signs to be installed.

B. Within thirty (30) days of issuance of the certificate of occupancy for the first residence by the City of Carpinteria, the permittee shall install permanent signage that notifies the public's right for pedestrian and bicycle access through the new subdivision as shown in **Exhibit 11**.

C. Animal waste control measures (e.g., mutt-mitt dispensers) shall be implemented. Mutt-mitt dispensers shall be installed and maintained by the Developer/Homeowner's Association at the proposed trailhead within the development. Educational displays/signs and a trash receptacle shall be installed at the trailhead to provide information about water quality in Franklin Creek and the downstream Carpinteria Salt Marsh, and appropriate education materials shall be incorporated into the Homeowners' Association CC&Rs. The displays and/or signs shall include information pertaining to animal waste and surface water pollution prevention.

D. The required signs shall be maintained in good condition and replaced when necessary.

14. Revised Project Plans

Prior to issuance of the coastal development permit, the permittee shall submit, for the review and approval of the Executive Director, two (2) sets of final revised vesting tentative tract map

and project plans. The revised final vesting tentative tract map and project plans shall reflect the following:

- A. The required creek setback area, as shown in **Exhibit 12**, shall be included as a separate lot, Lot A, of the proposed subdivision;
- B. Lots 14, 15, 16, 17, and 18 shall be reconfigured to reflect the incorporation of the creek setback area into a separate lot, Lot A, as described above.
- C. The proposed chain-link and split-rail fence with gates shall be replaced by a continuous six-foot high solid wall, which shall be constructed along the entire length of the boundary between the required riparian setback area and the backyards of Lots 14, 15, 16, 17, and 18, with the exception of the five foot wide trail access easement, in order to help contain domestic animals and backyard activities within the residential area. No gates in the wall shall be allowed. Prior to issuance of the coastal development permit, the permittee shall submit final revised plans showing the location, design, height and materials of all such walls for the review and approval of the Executive Director.
- D. The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.
- E. The covenants, conditions and restrictions (CC&R's) required by **Special Condition Nine (9)** shall incorporate the backyard enclosure/fencing restrictions required by this special condition for Lots 14, 15, 16, 17, and 18.

15. Final Tract Map

Recordation of the Final Tract Map for the subdivision authorized herein shall only occur following issuance of the coastal development permit. Prior to recordation of the Final Tract Map for the subdivision authorized herein, the applicant shall submit to the Executive Director, for review and approval, a copy of such map. The Final Tract Map shall reflect the requirements imposed by **Special Condition Fourteen (14)** above and shall state on the map that Lot A is restricted to use as open space and may not be modified or eliminated without authorization from the California Coastal Commission. The Final Tract Map shall include an informational sheet to be recorded with the map that shall include all of the mitigation measures, conditions, agreements, and specific plans required by the Commission and the City of Carpinteria for approval of the project.

Prior to implementation of the Development Plan for this project, the applicant shall submit to the Executive Director, for review and approval, evidence that the Final Tract Map was executed and recorded in conformance with the requirements outlined above and specified in the City of Carpinteria's conditions of approval.

16. City of Carpinteria's Conditions

The applicant shall comply with all of the City's conditions attached to the City of Carpinteria approval of 99-881-DP/CDP as shown in **Exhibit 2**. Prior to the issuance of Coastal Development Permit A-4-CPN-05-040, the applicant shall submit evidence of such condition

compliance for the review and approval of the Executive Director. Should any conflict arise between the City's conditions of approval and **Special Conditions One (1) through Fifteen (15)** set forth above, **Special Conditions One (1) through Fifteen (15)** shall prevail and shall supercede the conflicting requirement(s) of the City's condition(s).

The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans as described in this staff report shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

17. Santa Barbara County Flood Control District Review

Prior to the issuance of the coastal development permit, the applicant shall submit evidence, for the review and approval of the Executive Director, of final approval for the development from the Santa Barbara County Flood Control District. Should the Flood Control District require any substantial changes to the development, such as additional grading or other flood control measures, an amendment to the permit shall be required. The Executive Director shall determine if any required changes to the development are substantial and require an amendment to the Coastal Development Permit.

City of Carpinteria Conditions from the Council hearing of February 14, 2005

The Conditions set forth in this permit affect the title and possession of the real property that is the subject of this permit and shall run with the real property or any portion thereof. All the terms, covenants, conditions, and restrictions herein imposed shall be binding upon and inure to the benefit of the owner (applicant, developer), his or her heirs, administrators, executors, successors and assigns. Upon any sale, division or lease of real property, all the conditions of this permit shall apply separately to each portion of the real property and the owner (applicant, developer) and/or possessor of any such portion shall succeed to and be bound by the obligations imposed on the owner (applicant, developer) by this permit

GENERAL:

1. This Tract Map, Development Plan, Variance, Modification, Coastal Development Permit, and Development Agreement approval is restricted to APNs 004-011-043 and 004-011-044 located at 1497 Linden Avenue, and is for the development of a single-family residential project consisting of: 27 dwelling units; a private street; a six to eight-foot wide footbridge over Franklin Creek Channel; a five-foot wide pathway through the site crossing over the footbridge; a six to eight-foot wide pathway through Franklin Park to Sterling Avenue; traffic calming and control measures/devices along Linden Avenue; a landscaped buffer on the western site edge of 50 feet from the top of the Franklin Creek Channel; and various other landscaping on site. The project shall be constructed in compliance with the exhibits in Attachment B of the Resolution of Approval (Site Plan dated 12-29-04; Floor Plans and Elevations for Plans 1, 2, 3, 6, 7, 7a, 9a, 9b, 9d, 11, 12, 13, 14; Tentative Tract Map dated 12-21-04; Preliminary

Subdivision Improvement Plan dated 2-3-05; Pedestrian Bridge and Access Exhibit dated 12-21-04; Existing and Proposed Conditions – Linden Avenue from Malibu Drive to El Carro Lane (Traffic Calming Plan)– dated February 2005; and Landscape Plans Sheets L1, L2 and L3 – dated 12-28-04) with conditions provided in Attachment C, as listed below. As a part of this approval, a modification of Carpinteria Municipal Code Sections 14.12.050, 14.20.070, 16.16.090 is hereby granted to allow for a reduction in the front yard setbacks for Lots 2, 3, 4, 16, 26, 27, 19, 8, 9, 20, 21, 22, 23, 10, and 17; a reduction in the minimum parcel size for Lots 3, 8 and 9; and a reduction in the minimum net lot width for Lots 3 and 9. As a part of this approval, a variance for Carpinteria Municipal Code Sections 14.20.070 and 16.16.090 is hereby granted to allow for a reduction in the required setback on Lot 25 (flag lot) and reduction in the required width of the staff of the flag lot (Lot 25).

2. The conditions of this approval supercede all conflicting notations, specifications, dimensions, and the like that may be shown on submitted plans.
3. All project conditions and mitigation measures shall be listed on a sheet included as part of the construction plans submitted for review and approval by the City prior to issuance of a Building Permit/Grading Permit. The approved set of plans shall be retained at the construction site for review by the Building Inspector during the course of construction.
4. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threatened to be filed therein which action is brought within the time period provided by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitations period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
5. All requirements of the City of Carpinteria (including but not limited to public improvements as defined in the City of Carpinteria Municipal Code (CMC) Section 15.16.110), and any other applicable requirements of any law or agency of the State and/or any government entity or District, shall be met.
6. The applicant agrees to pay any and all City costs, permits, attorney's fees, engineering fees, license fees and taxes arising out of or concerning the proposed project, whether incurred prior to or subsequent to the date of approval and that the City's costs shall be reimbursed prior to this approval becoming valid. In addition, the applicant agrees to indemnify the City for any and all legal costs in defending this project or any portion of this project and shall reimburse the City for any costs incurred by the City in its defense of the project approval.
7. Any minor changes may be approved by the City Manager and/or Community Development Director. Any major changes will require the filing of a modification application to be considered by the Planning Commission.

