

September 3, 2008

TO: **Planning Commission**

FROM: **Planning Staff**

SUBJECT: **Development Agreement for Town Center West (RiverPark), filed by Oxnard Development Company, LLC**

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Recommendation:

That the Planning Commission have a hearing on the proposed Development Agreement for the Town Center West (RiverPark) properties and find conformance with the General Plan.

Discussion:

The RiverPark Specific Plan applies to several properties which were not among the holdings of the original RiverPark development partnerships. These were the properties included in the original Oxnard Town Center subdivision. The proposed Development Agreement applies to the two remaining vacant parcels within the original subdivision. The two parcels consist of a total of 4.23 acres designated for commercial development.

Execution of the Development Agreement will place these two remaining vacant parcels on a par with the parcel governed by the original RiverPark Development Agreement. The Development Agreement includes the same terms and conditions that apply to the balance of the RiverPark development. In addition, the Development Agreement requires the developer to rehabilitate the landscaping in the adjacent Ventura Road median at the time of the development of the affected parcels.

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of Oxnard  
305 West Third Street  
Oxnard, California 93030  
Attention: City Clerk

(Gov. Code § 27361.6)

SPACE ABOVE THIS RESERVED FOR RECORDER'S USE

### **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is made in Ventura County, California as of \_\_\_\_\_, 2008, by and between the **CITY OF OXNARD**, a municipal corporation of the State of California (the "City") and **OXNARD DEVELOPMENT COMPANY, LLC**, a California limited liability company (the "Developer").

#### **RECITALS**

A. The City is authorized pursuant to Government Code sections 65864 through 65869.5 and City Council Resolution No. 10,448 to enter into binding development agreements with persons or entities owning legal or equitable interests in real property located within the City.

B. Oxnard Development Company, LLC is the owner of that certain real property more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").

C. The City and the Developer each desire to enter into this Agreement affecting the Property in conformance with Government Code section 65864 et seq. in order to achieve the mutually beneficial development of the Property in accordance with this Agreement.

D. On September 10, 2002, the City Council of the City of Oxnard ("City Council") approved the River Park Specific Plan (the "Specific Plan"). The Property is included in the Specific Plan as Planning District B, the West Peripheral Commercial District.

E. The development project which the Developer seeks to develop on the Property will consist of Commercial: Regional land uses (collectively, the "Project"), all in accordance with the Specific Plan.

F. The City and the Developer each mutually desire to obtain the binding agreement of one another to permit and ensure that the Project is developed on the Property strictly in accordance with the provisions of this Agreement.

G. This Agreement will benefit the Developer and the City by eliminating uncertainty in planning and providing for the orderly development of the Project thereby serving the public interest within the City and the surrounding region.

H. The Planning Commission of the City (the "Planning Commission") and City Council have each given notice of their intention to consider this Agreement, have each conducted public hearings thereon pursuant to the relevant provisions of the Government Code, and have each found that the provisions of this Agreement are consistent with the City's 2020 General Plan for development within the City (the "General Plan"), City zoning ordinances, and the Specific Plan. The City Council has also specifically considered the impacts and benefits of the Project upon the welfare of the residents of the City and the surrounding region. The City Council has determined that this Agreement is beneficial to the residents of the City and is consistent with the present public health, safety and welfare needs of the residents of the City and the surrounding region.

I. On \_\_\_\_\_, 2008, the Planning Commission held a duly noticed public hearing wherein the Planning Commission recommended approval of this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals which are hereby incorporated into the operative provisions of this Agreement by this reference and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and the Developer agree as follows:

**1. Definitions.**

1.1 Except as to development impact and capital fees, "Applicable Law of the Project" means the rules, regulations and official policies of the City which were in force as of the Effective Date (as defined below), including, but not limited to, the General Plan, the Specific Plan (as defined below), City zoning ordinances and other entitlements, development conditions and standards, public works standards, subdivision regulations, density, growth management, environmental consideration, grading requirements, and design criteria applicable to the Project. Development impact and capital fees shall be applicable to the Project as provided in Section 6 hereof. Applicable Law of the Project shall not include building standards adopted by the City pursuant to Health and Safety Code section 17922 and 17958.5.

1.2 "City Council" shall mean the City Council of the City.

1.3 "City Manager" shall mean the City Manager of the City.

