



Planning and Environmental Services

**PLANNING COMMISSION
STAFF REPORT**

TO: Planning Commission

FROM: James F. Rupp, Jr., Assistant City Attorney

DATE: September 8, 2008

SUBJECT: Planning and Zoning Permit No. 08-670-5 (Development Agreement for the Las Cortes Project Located North of First Street, West of Rose Avenue, South of Del Sol Park and East of Marquita Street). Filed by the Oxnard Housing Authority and Steadfast Properties LLC.

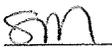
Recommendation: That the Planning Commission conduct a public hearing on the proposed development agreement.

Analysis: On March 18, 2008, the Oxnard City Council adopted the Las Cortes Specific Plan that provides for the development of a 31 acre site. The plan calls for the development of 260 replacement units for an existing public housing project, 101 parcels of for sale single family detached, 60 units of for sale attached, and 80 units of new affordable rental units. This is a public/private project with the Oxnard Housing Authority and Steadfast Properties, LLC. The site is owned by the Oxnard Housing Authority. The project is being undertaken to replace a deteriorating 260 unit public housing project.

The attached development agreement reflects the relationship between the Housing Authority and the Developer. The project is multiphased so as to accommodate the construction and relocation of the families that currently reside in the 260 units of public housing.

Attachments:

A. Draft Development Agreement

Prepared by:  JR
Approved by:  SM

DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is executed this ___ day of _____, 2008, by and among the CITY OF OXNARD, a municipal corporation (“City”) and Steadfast Residential Development, LLC, a Delaware limited liability company, Steadfast the Courts I, L.P., a California limited partnership, Steadfast the Courts II, L.P., a California limited partnership, and Steadfast the Courts III, L.P., a California limited partnership (collectively, Steadfast Residential Development, LLC, Steadfast the Courts I, L.P., Steadfast the Courts II, L.P., and Steadfast the Courts III, L.P. are referred to herein as “Developer”), pursuant to California Government Code Section 65864, *et seq.*, and the implementing procedures of the City, with respect to the following:

1. DEFINITIONS.

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

1.1 “**Applicable Rules**” means the rules, regulations, ordinances and officially adopted policies of the City that regulate the development of land that are in force as of October 14, 2008, including the City's zoning of the Property and the General Plan designation of the Property. “Applicable Rules” do not include and the City may apply (a) amended or newly enacted fees and charges of any sort, (b) storm water pollution abatement standards mandated by the Federal Water Pollution Act of 1972, and subsequent amendments thereto, and (c) construction regulations, which regulations are currently codified in Chapter 14 of the City Code, but which may be amended from time to time.

1.2 “**Developer**” means Steadfast Residential Development, LLC, a Delaware limited liability company, Steadfast the Courts I, L.P., a California limited partnership, Steadfast the Courts II, L.P., a California limited partnership, Steadfast the Courts III, L.P., a California limited partnership, and any subsequent transferees or assignees.

1.3 “**Development Agreement Act**” means Section 65864, *et seq.*, of the California Government Code.

1.4 “**Discretionary Action**” or “**Discretionary Approval**” means an action which requires the exercise of judgment, deliberation or a decision on the part of the City, including any board, commission or department or any officer or employee of the City, in the process of approving or disapproving a particular activity, as distinguished from an activity which merely requires the City, including any board, commission or department or any officer or employee of the City, to determine whether there has been compliance with statutes, ordinances or regulations.

1.5 “**Disposition and Development Agreements**” means those certain (i) Disposition and Development Agreement (Non-Profit Housing Project) by and between the Oxnard Housing Authority (the “Authority”) and Steadfast Residential Development, LLC; (ii) Disposition and Development Agreement (Affordable Rental Project) by and between the Authority and Steadfast the Courts I, L.P., and (iii) Disposition and Development Agreement

(Townhome and For Sale Projects) by and between the Authority and Steadfast the Courts II, L.P. and Steadfast the Courts III, L.P., all of which are dated on or about October 18, 2005. Collectively, the Disposition and Development Agreements provide the framework for the transfer of the Property (defined below) from the Authority to Developer for the purpose of developing the Project (defined below).

1.6 **“Parties”** means Developer and the City, each of which may be referred to herein individually as a “Party”.

1.7 **“Processing Fees”** means all fees required by the City including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, maps and certificates of occupancy which are necessary to accomplish the intent and purpose of this Agreement

1.8 **“Project”** means the development of the Property (as defined below) into 101 single family homes, 60 townhome condominium units, and 340 multi-family units. The Project is more specifically defined by the Las Cortes Specific Plan adopted by the City on or around October 16, 2007 (the “Las Cortes Specific Plan”).

1.9 **“Project Approvals”** means the following land use actions approved/certified or in the process of being approved/certified by the City: (a) the Las Cortes Specific Plan, (b) PZ No. 06-300-05 Tentative Subdivision Map (Tract Map No. 5687), (c) PZ No. 06-640-01, (d) Ordinance No. 2754, and (e) all approvals necessary to develop the Property in accordance therewith.

1.10 **“Property”** means certain real property located in the City of Oxnard, State of California, as more particularly described in Exhibit A attached hereto.

1.11 **“Reserved Powers”** means the rights and authority excepted from this Agreement’s restrictions on the City’s police powers and which are instead reserved to the City. The Reserved Powers include the powers to enact regulations or take future Discretionary Actions after the Effective Date that may be in conflict with the Applicable Rules, but: (1) are necessary to protect the public health and safety, and are generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or City Council, such as floods, earthquakes and similar disaster); or (2) are necessary to comply with state or federal laws and regulations (whether enacted previous or subsequent to the Effective Date).