8. In addition to the conditions within the City Council's Resolution to approve the project, the project shall conform to the provisions of the Development Agreement, dated February 28, 2005. The Development Agreement shall be approved by Ordinance pursuant to Government Code Section 65867.5, and shall be deemed in full force and effect on the effective date. The term of the Development Agreement shall commence upon the effective date and shall extend until the third anniversary of the effective date.
9. When not specified herein or in the Development Agreement, all conditions shall be satisfied prior to the issuance of Building Permits or prior to occupancy when allowed by the Community Development Director.

COMMUNITY DEVELOPMENT - GENERAL:

10. All buildings, roadways, parking areas, landscaping and other features shall be located substantially as shown on the attached exhibits, and as amended by these conditions.
11. Water conserving fixtures shall be utilized on all faucets, sinks, water closets and other water outlets throughout the project to reduce water demands and as required to be consistent with the Uniform Building Code and CMC 15.32.020 (L), Water Saving Devices.
12. Any and all damage or injury to public property resulting from this development, including without limitation, City streets, shall be corrected or result in being repaired and restored to its original or better condition.
13. The standards defined within the City's adopted model Building Codes (UBC; NEC; UMC; UFC; UPC; UHC) relative to the building and occupancy shall apply to this project.
14. The applicant shall comply with the mitigation measures of the attached environmental document pursuant to the California Environmental Quality Act, which are incorporated herein as conditions of approval.
15. An approval granted by the Planning Commission does not constitute a building permit authorization to begin any construction. An appropriate permit issued by the Building or Division must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.
16. Prior to issuance of a Building Permit or Grading Permit, all plans included as Attachment B to the Resolution of Approval shall be provided in an electronic format acceptable to the City, such as a pdf or tif file.
17. This approval shall not be effective for any purposes unless the applicant/developer and the owner of the property involved (if other than the owner) shall file with the office of

the Community Development Department prior to issuance of a Building Permit or Grading Permit a recorded affidavit stating that the applicant/developer and the owner are aware of and agree to accept all conditions of approval. Prior to recordation of the map and subject to City approval as to form and content, the applicant shall include all of the conditions of approval required by this project approval on a separate informational sheet to be recorded with the Final Map.

18. Prior to recordation of the map, the applicant shall complete (to the satisfaction of the Community Development Director) a separate informational sheet to be recorded with the map listing all of the mitigation measures, conditions, agreements and specific plans associated with or required by this project approval. These requirements shall be graphically illustrated where necessary for clarification.
19. Subject to the provisions of the Development Agreement, if, at any time, the City or Planning Commission determines that there has been, or may be, a violation of the findings or conditions of this Development Plan/Tract Map/Modification/Variance/Coastal Development Permit/Development Agreement, or of the Municipal Code regulations, a public hearing may be held before the City Council to review this permit. At said hearing, the City Council may add additional conditions, or recommend enforcement actions, or revoke the permit entirely, as necessary to ensure compliance with the Municipal Code, and to provide for the health, safety, and general welfare of the City. The applicant shall reimburse the City for all costs associated with gaining compliance with the original conditions of approval.
20. If the construction site is graded and left undeveloped for over three weeks, the following methods shall be employed immediately to inhibit dust generation: (1) seeding and watering to revegetate graded areas; (2) spreading of soil binders, and/or (3) any other methods deemed appropriate by the City or County Air Pollution Control Board (APCD).
21. No construction-related debris (mud, dust, paint, lumber, rebar, etc.) shall leave the project site unless transported to an approved disposal site. During the construction period, washing of concrete, paint, and/or equipment shall be allowed only in areas where polluted water and materials can be contained for subsequent removal from the site.
22. Washing of equipment shall not be allowed near sensitive biological resources. The applicant shall designate a "wash-off area" on the construction plans and install such an area prior to the commencement of any construction activities.
23. Any unanticipated damage that occurs to trees or sensitive habitats during construction activities shall be mitigated by either: (1) tree replacement, or bonding for tree replacement; (2) hiring (at applicant expense) a qualified biologist or botanist to assess the damage and recommend mitigation, which mitigation shall be completed by applicant at its sole cost and expense.

24. To allow time for the Gas Company and other utilities to locate and mark their facilities for the contractor, please telephone Underground Service Alert (USA) toll free at 1-800-227-2600 a minimum of forty-eight (48) hours prior to the start of construction. For best response, provide as much notice as possible, up to ten (10) working days.
25. The applicant is required to complete a School District sign-off form, which may include payment of applicable School Mitigation Fees, prior to issuance of Building Permit.
26. In accordance with Chapter 15.80 of the Carpinteria Municipal Code, the applicant shall pay the Development Impact Fee(s) (DIFs) for the entire project prior to the date of final inspection of the first dwelling unit. The amount of the fee shall be that in effect at the time of Building Permit issuance. Current estimates can be obtained from the Community Development Department. All fees and charges paid are subject to protest per Government Code Section 66020.
27. The project is subject to City parks improvement, aquatic facility and parks acquisition fees pursuant to Chapters 15 and 16 of the City's Municipal Code. These fees shall be paid to the City prior to issuance of a Building Permit.
28. The project is within the boundaries of the City of Carpinteria Parks Maintenance District, and a fee, calculated by the City Parks & Recreation Department, shall be levied upon each residential unit on an annual basis.

COMMUNITY DEVELOPMENT - SPECIAL:

29. No signs are approved as part of this project, except as specifically indicated.
30. The hedge shown along the edge of Franklin Park shall be riparian species. The revised landscape plan shall be provided for final ARB review.
31. A qualified native riparian plant specialist shall review all proposed landscape plans in the 50-foot setback to ensure they are consistent with the Creeks Preservation Program, and that the site conditions are appropriate to such species. A brief report prepared by the specialist, with any recommended palette changes, shall be provided to the City prior to scheduling the project for final ARB review of the landscape plans. Any resulting changes to the vegetation shall be shown on the landscape plans brought before the ARB for final review.
32. Lighting on the footbridge shall be low intensity and directed downwards so as to minimize light spillover and glare.
33. The footbridge width shall be the same as that of the pathway proposed in Franklin Park, approximately six to eight feet. This dimension shall be called out on the final plans. The footbridge shall be designed in accordance with the plans approved as part

of this project, shall be designed to ADA standards and Building Code standards, and shall be acceptable to the City's Community Development Department, Public Works Director, and City Engineer, as well as the Flood Control District. The footbridge shall be constructed per Section 3.070.03 of the Development Agreement.

