

STAFF REPORT
COUNCIL MEETING DATE
September 26, 2011

ITEM FOR COUNCIL CONSIDERATION

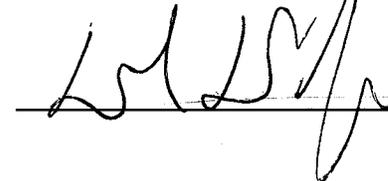
A Development Agreement (Project Number 10-1552-DA/CDP) to amend conditions of approval of Project No. 03-1105-TM/DP/MOD/CDP to allow five affordable housing units to be converted to market rate units at the Lavender Court Mixed Use Development (4646 Carpinteria Avenue) and to allow for the implementation of energy efficiency measures.

Report prepared by: Jackie Campbell
Community Development Director



Signature

Reviewed by: Dave Durlinger
City Manager



Signature

STAFF RECOMMENDATION

Action Item X ; Non-Action Item ____

Approve the Development Agreement and Coastal Development Permit for Lavender Court Mixed-Use Project to allow the conversion of five affordable housing units to market rate units.

Motion 1: I move to approve Resolution No.5339, thereby adopting Ordinance No. 652, as read by title only (first reading), to enter into a Development Agreement with 4646 CARPAV, LLC to convert five affordable housing units to market rate units.

Motion 2: I move to continue this item to the City Council meeting of October 10, 2011 for final adoption of Ordinance No. 652 (second reading) and approval of Project No. 10-1552-DA/CDP.

I. BACKGROUND

In November 2004, the City approved a mixed-use condominium project consisting of 40 attached condominium units (35 market rate units and five affordable units) and approximately 4,600 square feet of commercial space in a development known as Lavender Court. When the subdivision map was recorded in 2005, there were also three affordable housing covenants recorded which implement the conditions of approval regarding affordable housing. Pursuant to those conditions, the developer was required to provide five on-site affordable housing units (two two-bedroom units and three one bedroom units) as required by the City's Inclusionary Housing Ordinance. Since this project was completed, conditions in the housing market have changed such that the current owner prefers to maintain the units as rentals rather than try to sell them. Therefore, it would be some time before the subject affordable units could be available for sale to affordable income households.

Construction on the Lavender Court project commenced in 2006 and was completed in 2008. In April 2008, City staff conducted a lottery to create a list of eligible buyers in the above-moderate income range for the five affordable units. Once the list was established, eligible buyers were given the opportunity to buy the affordable units. However, eligible buyers were unable to complete purchases of the Lavender Court affordable units for several reasons, including: various liens that were existing on the property as identified in a Preliminary Title Report, pending civil contract lawsuits¹ and the marketing of market rate apartments rather than for-sale condominiums due to a change in market conditions unanticipated by the project developer. The combination of these factors created an unfortunate situation that prevented lenders from financing loans for otherwise qualified buyers, with the result that none of the units was sold (market rate or affordable). When these facts became known, the City suspended the lottery and notified all lottery participants of the situation in August 2008. The result has been that the five units intended for sale at affordable prices have remained vacant.

The Lavender Court developer then submitted a request to modify the development permit's conditions of approval to allow him to rent the affordable units rather than sell them. Staff reviewed the application request and prepared a staff report for consideration by the Planning Commission; however, before the matter could be acted upon by the Commission, the owner withdrew the request. Not long after that, the property owner defaulted on his financial obligations and the bank (First Regional Bank) that had made the construction loan foreclosed on the property. Ultimately, the property developer declared bankruptcy, and the bank that had made the original construction loan was unable to continue operations. The property was acquired by a second bank, First Citizens Bank and Trust (First Citizens) in March 2010. First Citizens sold the property to SG Acquisitions, LLC at the end of March; SG then quitclaimed its interest to the current owner, 4646 CARPAV, LLC, in May 2010. The subject request from 4646 CARPAV, LLC asking the City to consider entering a development agreement to modify the affordable housing conditions of approval for the Lavender Court development was received in June 2010. In July 2010 the Council directed staff to enter negotiations with

¹*Blum & Sons Electric, Inc. v. JEM Services, Inc. et al*, Santa Barbara Superior Court Case #1301287; *JEM Services, Inc. v. Narang Acquisition Group LLC et al*, Santa Barbara Superior Court Case #1268063

the owner for the proposed development agreement. That negotiation process occurred over the past year, with a recommendation of approval of the development agreement coming from the Planning Commission on September 6, 2011.

At the Planning Commission hearing, the Commission held a thoughtful discussion of the pending request. The Commissioners discussed the options available and heard public comment from Jennifer McGovern of the Santa Barbara County Affordable Housing Trust Fund who described her organization's First Time Homebuyers Assistance Program (one of the options available to invest and leverage affordable housing revenue). The Commission ultimately voted to recommend that the City Council approve the Development Agreement, with the recommendation that the affordable housing funds be earmarked for low and lower moderate income affordable housing, as those specific income levels have not received the same level of support as the very low income and the above moderate income categories. The very low income needs are being addressed through the City's continuing partnership with Peoples' Self-Help Housing through the Dahlia Court Apartments Expansion and the Casas de las Flores Apartments (Camper Park). The above moderate income category is supported by the City's inclusionary housing program, which has recently produced three affordable income dwellings at Mission Terrace and an upcoming 11 affordable units that will be constructed at Lagunitas. However, as there have been fewer affordable housing opportunities generated at the low and lower moderate income levels, the Commission unanimously voted to recommend that the City Council consider earmarking the \$571,000 contribution from this Development Agreement for those income categories. The Planning Commission action letter is attached as Exhibit 5.

II. DISCUSSION

A Development Agreement is required by law to include at least the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, an annual reporting requirement and provisions for reservation or dedication of lands for public purposes. A Development Agreement is useful in this case to resolve the problem of how best to fulfill the project's responsibility for meeting its affordable housing obligations.

The City Council determined in July 2010 per Resolution No. 5271 (Exhibit 6) that consideration of a Development Agreement was appropriate in this case and directed that the agreement should include the following:

1. **Payment of funds to support affordable housing** – contribute to the City's affordable housing fund to support programs or improvements deemed appropriate by the City.
2. **Provision of rental housing** – maintain the subject five units as rental units for a minimum specified period of time into the future.
3. **Provision of public benefits** –contribute to alternative transportation and improve on-site energy efficiency by at least 15%.

The City Council's authorization for the processing of a Development Agreement application in no way requires or implies that the City must approve an agreement. Only after the conclusion of a public hearing process will formal action on the

development agreement occur. The Planning Commission is charged with making a recommendation to the City Council on whether or not to enter into the Development Agreement. That recommendation was made by the Planning Commission at its September 6, 2011 hearing. The components of the Development Agreement recommended by the Planning Commission are evaluated below. The Development Agreement is attached as Exhibit 1.

Adoption of the Development Agreement would nullify conditions of approval of the original Lavender Court development project to delete the requirement to provide the five previously required affordable units and to allow those units to now be available for sale or rent at market rates. Conditions 39 and 40 shown below would be deleted, and the recorded agreements implementing those conditions would be rescinded by recorded document.

39. The project shall comply with all provisions of the City's Inclusionary Housing Requirement Ordinance (No. 590). The affordable housing component of the project shall include five for-sale residential units, targeted to above-moderate-income residents (121 percent of the area median income) for a period of 30 years, consistent with said Ordinance. The Developer/Owner shall submit all information and materials deemed necessary by the City to ensure compliance with the City's Inclusionary Housing Ordinance No. 590.
40. At the time of Final Map approval by City Council, an Inclusionary Housing Agreement (pursuant to the City's Inclusionary Housing Requirement Ordinance No. 590) between the City and the Developer/Owner shall be approved by the City Council. The Agreement shall be in a form acceptable to the City, and at the City's discretion, may include, but not be limited to, the following: the process for qualifying prospective resident households for income eligibility pursuant to City policies and procedures; provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal, and affordability control covenants for each unit; marketing plan; and provisions for monitoring compliance with the terms of the Agreement.

In exchange, the owner would pay \$571,000 into the City's affordable housing trust fund, which would be used to support affordable housing elsewhere in the City. Other public benefits associated with the Development Agreement include an annual contribution of \$5,500 (in perpetuity) to be used to support the Seaside Shuttle, and simple improvements at the site to increase energy efficiency by 15% over current demand (e.g., additional insulation, energy efficient appliances, high efficiency lighting). Also, the five units subject to the Development Agreement would remain market rate rental units until December 31, 2012, to preserve these units as part of the local rental housing supply. Conditions of approval to amend the previously approved Project No. 03-1105 would be added to ensure that these provisions are met over time after the term of Development Agreement expires. The amended conditions of approval that implement the Development Agreement are included as Attachment B of City Council Resolution No. 5339 (Exhibit 2). The amended conditions show Conditions 39 and 40 in strike-out, and the two new

conditions that implement the public benefits that will continue for the life of the project are shown in underline as Conditions 110 and 111. All other conditions of the original Lavender Court Mixed Use Development (Project No. 03-1105-TM/DP/MOD/CDP) remain in effect and are not modified by action taken on the proposed Development Agreement.

Affordable Housing Funds

For the payment of funds to support affordable housing, the City has determined an appropriate payment amount to allow the conversion of the five units to market rate. The amount of the affordable housing payment was calculated using the model of the in-lieu fee methodology set forth in the Affordable Housing Policies and Procedures Manual updated in September 2010. An in-lieu fee is intended to cover the gap between the median price for a market rate condominium unit and the price that would be set to sell the units at a price affordable to households earning in the above-moderate income category. The money provided by the applicant's affordable housing payment could be used to assist non-profit affordable housing developers in the City, such as Peoples' Self-Help Housing, or could be used to fund other programs such as the Santa Barbara County Housing Trust Fund First-Time Homebuyer Down Payment Program. This latter program provides 30-year deferred payment down payment loans of up to \$42,000 to assist low-income first-time homebuyers in purchasing entry-level residential units in the community where they work. The units are restricted as affordable for a term of 30 years, similar to the City's requirements under the Inclusionary Housing Ordinance. With the affordable housing payment offered through the Development Agreement, these funds could be used to provide a match for a first-time homebuyer program such as the one offered through the Housing Trust Fund that would expand the opportunities available under that program, specifically for Carpinteria. With a program like this, it is estimated that approximately nine units of low income affordable ownership housing could be secured locally, rather than the five above-moderate income units that were required at the time of project approval.

Public Benefits

Rental Housing. The vacancy rate for housing in Carpinteria has historically been below 5%, indicating a high demand for all types of housing, particularly rental housing. Given that fact, there is value in maintaining the subject five units as rental housing units for some period of time, even if the units will be rented at market rates. Because it will take some time to apply the affordable housing funds to a program or project that will make more housing units available to affordable income households, maintaining rental housing stock is beneficial to the community. Therefore, the Development Agreement includes a provision that the subject five units will remain rental units until at least December 31, 2012 and will not be sold as individual condominium units during this time period.

Alternative Transportation. One of the functions of the City's affordable housing program is to provide affordable housing located in proximity to urban services such as transit. The conversion of the affordable units at Lavender Court will eliminate the opportunity for these units to be purchased by affordable

income earners and may then result in those individuals living farther from job centers. Therefore, the Development Agreement includes a provision that requires the property owner or future homeowners' association to pay an annual fee of \$5,500 (adjusted annually by the Consumer Price Index) to support the City's Seaside Shuttle or other similar alternative transportation program as may exist in the future. This fee payment would commence in January 2013.