1.12 **“Term”** has the meaning set forth in Section 6.2 hereof.

1.13 **“Subsequent Approvals”** means those certain other land use approvals, entitlements, and permits other than the Project Approvals as are necessary or desirable to complete the Project. The Subsequent Approvals may include, without limitation, the following: amendments of the Project Approvals, design review approvals, improvement agreements, use permits, grading permits, building permits, lot line adjustments, sewer and water connection permits, certificates of occupancy, subdivision maps, rezonings, development agreements, permits, resubdivisions, and any amendments to any of the foregoing.

2. RECITALS OF PREMISES, PURPOSE AND INTENT.

2.1 **State Enabling Statute.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

“The Legislature finds and declares that:

“(a) 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 a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

“(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development.

“(c) The lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities, is a serious impediment to the development of new housing. Whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed overtime for financing of public facilities.”

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset these restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

2.2 City Procedures and Actions.

2.2.1 **Planning Commission Action.** The Planning Commission held a duly noticed public hearing on _____ regarding this Agreement.

2.2.2 **City Council Action.** The City Council on _____, 20___, after conducting a duly noticed public hearing, adopted Ordinance No. _____, to become effective thirty days thereafter, approving this Agreement, found that its provisions are consistent with the City’s General Plan and authorized the execution of this Agreement.

2.3 Purpose of this Agreement.

2.3.1 **Developer Objectives.** In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances that the Project may be developed in accordance with the Applicable Rules and with the terms of this Agreement and subject to the City's Reserved Powers. To the extent of Project development, and as provided by Section 3.1.1, Developer anticipates making capital expenditures in reliance upon this Agreement. In the absence of this Agreement, Developer would have no assurance that it can complete the Project for the uses and to the density and intensity of development set forth in this Agreement and the Project Approvals. This Agreement, therefore, is necessary to assure Developer that the Project will not be (1) reduced in density, intensity or use from what is set forth in the Project Approvals; or (2) subjected to new rules, regulations, ordinances or official policies which are not related to compliance with State or Federal mandates or health and safety conditions.

2.3.2 **Mutual Objectives.** Development of the Project in accordance with this Agreement will provide for the orderly development of the Property in accordance with the objectives set forth in the General Plan and the Applicable Rules. Moreover, this Agreement will eliminate uncertainty in planning for and securing orderly development of the Property, assure installation of necessary improvements, assure attainment of maximum efficient resource utilization within the City at the least economic cost to its citizens and otherwise achieve the goals and purposes for which the Development Agreement Act was adopted. The Parties believe that such orderly development of the Project will provide many public benefits to the City. Additionally, although development of the Project in accordance with this Agreement will restrain the City's land use or other relevant police powers, the Agreement will provide the City with sufficient reserved powers during the term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurances that the Project may be developed during the term of this Agreement in accordance with the Applicable Rules and Reserved Powers, subject to the terms and conditions of this Agreement.

2.4 **Applicability of this Agreement.** This Agreement does not: (1) grant density or intensity in excess of that otherwise established in the Applicable Rules; (2) eliminate future Discretionary Actions relating to the Project if applications requiring Discretionary Action are initiated and submitted by the owner of a portion of the Property after the Effective Date; (3) guarantee that Developer will receive any profits from the Project; (4) prohibit the Project's participation in any benefit assessment district that is generally applicable to surrounding properties; or (5) amend the City's General Plan. Furthermore, in actions after the Effective Date applicable to the Project, the City may apply the new rules, regulations and official policies as are contained in its Reserved Powers.

3. AGREEMENT AND ASSURANCES.

3.1 **Agreement and Assurance on the Part of Developer.** In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the

promises, purposes and intentions set forth in Article 2 of this Agreement, Developer hereby agrees as follows:

3.1.1 Project Development. If the Project is developed, the Project shall be developed in accordance with the terms and conditions of this Agreement and the Project Approvals.

3.1.2 Public Benefit. In partial consideration of the City entering into this Agreement, if Developer develops the Project, Developer will replace 260 low-income units that have reached the end of their useful lives with 260 new low-income, deed restricted units. Additionally, if the Project is developed, Developer will deed restrict up to an additional 102 units for low and moderate income families for 55 years.

3.1.3 Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or the rate at which the Project would be developed. These decisions depend upon numerous factors that are not all within the control of Developer, such as market orientation and demand, availability of financing and competition. Because the California Supreme Court held in Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), that the failure of the Parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Developer and the City to hereby acknowledge and provide for the right of Developer to develop the Project in an order and at a rate and times as Developer deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that this right is consistent with the intent, purpose and understanding of the Parties to this Agreement.

3.2 Agreement and Assurances on the Part of the City. In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the promises, purposes and intentions set forth in Article 2 of this Agreement, the City hereby agrees as follows:

3.2.1 Entitlement to Develop. For the Term of this Agreement, Developer has the vested right to develop the Project subject to the terms and conditions of this Agreement, the Project Approvals, the Subsequent Approvals, and the Applicable Rules.

3.2.2 Consistency with Applicable Rules. Based upon all information made available to the City up to or concurrently with the execution of this Agreement, the City finds and certifies that no Applicable Rules prohibit or prevent the full completion and occupancy of the Project in accordance with the uses, densities, designs, heights, signage regulations and other development entitlements incorporated and agreed to herein and in the Project Approvals.

3.2.3 Changes in Applicable Rules. Any change in, or addition to, the Applicable Rules, including, without limitation, any change in any applicable general plan, specific plan or zoning regulation, adopted or becoming effective after the Effective Date, including, without limitation, any of these changes by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or

instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission of the City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Applicable Rules or this Agreement, shall not be applied to the Project unless these changes represent an exercise of the City's Reserved Powers. Notwithstanding the foregoing, Developer may, in its sole discretion, consent to the application to the Project of any change in the Applicable Rules.