34. The developer/owner shall obtain the necessary permits and approvals from the Flood Control District for construction of the pathway west of the footbridge, on Flood Control District property, and provide them to the City prior to issuance of a Grading Permit or Building Permit.
35. The developer/owner shall submit proof of all Flood Control District permits and other necessary District approvals, including that for storm drain improvements, pathways and the footbridge, prior to issuance of a Grading Permit or Building Permit.
36. A maximum three-foot tall post and rail wood or "woodcrete" fence shall be provided along the pathway connecting to the footbridge between Lots 14 and 15 to provide some measure of privacy and delineation of public space. The specific fence design shall be submitted to the ARB for final review. Maintenance of the fence and pathway shall be the responsibility of the proposed homeowners' association, and provided in the CC&Rs.
37. No fence shall be placed in Franklin Park as a part of this project.
38. In accordance with the Carpinteria Creeks Preservation Program, no structures or other development are allowed within the 50-foot setback from the top of the Franklin Creek Channel, including on Lots 14-18, with the exception of the following: (1) Patios of stone pavers are allowed in the 50-foot setback providing that the patios are permeable, allow grass or other vegetation to grow in between the pavers, and that no solid foundation is used. The patios in the 50-foot setback on Lots 14-18 shown on the construction plans submitted for a Building Permit shall conform to the size and shape as those shown on the landscape plans approved as part of this project; (2) The wooden fence proposed in the 50-foot setback from the top of the Franklin Creek Channel shall not exceed 40 inches tall, and the bottom rail shall be at least 14 inches above the ground to encourage passage of wildlife. This 14-inch gap shall be left unobstructed throughout the life of the development. The wooden planks shall be separated by gaps approximately three inches wide, or as approved by the Community Development Department; and (3) All plant species proposed in Franklin Park and in the 50-foot setback from Franklin Creek Channel on the project site shall be regionally native and riparian, as directed by and consistent with the Carpinteria Creeks Preservation Program. Property owners of the individual lots shall maintain in perpetuity the landscape in the 50-foot setback. The trees and major vegetation proposed in this 50-foot setback shall be maintained for the life of the project. Any requests for replacement of, or changes to, species shall be considered by City staff to determine compliance with project conditions and applicable City policies. For Lot 15, this condition means that no building projections such as door landings or roof overhangs shall be located within the 50-foot setback. A covenant imposing the

condition specified herein on individual Lots 14, 15, 16, 17, and 18 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.

39. Pursuant to the Carpinteria Creeks Preservation Program, a Construction Mitigation Plan and Post-Construction Mitigation Plan to ensure protective measures are utilized during habitat restoration and revegetation in the 50-foot setback from the top of the Franklin Channel shall be submitted for review and approval to the Community Development Department prior to issuance of a Grading Permit or Building Permit.
40. A hedge along Linden Avenue shall be retained and maintained at approximately five and one-half feet along Lots 1, 25 and 27, with the hedge removed at the vehicle entrance to the site and in the portion of Lots 1 and 27 adjacent to the entrance, and shall be shown on the plans submitted for final ARB review. A covenant imposing the condition specified herein on individual Lots 1, 25 and 27 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.
41. The homes on the following lots shall be one story: 1, 2, 5, 6, 12, 13, 14, 15, 20, 22, 25, and 27. The homes on lots 1, 25, 27, 15, 14, 13, 12, 6, 5, 2 shall remain as single story. No second story additions shall be permitted for such houses. A covenant imposing the condition specified herein on individual lots 1, 25, 27, 15, 14, 13, 12, 6, 5, 2 that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. This condition shall also be included in the CC&Rs for the project.
42. A sign shall be placed near the project entrance on Linden Avenue, indicating available pedestrian access to Franklin Creek Park via the subdivision. The sign design (including, size, materials, colors, wording, style) shall be presented to the Community Development Department for review and approval, and may require ARB review and approval.
43. The developer/owner shall install a six-eight foot wide ADA-compliant decomposed granite path in Franklin Park, from the footbridge to Sterling Avenue, as shown on the plans. The path terminating at Sterling Avenue shall be aligned with the existing cross walk at El Carro Road and Sterling Avenue. The path shall be stabilized with 6-inch x 6-inch concrete headers, per the City's standard trail specification, and a curb cut provided at Sterling Avenue per City standards. The path shall be constructed per Section 3.070.03 of the Development Agreement.
44. The developer/owner shall install all landscaping in Franklin Creek Park, as shown on the project plans. The landscaping shall be installed per Section 3.070.03 of the Development Agreement.

45. The private road shall consist of 16 feet of clear driving width and 8 feet of parking on each side of the road (total 16 feet of parking), along with a 5-foot wide sidewalk on each side of the road, all of which shall be designed and built to City standards.
46. All new residential units shall contain fire sprinkler systems, per the Fire District standards, and shall meet all requirements of the Fire District.
47. The location and specifications of the sewer pump station and sewer lines, as well as any required easements, shall be shown on the plans submitted to the City prior to the issuance of a Grading Permit or Building Permit, and shall be acceptable to the Carpinteria Sanitary District (CSD), as well as the City's Community Development and Public Works Departments. The Public Works Department shall obtain comment on said plans from the Santa Barbara County Flood Control and Water Conservation District. The pump station shall be below grade, although a standard utility panel may be sited above ground. The station shall not be installed in a street, or within the 50-foot setback from the Franklin Creek Channel, or directly adjacent to the top of bank of the southerly drainage ditch along the property. The developer/owner shall dedicate an easement to the CSD for access to all facilities, and shall dedicate the pump station and appurtenances to the CSD.
48. An easement shall be dedicated to the City in perpetuity, granting a public right of passage on the private street and sidewalk for the purposes of accessing the footbridge. The easement shall be in a form acceptable to the City Attorney and City's Community Development and Public Works Departments, and shall be recorded prior to the issuance of the first Grading Permit or Building Permit.
49. Channel access gates for Flood Control District purposes proposed at the end of the footbridge, in Flood Control District property, shall be constructed by the developer/owner, and shown on the Final Tract Map, Subdivision Improvement Plan, Pedestrian Bridge and Access Exhibit, and Site Plan prior to issuance of a Building Permit or Grading Permit. The design of the gates shall be reviewed by the ARB at final review. Maintenance of the gates shall be the responsibility of the proposed homeowners' association, and identified in the CC&Rs.
50. A metal or wrought iron vehicle access gate acceptable to the Flood Control District, Carpinteria Sanitary District (CSD), and the City shall be provided along Linden Avenue at the entrance to the Flood Control/CSD access road traversing the southern site edge, and shall be shown on the plans submitted prior to issuance of a Grading or Building Permit. Maintenance of the gates shall be the responsibility of the proposed homeowners' association, and identified in the CC&Rs.
51. The vehicular access to the site at Linden Avenue and El Carro Lane shall not be gated.

ARCHITECTURAL REVIEW – GENERAL

52. Prior to the issuance of any Building Permits, the applicant shall return to the Architectural Review Board for review and approval of final plans to include detailed plot plans, elevations, signs, lighting, landscaping and irrigation. All required plans shall be submitted as a part of a single application.
53. Prior to the issuance of any building permits, the applicant shall post a landscape maintenance bond equaling \$500.00, or \$0.03 per square foot of landscaped area, whichever is greater; the landscaping at Franklin Park shall be maintained in good condition for one (1) year, at which time the bond will be released; the Linden Avenue landscaping, landscaping along the pathway leading to the bridge, and the front yard landscaping including street trees shall be maintained in good condition with a bond equaling \$500.00 or \$0.03 per square foot of landscaped area, whichever is greater posted by the applicant to ensure the landscaping is maintained in good condition until the homeowner's association is established; where feasible, locally adapted native plants shall be required; prior to occupancy, all landscaping and planting shall be installed; a raised six-inch curb shall protect all landscaped areas located within parking areas; any curb carrying water along its face shall be curb and gutter; specimen trees shall be appropriate to the site and shall be maintained in good condition so as to attain a full and healthy mature appearance; and the removal, topping of or otherwise interference with the specimen tree(s) ability to continue its growth and attain full maturity shall be a violation of these conditions of approval and shall require replacement of the damaged tree.
54. If determined applicable by the City, the project shall comply with the requirements of the City's Water Efficient Landscape Ordinance (Chapter 15.90, Carpinteria Municipal Code).
55. Any mechanical equipment, including roof mounted (i.e., air conditioning fans, blowers, and vent stacks, etc.) shall be visually screened from all views. Screening shall be compatible with the style and color of the main structure and shall be approved by the Architectural Review Board at final review.
56. All materials and colors used in construction and all landscape materials shall be as represented to or as specified by the Architectural Review Board and any deviation will require the express approval of the Board.