Energy Efficiency. Since the Lavender Court project was constructed, energy efficiency has become a priority of the City in implementing sustainability measures. Improved energy efficiency in buildings benefits the community as a whole in terms of reduced energy demand and reduced environmental effects associated with the generation of energy. There are also financial savings that can be passed on to residents to reduce utility costs. To address the topic of energy efficiency as required through implementation of the Cal Green Building Code, which became effective on January 1, 2011, provisions in the Development Agreement require the owner to employ various simple measures that will reduce the energy demand at Lavender Court by 15% over its initial Title 24 calculations approved at the time of construction. Examples of simple measures include replacement of incandescent or other types of light bulbs with LED bulbs, installation of additional insulation such as radiant heat barriers installed in the attic space on the underside of roofs and/or use of energy efficient appliances. While this measure calls out specific "simple" measures, it does not preclude the opportunity for the owner to implement other measures such as solar water heating or solar electric.

Zoning Code Requirements

Carpinteria Municipal Code §14.75.090 allows that an in-lieu fee may be charged if the production of on-site inclusionary housing is infeasible. The amount of the fee is fixed according to a schedule adopted by the City Council. For condominium projects, the fee is required to be an amount equivalent to the monetary difference between the median sales price of a condominium unit in the City and the sales price of a condominium unit affordable to an above-moderate income household earning 121% of the area median income calculated according to the formula specified in the City's Affordable Housing Policies and Procedures. This fee is only allowed to be paid if it can be proven at the time of project review that it is infeasible to provide the affordable units on-site.

Carpinteria Municipal Code §14.75.100 authorizes establishment of an affordable housing trust fund which funds are to be used exclusively for the provision of affordable housing. The affordable housing trust fund currently has a balance of approximately \$230,000. If the proposed Development Agreement is approved, monies collected from the owner would be added to this fund and could be used as match funds or in other ways to complement any existing affordable housing programs, such as a first-time homebuyers program to assist affordable income earners in purchasing a home in Carpinteria.

Taking into consideration the basic premise of these two aspects of the Zoning Code, along with the history of the Lavender Court development relative to the

affordable housing units, the proposed Development Agreement can be used as a tool to accomplish the intent of the City's affordable housing program and to meet the goals and objectives of the Housing Element within the framework of existing City programs such as the affordable housing trust fund.

III. ENVIRONMENTAL

The proposed development agreement is exempt from CEQA pursuant to State CEQA Guidelines §15060(c)(2) (activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and §15060(c)(3) (the activity is not a project) as defined in §15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. See Exhibit 4 for more details.

IV. POLICY

The project site has a General Plan/ Coastal Plan designation of General Commercial within the Residential Overlay which allows mixed use development. The following goals, objectives and policies from the City's Housing Element are applicable to the development agreement to ensure that its terms are consistent with the applicable Housing Element policies.

Housing Element Goals and Policies

- 1) *Attain a housing supply that meets a variety of housing needs.*
- 2) *Attain a housing supply that meets the needs of low and moderate income households.*
- 3) *Attain a housing supply that meets the needs of special population groups.*

Program Category 2: Assist in the Development of Low- and Moderate-Income Housing

Goals

Attain a housing supply that meets a variety of housing needs.
Attain a housing supply that meets the needs of low and moderate-income households.
Attain a housing supply that meets the needs of special population groups.

Policies

Acquisition and Rehabilitation of Rental Housing: *Work with non-profit and other sponsors such as housing cooperatives and community land trusts to acquire and rehabilitate rental housing units in order to maintain long-term affordability of the units. This will include, but not be limited, to: (a) technical support needed to obtain funding commitments from County, State and/or Federal program; (b) assistance in permit processing; (c) possible deferral, reduction or waiver of City fees; and (d) contribution of City housing funds, if available.*

Farmworker and Supportive Housing: *Allocate in lieu fees for predevelopment activities, including State and/or Federal funding applications, to support the sponsors of farm worker housing and supportive housing for special needs populations.*

Program Category 3A: Conserve the Existing Affordable Housing Stock

Goals

Conserve existing housing important to the community such as apartment rental housing, mobile home parks, and the affordable housing stock.

Policies

Establish resale controls and rent and income restrictions to ensure that affordable housing provided through financial contributions and incentives and as a condition of development approval remains affordable over time to the income group for which it is intended.

Long-Term Housing Affordability: *Establish resale controls and rent and income restrictions to ensure that affordable housing provided through financial contributions and incentives and as a condition of development approval remains affordable over time to the income group for which it was created.*

All of these goals, objectives and policies have been considered in the review of the proposed Development Agreement request and the proposal has been found to be consistent with them. The contribution to the affordable housing fund will provide the opportunity for the City to leverage the money to provide more affordable housing units at various income levels to meet the City's needs as identified in the Regional Housing Needs Assessment (RHNA) process. Provision of affordable housing through these means could be helpful in showing the State Housing and Community Development Department the City's ability to provide its regional share of affordable housing. Also, the City Council has the option to designate exactly how money from the affordable housing fund is spent, with the potential to highlight some of the special needs identified in the Housing Element, e.g., farm employee housing. To that end, the Planning Commission recommended that if the Development Agreement is approved, the City Council should designate the \$571,000 to be used for housing affordable to lower moderate and above moderate income households.

Further, consistent with these goals and policies, before providing any funding through any kind of partnership agreement with the Housing Trust Fund of Santa Barbara County or other similar entity, staff would ensure that all required resale covenants and income restrictions are in place.

V. FINANCIAL CONSIDERATIONS

Funds collected in exchange for allowing the conversion of the affordable units to market rate units will be deposited into the City's affordable housing fund. Funds can be specifically directed, such as identifying an income category to be served by these funds or designating the funds to be used exclusively for affordable ownership units.

Or, the money can simply be deposited into the affordable housing fund and used to support any type of affordable housing at the discretion of the Council in the future.

Funds to support the Seaside Shuttle (or future equivalent) alternative transportation program were calculated based on a rough calculation including the average annual operating costs of the shuttle and the number of apartment units and hotel rooms that could be served by an expanded shuttle route that would encompass areas of the City both east and west of the current downtown/central City route. The payment of \$5,500 in perpetuity (or the life of the alternative transportation program) also includes an annual inflationary adjustment factor to ensure that the contribution keeps pace with the cost of the service.

All costs associated with processing the Development Agreement request have been paid by the applicant.

VI. LEGAL ISSUES

In 1979, the California Legislature established the Development Agreement Law (codified at 65864 *et seq.*), a statute that allows for a city or county to contract with a developer to provide greater assurances in the land use development process than might normally be available through zoning regulations. Among the reasons motivating the passage of the law were that the lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public. The Legislature determined that allowing the parties to contract strengthens the public planning process, encourages private participation in comprehensive planning and reduces the economic costs of development.

Under the Development Agreement Law, a Development Agreement must specify the permitted uses of the property and the local agency's existing land use rules that apply to that use unless the Development Agreement provides otherwise. (Government Code §§65866 and 65865.2) The City, under a Development Agreement, has authority to deviate from existing land use rules, so long as the Development Agreement is consistent with the applicable zoning designation, General Plan and Housing Element. Moreover, there is no requirement that a Development Agreement can only be entered into at some particular stage of project approval.² Negotiations for a Development Agreement allow open-ended bargaining between the city and developer for a number of possible objectives: to resolve complicated problems associated with project timing and phasing, to ensure that a particular mix of development can occur, and to facilitate the funding of significant public improvements. The Development Agreement is required to be adopted by Ordinance. A draft of City Council Ordinance No. 652 is attached as Exhibit 3.

²*Santa Margarita Area Residents Together v San Luis Obispo County Bd. of Supervisors* (2000) 84 CA4th 221, 228, 230

VII. CONCLUSION

Staff believes that a development agreement is appropriate in this instance given the unique circumstances relative to the market conditions and economic recession that affected the intended sale of the five affordable housing units at Lavender Court. The option laid out in the Zoning Code to accept fees in lieu of having the affordable units on-site gives the City broad flexibility in how it directs its resources to implement the goals and objectives of the Housing Element. Amending the conditions of approval of the Lavender Court development permit to allow payment into this account could provide a significant amount of money to be used to support affordable housing elsewhere in the City. The City could choose very specifically how to target the use of those funds to best fit the affordable housing needs of the community or leave the decisions on how to use the money to support affordable housing to the discretion of the Council at such time as a request for funds is received.

VIII. ALTERNATIVES

1. Adopt Ordinance No. 652 and Resolution No. 5339, including findings for approval, to approve Project Number 10-1552-DA/CDP to amend the conditions of approval of Project No. 03-1105-TM/DP/MOD/CDP to allow the five affordable condominium units at Lavender Court to be converted to market rate units in exchange for the contribution of \$571,000 to the City's Affordable Housing Trust Fund and the provision of other public benefits as set forth in the Development Agreement. (staff's recommendation)
2. Direct staff and the applicant to prepare revisions to the Development Agreement and return to the next City Council meeting.
3. Deny the project as proposed. Direct staff to return to the City Council with findings for denial. This would result in the units remaining vacant for the foreseeable future.

IX. ATTACHMENTS

Exhibit 1 – Development Agreement

Exhibit 2 – Resolution No. 5339

Attachment A – Findings for Approval

Attachment B – Revised Conditions of Approval

Exhibit 3 – Ordinance No. 652

Exhibit 4 – Notice of Exemption dated October 10, 2011

Exhibit 5 – Planning Commission Action Letter dated September 8, 2011

Exhibit 6 – City Council Resolution No. 5271

Exhibit 1
Development Agreement

Lavender Court Mixed Use Project
Project No. 10-1552-DA/CDP

City Council Hearing
September 26, 2011

Exhibit 1

RECORDING REQUESTED BY:

WHEN RECORDED MAIL ORIGINAL TO:
City Clerk, City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

WITH A COPY TO:
Joshua Rabinowitz
Fell, Marking, Abkin, Montgomery, Granet,
& Raney
222 East Carrillo Street, Ste. 400
Santa Barbara, CA 93101

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

DEVELOPMENT AGREEMENT BY AND BETWEEN:
CITY OF CARPINTERIA AND 4646 CARPAV, LLC

LAVENDER COURT DEVELOPMENT PROJECT
PROJECT NO. 10-1552-DA/CDP
at APNs 004-111-001 through – 041

DEVELOPMENT AGREEMENT BY AND BETWEEN
CITY OF CARPINTERIA AND 4646 CARPAV, LLC
LAVENDER COURT DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into this 10th day of October 2011, by and between 4646 CARPAV, LLC, a California limited liability company ("**Owner**"), and the City of Carpinteria, a municipal corporation in the County of Santa Barbara, state of California ("**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. The property at issue, commonly known as Lavender Court, is located at 4646 Carpinteria Avenue in Carpinteria, California (APNs 004-111-001 through -041) and is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**"), and is owned by Owner.
- B. On November 8, 2004, the City Council approved the Lavender Court development project under Permit 03-1105-TM/DP/MOD/CDP (the "**Permit**"), which authorized a mixed-use condominium project consisting of 40 residential units and approximately 4,600 square feet of commercial space. A final subdivision map was recorded in 2005. Construction of the Lavender Court development commenced in 2006 and was completed in 2008.
- C. Pursuant to the City's Inclusionary Housing Ordinance established in CMC 14.75, five of the 40 units (two two-bedroom and three one-bedroom units) were required to be made available at a sales price affordable to households earning one hundred and twenty one percent (121%) of the median income, known as above-moderate income.
- D. Several affordable housing covenants were recorded against the Property, as required by the Conditions of Approval Nos. 39 and 40 of Permit 03-1105. Those documents include: an Agreement to Provide Inclusionary Housing, a Performance Deed of Trust and Assignment of Rents, an Interim Affordability Control Covenant and a Grant of Preemptive Right: Resale Restriction Covenant and Options to Purchase Secured by Performance Deed of Trust. Collectively the documents are known as the "**Affordability Documents.**"
- E. As required by the City's policies and the applicable conditions on the project, in April 2008 the City conducted a lottery to establish a list of eligible buyers for the five affordable units. Eligible buyers were offered opportunities to purchase the affordable units, but were unable to complete the transaction due to the unavailability of financing as a result of liens on the Property, pending lawsuits and the prior owner's marketing of the market rate units as rental units rather than

for-sale condominiums. Thereafter the lottery was suspended and the five for-sale affordable units have remained vacant.