City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure (each individually, a "City Law") that is in conflict with Applicable Rules or this Agreement or that reduces the development rights or assurances provided by this Agreement. Without limiting the generality of the foregoing, any City Law shall be deemed to conflict with Applicable Rules or this Agreement or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project:

- (a) Change any land use designation or permitted use of the Property;
- (b) Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project;
- (c) Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals or the Subsequent Approvals (as and when they are issued);
- (d) Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner;
- (e) Apply to the Project any City Law otherwise allowed by this Agreement that is not uniformly applied on a Citywide basis to all substantially similar types of development projects and project sites;
- (f) Result in Developer having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by Applicable Rules;
- (g) Substantially increase the cost of constructing or developing the Project or any portion thereof;
- (h) Establish, enact, increase, or impose against the Project or Property any fees, taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations (including generating demolition permit fees, encroachment permit and grading permit fees) other than those specifically permitted by this Agreement or other connection fees imposed by third party utilities;

(i) Impose against the Project any condition, dedication or other exaction not specifically authorized by Applicable Rules; or

(j) Limit the processing or procuring of applications and approvals of Subsequent Approvals.

3.2.4 Subsequent Development Review. The City shall not require Developer to obtain any approvals or permits for the development of the Project in accordance with this Agreement other than those permits or approvals that are required by the Applicable Rules or the Reserved Powers.

To the extent that any Subsequent Approval initiated by Developer changes the vested elements, then such Subsequent Approval shall not be vested without an amendment to this Agreement or shall be subject to the rules, regulations, ordinances and official policies of the City then in effect.

By approving the Project Approvals, the City has made a final policy decision that the Project is in the best interests of the public health, safety and general welfare. Accordingly, the City shall not use its discretionary authority in considering any application for a Subsequent Approval to change the policy decisions reflected by the Project Approvals or otherwise to prevent or delay development of the Project as set forth in the Project Approvals. Instead, the Subsequent Approvals shall be deemed to be tools to implement those final policy decisions and shall be issued by the City so long as they comply with this Agreement and the Applicable Rules and are not inconsistent with the Project Approvals as set forth above.

The City may deny an application for a Subsequent Approval only if such application does not comply with this Agreement or the Applicable Rules, or does not substantially comply with the Project Approvals (provided, however, that inconsistency with the Project Approvals shall not constitute grounds for denial of a Subsequent Approval which is requested by Developer as an amendment to that Project Approval). The City may approve an application for such a Subsequent Approval subject to any conditions necessary to bring the Subsequent Approval into compliance with this Agreement or the Applicable Rules, or is necessary to make the Subsequent Approval consistent with the Project Approvals. If the City denies any application for a Subsequent Approval, the City must specify in writing the reasons for such denial and may suggest a modification which would be approved. Any such specified modifications must be consistent with this Agreement, the Applicable Rules, and the Project Approvals, and the City shall approve the application if it is subsequently resubmitted for City review and addresses the reason for the denial in a manner that is consistent with this Agreement, the Applicable Rules, and the Project Approvals.

3.2.5 Effective Development Standards. The City agrees that it is bound to permit the uses, intensity of use and density on the Property which are permitted by this Agreement, insofar as this Agreement and the Project Approvals so provide or as otherwise set forth in the Applicable Rules or the Reserved Powers. The City hereby agrees that it will not unreasonably withhold or unreasonably condition any Subsequent Approval, Discretionary Action or Discretionary Approval which must be issued by the City in order for the Project to proceed, provided that Developer reasonably and satisfactorily complies with all preliminary

procedures, actions, payments of Processing Fees, and criteria generally required of developers by the City for processing applications for developments and consistent with this Agreement.

3.2.6 Interim Use. The City agrees that Developer may use the Property during the term of this Agreement for any use which is otherwise permitted by the applicable zoning regulations and the General Plan in effect at the time of the interim use or pursuant to any approvals, permits, or other entitlements previously granted and in effect as of the Effective Date.

3.2.7 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise after the Effective Date, which relates to the rate, timing, or sequencing of the development or construction on all or any part of the Property, including, without limitation, any ordinance, resolution or other measure restricting or precluding the issuance of building permits, the City agrees that the ordinance, resolution or other measure shall not apply to the Property or this Agreement, unless the changes are both (a) found by the City to be necessary to protect the health and safety of the residents of the City, and (b) generally applicable on a Citywide basis (except in the event of natural disasters as found by the Mayor or the City Council, such as floods, earthquakes and similar disasters).

3.3 Water Assessment. Pursuant to Government Code section 65867.5, Developer and the City agree that any tentative map prepared for the Project shall comply with the provisions of Government Code section 66473.7, if, and to the extent, required by Government Code section 66473.7.

4. PERIODIC REVIEW.

4.1 Annual Review. During the Term of this Agreement, the City shall review annually compliance with this Agreement by Developer. This periodic review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer shall have the burden of demonstrating good faith compliance.

4.2 Pre-Determination Procedure. Submission by Developer of evidence of compliance with this Agreement, in a form which the Development Services Director may reasonably establish, shall be made in writing and transmitted to the Development Services Director not later than sixty (60) days prior to the yearly anniversary of the Effective Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Development Services Director at least sixty (60) days prior to the yearly anniversary of the Effective Date. All these public comments and final staff reports shall, upon receipt by the City, be made available as soon as possible to Developer.

4.3 Director's Determination. On or before the yearly anniversary of the Effective Date, the Development Services Director shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 6.1. Copies of the determination shall also be available to members of the public.