ARCHITECTURAL REVIEW - SPECIAL:

57. The landscape plan shall be provided for final ARB review and approval.
58. Restudy the plantings proposed along Linden Avenue, particularly with traffic visibility and safety issues prior to final ARB review.

59. Lighting location and details, including but not limited to footbridge, streetlights, and building lights, shall be provided for ARB final review.
60. Show the design and specific location of the channel access gates for Flood Control District purposes, which should be decorative to match the architecture of the development.
61. Provide further footbridge design details, particularly relating to the transitional ramp, and identify the low lighting along the bridge.
62. The specific materials of the footbridge, weathered steel, shall be identified on the plans submitted for final ARB review.

ENGINEERING - GENERAL:

63. The applicant shall submit grading, drainage and street improvement plans prepared by a California Registered Civil Engineer. Said plans shall include but not be limited to grading, street, utility, and storm drain improvements and shall be submitted to the Community Development Department for review and approval prior to recordation of the Tract or Parcel Map.
64. An engineering cost estimate shall be submitted with the grading and improvement plans. Each page of the cost estimate shall be signed and stamped by the applicant's engineer.
65. Using a rain frequency of a twenty-five year storm, hydrology/hydraulic calculations shall be submitted by the applicant's engineer to the Community Development Department for review, using the Santa Barbara County Engineering Design Standards. Storm drainage run-off shall be conducted to the street in a safe and adequate manner per Santa Barbara County Standards. Easements required for drainage shall be described and shown on the improvement plans and Final Tract or Parcel Map.
66. Prior to issuance of a Building Permit, the applicant shall submit plans and calculations as required to apply for all necessary Engineering permits. Said permits include, but are not limited to, Street Construction, Excavation in the public right-of-way, Grading and/or Encroachment.
67. Prior to recordation of the Final Tract Map, Faithful Performance and Labor and Material bonds (each to be 100 percent of the City Engineer's estimate) shall be filed with the City to cover all public improvements and any on-site grading, drainage and retaining walls. A cash deposit in the amount of ten percent of the bond amount shall be submitted with each bond.
68. All service lateral utilities shall be installed underground.

69. All underground utility (gas, electrical, telephone, cable TV, water, sewer, storm drainage, etc.) service installations and/or enlargements are to be completed prior to any paving required for this project.
70. All utilities shall be provided to all lots in the subdivision (units) prior to occupancy.
71. All utility easements shall be described adequately on submitted plans, and shown on the Final Tract Map.
72. Portions of the project's Linden Avenue frontage shall be improved in accordance with the requirements of the City Engineer and with the standards, specifications and policies of the City of Carpinteria, which shall include: (1) Monolithic 6" curb and 18" or 24" gutter, and 5' wide sidewalk, as applicable, handicapped ramp, and driveway approaches shall be constructed per the Santa Barbara County Standard Details at the locations shown on the improvement plans; and (2) Prior to commencement of any work in the public right-of-way, a street construction and/or excavation encroachment permit shall be obtained from the City Engineer.
73. Asphalt street areas, curbs, gutters, and sidewalks shall transition into existing public improvements subject to review and approval by the City Engineer.
74. No persons shall occupy any structure until the City Engineer has approved all improvements and, on-site construction has received final approval from the Building Inspector and a Certificate of Occupancy has been obtained from the Community Development Department.
75. All streetlights shall be installed outside of the sidewalk in accordance with City standards and practices approved by the City Engineer.
76. Prior to performing any grading, the developer shall obtain a Grading Permit from the City Engineer, in accordance with Chapter 8.36 of the Carpinteria Municipal Code, and pay the required grading permit deposits/fees.
77. At the time of final acceptance of improvements, the applicant shall submit a set of "Record Drawings" of all public improvements. The "Record Drawings" shall be the original or permanent mylars of a quality acceptable to the City Engineer.
78. Prior to occupancy, a Notice of Completion for all public improvements shall be accepted by the City Council.

ENGINEERING – SPECIAL:

79. The Developer shall provide engineering details of the cross lot drainage between Lots 13 and 14, including overland flow swale, storm drain pipe, and the storm drainage outlets into the southern drainage ditch and Franklin Creek Channel, which shall be addressed as part of the grading plans submitted for review and approval by the City

Engineer, prior to issuance of a Grading Permit. Appropriate cross lot drainage easements shall be provided. In addition, a maintenance easement to the proposed homeowners' association shall be shown on the plans (Tract Map, Subdivision Improvement Plan, Site Plan) submitted prior to Building Permit or Grading Permit issuance.

80. The Developer shall provide engineering details of the cross lot drainage for Lots 9 and 10, and Lots 3 and 4. The design shall include a drainage swale or some other mechanism, distinct from the proposed yard turf areas, to clearly delineate the drainage course so that it is not inadvertently covered, and proper drainage inhibited. Details of the drainage in these areas shall be shown on the project plans and reviewed and approved by the City Engineer prior to issuance of a Grading Permit. Easements shall be shown on the grading plans and Final Tract Map for said cross lot drainage.
81. Except as otherwise noted in these Conditions of Approval, all electrical transformers and utility boxes shall be undergrounded within a vault or made flush with the ground, with final location submitted to the Community Development and Public Works Departments for review and approval.
82. Pursuant to the applicant's agreement as contained in the project description, the applicant shall design, engineer and install traffic control and calming devices (including signage, median landscaping and/or decorative paving, as determined by the City) in the area of the project site, on Linden Avenue approximately between Malibu Drive and El Carro Lane, consistent with the drawings of traffic calming measures included as Attachment B to this Resolution of Approval, with the exception of speed humps. Final Engineering plans for such improvements shall be submitted to the Community Development and Public Works Departments for review and approval prior to issuance of a Grading Permit. The measures/devices shall be constructed as set forth in Section 3.07.03 of the Development Agreement. Such traffic calming and control measures/devices shall not result in significant traffic impacts as set forth in the City's CEQA Threshold Guidelines. The applicant shall provide a deposit, or other security, in an amount to be determined by the City, and held by the City for three years for design and construction costs. At the end of this time, if the funds are unused, they shall be refunded to the applicant.
83. Final traffic calming improvement plans for the Linden Avenue segment near the project site shall include signage, landscaping and/or decorative paving, as determined by the City, in the medians and along the curbs.

TRACT MAP:

84. The Tract Map shall be subject to the Subdivision Ordinance of the City of Carpinteria and the Subdivision Map Act and fully comply with all relevant provisions.