1.4 "Discretionary Actions" and "Discretionary Approvals" means those actions and approvals, including those relating to entitlement permits, which require the

exercise of judgment, or imposition of a condition or obligation, by any officer, employee, review board, commission or department of the City. Discretionary Actions and Discretionary Approvals are distinguished from activities or approvals which merely require any officer, employee, review board, commission or department of the City to determine whether or not there has been compliance with applicable statutes, ordinances, regulations or conditions of approval.

1.5 "Effective Date" means the date on which the ordinance approving this Agreement becomes operative under Government Code section 36937.

1.6 "Financing District" means a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982 (Government Code section 53311 et seq.), an assessment district formed pursuant to the Landscaping and Lighting Act of 1972 (Streets and Highways Code section 22500 et seq.), or any other similar special district or assessment district existing pursuant to state law for purposes of financing the cost of public improvements, facilities, services or public facilities within a distinct geographic area of the City.

1.7 "Periodic Review" shall have the meaning assigned to such term in Section 13 hereof.

1.8 "Planning Commission" shall mean the Planning Commission of the City.

1.9 "Project" shall mean that development contemplated for the Property pursuant to the Specific Plan.

1.10 "Specific Plan" shall mean the RiverPark Specific Plan adopted by the City Council on August 27, 2002, as further amended prior to approval of this Agreement.

2. **Term of Agreement.** This Agreement shall become operative and commence upon the Effective Date and shall remain in effect for a term of fourteen (14) years, unless the term is modified by mutual written consent of the City and the Developer. The running of this term shall be automatically stayed for the period of time during which the parties apply to a court of competent jurisdiction for relief or further proceedings pursuant to this Agreement, provided that the issue that is the subject of the requested relief or further proceedings is one of substantial materiality to the Development Agreement as a whole. The parties further agree to consult regarding possible tolling of the term should delay in permit processing or review by a public agency with jurisdiction over the Project or its improvements pose a substantial impediment to Owner's ability to complete construction of the Project within the term.

If, on or before the end of the term, Developer is in the process of developing the Property and has completed the construction of at least fifty percent (50%) of the Project, then the Developer may submit a written request to the City Manager requesting an extension of the

term of the Agreement. Such request shall include a summary of the specific development that has occurred on the Property and a projected schedule for the completion of the Project. Upon the Developer's submission of the summary, along with any additional reasonable detail requested by the City Manager, the City Manager shall determine, in his or her reasonable discretion, whether the term of the Agreement should be extended. Such determination shall be based upon the Developer's implementation of and compliance with the provisions of the Specific Plan and the Agreement, and the effect of such extension upon the fiscal welfare of the City. If the City Manager extends the Agreement, such extension shall be until the Project has been completed, but not to exceed an additional ten (10) years. Upon the expiration of the term, this Agreement shall be deemed terminated and have no further force and effect.

**3. Permitted Uses; Terms and Conditions of Development.** All of the Project and the Property shall be subject to this Development Agreement. The permitted uses, the density and intensity of use, the location of uses, the maximum height and size of proposed buildings, and other standards of Project design applicable to the Property shall be consistent with the Specific Plan and the Applicable Law of the Project. In particular, the Project shall contain the following elements, in compliance with Government Code § 65865.2:

**3.1** Permitted uses of the Property are limited to those uses permitted in the Specific Plan.

**3.2** Maximum density (intensity of use) shall be consistent with the Specific Plan.

**3.3** Maximum height for each of the proposed buildings shall be consistent with the Specific Plan.

**3.4** Maximum size for each of the proposed buildings shall be consistent with the Specific Plan.

**3.5** Provisions for reservation or dedication of land for public purposes shall be consistent with the Specific Plan.

**4. Vested Right to Develop the Project.** The City hereby grants to the Developer the vested right to develop the Project on the Property to the extent and in the manner provided in this Agreement, subject to the Applicable Law of the Project. Except as provided herein, any change in the City's ordinances, policies and standards adopted or becoming effective after the Effective Date shall not be applicable to or binding upon the Project or the Property. This Agreement will bind the City to the terms and obligations specified in this Agreement and will limit, to the degree specified in this Agreement and under state law, the future exercise of the City's ability to regulate development of the Project.