4.4 **Appeal by Developer.** In the event the Development Services Director makes a finding and determination of non-compliance, Developer shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer has complied in good faith with the provisions and conditions of this Agreement.

4.5 **Period to Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Development Services Director or the Planning Commission, on appeal, that Developer has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 6.3, shall submit to Developer by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 6.15, stating with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer, and/or any Assuming Transferee (defined below), as the case may be, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or any longer period as is reasonably necessary to remedy the default(s), provided that Developer shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

4.6 **Failure to Cure Non-Compliance Procedure.** If the Development Services Director finds and determines that Developer has not cured a default pursuant to this Section, and that the City intends to terminate or modify this Agreement, the Development Services Director shall make a report to the Planning Commission. The Development Services Director shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after the public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that (i) Developer has not cured a default pursuant to this Section, and (ii) that the City shall terminate or modify this Agreement as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 6.3. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity.

4.7 **Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3 relating to the defaulting Party's rights and obligations hereunder. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 6.3.

4.8 **Reimbursement of Costs.** The Developer or Transferee, as the case may be, shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

5. DEFAULT PROVISIONS.

5.1 Default by Developer.

5.1.1 **Default.** In the event Developer fails to perform its obligations under this Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, which shall include modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2.

5.1.2 **Notice of Default.** The City through the Development Services Director shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 6.16, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer, shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred twenty (120) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy the default(s), provided that Developer shall continuously and diligently pursue the remedy at all times until the default(s) is cured.

5.1.3 **Failure to Cure Default Procedure.** If after the cure period has elapsed, the Development Services Director finds and determines that Developer or an Assuming Transferee (defined below) remains in default and that the City intends to terminate or modify this Agreement, with respect to one or more of the Developer entities and/or an Assuming Transferee, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that one or more of the Developer entities and/or an Assuming Transferee, as the case may be, has not cured the default pursuant to this Section, and that the City shall terminate or modify this Agreement with respect to such Developer entity or entities or Assuming Transferee, then the affected Developer or Assuming Transferee, as the case may be, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 6.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity.

5.1.4 **Termination or Modification of Agreement.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, relating solely to the defaulting Developer entity or entities or Assuming Transferee and such defaulting Party's portion of the Property after the final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 6.3 relating to the defaulting Party's rights and obligations hereunder. Such termination or modification shall not, however, affect or alter the rights or obligations of any Developer entity or entities or Assuming Transferees that are not in default. There shall be no termination or modification of this Agreement unless the City Council acts pursuant to Government Code section 65867.5 and 65868, irrespective of whether an appeal is taken as provided in Section 6.3.

5.2 Default by the City.

5.2.1 Default and Notice of Default. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use as provided in this Agreement upon compliance with the requirements therefor, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Developer shall have all rights and remedies provided herein or by applicable law, which shall include compelling the specific performance of the City's obligations under this Agreement provided that Developer has first complied with the procedures in Section 5.2.2.

5.2.2 Notice of Default. Developer shall first submit to the City a written notice of default stating with specificity those obligations that have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of the default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or a longer period as is reasonably necessary to remedy the default(s), provided that the City shall continuously and diligently pursue the remedy at all times until the default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Developer shall submit the matter to arbitration pursuant to Section 6.5 of this Agreement.

5.3 No Monetary Damages. It is acknowledged by the Parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. The Parties agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would require to enter into this Agreement to justify the exposure. Therefore, the Parties agree that each of the Parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the Parties shall not be liable in monetary damages and the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement.

6. GENERAL PROVISIONS.

6.1 Effective Date. This Agreement shall be effective thirty days after adoption of Ordinance No. _____.

6.2 Term. The Term of this Agreement shall extend from the Effective Date until the earlier of (i) the expiration of the last Disposition and Development Agreements to expire or (ii) October 1, 2028, unless the Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. In accordance with Section 6.27 hereof, and pursuant to Government Code section 66452.6(a)(1), this Agreement shall extend the term of PZ No. 06-300-05 for the Term of this Agreement. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect; provided, however, that this termination shall not affect any right or duty arising from entitlements or approvals, including the Project Approvals on the Property approved prior to, concurrently with, or subsequent to, the Effective Date. The Term of this Agreement shall

automatically be extended for the period of time of any actual delay resulting from any enactments pursuant to the City's Reserved Powers or moratoria.

6.3 Appeals to City Council. Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Commission is created by this Agreement, that appeal shall be taken, if at all, within twenty (20) days after the mailing of the finding and/or determination to Developer. The City Council shall act upon the finding and/or determination of the Planning Commission within eighty (80) days after the mailing, or within any additional period as may be agreed upon by Developer and the Council.

6.4 Enforced Delay; Extension of Time of Performance. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which the Party is prevented from, or is unreasonably interfered with, the doing or completion of the act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; disasters; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs (e.g., the annual review)); any approval required by the City (not including any period of time normally expected for the processing of the approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third Parties against Developer. If written notice of the delay is given to either Party within thirty (30) days of the commencement of the delay, an extension of time for cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

6.5 Dispute Resolution.

6.5.1 Dispute Resolution Proceedings. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) non-binding arbitration as provided below; or (c) any other manner of dispute resolution which is agreed upon by the Parties.

6.5.2 Non-Binding Arbitration. Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who is selected by mutual agreement of the Parties.

6.5.3 Arbitration Procedures. Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under

the procedures set forth in Code of Civil Procedure Section 638, *et seq.*, or under other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to the proceeding.

6.5.4 Extension of Agreement Term. The Term of this Agreement as set forth in Section 6.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that an extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of this dispute resolution.

6.6 Legal Action. Either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation of the obligations and rights of the Parties hereto.