- F. Maintaining the affordable units as vacant is an inefficient use of the City's limited affordable housing resources and Owner's resources. Owner has requested that the City consider allowing Owner to convert the five approved for-sale affordable housing units to market rate units, in exchange for Owner's contribution of funds to mitigate the loss of the five affordable units. Such release of the approved affordable housing units from the affordability restrictions requires modification of the Lavender Court project's permit conditions and rescission of the Affordability Documents.
- G. Government Code Sections 65864-65869.5 (the "**Development Agreement Statute**") authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property.
- H. City staff brought the Owner's request to convert the affordable units to market rate units in exchange for a financial contribution mitigating the effect of the lost units before the City Council on July 26, 2010. The City Council indicated an interest in exploring a development agreement, authorizing the conversion of the five affordable units to market rate status, if the Owner was willing to assist the City in achieving its housing policies and goals by making the financial contribution set forth above, by making a contribution towards the expansion of an in-town bus route that connects residents to places of work and commerce, and by making improvements in the Lavender Court development's energy efficiency, all on the terms and conditions contained herein. (Collectively these actions constitute the "**Project.**")
- I. On July 26, 2010 the City Council authorized initiation of a development agreement regarding the Project.
- J. Appropriate proceedings have been taken to consider a development agreement for the Property, in accordance with the City's rules and regulations. On October 10, 2011, the City Council approved this Agreement, modification of conditions of approval for Permit 03-1105-TM/DP/MOD/CP and conditions of approval governing implementation of this Agreement and the Project.
- K. This Development Agreement is intended to be, and shall be construed as, a development agreement within the meaning of the Development Agreement Statute and the Enabling Resolution, and, in that connection, among other things, will assure Owner that the Project can be owned and used in accordance with the terms and conditions hereof. 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:

1. Incorporation of Recitals. The parties agree the foregoing Recitals are true and correct and are hereby incorporated by reference as a material part of this Agreement.
2. Project and Property Subject to This Agreement; Applicable Regulations.
 - 2.1 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 Lavender Court development shall be those set forth in Permit 03-1105-TM/DP/MOD/CDP.
 - 2.2 Vested Right to Develop; Effect of Agreement. Owner shall have the vested right to develop, own, use and sell the condominiums that are part of the Project in accordance with the provisions of this Development Agreement. The provisions of this Agreement shall supersede any inconsistent agreements, ordinances, rules, regulations or official policies which either currently exist or may be enacted in the future as they apply to the Project, except as specifically set forth herein.
 - 2.3 Applicable Law of the Project. Except as otherwise provided in this Agreement, the statutes, ordinances, rules, regulations, and official policies of City governing the Project shall be those ordinances, rules, regulations, fees, and official policies in effect on the date of City's approval of this Agreement (“**Applicable Law of the Project**”).
 - 2.4 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 the extent necessary to comply with state or federal law.
3. Obligations of City.
 - 3.1 Affordable Unit Conversion. The market conditions now and for the foreseeable future are such that it will be unlikely that any eligible affordable purchasers would be able to secure financing for the five affordable units which are a part of the Lavender Court development. In exchange for carrying out the obligations of the Owner, established in Paragraph 4, *infra*, the City shall take the following actions.
 - 3.1.1 City shall modify the Conditions of Approval for Permit 03-1105-TM/DP/MOD/CDP to eliminate Conditions 39 and 40 and

to replace them with new conditions that implement the provisions of this Agreement as evidenced by the City Council's adoption of a resolution approving such changed conditions.

3.1.2 Upon receipt of the payments provided for in Paragraph 4.1, City shall record in the Office of the Recorder of the County of Santa Barbara documents substantially in the form of **Exhibit B** rescinding the Affordability Documents. Thereafter, the Affordability Documents shall have no force or effect and shall not be binding or enforceable upon Owner or any successor or assigns.

4. Obligations of Owner.

4.1 Provision of Financial Contribution to Mitigate Loss of Affordable Housing Units. The City has determined that the occupancy of the five on-site affordable units is infeasible due to market conditions. The affordable units have been vacant since their construction because the conditions of approval require that they be owner-occupied. The City has determined that maintaining vacant units is inefficient and contrary to General Plan policies which encourage the development of affordable housing. In consideration of the City removing the affordable covenants and modifying the conditions of approval on the Property in the manner provided for in Paragraph 3 hereof, Owner has agreed to make a financial contribution in the amount set forth below:

4.1.1 Contribution to be Paid. The financial contribution shall be \$571,000.00.

4.1.2 Time of Payment. Owner shall tender to the City the financial contribution pursuant to this Paragraph 4.1 upon City's final approval of this Development Agreement.

4.1.3 Affordable Housing Trust Fund. City shall collect the contribution and deposit it into City's affordable housing trust fund.

4.2 Interim Rental Requirement. Rental units represent some of the City's most affordable housing stock. Because it will take some time to apply Owner's contribution to the affordable housing trust fund into a cognizable benefit providing affordable housing for the community, the parties agree that the five designated units shall be maintained as rentals on an interim basis.

4.2.1 Owner shall maintain the five housing units, previously designated as affordable units under the affordable covenants, as full fair market rental units until December 31, 2012.

4.3 Alternative Transportation Contribution. Among the purposes of the City's affordable housing program is the creation of opportunities to allow low income

households to live closer to their place of work. The loss of affordable units in the Lavender Court development may require would-be low income occupants to travel longer distances to their place of employment. Owner shall offset this impact by expanding the availability of alternative forms of transportation as set forth herein.

Beginning on January 10, 2013, and every year thereafter, Owner or any successor in interest, including but not limited to a homeowners association, shall make an annual contribution (“Alternative Transportation Contribution”) to the City in the amount of five thousand five hundred dollars (\$5,500.00), adjusted annually by the Consumer Price Index (Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, All Items (1982-84 = 100)). This amount shall be due upon the tenth (10th) day of the first month of each year.

4.3.1 The Alternative Transportation Contribution shall be deposited into a fund dedicated to alternative transportation operations. Said contribution shall be applied towards the cost of maintaining the City’s in-town public alternative transportation network, including but not limited to the Seaside Shuttle.

4.4 Energy Efficiency Improvements. Since the development of Lavender Court, the City has prioritized energy efficient building practices. Such practices not only improve the environment, they also reduce the utility costs associated with development, creating long term savings for occupants. Some of the cost savings that will be lost with conversion of affordable units to market rate units can be mitigated by improving the energy efficiency of the development.

Prior to December 31, 2013, Owner or any successor in interest including but not limited to a homeowner’s association shall implement measures to reduce existing energy consumption of the Lavender Court development by no less than fifteen percent (15%) over the Lavender Court development’s current energy efficiency. Compliance with this provision shall be determined by the Director in the Director’s reasonable discretion and shall be limited to relatively simple measures such as increased insulation, low energy use appliances, high efficiency lighting, and the like (but not more expensive measures such as the installation of solar energy equipment, although such measures are allowed pursuant to this provision).

5. Implementation of Agreement.

5.1 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 thirty first (31st) day following the date of adoption by the City Council of the ordinance approving this Agreement.

- 5.2 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 running of this Term shall be automatically stayed for the period of time during which the parties apply to a court of competent jurisdiction for relief or further proceedings pursuant to this Agreement, provided that the issue that is the subject of the requested relief or further proceedings is one of substantial materiality to the Development Agreement as a whole.
- 5.3 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.
- 5.3.1 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 anyone or more of the material terms and conditions of this Agreement.
- 5.3.2 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.
- 5.3.3 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. The parties acknowledge that the City would not have entered into this Development Agreement had it been exposed to damage claims from Owner for any breach thereof. As such, the parties agree that City shall have the right to pursue damages for Owner's defaults (e.g., to recover payments required under this Agreement) but in no event shall Owner be entitled to damages of any kind from City, including, but not limited to, damages for economic loss, lost profits, or any other economic or consequential damages of any kind or nature. Owner's sole and

exclusive remedies shall be specific performance or declaratory or injunctive relief.

5.3.4 Reference. Pursuant to Code of Civil Procedure Section 638 et seq., all legal actions shall be heard by a referee who shall be a retired judge from either a California Superior Court, the California Court of Appeal, the United States District Court or the United States Court of Appeals, provided that the selected referee shall have experience in resolving land use and real property disputes. Owner and City shall agree upon a single referee, who shall try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Owner and City are unable to agree on a referee within ten days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to Code of Civil Procedure Section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section 5.3.4 shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Notwithstanding the provisions of this Section 5.3.4, either party shall be entitled to seek declaratory and injunctive relief in any court of competent jurisdiction to enforce the terms of this Agreement, or to seek to enjoin the other party from an asserted breach thereof, pending the selection of a referee as provided in this Section 5.3.4, on a showing that the moving party would otherwise suffer irreparable harm.

5.3.5 Compliance with the California Claims Act. Compliance with the procedures set forth in this Section 5 shall be deemed full compliance with the requirements of the California Claims Act (Government Code §§900 et seq.), including, but not limited to, the notice of an event of default hereunder constituting full compliance with the requirements of Government Code §910.

5.4 Annual Review. Each year during the term of this Agreement beginning in 2012, 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 as provided for herein. The City may exercise its rights and remedies relating to any such event of default only after the period for curing a default 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 noncompliance 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.