85. The Final Map shall be substantially in compliance with the Tract Map as herein approved, and any substantial changes shall require the approval of the City's Planning Commission.
86. Prior to recordation of the Final Map, and in accordance with the Subdivision Ordinance, the developer shall prepare plans and specifications for review and approval by the City Engineer, and shall enter into a Subdivision Improvement Agreement with the City to install improvements. Along with recordation of the Final Map, separate instruments will be recorded describing each of the easements shown on the Tract Map and their purpose, and legal description and sketch of each said instruments shall be approved by the City prior to recordation.
87. Covenants, Conditions and Restrictions (CC&Rs) for the project shall be submitted for review to the Community Development Department and City Attorney and approved by the City Council prior to acceptance of the Final Map. The CC&Rs shall be recorded concurrently with the Final Map. Further, the Community Development Department, Public Works Department, and City Attorney may require additional restrictions within the CC&Rs as found to be appropriate by City in conformity with the conditions of approval. The CC&Rs shall provide the following: (1) parking requirements, including that no recreational vehicle/ boat/boat trailer parking shall be allowed on the street or on driveways; (2) maintenance of the private street and sidewalk; (3) maintenance of swales and drainage easements for cross lot drainage shall be the responsibility of the proposed homeowners' association; (4) maintenance of the landscaping along the pathway on the subject site leading to the footbridge, and any landscaping proposed as part of a parkway along Linden Avenue and the private street trees shall be the responsibility of the proposed homeowners' association, with the requirement that any requested replacement or changes to said landscaping be made to the Community Development Department for consideration; (5) maintenance of the pathway on the subject site leading to the footbridge in perpetuity and any fence leading from the site to the footbridge, as well as any access gates, shall be the responsibility of the proposed homeowners' association; (6) enforcement of the Creeks Preservation Program in the 50-foot setback shall be the responsibility of the proposed homeowners' association; (7) the owners of Lots 14-18 along the Franklin Creek Channel shall maintain in perpetuity the landscape in the 50-foot setback consistent with the approved plans; and the homeowners' association shall have the right to compel all such maintenance where parties other than the homeowners' association are required to maintain improvements or landscaping; and the City shall have the right to compel enforcement of the CC&Rs as to all obligations contained in these conditions of approval; and the homeowners' association shall regularly inspect the areas within the 50-foot buffer and provide a summary report to the Community Development Department every two years demonstrating compliance with the requirements of the Creeks Preservation Program, the approved plans, and the conditions set forth herein; (8) the vehicular access to the site at Linden Avenue and El Carro Lane shall not be gated; (9) conditions of approval 36-40 specified herein shall be complied with; (10) best management practices to minimize potential for pollutants to enter the storm drain system per Condition of Approval 103 shall be maintained; drain shall be cleaned on a

regular basis, at least every six months; and (11) the Construction and Post-Construction Mitigation Plans to ensure protective measures are utilized in revegetation and habitat restoration efforts within the 50-foot buffer from the Franklin Creek Channel top of bank, as described in the Carpinteria Creeks Preservation Program, shall be implemented. The CC&Rs shall itemize those provisions that are required by these conditions of approval and shall provide that no such provisions shall be deleted or amended without prior consent of the City Council.

88. The applicant shall submit two copies of the Final Map to the Community Development Department for review. A California Registered Civil Engineer or Licensed Land Surveyor shall prepare said map. Closure calculations shall be submitted with the Final Map along with adequate reference data and a current title report.
89. The applicant shall pay all engineering fees and all other fees and deposits prior to City Council approval of the Final Map.
90. No Building Permits shall be issued prior to recordation of the Final Map.
91. Within 30 days after the Final Map is filed with the County Recorder, and prior to receiving a Building Permit, the applicant shall deliver one set of reproducible mylars of the recorded map to the Community Development Department.

ENVIRONMENTAL/MITIGATED NEGATIVE DECLARATION:

92. AES-1. The ARB shall review the project with regard to neighborhood compatibility and the appropriateness of the design. The ARB shall consider the height of the proposed buildings in relation to adjacent developed properties. All recommendations of the ARB shall be forwarded to the Planning Commission for consideration, followed by the City Council. Any conditions of approval proposed by the City decision-making body pertaining to neighborhood compatibility, building height and appropriateness of the design, shall be incorporated into the project plans.
93. AES-2. All exterior lighting shall be directed downward and designed so as to minimize the potential for glare and light spillover.
94. AQ-1. Dust generated by the development activities shall be retained onsite and kept to a minimum by following the dust control measures listed below. Reclaimed water shall be used whenever possible. (1) During clearing, grading, earth moving or excavation, water trucks or sprinkler systems are to be used in sufficient quantities, after each day's activities cease, to prevent dust from leaving the site and to create a crust. (2) After clearing, grading, earth moving or excavation is completed, the disturbed are must be treated by watering or revegetating; or by spreading the soil binders until the area is paved or otherwise developed so that dust generation will not occur. (3) During construction, water trucks or sprinkler systems are to be used to keep all areas of vehicle movement damp enough to prevent dust from leaving the site. At a

minimum, this will include wetting down such areas in the late morning and after work is completed for the day. Increased watering frequency will be required whenever the wind speed exceeds 15 mph.

95. AQ-2. Importation, Exportation and Stockpiling of Fill Material: (1) Soil stockpiled for more than two days, or at the discretion of the Public Works Director, shall be covered, kept moist, or treated with soil binders to prevent dust generation; and (2) Trucks transporting fill material to and from the site shall be tarped from the point of origin.
96. AQ-3. Activation of Increased Dust Control Measures: The contractor or builder shall designate a person or persons to monitor the dust control program and to order increased watering, as necessary, to prevent transport of dust offsite. Their duties shall include holiday and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD prior to land use clearance for map recordation and land use clearance for finish grading of the structure, as well as to the City Community Development Department prior to issuance of a Grading Permit.
97. BIO-1. Prior to commencing any earth disturbing or other construction activities on the site, a temporary construction fence and silt fence shall be installed along the southern and western property edges to prevent debris, soil and equipment access into the southern drainage and Franklin Creek Channel. These fences shall remain in place through the end of construction. In areas where access to the channel and drainage is necessary to conduct storm water outlet, pathway, footbridge, and other approved improvements, temporary access through the fence shall be allowed, with the fence realigned along the work area. The particular type of fencing and its placement shall be approved by the City prior to issuance of a Grading Permit.
98. CR-1. A qualified archaeologist or Native American monitor shall be present during all earth disturbing activities. In the event that archaeological resources are unearthed during project construction, all earth disturbing work within the vicinity of the find must be temporarily suspended or redirected until an archaeologist has evaluated the nature and significance of the find. After the find has been appropriately mitigated, work in the area may resume. A qualified Native American representative shall monitor any mitigation work associated with prehistoric cultural material.
99. CR-2. If human remains are unearthed, State Health and Safety Code Section 7050.5 requires that no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the remains are determined to be of Native American descent, the coroner has 24 hours to notify the Native American Heritage Commission.
100. GEO-1. Project construction and grading shall comply with all recommendations

outlined in the Geotechnical Engineering Report (Earth Systems, June 2002), to the satisfaction of the City Engineer. These recommendations shall be reflected in the project construction plans submitted to the City prior to issuance of a Grading Permit.

101. HAZ-1. In the event that potentially hazardous materials are discovered during project construction, all earth disturbing work within the vicinity of the find must be temporarily suspended or redirected, and the City Public Works Director and the appropriate authorities at the Santa Barbara County Fire Department, Hazardous Materials Unit, are contacted. After the area has been appropriately mitigated and cleared, per Santa Barbara County requirements, work in the area may resume.
102. HAZ-2. An environmental site assessment to determine the potential for hazardous materials related to agricultural use to be located on the site shall be prepared by a professional Registered Environmental Assessor, or other qualified professional, and submitted for review and approval by the City Public Works Department prior to issuance of a Grading Permit. All recommendations of the study shall be incorporated into the project and shown on the construction plans to the satisfaction of the City Engineer, prior to issuance of a Grading Permit.
103. H-1. The applicant shall incorporate into the project design appropriate Best Management Practices (BMPs) to minimize the potential for pollutants to enter the storm drain system onsite during operation of the project. These may include, but not be limited to, storm drain catch basin inserts/biofilters to trap pollutants. Such facilities shall be maintained and cleaned on a regular basis, at least every six months. The construction plans and the BMPs shall be prepared by a registered civil engineer, and reviewed and approved by the Public Works Director prior to the issuance of a Grading Permit. Prior to issuance of a Grading Permit, the City shall ensure that the Covenants, Conditions and Restrictions for the project include a requirement that any BMP mechanisms be maintained and cleaned at least every six months. Additionally, all storm drain inlets shall be marked to clearly indicate that they drain to the ocean.
104. H-2. The overflow swale proposed at the southwestern property edge to provide an overland escape route shall be grass-lined, as opposed to the proposed concrete-lined, to provide for additional filtering of potential pollutants, as determined feasible by the City Engineer. This mechanism shall be shown on the plans submitted to the City for review and approval prior to issuance of a Grading Permit.
105. H-3. Prior to the issuance of a Grading Permit, information regarding the quantity of runoff attributed to the project to enter the southerly drainage and the Franklin Creek Channel shall be submitted for review and approval by the City Public Works Director and the Santa Barbara County Flood Control District, as necessary. The storm drainage system on the site shall be designed to the satisfaction of the City Engineer, and reflected on the construction plans submitted prior to the issuance of a Grading Permit.