**5. Applicable Law of the Project; No Conflicting Enactments; Initiative Measures and Moratoria; Cooperation.** Except as otherwise provided in this Agreement, the ordinances, rules, regulations and official policies of City governing the Project and Property shall be those ordinance, rules, regulations and official policies in effect on the date of City's approval of this Agreement.

(a) No Conflicting Enactments. Neither the City Council nor any agency of the City shall enact rules, regulations, ordinances or other measures which relate to the rate, timing, sequencing, density, intensity or configuration of the development of any part of the Project which is inconsistent or in conflict with this Agreement. Future regulations may only be applied to the Project and Property if one of the following three conditions occurs:

i. The provisions of Section 4 shall not govern the application to the Project of the Uniform Building Code, Uniform Fire Code and other uniform construction codes, and other codes, ordinances and regulations enforced by City relating to building or construction standards, which shall apply to the Project as in force and effect at the time of building permit or construction permit issuance.

ii. This Agreement shall not preclude the City, in subsequent actions applicable to the Property or the Project, from applying new rules, regulations and official policies which do not conflict with the Applicable Law of the Project, which carry out the objectives of this Agreement, and which facilitate the development of the Project.

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

(b) Initiative Measures and Moratoria. No moratorium or other limitation (whether relating to (i) the rate, timing or sequence of the development of or issuance of entitlement permits for all or any part of the Project, (ii) construction or condition of public improvements or mitigation related thereto, including but not limited to traffic levels of service, or (iii) any other matter, and whether enacted by initiative or otherwise) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, certificates of occupancy, discretionary or ministerial permits, action or approvals or other entitlements without limitation shall apply to the Project and Property including but not limited to Measure V on the November 4, 2008 general election ballot for City.

(c) Cooperation. City agrees to cooperate with Developer in all reasonable manners in order to keep this Agreement in full force and effect. Notwithstanding the preceding sentence, in the event any legal action instituted by a third party or other government entity or official challenging the validity of this Agreement, the City and Developer agree to cooperate in defending such action, with the Developer to indemnify the City, pursuant to Paragraph 20(m) of this Agreement. In the event of any litigation challenging the effectiveness of this Agreement or any portion thereof, this Agreement shall remain in full force and effect while such litigation, including any appellate review, is pending, unless a court of competent jurisdiction orders otherwise.

**6. Project's Payment of Development Impact and Capital Fees.** Developer shall pay all development impact and capital fees applicable to the Project at such time and in such manner as is provided in the Applicable Law of the Project ("Existing Fees"). The Existing Fees shall be fixed for a period of five (5) years after January 4, 2006, which constitutes the Fee Start Date contained in the River Park development agreement. The Existing Fees shall consist of those development impact and capital fees in existence on January 4, 2006, including but not limited to Growth Requirement Capital Fees, Planned Drainage Fees, Planned Traffic Circulation Facilities Fees, Planned Wastewater Facilities Fees and Planned Water Facilities Fees. The Existing Fees shall only include such fees that are retained by the City and not paid to another governmental agency, and that offset or reimburse the City for the increased impacts on the City's public improvements due to development. Any increase in any fee applicable to the Project shall only be applicable to the Project to the extent that any such fee increase is applied consistently and proportionately in accordance with applicable law. Any new City development impact and capital fees, and any increases in the Existing Fees, shall be applied to those portions of the Project and Property that receive a building permit five or more years after January 4, 2006.

**7. Construction of Infrastructure for Project.** The Developer shall neither receive credit nor provide reimbursement for those public facilities required pursuant to the Specific Plan that have already been constructed. Developer shall construct at its sole cost and expense all infrastructure improvements specifically required for development of the Project, as specified by the Specific Plan ("Project Infrastructure") and by those mitigation measures adopted pursuant to the environmental documentation for the Project. In addition, to provide a special benefit to City, Developer agrees to provide and maintain landscaping within the median of Ventura Road from Town Center Drive to the U.S. 101 freeway bridge consistent with the landscaping standards and criteria set forth in the Specific Plan. Installation of such median landscaping will commence within one hundred twenty (120) days from issuance of the first building permit for the Project and will proceed diligently until completed. For good cause shown, City's Community Development Director may provide reasonable extensions of such commencement date. Developer shall continue to maintain such landscaping until such maintenance is assumed by a landscape maintenance district or other entity or program approved by City.