- 5.5 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, or other similar causes. If performance has been delayed by any such cause, the Term of this Agreement and times for performance under this Agreement shall be extended for the period of the delay, with such period commencing to run from the time of the commencement of the cause.
- 5.6 Cooperation in the Event of Legal Challenge; City's Indemnification. If any legal or equitable action or other proceeding (hereafter "actions") is brought by any person, private entity, governmental entity or official challenging the validity of any provision of this Agreement or modification of the Project Approvals, the parties shall cooperate in defending such action or proceeding. Owner agrees to hold harmless the City from any such actions and shall defend and indemnify the City for all attorneys' fees, litigation costs, settlement payments and judgments arising from or in any way related to such actions. Owner shall pay for the defense of the City, as the costs of defense are incurred, with counsel selected by the City, which counsel shall be subject to approval by Owner, such approval being not unreasonably withheld. If this Agreement is adjudicated or determined

to be invalid or unenforceable, in whole or in part, City and Owner agree to seek a declaration from the Court as to the extent to which the Agreement is still valid and enforceable. After obtaining such declaration and after consultation with Owner, City agrees, to the extent permitted by law, to consider appropriate modifications to the Agreement, the intent of the parties being to accomplish the objectives of this Agreement, including development of the Property as conditioned by the City. If this Agreement is adjudicated or determined to be unenforceable or invalid, in whole or in part, Owner shall reimburse City for all fees and/or costs assessed against the City by the Court.

- 5.7 Agreement Constitutes Legislative Act. Owner acknowledges and agrees that City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity and meaning of this Agreement shall be that accorded legislative acts of City.
- 5.8 Implementation of Parties' Obligations. Conditions of Approval for Permit 03-1105-TM/DP/MOD/CDP shall be amended to incorporate Owner's and City's obligations hereunder as conditions of approval for the Lavender Court project.

6. Amendment of Agreement and Discretionary Permits.

- 6.1 Amendment of Agreement. This Agreement and the underlying discretionary permits (hereinafter "Agreement") may be amended from time to time by mutual consent of the parties or their successors in interest, in accordance with California Government Code Section 65868, with City costs being paid by Owner. Amendments to this Agreement and any exhibits thereto shall be governed by the Applicable Law of the Project.
- 6.2 Minor Amendments. Any amendment to this Agreement which does not relate to the term of this Agreement, the payment of contributions to City, or the permitted uses within the Project may be processed and approved by City as a "Minor Amendment." Upon the written request of Owner for a Minor Amendment, the Director of the Community Development Department for the City (the "**Director**") shall determine whether the requested amendment is a Minor Amendment and whether it is consistent with the Applicable Law of the Project. The determination whether such amendment is a Minor Amendment shall refer to whether the change in this Agreement is minor and not material in the context of the overall Project, is in substantial conformity with the Project Approvals, is consistent with the findings adopted by the City in approving the Project, and does not have the potential to create greater environmental impacts than those identified in the environmental review process. If the Director finds that the proposed amendment is a Minor Amendment and consistent with the Applicable Law of the Project, he/she may approve said Minor Amendment without notice and public hearing. If he/she determines that the proposed amendment is not a Minor Amendment or is inconsistent with the Applicable Law of the Project, he/she shall forward the proposed amendment to the Planning Commission, 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. Decisions of the Director and/or Planning Commission shall be subject to the procedures for appeal set forth in Carpinteria Zoning Code, Chapter 14 of the Carpinteria Municipal Code.

7. General Provisions.

7.1 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.

7.2 Mortgagee Rights and Protections.

7.2.1 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 this Agreement.

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

7.3 Assignments and Transfers of Ownership.

7.3.1 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, 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 this Agreement. 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 this Agreement.

7.3.2 Consent to Assignment. Owner's rights, duties and obligations under this Agreement shall not be assigned without the written consent of City, which consent shall not be unreasonably withheld. Transfer of Owner's rights, duties and obligations to the Homeowners Association for the Lavender Court project is deemed to be an approved assignment hereunder. In determining whether to grant consent to the assignment, City shall consider the experience, capability, competence, and financial ability of the Assignee to carry out the terms of this Agreement. Reasonable reserves shall be deemed sufficient to demonstrate satisfactory financial ability of the Assignee. Any proposal by Owner to assign pursuant to this Agreement hereof shall be made in strict compliance with conditions precedent (i) - (iii) below. Subject to the foregoing provisions regarding the City's right to consent to assignment, City shall provide Owner with written consent to assignment upon Owner's compliance with conditions precedent (i) - (iii):

- (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.

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.

7.3.3 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 which is subject to the Assignment.

- 7.4 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.
- 7.5 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.
- 7.6 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 (acting through its City Manager) and Owner. City, in its sole discretion, shall determine whether a requested clarification may be effectuated pursuant to this Section or whether the clarification is of such a character as to constitute an amendment hereof pursuant to Section 6 above. Each such operating memorandum shall become an attachment to this Agreement.
- 7.7 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.
- 7.8 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. mail (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

To the City, to:

Director, Community Development Department
City of Carpinteria

5775 Carpinteria Avenue
Carpinteria, CA 93013

With a copy to:

Peter N. Brown
Brownstein Hyatt Farber Schreck
21 East Carrillo Street
Santa Barbara, CA 93101

To Owner, to:

4646 CARPAV, LLC
c/o SG Acquisitions, LLC
Attn: Tim Pinkevich, Managing Director
222 E. Carrillo Street, Ste. 302
Santa Barbara, CA 93101

With a copy to:

Joshua Rabinowitz
Fell, Marking, Abkin, Montgomery, Granet, & Raney
222 East Carrillo Street, Ste. 400
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.

- 7.9 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 re-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 this Agreement. The City Manager shall be authorized to execute for City; Owner's Managing Partner shall be authorized to execute for Owner.

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

- 7.10 Owner's Interest. Owner represents that the Property is owned by Owner or that Owner has control of the Property described in Exhibit A.
- 7.11 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.
- 7.12 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 under-taken private development. No partnership, joint venture, or other association of any kind between Owner and City is formed by this Agreement. The only relationship between City and Owner is that of a governmental entity regulating the development of private property with Owner as Owner of such private property.
- 7.13 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.
- 7.14 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.
- 7.15 Time of Essence. Time is of the essence for this Agreement.
- 7.16 Recordation. The Agreement shall be recorded, at Owner's sole cost and expense, upon execution by the parties.
- 7.17 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.

7.18 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 19 pages, including notary acknowledgment forms, and, in addition, two (2) exhibits which constitute the entire understanding and agreement of the parties to this Agreement. The following exhibits are attached to this Agreement and incorporated herein for all purposes:

Exhibit A: Legal Description of the Property

Exhibit B: Notice of Rescission of Affordability Document

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

IN WITNESS WHEREOF, the parties have executed this Agreement at the place and as of the date first written above.

"CITY"

"Owner"

**4646 CARPAV, LLC, a California
limited liability company**

City of Carpinteria

By: _____
David Durflinger, City Manager

By: _____
Sergey Grishin, Manager

APPROVED AS TO FORM:
City of Carpinteria

By: _____
Peter N. Brown, City Attorney

LEGAL DESCRIPTION

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

PARCEL ONE:

AN UNDIVIDED 51,139/51,139TH INTEREST IN AND TO LOT 1 OF TRACT NO. 25,172, IN THE CITY OF CARPINTERIA, COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED OCTOBER 20, 2005, IN BOOK 201, PAGES 28 THROUGH 30, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE FOLLOWING:

(A) UNITS 1 THROUGH 40 AND THE COMMERCIAL UNIT AS SHOWN ON THE CONDOMINIUM PLAN RECORDED FEBRUARY 22, 2007, IN BOOK 198, PAGES 16 THROUGH 28, INCLUSIVE, OF CONDOMINIUM PLANS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

(B) THOSE PARKING AREAS LOCATED AND DESIGNATED "EUCA PARKING AREA (UNITS 1 THROUGH 40 AND C)" ON SAID CONDOMINIUM PLAN REFERRED TO ABOVE AND AS SET FORTH IN SECTION IV, ARTICLES 4.13 AND 4.14 OF THE COVENANTS, CONDITIONS AND RESTRICTIONS OF LAVENDER COURT OWNERS' ASSOCIATION RECORDED FEBRUARY 22, 2007 AS INSTRUMENT NO. 2007-13006 OF OFFICIAL RECORDS OF SAID COUNTY.

(C) NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES IN, OVER, UNDER, ACROSS AND THROUGH THE "PYA" AIRSPACE ELEMENT (PATIO/YARD AREA)" ON SAID CONDOMINIUM PLAN AND AS SET FORTH IN ARTICLE IV, SECTION 4.15(A) OF SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS REFERRED TO ABOVE.

(D) NON-EXCLUSIVE EASEMENT FOR SANITARY SEWER PURPOSES IN, OVER, UNDER ACROSS AND THROUGH THE "PYA" AIRSPACE ELEMENT (PATIO/YARD AREA)" ON SAID CONDOMINIUM PLAN AND AS SET FORTH IN ARTICLE IV, SECTION 4.15(A) OF SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS REFERRED TO ABOVE.

PARCEL TWO:

UNITS 1 THROUGH 40 AND C, CONSISTING OF THE APPLICABLE ELEMENTS AS SHOWN AND DEFINED ON SAID CONDOMINIUM PLAN REFERRED TO ABOVE AND AS SET FORTH IN SAID DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS REFERRED TO ABOVE.

PARCEL THREE:

THOSE PARKING AREAS LOCATED AND DESIGNATED "EUCA PARKING AREA (UNITS 1 THROUGH 40 AND C)" ON SAID CONDOMINIUM PLAN REFERRED TO ABOVE AND AS SET FORTH IN SECTION IV, ARTICLES 4.13 AND 4.14 OF SAID COVENANTS, CONDITIONS AND RESTRICTIONS REFERRED TO ABOVE.

PARCEL FOUR:

A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES, 10 FEET IN WIDTH, OVER A NORTHEASTERLY PORTION OF PARCEL 1 OF PARCEL MAP NO. 25161 FILED IN BOOK 53, PAGES 29-30 OF PARCEL MAPS. SAID EASEMENT IS SHOWN AS E-7, "AN EASEMENT 10' IN WIDTH FOR DRAINAGE PURPOSES ACROSS PARCEL 1..." ON SAID PARCEL MAP NO. 52162, AND IS APPURTENANT TO AND FOR

THE BENEFIT OF PARCEL ONE DESCRIBED ABOVE.

PARCEL FIVE:

A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES OVER THE NORTHERLY 10 FEET OF PARCEL 2 OF PARCEL MAP NO. 25162, FILED IN BOOK 53, PAGES 29-30 OF PARCEL MAPS. SAID EASEMENT IS SHOWN AS E-8, "AN EASEMENT 10' IN WIDTH FOR DRAINAGE PURPOSES ACROSS PARCEL 2...", ON SAID PARCEL MAP NO. 25162 AND IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL ONE DESCRIBED ABOVE.

PARCEL SIX:

A NON-EXCLUSIVE EASEMENT FOR DRAINAGE PURPOSES OVER THE EASTERLY 5 FEET OF PARCEL 2 OF PARCEL MAP NO. 25162, FILED IN BOOK 53, PAGES 29-30 OF PARCEL MAPS. SAID EASEMENT IS SHOWN AS E-10, "AN EASEMENT 5' IN WIDTH FOR DRAINAGE PURPOSES ACROSS PARCEL 2...", ON SAID PARCEL MAP NO. 25162, AND IS APPURTENANT TO AND FOR THE BENEFIT OF PARCEL ONE DESCRIBED ABOVE.