106. N-1. Project construction activities shall be limited to weekdays, between the hours of 7:00 a.m. and 5:00 p.m.

107. The Owner/Developer shall comply with the Mitigation Monitoring and Reporting Program (MMRP) requirements, which are included as part of the IS/MND.

CARPINTERIA WATER DISTRICT

108. The proposed onsite water distribution system shall be reviewed and approved by the Carpinteria Valley Water District (CVWD) prior to issuance of any permit. The water line shall loop back to the south end of the project parcel, along the Franklin Creek Channel, or as otherwise directed by the CVWD.

CARPINTERIA/SUMMERLAND FIRE PROTECTION DISTRICT

109. Visible street addresses must be posted at driveways and on buildings.. Numbers shall be a minimum three inches high on a contrasting background.

110. Access to all structures shall conform to the requirements for private roads and driveways set forth in the Santa Barbara County Private Roads and Driveway Standards, Section 8.

111. Per 1997 Uniform Building Code and National Electric Code, smoke detectors must be installed in all residences.

112. Roof access must meet the requirements stated in the Carpinteria Municipal Code.

113. Any future changes, including further division, intensification of use, or increase in hazard classification, may require additional conditions in order to comply with applicable Fire District development standards.

114. Per Carpinteria-Summerland Fire District Ordinance pertaining to fees and service charges, a service charge is assessed on reviews of lot line adjustments, lot splits, and development review.

115. Pursuant to C.S.F.P.D. Ordinance, prior to issuance of a "Certificate of Occupancy", the Fire District mitigation fee must be paid.

116. All required access ways shall be installed and made serviceable prior to the erection of combustible materials.

117. When access ways are gated, a Fire District approved key box or switch shall be installed in an accessible location. Prior to installation, the Fire District shall approve the type and location.

118. Public fire hydrants supplying the required fire flow within the required driving distance from the structures shall be provided. Both the Fire District and the applicable Water District shall approve the type of hydrant and the exact location. The new fire hydrant(s) shall be installed and in-service prior to any construction. While the hydrants as shown meet the minimum requirements, a repositioning adjacent to driveway aprons may be more suitable. The Fire District retains final approval as to exact location prior to installation.
119. A roadway width of 32 feet minimum must provide a clear driving width of 16 feet. Parking allocation and all other construction standards shall be consistent with Santa Barbara County Road Standards, as determined appropriate by the City. The cul-de-sac radius of 40 feet provides the minimum clearance requirement for a fire apparatus turn around when no parking provisions are provided. The District will permit parking in both of the cul-de-sacs, provided that the driveway construction for the first 10 feet of each driveway on the cul-de-sac is in accordance with Santa Barbara County Structural Standards for private driveways. This requirement shall provide a design that will meet the minimum specifications for standard Hammerhead style turnarounds.

CARPINTERIA SANITARY DISTRICT

120. The owner of record, or authorized designee, shall obtain all necessary permits, submit fees due for inspection, and provide all required bonds to the Carpinteria Sanitary District (CSD) prior to issuance of the construction permit.
121. The subject property must be annexed to the Carpinteria Sanitary District (CSD) following the Local Agency Formation Commission (LAFCO) and CSD procedures and requirements. All applicable annexation fees shall be submitted with the annexation application.
122. The owner of record, or authorized designee, is required to submit a detailed sewer plan and profile to CSD for review, and the applicable plan check fees. The applicant shall design and construct sewer facilities to meet all CSD design standards and specifications.
123. The applicant is required to submit a detailed sewer improvement plan, prepared by a registered professional engineer, to CSD for review and approval. Applicable plan check fees shall be submitted to CSD with the sewer improvement plans.
124. The applicant shall design and construct sanitary sewer facilities necessary to serve the proposed development, in strict conformance with all CSD design standards and construction specifications. Based on a preliminary review of the site and the proposed improvements, the following infrastructure is anticipated to be required: (1) Gravity sewer mains, with appurtenant manholes, to collect and convey storm wastewater from individual parcels. All sewer laterals shall be owned and maintained by the owner up to and including the wye connection. (2) Duplex sewer lift station with submersible

pumps, controls and telemetry, dedicated electrical service, and portable back-up power supply, designed and constructed in accordance with CSD standards. The portable back-up power supply shall consist of a trailer-mounted generator stored at the CSD facility, and transported by CSD staff to the lift station for emergency power on a temporary basis. (3) Sewer force main between the lift station and the District's existing gravity sewer system located in Linden Avenue. If located within the existing flood control access easement on the southern perimeter of the property, surfacing requirements and other improvements may be imposed. (4) Four-inch (4") minimum lateral and building sewers of approved materials shall be installed for each single-family dwelling. The letter "S" shall be etched into the curb over the physical location of the sewer lateral for each parcel.

125. Prior to commencing construction, the contractor shall notify the District Inspector. A minimum of 48-hours advance notice is required. All work shall be inspected, tested, and televised in accordance with CSD standard requirements.
126. All costs and expenses associated with the installation of both public and private sewer facilities are the sole responsibility of the applicant. The applicant shall enter into an agreement with CSD that guarantees the construction of the sewer system and lift station.
127. The applicant shall provide required construction and maintenance bonds for the public sewer facilities.
128. The applicant shall prepare and grant permanent access and utility easements in favor of CSD for all publicly owned pipelines, lift stations, and other related infrastructure.
129. The applicant shall conduct a construction permit from CSD and pay associated fees prior to commencing connection.
130. A Development Impact Fee (DIF) shall be paid for each newly constructed "equivalent dwelling unit" (EDU). The current DIF is \$2,400 per EDU.

SANTA BARBARA COUNTY FLOOD CONTROL & WATER AGENCY

131. Prior to recordation of the Final Map, the applicant shall submit a copy of the Tract Map to the Flood Control District for review and approval, and shall comply with the Flood Control Standard Conditions of Approval.
132. Prior to the District's issuance of land use clearance, the applicant shall submit improvement plans and grading and drainage plans to the District for review and approval. The applicant shall obtain an Encroachment Permit from the District prior to commencing any work within the District right-of-way. A copy of the encroachment permit and any other District required approvals shall be submitted to the City prior to issuance of a Grading Permit or Building Permit.

133. Landscape screening shall be done within the Tract boundary rather than on the Flood Control District (District) parcel.
134. Grading for the proposed overland escape drainage swale off of El Carro Lane shall be done within the Tract boundary rather than on the District parcel.
135. The District access road along the eastern side of the Franklin Creek Channel shall maintain its existing width as much as possible. Any ramping or approach to the pedestrian bridge shall be designed and constructed so as to not preclude continued vehicular use of the Flood Control District easement.
137. All work proposed within the District parcel shall require District approval/signing of the plans and issuance of an Encroachment Permit prior to construction. The encroachment permit will likely require an inspection deposit.
138. The applicant shall pay the current plan check fee deposit at the time the plans and map are submitted for District review and approval.