6.7 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Ventura, State of California for state actions and the Central District of California for any federal actions.

6.8 Amendments. This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868; provided, however, that any amendment which does not relate to the term, permitted uses, density or intensity of use, height or size of buildings, provisions for reservation and dedication of land, or monetary contributions by Developer shall not require notice or public hearing, before the Parties may execute an amendment hereto.

6.8.1 Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer 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 Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section 6.8. The City Manager is hereby authorized to execute any operating memoranda hereunder without Council or Planning Commission action.

6.9 Assignments and Transfers. Assignment of Interests, Rights and Obligations.

Developer may transfer or assign all or any portion of its interests, rights or obligations under this Agreement, the Project Approvals or Subsequent Approvals to third parties acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities.

6.9.1 Transfer Agreements. In connection with the transfer or assignment by Developer of all or any portion of the Project (other than a transfer or assignment by Developer to an affiliated party, a Mortgagee (as defined below), or a Non-Assuming Transferee (as defined below)), Developer and the transferee (an “Assuming Transferee”) shall enter into a written agreement (a “Transfer Agreement”) regarding the respective interests, rights and obligations of Developer and the transferee in and under the Agreement, the Project Approvals, and the Subsequent Approvals. Such Transfer Agreement shall (i) release Developer from obligations under the Agreement, the Project Approvals, or the Subsequent Approvals that pertain to that portion of the Project being transferred, as described in the Transfer Agreement, provided that the Assuming Transferee expressly assumes such obligations and (ii) transfer to the Assuming Transferee vested rights to improve that portion of the Project being transferred, and may address any other matter deemed by Developer to be necessary or appropriate in connection with the transfer or assignment. A form of Transfer Agreement is attached hereto as Exhibit B the form of which, if used by Developer and an Assuming Transferee, is hereby approved in advance by City.

Developer shall seek City’s prior written consent to any Transfer Agreement, which consent shall not be unreasonably withheld or delayed. Failure by City to respond within forty-five (45) days to any request made by Developer for such consent shall be deemed to be City’s approval of such Transfer Agreement. City may refuse to give its consent only if, in light of the proposed Assuming Transferee’s reputation and financial resources, such Assuming Transferee would not in the City’s reasonable opinion be able to perform the obligations proposed to be assumed by such Assuming Transferee. Such determination shall be made by the Community Development Director, and is appealable by Developer to the City Council.

Any Transfer Agreement shall be binding on Developer, City and the Assuming Transferee. Upon recordation of any Transfer Agreement in the Official Records of Ventura County, Developer shall automatically be released from those obligations assumed by the Assuming Transferee therein.

Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by an Assuming Transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer’s obligations under this Agreement shall be attributed to Developer, nor may Developer’s rights hereunder be canceled or diminished in any way by any breach or default by any such person.

6.9.2 Non-Assuming Transferees. Except as otherwise required by Developer in Developer’s sole discretion, the burdens, obligations and duties of Developer under this Agreement shall terminate with respect to, and neither a Transfer Agreement nor County’s consent shall be required, in connection with the transfer of any single parcel or multiple parcels

in the Property to a third party that Developer elects will not assume Developer's obligations under this Agreement. The transferee in such a transaction and its successors ("Non-Assuming Transferees") shall be deemed to have no obligations under this Agreement, but shall continue to benefit from the vested rights provided by this Agreement for the duration of the Term. Nothing in this section shall exempt any property transferred to a Non-Assuming Transferee from payment of applicable fees and assessments or compliance with applicable conditions of approval.

Notwithstanding any provision of this Agreement to the contrary, this Agreement shall terminate as to any dwelling unit which has been finally subdivided, constructed, and for which the applicable City agency has issued a certificate of occupancy or certificate of completion. Upon the issuance of a certificate of occupancy or certificate of completion, the dwelling unit shall be released from and shall no longer be subject to or burdened by the provisions of this Agreement. The provisions of this paragraph shall be self-executing and shall not require the execution or recordation of any further document or instrument.

6.10 Covenants. The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Property for the benefit thereof, and the burdens and benefits hereof shall bind and inure to the benefit of the Parties hereto and all successors, transferees and assigns of the Parties, including any transferee of Developer as provided herein.

6.11 Assignment to Authority. In the event that the Disposition and Development Agreements are terminated prior to construction of the Project, then Developer shall upon the request of the Authority, at no cost to the Authority, assign all of Developer's interests, rights and obligations under this Agreement to the Authority or a third party designated by the Authority. Developer shall be automatically released from any and all obligations and liabilities under this Agreement.

6.12 Cooperation and Implementation.

6.12.1 Processing. Upon satisfactory completion by Developer of all required preliminary actions and payment of appropriate Processing Fees, including the fee for processing this Agreement, the City shall commence and diligently process all required steps necessary for the implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans and other information necessary for the City to carry out its processing obligations

6.12.2 Other Governmental Permits. To the extent the Project is developed, Developer and/or any transferee shall apply for other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer and/or any transferee, as the case may be, in its endeavors to obtain the permits and approvals and shall, from time to time at the request of Developer, and/or any transferee, as the case may be, attempt with due diligence and in good faith to enter into binding agreements with any entity to ensure the availability of permits and approvals, or services, provided the agreements are reasonable and not detrimental to the City (a "Government

Agreement”). Government Agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, *et seq.*) or the provisions of other laws to create legally binding, enforceable agreements between the Parties. To the extent allowed by law, Developer and/or any transferee, as the case may be, shall be a party to any Government Agreement, or a third party beneficiary of such Government Agreement, entitled to enforce for its benefit on behalf of the City, or in its own name, the rights of the City or Developer and/or any transferee, as the case may be, thereunder or the duties and obligations of the Parties thereto. Developer and/or any transferee, as the case may be, shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such Government Agreement provided that Developer and/or any transferee, as the case may be, has requested it. Developer and/or any transferee, as the case may be, shall defend the City in any challenge by any person or entity to any such Government Agreement provided that Developer and/or any transferee, as the case may be, has requested it, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such Government Agreement provided that Developer and/or any transferee, as the case may be, has requested it. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer and/or any transferee, as the case may be, except where Developer and/or any transferee, as the case may be, has notified the City in writing, prior to the City entering into a Government Agreement, that it does not desire for the City to execute such Government Agreement.