PARCEL SEVEN:

A NON-EXCLUSIVE EASEMENT FOR PEDESTRIAN INGRESS AND EGRESS OVER AND ACROSS THE MOST NORTHERLY TEN FEET OF PARCEL 2 OF PARCEL MAP NO. 25162, FILED IN BOOK 53, PAGES 29-30 OF PARCEL MAPS FOR THE PURPOSE OF CONNECTING PARCEL 3 OF PARCEL MAP 25162 WITH PARCEL 1 OF PARCEL MAP 25162 FOR PEDESTRIAN TRAFFIC TOGETHER WITH THE RIGHT TO CONSTRUCT, MAINTAIN, REPAIR, FENCE, LANDSCAPE, RECONSTRUCT, AND OTHERWISE ESTABLISH AN ELEVATED WALKWAY ACROSS SAID PARCEL 2 FOR PEDESTRIAN TRAFFIC.

SAID LAND IS ALSO SHOWN AS LOT 1 OF PARCEL MAP NO. 25, 172 RECORDED OCTOBER 20, 2005 IN BOOK 201, PAGES 23 THROUGH 30, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

APN: 004-111-01 through 004-111-41

RECORDING REQUESTED BY:

WHEN RECORDED MAIL ORIGINAL TO:
City Clerk, City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

WITH A COPY TO:

Joshua Rabinowitz
Fell, Marking, Abkin, Montgomery, Granet,
& Raney
222 East Carrillo Street, Ste. 400
Santa Barbara, CA 93101

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

NOTICE OF RESCISSION OF AFFORDABILITY DOCUMENTS

APNs 004-111-001 through 004-111-041

THIS NOTICE OF RESCISSION OF AFFORDABILITY DOCUMENTS ("Notice") is given by the City Council of the City of Carpinteria, a municipal corporation organized under the laws of the state of California ("City"), based on the following facts:

WHEREAS, on November 8, 2004, the City Council authorized the Lavender Court development project on property known as 4646 Carpinteria Avenue in Carpinteria, California (APNs 004-111-001 through -041) ("Property"), the City Council authorized the Lavender Court development project under Permit 03-1105-TM/DP/MOD/CDP; and

WHEREAS, the Permit included conditions ("Permit Conditions") requiring the Owner's predecessor in title to "*include five for-sale residential units, targeted to above moderate-income residents (121 percent of the area median income) for a period of 30 years*" in a manner consistent with the City's Inclusionary Housing Ordinance, Chapter 14.75; and

WHEREAS, on October 26, 2005, a document entitled "Agreement to Provide Inclusionary Housing" was recorded as Document No. 2005-0104074 in the Official Records of the County of Santa Barbara, which document purports to comply with the Permit Conditions by requiring that affordable units be provided on-site as part of the Lavender Court development; and

WHEREAS, on October 26, 2005, a document entitled "Performance Deed of Trust and Assignment of Rents" was recorded as Document No. 2005-0104071 in the Official Records of the County of Santa Barbara, which document purports to comply with the Permit Conditions by irrevocably granting, transferring and assigning to the City of Carpinteria the power of sale of the subject Lavender Court property and requesting that a copy of any Notice of Default and any Notice of Sale be provided to the City; and

WHEREAS, on October 26, 2005, a document entitled "Interim Affordability Control Covenant" was recorded as Document No. 2005-0104072 in the Official Records of the County of Santa Barbara, which document purports to comply with the Permit Conditions by serving as the affordability restriction on the property until the affordable units would be sold to eligible purchasers; and

WHEREAS, the Agreement to Provide Inclusionary Housing, Performance Deed of Trust and Assignment of Rents and Interim Affordability Control Covenant are collectively known as the "**Affordability Documents.**"

WHEREAS, the five affordable units were not sold to affordable owners and are not currently occupied;

WHEREAS, on October 10, 2011, the City Council of the City of Carpinteria entered into a Development Agreement with 4646 CARPAV, LLC, a California limited liability company, the owner of the Property ("Owner"), in which the City consented to the release of the five housing units previously designated as affordable units from the restrictions imposed by the Affordability Documents in exchange for the payment of an affordable housing contribution and other valuable consideration; and

WHEREAS, Owner has paid into the City's Affordable Housing Trust Fund and is in full compliance with the other provisions of the Development Agreement; and

NOW, THEREFORE, the City hereby gives notice that the Affordability Documents are hereby rescinded and shall hereafter no longer be of any further force or effect.

Dated: _____, 2011

Al Clark
Mayor, City of Carpinteria

APPROVED AS TO FORM

Peter N. Brown, City Attorney

Exhibit 2

RESOLUTION NO. 5339

A RESOLUTION OF THE CITY OF CARPINTERIA CITY COUNCIL APPROVING A DEVELOPMENT AGREEMENT AND COASTAL DEVELOPMENT PERMIT (PROJECT NO. 10-1552-DA/CDP) TO AMEND THE CONDITIONS OF APPROVAL OF PROJECT NO. 03-1105-TM/DP/MOD/CDP TO ALLOW THE CONVERSION OF FIVE AFFORDABLE UNITS TO MARKET RATE UNITS AT LAVENDER COURT AND THE IMPLEMENTATION OF ENERGY EFFICIENCY MEASURES (APNs 004-111-001 through -041)

REQUESTED BY 4646 CARPAV, LLC

WHEREAS, the City of Carpinteria received an application for a Development Agreement and Coastal Development Permit on June 10, 2010; and

WHEREAS, said application was subsequently deemed complete and accepted by the City as being consistent with the applicable submittal requirements on July 26, 2010; and

WHEREAS, the Planning Commission conducted a public hearing on September 6, 2011, and the City Council conducted public hearings on September 26 and October 10, 2011 regarding the application for a Development Agreement and Coastal Development Permit, as well as the exemption pursuant to the California Environmental Quality Act; and

WHEREAS, the City Council has reviewed the project in light of the relevant policies of the General Plan and Coastal Plan, the Housing Element and the Zoning Code standards.

NOW THEREFORE, THE CITY COUNCIL HEREBY RESOLVES AS FOLLOWS:

1. The City Council approves the Coastal Development Permit to amend the conditions of approval of Project No. 03-1105-TM/DP/MOD/CDP (as shown in Attachment B) to allow the conversion of five affordable housing units to market rate units, the payment of \$571,000 into the City's Affordable Housing Trust Fund, the annual payment in perpetuity to the City's alternative transportation program (e.g., Seaside Shuttle) and the implementation of certain energy efficiency measures at the Lavender Court Mixed Use Development, making the findings found in Attachment A, and imposing the revised conditions of approval for Project No. 03-1105-TM/DP/MOD/CDP, set forth in Attachment C.

2. The City Council finds the project exempt from environmental review pursuant to the Notice of Exemption included as Attachment 4 of the staff report dated October 10, 2011.
3. This Resolution becomes effective upon the effective date of Ordinance No. 652 approving the Development Agreement.

PASSED, APPROVED AND ADOPTED this 10th day of October 2011 by the following called vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBER(S):
ABSENT: COUNCILMEMBER(S):

Mayor, City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 10th day of October 2011.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

City Attorney

Exhibit 2
ATTACHMENT A: FINDINGS

CITY COUNCIL HEARING
PROJECT NO. 10-1552-DA/CDP
4646 Carpinteria Avenue
October 10, 2011

Lavender Court Development Agreement and Coastal Development Permit

FINDINGS PURSUANT TO GOVERNMENT CODE, LOCAL COASTAL PROGRAM,
GENERAL PLAN AND TITLE 14 OF THE CARPINTERIA MUNICIPAL CODE

1.0 Administrative Findings

The City Council hereby incorporates by reference as though set forth in full all Community Development Department staff reports and attachments thereto presented to the Planning Commission and City Council and all comments made or received either orally or in writing at the public hearings on this project.

1.1 Procedures

Pursuant to the California Coastal Act, the Administrative Regulations of the California Coastal Commission and the City's Local Coastal Program, it has been found that the process for public review of the subject Coastal Development Permit has been properly conducted as follows:

- A. An application for a Development Agreement and Coastal Development Permit was submitted on June 10, 2010 and deemed complete and accepted by the City as being consistent with the applicable submittal requirements on July 26, 2010. Said application and all related material have been available for public review at City offices since the date of submittal.
- B. The application has been evaluated and found to conform to the applicable zone district, the City's Coastal Land Use Plan, the Interpretive Guidelines of the Coastal Commission and the California Coastal Act.
- C. The project has been reviewed by the City Council at a duly noticed public hearing which included, but is not limited to, mailed notice to all property owners within 300 feet and occupants within 100 feet of the subject property and publication in the local newspaper, the Coastal View News.

1.2 CEQA Exemption

In accordance with the California Environmental Quality Act (CEQA), the City has provided public notice of the intent of the City to find the project exempt from environmental review

pursuant to §15060(c)(2) and §15060(c)(3) as the project does not have the potential to result in a significant effect on the environment.

1.3 Local Coastal Development Permit

Pursuant to the California Coastal Act, the Administrative Regulations of the California Coastal Commission and the City's Local Coastal Program, the City Council finds that the permit requested may be issued based on the following finding:

The proposed development is in conformity with the City's certified Local Coastal Program.

The project involves a mixed use development in an urban setting which is not adjacent to or in close proximity to the beach. Based on the City's Coastal Land Use Plan, this type of development has been anticipated. The property is designated for General Commercial use with a Residential Overlay in the City's Coastal Land Use Plan; single family residential use is allowed in addition to commercial uses allowed on the property per the City's zoning map and Chapter 14, Zoning, of the Municipal Code. The City's Zoning Code is an implementation document of the City's certified Local Coastal Program. The project is consistent with the zoning for the site, with the provision of various modifications granted through the original project review for Project No. 03-1105. The project as amended by the Development Agreement is consistent with the City's General Plan/Coastal Plan, incorporating the conditions of approval set out in Attachment B of this Resolution. As the development is compatible with the land use designation and zoning for the site, the subject project would not result in impacts to marine or other coastal resources, the design and scale are compatible with the neighborhood and natural resources and creekways would be protected.

1.4 Development Agreement

- A. Pursuant to Government Code §65867.5, the provisions of the agreement are consistent with the General Plan as discussed in the City of Carpinteria staff reports dated September 6, 2011, September 26, 2011 and October 10, 2011 and incorporated herein by reference.
- B. The development will provide public benefits as follows. The owner will contribute \$571,000 to support affordable housing in the City, will provide long-term funding for alternative transportation (e.g., Seaside Shuttle), will maintain the five subject units as rental units until December 31, 2012 and will improve the energy efficiency of the existing development. All of these actions implement policies in the General Plan that support affordable housing, including the provision of rental housing, encourage the use of alternative transportation to minimize air quality impacts, reduce traffic congestion and contribute to the small town charm and promote energy efficiency to reduce air quality impacts related to greenhouse gas emissions.