Attachment B

Mission Terrace Estates Site Plan

Mission Terrace Estates Annual DA Review and Termination
November 26, 2012

MISSION TERRACE ESTATES SITE PLAN



Attachment C
Recent Construction Photos



Mission Terrace Estates Annual DA Review and Termination
November 26, 2012



As seen from Sterling across Franklin Creek Park



Native riparian plantings



Looking over the footbridge to Franklin Creek Park



From the public path into the development



From the public path into the development



The residence on Lot 18 under construction



Vacant Lot 22



Completed residences

Attachment D

Operating Memorandum No. 1 to the Development Agreement

Mission Terrace Estates Annual DA Review and Termination
November 26, 2012

**OPERATING MEMORANDUM NO. 1 TO DEVELOPMENT AGREEMENT
BY AND BETWEEN CITY OF CARPINTERIA AND MISSION TERRACE
ESTATES, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION
DATED: DECEMBER 19, 2007**

THIS OPERATING MEMORANDUM NO. 1 TO DEVELOPMENT AGREEMENT is entered into this 19th day of December, 2007 by and between the City of Carpinteria, a municipal corporation (“**City**”) and Mission Terrace Estates, LLC, a California Limited Liability Corporation (“**Owner**”).

WHEREAS, City and Owner have previously executed a Development Agreement dated February 28, 2005 (“**Agreement**”) regarding development of the Mission Terrace Estates project (“**Project**”) on that certain real property described in attached Exhibit A pursuant to Government Code section 65864 et seq.; and

WHEREAS, section 8.09 of the Agreement provides that the parties may clarify details regarding performance by City or Owner pursuant to the Agreement; and

WHEREAS, Owner has requested that City authorize a minor adjustment to timing of the approval of plans so that building permits may be issued for the first four residences prior to final approval of the footbridge and traffic calming plans. Sections 4.01.03.01 and 4.01.03.04 of the Agreement provide that final plans for a footbridge spanning the Franklin Creek flood control channel and traffic control and calming devices in the area of the project site on Linden Avenue between Malibu Drive and El Carro Lane be approved prior to the issuance of the first Coastal Development permit/building permit for the project; and

WHEREAS, City has determined that, due to the extended plan check process for the footbridge and traffic calming devices and the fact that issuance of a small number of building permits will not negatively impact ultimate construction of the footbridge and traffic calming improvements, allowing the first four residential building permits to be issued prior to final approval of the plans for these elements is appropriate, does not change the intent expressed in the Development Agreement, and can be effected through this Operating Memorandum.

NOW, THEREFORE, City and Owner agree as follows:

Section 1. Incorporation of Recitals. The parties agree that the foregoing recitals are true and correct and are incorporated into this Operating Memorandum No. 1.

Section 2. Clarifications of Development Agreement. This Operating Memorandum No. 1 clarifies the Agreement to provide that final plans for the Franklin Creek footbridge and the Malibu Drive/El Carro Lane traffic calming improvements shall be submitted to

and approved by City's Community Development and Public Works Departments prior to issuance of a building permit for the fifth (5th) residential structure within the Project.

IN WITNESS HEREOF, City and Owner have executed this Operating Memorandum No. 1 as of the date first hereinabove written.

OWNER

CITY

**Mission Terrace Estates, LLC, a
California Limited Liability Corporation**

**City of Carpinteria, a municipal
corporation**

Corporation

MILAN TIMM
By: [Signature]
Its: MANAGING MEMBER

JACKIE CAMPBELL
By: [Signature]
Its: COMMUNITY DEVELOPMENT DIRECTOR

APPROVED AS TO FORM

[Signature]
By: Peter N. Brown
City Attorney

LEGAL DESCRIPTION

EXHIBIT "A"

THAT PORTION OF THE OUTSIDE PUEBLO LANDS OF THE CIT OF CARPINTERIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON A MAP ATTACHED WITH THE GRANT OF SAID LANDS TO THE CITY OF SANTA BARBARA, RECORDED IN BOOK A. PAGE 91 OF PATENTS (A-92, APRIL 8, 1890), RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING ON A SPIKE AND TIN IN THE CENTER LINE OF LINDEN AVENUE, VARIOUS WIDTHS, AT THE SOUTHEASTERLY CORNER OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON OCTOBER 13, 1937 IN BOOK 417, PAGE 97 OF OFFICIAL RECORDS, SAID SPIKE AND TIN SHOWN ON THE MAP OF CANALINO VILLAGE NO. 1 FILED IN BOOK 40, PAGES 65 AND 66 OF MAPS; THENCE 1ST, ALONG THE SOUTHERLY LINE OF SAID SALVESTRIN TRACT (BEING ALSO THE NORTHERLY LINE OF SAID CANALINO VILLAGE NO. 1: THE NORTHERLY LINE OF CANALINO VILLAGE NO. 2 AS SHOWN IN BOOK 45, PAGES 13, 14 AND 15 OF MAPS; AND THE NORTHERLY LINE OF TRACT NO. 10.166 AS SHOWN IN BOOK 59, PAGES 75 AND 76 OF MAPS, RECORDS OF SAID COUNTY), NORTH 75°14'30" WEST 1515.90 FEET TO A 2 INCH IRON PIPE AT THE SOUTHWESTERLY CORNER OF SAID SALVESTRIN TRACT: THENCE 2ND, ALONG THE WESTERLY LINE OF SAID SALVESTRIN TRACT TO AND ALONG THE WESTERLY LINE OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON APRIL 27, 1945 IN BOOK 641, PAGE 416 OF OFFICIAL RECORDS, NORTH 14°34'00" EAST 514.87 FEET TO THE NORTHWESTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 3RD, ALONG THE NORTHERLY LINE OF SAID LAST MENTIONED SALVESTRIN TRACT SOUTH 73°20'20" EAST 1507.76 FEET TO A POINT IN THE CENTER LINE OF LINDEN AVENUE, BEING THE NORTHEASTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 4TH, ALONG THE EASTERLY LINE OF SAID SALVESTRIN TRACT (BEING THE CENTER LINE OF LINDEN AVENUE) SOUTH 13°26'20" WEST 464.91 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE LAND GRANTED TO LEONARD J. HINES, ET AL., BY DEEDS RECORDED JANUARY 22, 1965 AS INSTRUMENT NO. 2314 IN BOOK 2088, PAGE 828 OF OFFICIAL RECORDS, AND APRIL 23, 1965 AS INSTRUMENT NO. 14534 IN BOOK 2102, PAGE 580 OF OFFICIAL RECORDS.

SAID LAND IS ALSO SHOWN AS PARCEL B ON A MAP RECORDED IN BOOK 69, PAGE 12 OF RECORD OF SURVEY.

Attachment E

Operating Memorandum No. 2 to the Development Agreement

Mission Terrace Estates Annual DA Review and Termination
November 26, 2012

**OPERATING MEMORANDUM NO. 2 TO DEVELOPMENT AGREEMENT
BY AND BETWEEN CITY OF CARPINTERIA AND MISSION TERRACE
ESTATES, LLC, A CALIFORNIA LIMITED LIABILITY CORPORATION
DATED: NOVEMBER 24, 2008**

THIS OPERATING MEMORANDUM NO. 2 TO DEVELOPMENT AGREEMENT is entered into this 24 day of November, 2008 by and between the City of Carpinteria, a municipal corporation (“**City**”) and Mission Terrace Estates, LLC, a California Limited Liability Corporation (“**Owner**”).