**8. Subsequent Discretionary Action and Approval.** Development of the Project will require City's approval of one or more discretionary permits. The City agrees not to unreasonably withhold, condition or delay any Discretionary Action or Discretionary

Approval or other action or approval by the City which may be required for development of the Project subsequent to the execution of this Agreement. Upon the filing of a complete application and payment of appropriate processing fees by Developer, the City shall promptly commence and diligently schedule and convene all required public hearings in an expeditious manner consistent with the Applicable Law of the Project and process all Discretionary Actions and Discretionary Approvals in an expeditious manner. City agrees that its processing and action on any such discretionary permit(s), including the imposition of conditions of approval therefor, shall be subject to this Agreement and the Applicable Law of the Project.

**9. Processing and Approvals.** Providing that Developer is not in default under this Agreement and provided that City has approved developer's Discretionary Permits as referenced above, upon submission by Developer of completed applications and payment of all appropriate processing fees as provided in this Agreement, City shall complete with reasonable diligence all steps necessary to issue, and shall issue, all subsequent permits or approvals required for development of the Project consistent with the Applicable Law of the Project. Such permits shall include but not be limited to building permits, use and land use permits, site clearance or demolition permits, grading permits (subject to section 10 hereof), landscape plans, design review approvals, water and sewer service and connection, and certificates of occupancy. City agrees that any conditions of approval or departmental conditions imposed upon the issuance of such further approvals or permits shall not be in conflict with this Agreement or with the Applicable Law of the Project.

**10. Development of the Project on the Property.**

(a) Permitted Uses. The Developer agrees that the Project shall be developed in accordance with the Specific Plan.

(b) Development Standards. All development and design requirements and standards applicable to the Project shall conform to the Applicable Law of the Project.

(c) Pre-Screening/Special Review of New Development in Project. City and Developer shall cooperate to create a pre-screening/special review process for development within the Project to ensure compliance with the Specific Plan. Such pre-screening/special review shall occur prior to the issuance of building permits. Review of an application through the pre-screening/special review process as provided by this subparagraph or the Specific Plan shall not be deemed to waive any of the Applicable Law of the Project pertaining to review or approval of such application. Developer authorizes the imposition of City fees necessary to cover the direct costs of such prescreening/special review process. The pre-screening/special review process shall terminate upon the expiration of this Agreement or the issuance of the final certificate of occupancy for development within the Project, whichever occurs first.

(d) Rough Grading Prior to Recordation of the Final Maps. Subject to (1) the City's receipt, review and approval of a grading plan for the Project or any portion

thereof (the "Grading Plan"), geotechnical report and engineering geologic report for the Property (2) the Developer's satisfaction of the City's bonding requirements and (3) compliance with requirements for the issuance of a grading permit with respect to such Grading Plan, the City agrees to review the reports and the Grading Plan when submitted and issue a grading permit with respect to the Grading Plan subject to the Grading Plan's compliance with the Applicable Law of the Project. The City agrees that the Grading Plan will be timely reviewed by the City, that a grading permit with respect to the Grading Plan may be issued and that the Developer may rough grade the Property in accordance with the approved Grading Plan without the Developer first recording the final maps associated with the Project. The City reserves the right to condition the issuance of such rough grading permits upon the Developer implementing and maintaining reasonable and appropriate erosion control measures until sufficient work on the Property is completed to address erosion concerns.

(e) Compliance with Government Code Section 66473.7. Any tentative maps prepared for this Project or any portion thereof shall comply with Government Code section 66473.7, to the extent applicable to the tentative map.

(f) Financing Districts. Should Developer so request, City agrees to consider the formation of one or more Financing Districts to be formed over all or part of the Property; provided, however, that the City shall have no obligation to form one or more Financing Districts unless the City elects at its sole discretion to do so. If formed, such Financing District or Financing Districts shall include the Property or a portion thereof within its boundaries for the purpose of funding the planning, design, construction and/or maintenance of public improvements required to be constructed including, but not limited to, traffic signals, street improvements, drainage, sewer and water improvements, park facilities and open space areas. The City shall not be liable for the financial obligations of the Financing District or Financing Districts unless the City specifically agrees in writing to accept such liability. In addition, if the City desires that one or more landscaping and lighting district be formed over the Project or a portion thereof, Developer agrees to consent to the formation of such landscaping and lighting district; provided, however, that such consent shall not be deemed a waiver of the Developer's right to challenge or protest the manner in which the assessments from such district or districts are allocated to the various properties within the district and the amount of such assessments.