**Exhibit 2
Attachment B**

**LAVENDER COURT MIXED USE DEVELOPMENT
AMENDED CONDITIONS OF APPROVAL FOR
PROJECT NO. 03-1105-TM/DP/MOD/CDP
4646 CARPINTERIA AVENUE**

**Approved by Project No. 10-1552-DA/CDP
Lavender Court Development Agreement**

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, Modification and Coastal Development Permit approval is restricted to APN 004-039-011, located at 4646 Carpinteria Avenue, and is for the development of a mixed use project consisting of 40 dwelling units and 4,672 square feet of commercial development, as well as landscaping and vehicle parking areas. The project shall be constructed to comply with all exhibits shown as Attachment B of the Resolution of Approval (Site Plan, Building Elevations and Floor Plans labeled as Sheets 1, 2, 2.1, 2.2, 3, 3.1, 3.2, 4, 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 5, 6, and 7 dated 10-18-04, 10-14-04, 8-17-04 and 7-19-04); Landscape Plan dated 8-26-04; and Sheets 1-4 of the Engineering Plans dated 10-14-04.
2. As a part of this approval, a Modification of Municipal Code Section 14.54.090 is hereby granted to allow the required commercial loading/unloading space to be located off-site, along Carpinteria Avenue in front of Building No. 1, as opposed to on-site, with a colored concrete curb marking the space, as approved by the City Engineer.
3. The conditions of this approval supercede all conflicting notations, specifications, dimensions and the like that may be shown on submitted plans.
4. 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.

5. The 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 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.
6. 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.
7. 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.
8. The applicant agrees to pay any and all City costs, permits, attorneys' 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.
9. Any minor changes to the project 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.
10. Unless substantial physical construction has been completed within twelve (12) months after the date of approval, or a time extension has been applied for, the approval shall automatically expire on that date. The City Council may grant an extension for good cause shown by the applicant if the following findings can be made:
 - a. there have been no changes in the proposed site plans and;
 - b. there have been no changes in the adjacent areas and;
 - c. the permittee had diligently worked toward the inauguration of the use.
11. When not specified herein, 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

12. All buildings, roadways, parking areas, landscaping and other features shall be located substantially as shown on the attached exhibits.
13. Water conserving fixtures shall be utilized on all faucets, sinks, water closets and other water outlets throughout the buildings to reduce water demands.
14. 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.
15. 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.
16. The applicant shall comply with the mitigation measures of the attached environmental document, which are incorporated herein as conditions of approval.
17. No building permits shall be issued for this project prior to meeting all required terms and conditions listed herein.
18. An approval granted by the City Council does not constitute a building permit or authorization to begin any construction. An appropriate permit issued by the Building Division must be obtained prior to constructing, enlarging, moving, converting or demolishing any building or structure within the City.
19. 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 electronic format acceptable to the City, such as a pdf or tif file.
20. 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.
21. 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.

22. If, at any time, the City or City Council determines that there has been, or may be, a violation of the findings or conditions of this Development Plan/Tract Map/Modification/Coastal Development Permit, 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.
23. If the construction site is graded and left undeveloped for over three weeks, the following methods shall be employed immediately to inhibit dust generation: seeding and watering to revegetate graded areas; spreading of soil binders, and/or any other methods deemed appropriate by the City or County Air Pollution Control District (APCD) Board.
24. 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.
25. 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.
26. Any unanticipated damage that occurs to trees or sensitive habitats during construction activities shall be mitigated by either: tree replacement, or bonding for tree replacement 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.
27. To allow time for utility companies/purveyors to locate and mark their facilities for the contractor, the applicant/developer shall telephone Underground Service Alert (USA) toll free at 1-800-227-2600, or similar service approved by the City, a minimum of forty-eight (48) hours prior to the start of construction. It is strongly suggested that the applicant/developer provide as much notice as possible, up to ten (10) working days.
28. The applicant is required to complete a School District sign-off form, which may include payment of applicable School Mitigation Fees, and provide such form to the City prior to issuance of Building Permit.
29. In accordance with Chapter 15.80 of the Carpinteria Municipal Code, the applicant shall pay all applicable Development Impact Fees to the City prior to issuance of a Building Permit. 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.

30. 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 at the rate in effect at that time.
31. The project is within the boundaries of the City of Carpinteria Parks Maintenance District, and the applicable fee will be levied upon each residential unit on an annual basis.
32. Prior to issuance of a Building Permit, Grading Permit, or other engineering permit, the final plans shall show the commercial loading/unloading zone along Carpinteria Avenue in front of the easternmost unit of proposed Building No. 1, providing that traffic safety and visibility issues are taken into account, as shown on Sheet 1 of the project plans in Attachment B to the Resolution of Approval. As appropriate, Carpinteria Avenue shall be red curbed at its intersection with the two proposed driveways that provide access to the site, consistent with the City Public Works Department standards.
33. To the extent feasible, the design, materials and paints for the on-site buildings bordering U.S. Highway 101 shall be selected for their ability to assist in deterring graffiti on structures.
34. Appropriate measures shall be incorporated into Building Nos. 7 and 8 and shown on the plans submitted for a Building Permit to reduce noise affecting the carriage units from the garages below. Such measures may include, but not be limited to, construction techniques insulating the garages from the living areas or the use of special garage doors that emit less noise upon closing/opening.
35. A landscaped parkway and the existing *Washingtonia robusta* trees along the Carpinteria Avenue frontage shall be located as reflected on Sheet 1 of the project plans and the Landscape Plan included as Attachment B to the Resolution of Approval. As shown on Sheet 1, some of the *Washingtonia robusta* trees shall remain in place with "bulb" planters created to accommodate the trees, while others shall be relocated to within the new parkway. The dimensions of the landscaped parkway and sidewalk shall be as shown on Sheet 1 and the engineering drawings included as Attachment B to the Resolution of Approval. As shown on the Landscape Plan, canopy trees shall also be planted in the parkway.
36. Prior to issuance of any permit for the project, a report by a certified arborist shall be prepared and submitted to the Community Development Department for review and approval. The report shall describe the size and health of each *Washingtonia robusta* palm tree along the Carpinteria Avenue street frontage of the project site and the parcel adjacent to the site on the west (the Eye of Day Nursery), and the proper protective methods to be used during construction of the parkway, including installation of landscaping and relocation of the existing *Washingtonia robusta* trees as identified on Sheet 1 of the project plans included as Attachment B of the Resolution of Approval. For those palm trees to be relocated within the parkway, the report shall also include transplanting procedures necessary to safely relocate the trees. The measures set forth in the report shall be

identified on the project plans submitted for any building, grading or engineering permit, and shall be implemented during construction of landscape improvements.

37. A bus shelter shall be constructed by the applicant/developer in the City right-of-way along the project's Carpinteria Avenue frontage near proposed Building No. 3, as shown on Sheet 1 of the plans included as Attachment B of the Resolution of Approval, with the design of the shelter to be determined by the ARB upon final review. All bus facilities located on the site shall be consistent with Metropolitan Transit District (MTD) standards, as feasible or as determined appropriate by the Community Development Department.
38. A minimum of 106 parking spaces shall be provided on the subject property in accordance with the parking design standards, as stipulated in Section 14.54 of the Carpinteria Municipal Code and as shown on the approved improvement plan.
39. ~~The project shall comply with all provisions of the City's Inclusionary Housing Requirement Ordinance (No. 590). The affordable housing component of the project shall include five for sale residential units, targeted to above moderate income residents (121 percent of the area median income) for a period of 30 years, consistent with said Ordinance. The Developer/Owner shall submit all information and materials deemed necessary by the City to ensure compliance with the City's Inclusionary Housing Ordinance No. 590.~~
40. ~~At the time of Final Map approval by City Council, an Inclusionary Housing Agreement (pursuant to the City's Inclusionary Housing Requirement Ordinance No. 590) between the City and the Developer/Owner shall be approved by the City Council. The Agreement shall be in a form acceptable to the City, and at the City's discretion, may include, but not be limited to, the following: the process for qualifying prospective resident households for income eligibility pursuant to City policies and procedures; provisions and/or documents for resale restrictions, deeds of trust, rights of first refusal, and affordability control covenants for each unit; marketing plan; and provisions for monitoring compliance with the terms of the Agreement.~~
41. The three live/work units shown in Building No. 2 on the site plan (Sheet 1 of Attachment B of the Resolution of Approval) shall comply with the following conditions, which shall be incorporated into the CC&Rs identified in Condition #71, and which shall be recorded with the Final Map: (a) No living or working space shall be rented/leased separately of one another; (b) the allowed use of the commercial component of the live/work units shall be as indicated for the zoning and shall be limited to those uses that would generate parking demand at a ratio of no less than 1 space per 250 square feet of commercial gross floor area per CMC Section 14.54.040; (c) the size and dimension of the commercial portion of said live/work units shall be as specified on Sheets 1, 3, 3.1 and 3.2 included as Attachment B to the Resolution of Approval, roughly 20.5 feet x 20.5 feet, with the area limited to commercial use only; (d) no expansion of said commercial area is permitted, and the commercial space shall not be used as living area; (e) as part of the tenant or lease agreement, the owner is responsible for notifying tenants of the limits on use and conduct for the said live/work units and enforcing said restrictions pursuant to this permit; and (f)

the owner/developer is required to prepare a management plan for the live/work units, addressing such provisions as may be appropriate to effectively implement the conditions of approval (including but not limited to hours during which the live/work units may be open to customer visits, delineation of customer parking spaces, prohibition of outdoor storage of commercial materials and hazardous materials) and incorporate the management plan into the CC&Rs. A covenant for each such unit imposing the conditions specified herein that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. The proposed homeowners' association shall be responsible for enforcing these conditions and covenants, and submitting a report to the City every two years regarding the status of compliance with these conditions and covenants, including the status of the businesses in the live/work units. The City shall have the right to compel enforcement of all obligations contained in these conditions of approval, if the homeowners' association fails to do so. The homeowners' association shall be liable for the City's expenses in compelling enforcement.

42. The allowed uses of the first floor commercial areas shown in Building No. 1 on the site plan (Sheet 1 of Attachment B of the Resolution of Approval) shall be as indicated for the zoning and shall be limited to those uses that would generate parking demand at a ratio of no less than 1 space per 250 square feet of commercial gross floor area per CMC Section 14.54.040. The CC&Rs shall specify the hours of use limitations and signage for the commercial areas, and shall address other appropriate restrictions on commercial activities to ensure compatibility with residential uses. This condition shall be incorporated into the CC&Rs identified in Condition #71, which shall be recorded with the Final Map. A covenant for each such unit imposing the conditions specified herein that is approved as to form by the City Attorney and Community Development Department shall be recorded concurrently with the final map. The proposed homeowners' association shall be responsible for enforcing these conditions and covenants, and submitting a report to the City every two years regarding the status of compliance with these conditions and covenants, including the status of the businesses in the units. The City shall have the right to compel enforcement of all obligations contained in these conditions of approval, if the homeowners' association fails to do so. The homeowners' association shall be liable for the City's expenses in compelling enforcement.
43. Appropriate measures shall be incorporated into the design and construction of the carriage units in Buildings 7 and 8, and shown on the plans submitted to the City prior to issuance of a Building Permit, to reduce the noise resulting from opening and closing of the garages below the residential units.
44. Use of the vehicle parking spaces along Carpinteria Avenue shall be limited to certain time periods, as determined by the City. Appropriate signage shall be incorporated along the street frontage to the satisfaction of the Public Works Director to ensure time limits are appropriately conveyed.