6.12.3 Cooperation in the Event of Legal Challenge. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Parties hereby agree to affirmatively cooperate in defending the action.

6.13 Relationship of the Parties. It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent contractor and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

6.14 Hold Harmless. Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, and its elected and appointed representatives, boards, commissions, officers, agents, and employees (collectively, “the City” in this Section), from any and all claims, costs, and liability for any damages, personal injury or death which may arise, directly or indirectly, from such Developer or such Developer’s contractors, subcontractors’, agents’, or employees’ operations in connection with the construction of the Project, whether operations be by such Developer or any of such Developer’s contractors, subcontractors, by anyone or more persons directly or indirectly employed by, or acting as agent for such Developer or any of such Developer’s contractors or subcontractors. Developer further agrees to and shall indemnify, save, hold harmless and, if requested by the City, such Developer shall defend the City in any action brought by a third party (1) challenging the validity of this Agreement or (2) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Nothing in this Section shall be construed to mean that each Developer of any portion of the Property shall hold the City

harmless and/or defend it from any claims arising from, or alleged to arise from, the negligent acts, or negligent failure to act, on the part of the City. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless. City may make all reasonable decisions with respect to its representation in any legal proceeding.

6.15 Notices. Any notice or communication required hereunder between the City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing this notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address, or any additional address, to which the notice or communication shall be given. These notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

City of Oxnard
300 West Third Street, Third Floor
Oxnard, California 93030
Attention: City Manager

with copies to:

City of Oxnard
300 West Third Street, Third Floor
Oxnard, California 93030
Attention: City Attorney

If to Developer:

Steadfast Residential Development
4343 Von Karman Avenue
Suite 300
Newport Beach, CA 92660
Attention: Etienne Brodeur

with copies to:

Steadfast Residential Development
4343 Von Karman Avenue
Suite 300
Newport Beach, CA 92660
Attention: Ana Marie Del Rio

6.16 Recordation. As provided in Government Code Section 65868.5, the City Clerk of Oxnard shall record a copy of this Agreement with the Registrar-Recorder of the County of Ventura within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for recording prior to or at the time of recording.

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

6.18 **Successors and Assignees.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties, any subsequent owner of all or any portion of the Property and their respective successors and assignees.

6.19 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either City or Developer of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then City and Developer shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to City and Developer.

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

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

6.22 **No Third Party Beneficiaries.** The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third party beneficiaries and this Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person whatsoever.

6.23 **Entire Agreement.** This Agreement sets forth and contains the entire understanding and agreement of the Parties and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein and no testimony or evidence of any representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement.

6.24 **Legal Advice; Neutral Interpretation; Headings.** Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to that Party as the source of the language in question. The headings used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

6.25 **Discretion to Encumber.** This Agreement shall not prevent or limit Developer in any manner, at its sole discretion, from encumbering the Property or any portion of the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the property or its improvements.

6.26 Entitlement to Written Notice of Default. Either (i) the mortgagee of a mortgage or beneficiary of a deed of trust ("Mortgagee") encumbering the Property, or any part thereof, and their successors and assigns or (ii) an equity investor of any Developer or Assuming Transferee, as the case may be (an "Investor"), shall, upon written request to the City, be entitled to receive from the City written notification of any default by Developer of the performance of Developer's obligations under this Agreement which has not been cured within sixty (60) days following the date of default. The Mortgagee or Investor shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such notice of default, or any longer period as is reasonably necessary to remedy the default(s), provided that Mortgagee or Investor shall continuously and diligently pursue the remedy at all times until the default(s) is cured. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee or Investor obtaining possession of the Property, or any portion thereof, and such Mortgagee or Investor seeks to obtain possession, such Mortgagee or Investor shall have until thirty (30) days after the date of obtaining such possession to cure such default, or any longer period as is reasonably necessary to remedy the default(s), provided that Mortgagee or Investor shall continuously and diligently pursue the remedy at all times until the default(s) is cured. Any Mortgagee or Investor who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of the Developer under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee or Investor be liable for any defaults or monetary obligations of the Developer arising prior to acquisition of title to the Property by such Mortgagee or Investor, except that the Mortgagee or Investor shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the portion of the Property acquired by such Mortgagee or Investor, have been satisfied.

6.27 Life of Subdivision Maps, Development Approvals, and Permits. The term of any subdivision map or any other map, permit, rezoning or other land use entitlement approved as a Project Approval or Subsequent Approval shall automatically be extended for the longer of the duration of this Agreement (including any extensions) or the term otherwise applicable to such Project Approval or Subsequent Approval if this Agreement is no longer in effect. The term of this Agreement and any subdivision map or other Project Approval or Subsequent Approval shall not include any period of time during which a development moratorium (including, but not limited to, a water or sewer moratorium or water and sewer moratorium) or the actions of other public agencies that regulate land use, development or the provision of services to the land, prevents, prohibits or delays the construction of the Project or a lawsuit involving any such development approvals or permits is pending.