WHEREAS, City and Owner have previously executed a Development Agreement dated February 28, 2005 (“**Agreement**”) regarding development of the Mission Terrace Estates project (“**Project**”) on that certain real property described in attached Exhibit A pursuant to Government Code section 65864 et seq., as well an Operating Memorandum No. 1 to said Agreement; and

WHEREAS, section 8.09 of the Agreement provides that the parties may clarify details regarding performance by City or Owner pursuant to the Agreement; and

WHEREAS, the Agreement provides in section 5.02 thereof that the term of the Agreement shall extend until the third (3rd) anniversary of the Effective Date of the Agreement, while also providing in section 7.06 thereof that the Agreement shall terminate when the Property has been fully developed consistent with the Agreement and when all of Owner’s obligations in connection with the Project are satisfied, as determined by City; and

WHEREAS, the parties agree that section 7.06 was intended to apply in those cases where significant delays occur in completion of the project, which has been the case with development of Mission Terrace; and

WHEREAS, Owner and City desire to clarify the Agreement and memorialize their intent to bring sections 5.02 and 7.06 into harmony by providing that section 7.06 shall govern the conditions under which the Agreement will be terminated.

NOW, THEREFORE, City and Owner agree as follows:

Section 1. Incorporation of Recitals. The parties agree that the foregoing recitals are true and correct and are incorporated into this Operating Memorandum No. 1.

Section 2. Clarifications of Development Agreement. This Operating Memorandum No. 2 clarifies the Agreement to provide that the provisions of section 7.06 thereof shall determine the conditions under which the Agreement shall be terminated.

IN WITNESS HEREOF, City and Owner have executed this Operating Memorandum No. 2 as of the date first hereinabove written.

OWNER

CITY

Mission Terrace Estates, LLC, a
California Limited Liability Corporation

City of Carpinteria, a municipal
corporation

Corporation

MILAN TIMM

JACKIE CAMPBELL

By: [Signature]
Its: MANAGING MEMBER

By: [Signature]
Its: COMMUNITY DEVELOPMENT DIRECTOR

APPROVED AS TO FORM

[Signature]

By: Peter N. Brown
City Attorney

RECEIVED

DEC 29 2008

CITY OF CARPINTERIA

LEGAL DESCRIPTION

EXHIBIT "A"

THAT PORTION OF THE OUTSIDE PUEBLO LANDS OF THE CIT OF CARPINTERIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON A MAP ATTACHED WITH THE GRANT OF SAID LANDS TO THE CITY OF SANTA BARBARA, RECORDED IN BOOK A. PAGE 91 OF PATENTS (A-92, APRIL 8, 1890), RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING ON A SPIKE AND TIN IN THE CENTER LINE OF LINDEN AVENUE, VARIOUS WIDTHS, AT THE SOUTHEASTERLY CORNER OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON OCTOBER 13, 1937 IN BOOK 417, PAGE 97 OF OFFICIAL RECORDS, SAID SPIKE AND TIN SHOWN ON THE MAP OF CANALINO VILLAGE NO. 1 FILED IN BOOK 40, PAGES 65 AND 66 OF MAPS; THENCE 1ST, ALONG THE SOUTHERLY LINE OF SAID SALVESTRIN TRACT (BEING ALSO THE NORTHERLY LINE OF SAID CANALINO VILLAGE NO. 1: THE NORTHERLY LINE OF CANALINO VILLAGE NO. 2 AS SHOWN IN BOOK 45, PAGES 13, 14 AND 15 OF MAPS; AND THE NORTHERLY LINE OF TRACT NO. 10.166 AS SHOWN IN BOOK 59, PAGES 75 AND 76 OF MAPS, RECORDS OF SAID COUNTY), NORTH 75°14'30" WEST 1515.90 FEET TO A 2 INCH IRON PIPE AT THE SOUTHWESTERLY CORNER OF SAID SALVESTRIN TRACT: THENCE 2ND, ALONG THE WESTERLY LINE OF SAID SALVESTRIN TRACT TO AND ALONG THE WESTERLY LINE OF THE TRACT OF LAND CONVEYED IN THE DEED TO LUIGI SALVESTRIN, RECORDED ON APRIL 27, 1945 IN BOOK 641, PAGE 416 OF OFFICIAL RECORDS, NORTH 14°34'00" EAST 514.87 FEET TO THE NORTHWESTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 3RD, ALONG THE NORTHERLY LINE OF SAID LAST MENTIONED SALVESTRIN TRACT SOUTH 73°20'20" EAST 1507.76 FEET TO A POINT IN THE CENTER LINE OF LINDEN AVENUE, BEING THE NORTHEASTERLY CORNER OF SAID LAST MENTIONED SALVESTRIN TRACT; THENCE 4TH, ALONG THE EASTERLY LINE OF SAID SALVESTRIN TRACT (BEING THE CENTER LINE OF LINDEN AVENUE) SOUTH 13°26'20" WEST 464.91 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPTING THEREFROM THE LAND GRANTED TO LEONARD J. HINES, ET AL., BY DEEDS RECORDED JANUARY 22, 1965 AS INSTRUMENT NO. 2314 IN BOOK 2088, PAGE 828 OF OFFICIAL RECORDS, AND APRIL 23, 1965 AS INSTRUMENT NO. 14534 IN BOOK 2102, PAGE 580 OF OFFICIAL RECORDS.

SAID LAND IS ALSO SHOWN AS PARCEL B ON A MAP RECORDED IN BOOK 69, PAGE 12 OF RECORD OF SURVEY.

Attachment F

Applicant's request to terminate the Development Agreement

Mission Terrace Estates Annual DA Review and Termination
November 26, 2012

M. TIMM DEVELOPMENT, INC.

REAL ESTATE CONSTRUCTION AND DEVELOPMENT

213 EAST CARRILLO STREET SANTA BARBARA, CA 93101-2186 | (805)963-0358 | FAX (805)564-3499

November 15, 2012

Steve Goggia
City of Carpinteria
5775 Carpinteria Ave.
Carpinteria, CA 93013

Re: Mission Terrace Estate
Request to terminate Development Agreement

Dear Steve,

Please accept this as our request to terminate the Development Agreement between Mission Terrace Estates, LLC and the City.

This request is timely because we have completed all of the required public improvements including the riparian area. We have satisfied the marketing requirements and the insurance requirements set forth in the Development Agreement are no longer necessary.

The Development Agreement sets forth substantial (and expensive) insurance requirements in which the City is to be a named insured on our policy. Now that all the public improvements have been completed and accepted by the City, the City no longer needs to be named on our policy thereby relieving us of this expensive requirement.

We have C of O's on 25 lots of the 27 lots in the project. One lot/home is sold and is under construction. The last undeveloped lot/home is available for sale. However, due to the bad housing market we will not build the home before it is sold. The house that eventually will be built has been approved by the City. All the public improvements needed to service the home have been completed and accepted by the City. The lot/home has been for sale for several years and was first offered to Carpinteria residents, thereby, fulfilling the marketing requirement.

The only involvement the City will have with the project in the future is the issuance of the last building permit, construction inspections and issuance of the last two certificates of occupancy. The Development Agreement is not needed to process these routine functions.

Also, the light shield for the street light has been shipped and currently is in transit. We should have it installed within the next two weeks. I've also attached an insurance certificate to the City which sets forth our workman's compensation and general liability coverage.

Thank you for your consideration of this request and please let me know if you have any questions or need additional information.

Very truly yours,

MISSION TERRACE ESTATES, LLC

By: 

Matthew J. Easter
Member