ARCHITECTURAL REVIEW

45. 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, landscape plans, sign program, lighting, and irrigation. All required plans shall be submitted as a part of a single application.
46. 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 shall be maintained in good condition for three years, at which time the bond will be released. Landscaping shall be drought resistant, low water-use species. 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.
47. 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.
48. 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).
49. All 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.
50. 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.
51. A colored concrete curb for on-street unloading/loading area markings along Carpinteria Avenue shall be provided, as approved by the Public Works Department.
52. A sign program, including sign style, size, type, height, color, material, location, lighting and brackets for all signs for the entire project, shall be submitted for ARB final review and approval prior to issuance of Building Permits. No roof or pole signs shall be permitted.
53. Parking and common area lighting shall be accomplished through single post standards with square bases to match the proposed square lanterns, and shall be consistent with the building architecture. Lighting shall be low level and directed downward to minimize glare and light spillover. The height of the poles, including lanterns, shall not exceed twelve (12) feet. Wall or building mounted lighting shall not be used to illuminate parking

and common areas. Final lighting details and locations shall be provided for final ARB review.

ENGINEERING

54. The applicant shall submit grading and street improvement plans prepared by a California Registered Civil Engineer. Said plans shall include but not be limited to 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, prior to issuance of Building Permit.
55. 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.
56. Using a rain frequency of a 25-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 public 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 Tract or Parcel Map.
57. 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.
58. Prior to recordation of the Final Map, or issuance of Building Permits, 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 and retaining walls. A cash deposit in the amount of ten percent of the bond amount shall be submitted with each bond.
59. All service lateral utilities shall be installed underground. 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. All costs for the relocation and undergrounding of existing transmission lines crossing the property and service laterals shall be borne by the applicant. All utilities shall be provided to all lots in the subdivision (units) prior to occupancy.
60. All utility easements shall be described adequately on submitted plans.
61. Separate electric meter shall be installed for each unit unless a "gang" meter approved by S.C.E. is installed.
62. The project 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: Monolithic 6" curb, 18" or 24" gutter, five-foot wide sidewalk, handicap ramp and driveway approaches shall be constructed per the Santa Barbara County Standard Details at the locations shown on the improvement plans. Prior to commencement of any work in the public right-of-way, a street construction and/or excavation permit shall be obtained from the City Engineer.

63. Asphalt street areas, curbs, gutters and sidewalks shall transition into existing public improvements subject to review of the City Engineer.
64. 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.
65. All streetlights shall be installed outside of the sidewalk in accordance with City standards and practices approved by the City Engineer.
66. 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.
67. 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 tracings or permanent mylars of a quality acceptable to the City Engineer.
68. Prior to occupancy, a Notice of Completion for all public improvements shall be accepted by the City Council.
69. Per Parcel Map 25,162, Parcel Map Book 53, Page 30, a two-foot wide City easement for public road and utility purposes is located within a portion of the site paralleling Carpinteria Avenue, which is proposed to contain landscaped planters. The City retains the right to place and maintain utilities in this easement and conduct other such work as allowed by the easement. The development specified by this project approval remains subject to the City's rights reserved in the easement. Prior to the developer/owner constructing anything under or over the easement, the City must grant approval. If vegetation or other improvements in the proposed planters must be removed for the City to conduct work in the easement, the property owner/developer, not the City, shall be responsible for its replacement.

TRACT MAP

70. 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.
71. 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.

72. 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.
73. 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. Further, the Community Development Department, City Attorney and the Public Works Director may require additional restrictions within the CC&Rs as found to be appropriate. The CC&Rs shall address the use and restrictions of the three live/work units in Building No. 2 and the commercial spaces in Building No. 1 (as listed in Conditions of Approval 41 and 42); hours of use limitations and signage for the parking spaces along the eastern site edge; maintenance of the common landscaped and open space areas onsite as identified on Sheet 1 of Attachment B of the Resolution of Approval; limitations of uses and activities that shall occur in the garages to minimize disturbance to the residents; appropriate restrictions on commercial activities to ensure compatibility with residential uses; as well as other items deemed necessary by the City. The CC&Rs shall be recorded concurrently with the Final Map. 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.
74. 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.
75. The applicant shall pay all engineering fees and all other fees and deposits prior to City Council approval of the Final Map. No Building Permits shall be issued prior to recordation of the Final Map.
76. 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.
77. The lanes of access on the private drive (easement) must be adequately controlled to prevent blocking access to emergency vehicles. This shall include at a minimum “no parking” signage and “red curb” treatment at appropriate locations.

ENVIRONMENTAL/MITIGATED NEGATIVE DECLARATION

78. AES-1. Methods to deter potential graffiti at the site through the use of certain building materials and design shall be incorporated into the project plans prior to the issuance of a Grading Permit.

79. AES-2. The Community Development Department Staff shall verify that any Planning Commission conditions to ensure that the project design is appropriate and compatible with the neighborhood character, and that the project would not significantly impair public views, shall be incorporated into the project plans prior to the issuance of a Grading Permit.
80. AES-3. All exterior lighting on buildings, in parking areas and along pedestrian paths shall be directed downward and designed so as to minimize the potential for glare and light spillover.
81. 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 shall 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 area must be treated by watering or revegetating; or by spreading soil binders until the area is paved or otherwise developed so that dust generation will not occur; and (3) During construction, water trucks or sprinkler systems shall 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.
82. 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; (2) trucks transporting fill material to and from the site shall be tarped from the point of origin
83. 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.
84. 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.
85. CR-2. If human remains are unearthed, State Health and Safety Code §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 §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.

86. GEO-1. The design and construction of the building foundation systems shall comply with all recommendations outlined in the Preliminary Foundation Investigation prepared by Pacific Materials Laboratory on July 29, 2003, 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.
87. 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.
88. 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.
89. N-1. All recommendations outlined in the Acoustical Analysis Report prepared by Veneklasen Associates (February 13, 2004, amended August 19, 2004) shall be incorporated into the project design, and shown on the project construction plans for City review and approval prior to issuance of a Building Permit.
90. N-2. Project construction activities shall be limited to weekdays, between the hours of 7:00 a.m. and 5:00 p.m., excluding legal holidays.
91. The Owner/Developer shall comply with the Mitigation Monitoring and Reporting Program (MMRP) requirements, which are included as part of the IS/MND.

FIRE PROTECTION

92. Visible street addresses must be posted at driveways and on buildings. An address directory will be required at each driveway location. Numbers shall be a minimum three inches high on a contrasting background.
93. 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. Minimum clear driving width shall be 24 feet and the minimum turning radius shall be 25 feet for the inside curve.

94. All new buildings or structures shall be protected by an approved automatic fire sprinkler system. Prior to installation, plans for the proposed fire sprinkler system shall be designed by a qualified person, and submitted to the prevention bureau for approval.
95. Per 1997 Uniform Building Code and National Electric Code, smoke detectors must be installed in all residences.
96. Roof access must meet the requirements stated in the Carpinteria Municipal Code.
97. Per Carpinteria-Summerland Fire Protection District (CSFPD) Ordinance No. 92-02 pertaining to fees and service charges, a service charge of \$55.00 is assessed on reviews of lot line adjustments, lot splits and development review.
98. Per CSFPD Ordinance No. 92-02, prior to issuance of a "Certificate of Occupancy" the Fire District mitigation fee must be paid.

SANITARY SEWER AND WATER

99. The owner of record, or authorized designee, shall obtain all necessary permits from the Carpinteria Sanitary District (CSD) prior to construction and/or final connection to the District's system.
100. Applicant is required to follow the guidelines for construction laid out in CSD's Construction Specifications Booklet.
101. A Development Impact Fee (DIF) will be charged for each newly constructed residential "equivalent dwelling unit" (EDU). The current fee is \$2,400 per EDU; therefore, in this case \$100,800 will be collected prior to construction.
102. A DIF will be calculated for each newly constructed commercial building. Credit will be given for the existing commercial building. Applicant must provide existing footage to CSD for review. Payment will be due in full prior to the commencement of construction.
103. CSD personnel must inspect and approve the installation of the building sewer, sewer lateral lines and the final connection to the sewer main prior to backfill.
104. The residential units shall be served by separate water meters from the commercial units.
105. The applicant shall submit a complete plumbing fixture count to CSD for review.
106. The construction plans shall show the location of the sewer cleanouts for each unit.
107. The existing six-inch sewer lateral from the property line manhole to the sewer mainline manhole shall be upgraded to an eight-inch line.

AIR QUALITY

108. The Developer/Owner is required to complete the "Asbestos Demolition/Renovation Notification" from of the Santa Barbara County Air Pollution Control District (APCD), and mail it to the Santa Barbara APCD and EPA Region IX. Contact the APCD General Source Division at (805) 961-8800 for further guidance.

DEVELOPMENT AGREEMENT

109. The property owner shall implement the terms of the Development Agreement as set forth in the document dated October 10, 2011.
110. Beginning on January 10, 2013, and every year thereafter, owner or any successor in interest, including but not limited to a homeowners' association, shall make an annual contribution in the amount of five thousand five hundred dollars (\$5,500.00) adjusted annually by the Consumer Price Index (Urban Wage Earners and Clerical Workers, Los Angeles/Riverside/Orange County, All Items 1982-84=100) toward the cost of maintaining the City's in-town public alternative transportation network, including but not limited to the Seaside Shuttle. This amount shall be due upon the tenth (10th) day of the first month of each year.
111. Prior to December 31, 2013, owner or any successor interest, including but not limited to a homeowners' association, shall implement measures to reduce existing energy consumption of the Lavender Court development by no less than fifteen percent (15%) over the Lavender Court development's current energy efficiency. Compliance with this measure shall be determined by the Community Development Director in the Director's reasonable discretion and shall be limited to relatively simple measures such as increased insulation, low energy use appliances, high efficiency lighting and the like (but not requiring more expensive measures such as the installation of solar energy equipment, though such measures are allowed by this condition).

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 the Development Agreement and Coastal Development Permit becoming effective.

Approved by the City Council on October 10, 2011

Mayor

Date

Exhibit 3

ORDINANCE NO. 652

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA APPROVING A DEVELOPMENT AGREEMENT AND COASTAL DEVELOPMENT PERMIT (PROJECT NO. 10-1552-DA/CDP) TO AMEND THE CONDITIONS OF APPROVAL OF PROJECT NO. 03-1105-TM/DP/MOD/CDP TO ALLOW THE CONVERSION OF FIVE AFFORDABLE UNITS TO MARKET RATE UNITS AND THE IMPLEMENTATION OF ENERGY EFFICIENCY MEASURES AT LAVENDER COURT

**LOCATED AT 4646 CARPINTERIA AVENUE
(APNs 004-111-001 through -041)**

The City Council of the City of Carpinteria ("City") ordains as follows:

WHEREAS, the City of Carpinteria received an application for a Development Agreement and Coastal Development Permit on June 10, 2010; and

WHEREAS, said Development Agreement by and between the City of Carpinteria and 4646 CARPAV, LLC would allow the owner to submit funds to the City and implement energy saving measures at the Lavender Court Mixed Use Development in exchange for converting five affordable housing units to market rate units; and

WHEREAS, the Development Agreement and Coastal Development Permit are found to be exempt from review under the California Environmental Quality Act pursuant to Sections 15060(c)(2) and 15060(c)(3) of the Guidelines for the Implementation of CEQA; and

WHEREAS, the procedures for processing the Development Agreement have been followed as required by state and local laws; and

WHEREAS, pursuant to California Government Code Section 65867, a public hearing must be held by both the Planning Agency and the City Council on an application for a Development Agreement; and

WHEREAS, the Planning Commission is the designated Planning Agency for the City of Carpinteria; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing regarding the Development Agreement on September 6, 2011, at which time all interested persons were given an opportunity to be heard; and

WHEREAS, the Planning Commission voted to recommend to the City Council adoption of this Ordinance to adopt the Development Agreement; and

WHEREAS, on September 26, 2011 and October 10, 2011 the City Council conducted duly noticed public hearings regarding the Development Agreement, at which times interested persons were given an opportunity to be heard; and

WHEREAS, the City Council considered the entire administrative record, including staff reports, the recommendation of the Planning Agency, the CEQA exemption and oral and written testimony from interested persons.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CARPINTERIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Recitals

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

SECTION 2. Adoption of Findings

Pursuant to Government Code Sections 65867.5 and 65868, the City Council hereby finds the following:

- a. The provisions of the Development Agreement are consistent with the City of Carpinteria General Plan/Coastal Plan.
- b. The Development Agreement is not subject to a Specific Plan.