6.28 Counterparts. This Agreement may be executed in duplicate originals, each of which is deemed to be an original.

6.29 Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either Party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that Party's actual knowledge: (a) that the Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Agreement by the City or

Developer, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; and (c) such other matters as may be reasonably requested.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

Developer

City of Oxnard, a municipal corporation
of the State of California

By: _____
Name: _____
Title: _____

By: _____
Dr. Thomas E. Holden, Mayor

Approved as to form:

Approved as to form:

By: _____
_____, Esq.

Counsel _____

By: _____
Alan Holmberg
City Attorney

ATTEST:

By: _____
Daniel Martinez
City Clerk

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

DEVELOPER:

STEADFAST RESIDENTIAL DEVELOPMENT, LLC
a Delaware limited liability company

By: Beacon Bay Holdings,
a Delaware limited liability company,
its Manager

By: _____
Name: _____
Title: _____

STEADFAST THE COURTS I, L.P.,
a California limited partnership

By: SRP Urban Development, Inc.,
a California corporation,
its General Partner

By: _____
Name: _____
Title: _____

STEADFAST THE COURTS II, L.P.,
a California limited partnership

By: SRP Urban Development, Inc.,
a California corporation,
its General Partner

By: _____
Name: _____
Title: _____

[signatures continue on following page]

**STEADFAST THE COURTS III, L.P.,
a California limited partnership**

By: SRP Urban Development, Inc.,
a California corporation,
its General Partner

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

EXHIBIT A
DESCRIPTION PROPERTY
(Attached)

EXHIBIT B
FORM OF TRANSFER AGREEMENT
(Attached)

Recording Requested by and
When Recorded Return to:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

ASSIGNMENT AND ASSUMPTION AGREEMENT - DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT ("**Agreement**") is made and entered into as of _____, 20 __, by and between _____, a _____ ("**Assignor**"), and _____, a _____ ("**Assignee**").

RECITALS

A. Assignor owns that real property located in the City of Oxnard ("**City**"), County of Ventura, State of California, and more particularly described in Exhibit A attached hereto (the "**Property**").

B. On the date hereof, Assignee is acquiring approximately __ acres of the Property more particularly described in Exhibit B attached hereto (the "**Assigned Property**").

C. The City, the Oxnard Housing Authority (the "Authority"), and _____ entered into that certain Development Agreement dated as of October __, 2008 and recorded against the Property on _____ as Instrument No. _____ in the Ventura County Recorder's Office (the "**Development Agreement**").

D. Assignor desires to assign to Assignee all of Assignor's rights, duties and obligations under the Development Agreement with respect to the Assigned Property only (the "**Assigned Rights and Obligations**"), and Assignee desires to accept and assume Assignor's rights and obligations under the Development Agreement with respect to the Assigned Property only (the "**Assumed Rights and Obligations**"), such assignment and assumption to be effective on the Effective Date (as defined in Section 1.3 below). The Assigned Rights and Obligations and the Assumed Rights and Obligations are referred to collectively herein as the "**Assigned Property Rights and Obligations**".

NOW THEREFORE, in consideration of these promises, and of the agreements, covenants and conditions contained in this Agreement and other good and valuable consideration, the parties agree as follows:

1.

**ASSIGNMENT AND ASSUMPTION OF
THE ASSIGNED PROPERTY RIGHTS AND OBLIGATIONS**

1.1 **Assignment.** Assignor assigns to Assignee, as of the Effective Date (as defined in Section 1.3 below), all of Assignor's rights, title and interest in and to the Assigned Property Rights and Obligations.

1.2 **Assumption.** As of the Effective Date, Assignee accepts Assignor's assignment of the Assigned Rights and Obligations and assumes the Assumed Rights and Obligations. From and after the Effective Date, Assignee shall keep and perform all covenants, conditions and provisions of the Development Agreement relating to the Assigned Property.

1.3 **Effective Date.** For purposes of this Agreement, the "Effective Date" shall be the later to occur of (1) the date on which the deed from Assignor to Assignee for the Assigned Property is recorded in the Office of the Recorder of the County of Ventura; or (2) the date of the execution of this Agreement by all parties.

2.

RIGHTS AND REMEDIES

2.1 **Assignor's Release; No Assignor Liability or Default for Assignee Breach.** Pursuant to Section 6.9.2 of the Development Agreement, Assignor shall be released from the Development Agreement with respect to the Assigned Property and the Assumed Rights and Obligations as of the Effective Date. Any default or breach by Assignee under the Development Agreement following the Effective Date with respect to the Assigned Property or the Assumed Rights and Obligations ("**Assignee Breach**") shall not constitute a breach or default by Assignor under the Development Agreement and shall not result in (a) any remedies imposed against Assignor or (b) modification or termination of the Development Agreement with respect to that portion of the Property retained by Assignor after the conveyance of the Assigned Property, if any (the "**Assignor Property**").

2.2 **No Assignee Liability or Default for Assignor Breach.** As of the Effective Date, any default or breach by Assignor under the Development Agreement prior to or after the Effective Date ("**Assignor Breach**"), shall not constitute a breach or default by Assignee under the Development Agreement, and shall not result in (a) any remedies imposed against Assignee or (b) modification or termination of the Development Agreement with respect to the Assigned Property.

3.

PERIODIC REVIEW OF COMPLIANCE

3.1 **Assignor Responsibilities.** Assignor shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assignor Property, and Assignee shall have no responsibility therefor.

3.2 **Assignee Responsibilities.** Assignee shall participate in the annual review of the Development Agreement conducted pursuant to Section 65865.1 of the California Government Code with respect to the Assigned Property, and Assignor shall have no responsibility therefor.

4.