SECTION 3. Adoption of Development Agreement

Pursuant to the foregoing findings, the City Council hereby adopts this Development Agreement, attached as Exhibit 1 and incorporated herein by reference.

SECTION 4. Recordation

The City Clerk of the City of Carpinteria shall record a copy of the Development Agreement with the County Recorder of Santa Barbara County Recorder of Santa Barbara County not later than ten (10) days after execution of the Development Agreement by the City and 4646 CARPAV, LLC.

SECTION 5. Documents

The documents and other materials which constitute the record of proceedings upon which this decision is based are in the custody of the City Clerk, City of Carpinteria, 5775 Carpinteria Avenue, Carpinteria, CA 93013.

SECTION 6. Effective Date

This ordinance shall take effect and be in force on the thirty-first (31st) day following the date of its final adoption.

SECTION 7. Publication

The City Clerk shall certify as to the passage of this Ordinance and cause the same to be published and posted in the manner prescribed by California law.

PASSED, APPROVED AND ADOPTED this 10th day of October 2011, by the following called vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBER(S):

ABSENT: COUNCILMEMBER(S):

Mayor, City of Carpinteria

ATTEST:

City Clerk, City of Carpinteria

I hereby certify that the foregoing Ordinance was duly and regularly introduced and adopted at a regular meeting of the City Council of the City of Carpinteria held the 10th day of October 2011.

City Clerk, City of Carpinteria

APPROVED AS TO FORM:

City Attorney, City of Carpinteria

Exhibit 4

NOTICE OF EXEMPTION

October 10, 2011

TO: Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814
 X Clerk of the Board
County of Santa Barbara
105 E Anapamu Street, Rm. 407
Santa Barbara, CA 93101

FROM: City of Carpinteria
5775 Carpinteria Avenue
Carpinteria, CA 93013

Project Title: Lavender Court Development Agreement and Coastal Development Permit

Project Location: City of Carpinteria

Description of Nature, Purpose and Beneficiaries of Project: The project includes the conversion of five affordable housing units to market rate units. This project will benefit the City of Carpinteria by increasing the amount of money in the Affordable Housing Trust Fund to be used to support affordable housing in the City of Carpinteria. Other benefits include an ongoing contribution to alternative transportation in the City of Carpinteria and increased energy efficiency at the Lavender Court mixed use development.

Name of Agency Approving Project: City of Carpinteria

Name of Person or Agency Carrying Out Project: 4646 CARPAV, LLC and City of Carpinteria

Exemption Status:

 Statutory [Article 18]
 Declared Emergency §15269(a)]
 Emergency Project [§15269 (b) and (c)]
 X Categorical [§15060(c)(2) and §15060(c)(3)]

Reasons why project is exempt: The City finds the proposed ordinance to be exempt from CEQA pursuant to State CEQA Guidelines §15060(c)(2) (activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and §15060(c)(3) (the activity is not a project) as defined in §15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. The proposed ordinance regulates an agreement to provide affordable housing and allows for the payment of fees into a trust fund to support affordable housing elsewhere in the City. The proposed ordinance would allow the units to be rented or sold at market rates and does not change the density or intensity of use at the site and has no potential to adversely affect the environment as no physical change to the units will occur. Changes to improve energy efficiency would benefit the environment by reducing the potential for air quality impacts by reducing greenhouse gas emissions.

Jackie Campbell, Community Development Director
(805) 684-5405 ext. 451

Date

CITY of CARPINTERIA CALIFORNIA



September 8, 2011

Members of the City Council

Al Clark - *Mayor*

J. Bradley Stein - *Vice Mayor*

Joe Armendariz

Gregg Carty

Kathleen Reddington

Joshua Rabinowitz
Fell, Marking, Abkin, Montgomery, Granet & Raney
222 East Carrillo Street, Ste. 400
Santa Barbara, CA 93101

Re: Lavender Court Development Agreement
Planning Commission Action

Dear Mr. Rabinowitz:

On September 6, 2011, the Planning Commission took action on the following item:

Hearing on the request of Josh Rabinowitz, attorney for 4646 CARPAV, LLC, owner, to consider Case No. 10-1552-DA/CDP [application filed June 10, 2010] for approval of a Development Agreement (Ordinance No. 652) and a Coastal Development Permit to convert five affordable residential units to market rate units under the provisions of the Commercial Planned Development with Residential Overlay (CPD/R) Zone District; and to accept the exemption pursuant to CEQA Guidelines §15060(c)(2) and §15060(c)(3). The application involves APNs 004-111-001 through -041, located at 4646 Carpinteria Avenue.

The Planning Commission voted 4 - 1 (Commissioner Benefield - no) to recommend that the City Council accept the exemption pursuant to Sections 15060(c)(2) and 15060(c)(3) of the Guidelines for the implementation of the California Environmental Quality Act Negative Declaration and approve Ordinance No. 652 approving a Development Agreement for the Lavender Court Mixed Use Development. This matter will be forwarded to the City Council for first reading (by title only) of the Ordinance on September 26, 2011 at approximately 5:30 p.m. Should you have any questions or need further information regarding this matter, please contact me at 684-5405, ext.451.

Sincerely,

Jackie Campbell
Community Development Director

cc: Tim Pinkevich, Managing Director, 222 E. Carrillo Street, Suite 300, SB, CA 93101

RESOLUTION NO. 5271

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARPINTERIA
AUTHORIZING THE PROCESSING OF A DEVELOPMENT AGREEMENT IN
CONJUNCTION WITH PROCESSING OF FILE NO. 10-1552-DA/CDP FOR
PROPERTY IDENTIFIED AS 'LAVENDER COURT'
AT 4646 CARPINTERIA AVENUE (APNs 004-111-001 through -041)**

WHEREAS, Government Code §65865 authorizes local agencies to enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property; and

WHEREAS, the City has received an application from 4646 CARPAV, LLC (Owner) and David Smith (Applicant) to

WHEREAS, Applicant has requested that the City approve a development agreement in conjunction with its consideration of File No. 10-1552-DA/CDP; and

WHEREAS, the City Council has determined consideration of a development agreement for this property is appropriate, given the unique circumstances surrounding the economics of the project and the financial history of the chain of ownership; and

WHEREAS, approval of this resolution is a necessary pre-condition to consideration of a development agreement for the project.

NOW THEREFORE, THE CITY COUNCIL RESOLVES as follows:

1. Authorization. The City Council authorizes the processing and consideration of an application for approval of a development agreement between Applicant and the City relating to the proposed project, as defined herein, in accordance with the procedures and requirements of this resolution. Said authorization in no way requires or implies the City's agreement to approve an application for a development agreement, but simply allows an application to be processed. Formal action as to whether or not to enter into a development agreement with Applicant regarding the proposed project will occur only after a complete application has been accepted by the City and staff analysis of the appropriateness of a development agreement and of development agreement's consistency with City policies has been completed.

2. Procedures.

a. Application. The applicant may submit an application for a development agreement to the Community Development Department in connection with the Planning Commission's consideration of the subject project. The Applicant shall pay all required fees for the review of the development agreement, which includes, but is not limited to, fees for staff, attorney and consultant review.

b. Hearings. Once an application is accepted by the Community Development Department and the environmental review has been completed, a public hearing on the application for a development agreement shall be held, first by the Planning Commission and then, following Planning Commission action thereon, by the City Council as appropriate, consistent with City Regulations. The development agreement shall be considered concurrently with the tentative map and development plan. Notice of intention to consider adoption of the agreement shall be given in the same manner as for zone changes in addition to such other notices

as may be required for other matters considered concurrently with the development agreement.

- c. Precondition for submittal of development agreement to Planning Commission. As a precondition to consideration of the development agreement by the Planning Commission, the form and content of the development agreement must first be approved by the City Manager for submittal to the Planning Commission. No development agreement shall be considered for Planning Commission review and City Council action absent such prior approval.
- d. Approval. Approval of a development agreement shall be by ordinance. The development agreement shall not be approved unless the Council finds that its provisions are consistent with the General Plan and any applicable specific plan and serves to protect the public health, safety and welfare. The agreement shall be effective upon the effective date of the ordinance.

3. Contents. The development agreement shall include all legally required information pursuant to Government Code §65864 and may address, but is not limited to, the following:

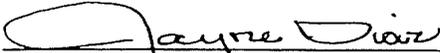
- **Payment of funds to support affordable housing** – The City could require the applicant to pay fees to fund affordable housing programs or improvements deemed appropriate by the City within a specified time frame (this is the staff recommendation at this point in time).
- **Provision of rental housing** – As an alternative during the time frame that the Lavender Court condominium units are not offered for individual sale, they could remain available as rental units.
- **Ensuring availability of housing units to Carpentierians** – The City could leave intact the mandatory marketing plan that provides local residents and employees a preferred opportunity to acquire housing at Lavender Court at such time as individual condominium units are offered for sale. This condition is currently in effect, but not implemented due to economic conditions.
- **Consistency with the City's Housing Element / Zoning Code** – For any development agreement, policy analysis is typically done (as is done for all projects) to ensure that any action taken by the City Council (such as amending the conditions of approval of the Lavender Court permits) is consistent with the City's Housing Element and, as required by law, the Zoning Code.
- **Provision of public benefits** – Other public benefits could be addressed in the development agreement, such as a contribution to alternative transportation or other method of providing a general public benefit or a benefit that relates particularly to the affordable housing community.

PASSED, APPROVED AND ADOPTED this 26th day of July 2010 by the following called vote:

AYES:	COUNCILMEMBERS:	Reddington, Clark, Carty
NOES:	COUNCILMEMBER(S):	None
ABSENT:	COUNCILMEMBER(S):	Stein, Armendariz

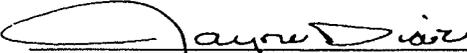

Mayor, City of Carpinteria

ATTEST:



City Clerk, City of Carpinteria

I hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the City council of the City of Carpinteria held the 26th day of July 2010.



City Clerk, City of Carpinteria

APPROVED AS TO FORM:



Peter N. Brown, City Attorney