AMENDMENT OF THE DEVELOPMENT AGREEMENT

4.1 **Assignor.** Assignor shall not request, process or consent to any amendment to the Development Agreement that would affect the Assigned Property or the Assigned Property Rights and Obligations without Assignee's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignor may process any amendment that does not affect the Assigned Property, and, if necessary, Assignee shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Assigned Property or any of Assignee's Assigned Property Rights and Obligations pursuant to the Development Agreement.

4.2 **Assignee.** Assignee shall not request, process or consent to any amendment to the Development Agreement that would affect the Assignor Property or the Assignor's remaining rights and obligations pursuant to the Development Agreement without Assignor's prior written consent, which consent shall not be withheld unreasonably. The foregoing notwithstanding, Assignee may process any amendment that does not affect the Assignor Property, and, if necessary, Assignor shall consent thereto and execute all documents necessary to accomplish said amendment, provided that said amendment does not affect the Assignor Property or any of Assignor's remaining rights and obligations pursuant to the Development Agreement.

5.

GENERAL PROVISIONS

5.1 **Notices.** All notices, invoices and other communications required or permitted under this Agreement shall be made in writing, and shall be delivered either personally (including by private courier), by certified mail, postage prepaid and return receipt requested, or by nationally recognized overnight courier service to the following addresses, or to such other addresses as the parties may designate in writing from time to time:

If to Assignee:

with copies to:

If to Assignor:

with a copies to:

Notices personally delivered shall be deemed received upon delivery. Notices delivered by certified mail as provided above shall be deemed received on actual delivery. Notices delivered by courier service as provided above shall be deemed received twenty-four (24) hours after the date of deposit. From and after the Effective Date and until further written notice from Assignee to the City pursuant to the terms of the Development Agreement, Assignee hereby designates as its notice address for notices sent by the City pursuant to Section 6.15 of the Development Agreement, the notice address set forth above.

5.2 Estoppel Certificates. Within ten (10) days after receipt of a written request from time to time, either party shall execute and deliver to the other, or to an auditor or prospective lender or purchaser, a written statement certifying to that party's actual knowledge: (a) that the Development Agreement is unmodified and in full force and effect (or, if there have been modifications, that the Development Agreement is in full force and effect, and stating the date and nature of such modifications); (b) that there are no current defaults under the Development Agreement by the City and either Assignor or Assignee, as the case may be (or, if defaults are asserted, so describing with reasonable specificity) and that there are no conditions which, with the passage of time or the giving of notice, or both, would constitute a default; (c) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, and stating the date and nature of such modifications); and (d) such other matters as may be reasonably requested.

5.3 Attorneys' Fees. In the event of any legal or equitable proceeding in connection with this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees, costs and disbursements paid or incurred in good faith at the arbitration, pre-trial, trial and appellate levels, and in enforcing any award or judgment granted pursuant thereto.

5.4 No Waiver. No delay or omission by either party in exercising any right, remedy, election or option accruing upon the noncompliance or failure of performance by the other party under the provisions of this Agreement shall constitute an impairment or waiver of any such right, remedy, election or option. No alleged waiver shall be valid or effective unless it is set forth in a writing executed by the party against whom the waiver is claimed. A waiver by either party of any of the covenants, conditions or obligations to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or any other covenants, conditions or obligations.

5.5 Amendment. This Agreement may be amended only by a written agreement signed by both Assignor and Assignee.

5.6 **Successors and Assigns.** This Agreement runs with the land and shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

5.7 **No Joint Venture.** Nothing contained herein shall be construed as creating a joint venture, agency, or any other relationship between the parties hereto other than that of assignor and assignee.

5.8 **Severability.** If any term or provision of this Agreement or the application thereof to any person or circumstance is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the full extent permitted by law; provided that, if the invalidation or unenforceability would deprive either Assignor or Assignee of material benefits derived from this Agreement or make performance under this Agreement unreasonably difficult, then Assignor and Assignee shall meet and confer and shall make good faith efforts to modify this Agreement in a manner that is acceptable to Assignor, Assignee and the City.

5.9 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.10 **Third Party Beneficiaries.** Assignor and Assignee acknowledge that the City and the Authority are third party beneficiaries of the terms and conditions of this Agreement to the extent necessary for City or the Authority to enforce the terms and conditions of the Development Agreement. This Agreement shall not be deemed or construed to confer any rights, title or interest, including without limitation any third party beneficiary status or right to enforce any provision of this Agreement, upon any person or entity other than Assignor, Assignee, the City, and the Authority.

5.11 **Time of the Essence.** Time is of the essence in the performance by each party of its obligations under this Agreement.

5.12 **Authority.** Each person executing this Agreement represents and warrants that he or she has the authority to bind his or her respective party to the performance of its obligations hereunder and that all necessary board of directors', shareholders', partners' and other approvals have been obtained.

5.13 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one document.

[remainder of page left intentionally blank – signature pages follow]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Agreement by proper persons thereunto duly authorized, to be effective as of the Effective Date.

“Assignor”

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

“Assignee”

_____,
a _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature of Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature of Notary Public

EXHIBIT A
Description of the Property
(Attached)

EXHIBIT B

Description of the Assigned Property

(Attached)

EXHIBIT C

CITY OF OXNARD'S CONSENT

The City of Oxnard hereby consents to the assignment and assumption of the Assigned Property Rights and Obligations as set forth in this Agreement and agrees to the terms and conditions set forth herein.

CITY OF OXNARD,
a Municipal corporation of the State of California

By: _____

Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF CALIFORNIA

)

) ss:

COUNTY OF VENTURA

)

On _____, 20__ before me, _____ (here insert name of the officer), Notary Public, personally appeared

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

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

WITNESS my hand and official seal.

Signature of Notary Public