(g) Phasing of Project. The City and Developer acknowledge that Developer cannot predict when the Project will be developed. Such decisions depend upon numerous factors which are not within the control of Developer including, but not limited to, market orientation and demand, interest rates, competition and similar factors beyond the control of Developer. Developer shall have the discretion to develop the commercial uses contemplated for the Project in phases and in such order as Developer deems appropriate within the exercise of its subjective and independent business judgment. Specifically, City and Developer agree that Developer shall be entitled to apply for and receive permits, maps, certificates of occupancy and other entitlements to use at any time that this Agreement is in effect, provided that such actions are in accordance with the Applicable Law of the Project. The provisions of this Paragraph 10(g) shall not be deemed

to waive or otherwise affect any specific requirement regarding the order of construction established by the Applicable Law of the Project, the Project's conditions of approval, or the Project's environmental document.

**11. Extension of Maps and Project Approvals.** In accordance with Government Code section 66452.6, subd. (a) and Government Code section 65863.9, unless a longer term would result under otherwise applicable state law, the term of any subdivision map or other permits approved as part of the Project approvals shall be automatically extended for the term of this Agreement.

**12. Public Services for the Project.** The City hereby acknowledges and agrees that when Developer has completed any public infrastructure called for by the Specific Plan for which Developer bears responsibility and has implemented any mitigation conditions required by the environmental documentation for the Project, the City has and will have sufficient capacity in its existing infrastructure, services and utility systems for provision of adequate traffic circulation, sewer collection, sewer treatment and sanitation service, water treatment, distribution and service, and drainage to accommodate the Project. The City has analyzed the existing and projected water needs for the areas served by the City and has determined that the City has the necessary water supplies available to properly serve the Project. To the extent that the City renders such services or provides the utilities referenced in this Paragraph 9, the City hereby agrees to timely grant or issue hookups or service to all development in the Project after Developer requests such hookups and services; provided, however, the City may delay the granting of requested additional water hookups for the Project provided that all of the following conditions precedent occur: (a) after a duly noticed public hearing, the City Council imposes a ban on all new water hookups in the City, except for a ban on emergency hookups, legally mandated hookups, hookups for essential public purposes, and pass-through hookups used solely to convey emergency water through the City to another public entity or public water provider; (b) after a duly noticed public hearing, the City Council makes findings, which are supported by substantial evidence, that the granting of additional water hookups in the Project would have a significant adverse impact on the public health and safety; (c) at such time as the City allows additional water hookups in the City, new water hookups in the Project shall have first priority for connections to the City's water system, with the exception of the following classes of hookups: emergency hookups, legally mandated hookups, hookups for essential public purposes, and pass-through hookups used solely to convey emergency water through the City to another public entity or public water provider.

**13. Cooperation in Relocation of Utilities.** To facilitate the development of the Project, which will benefit the entire City, the City agrees to cooperate in the relocation of utilities on or adjacent to the Project site, which are reasonably necessary to develop the Property pursuant to the provisions of the Specific Plan, provided that such cooperation is at no cost or expense to the City. Such cooperation shall include, but not be limited to, the City serving as the applicant in any such relocation matters, where appropriate.

**14. Compliance with Mutual Cooperation Agreement Between the Cities of Oxnard and San Buenaventura.** On April 6, 1999, the City and the city of San Buenaventura ("Ventura") entered into the Mutual Cooperation Agreement Between the Cities of Oxnard and San Buenaventura ("Cooperation Agreement"). Pursuant to Section 5(a)(5) of the Cooperation Agreement, Ventura agreed not to oppose or file a legal challenge to any proposed project or development within the Oxnard Town Center Project ("OTC") to the extent that (a) any proposed project or development therein is at the same or lesser density and intensity as the Oxnard Town Center Specific Plan and (b) any discretionary permits for the OTC area are expressly conditioned upon compliance with all applicable requirements and limitations of the Cooperation Agreement. City hereby agrees to make the applicable provisions of the Cooperation Agreement applicable to all discretionary permits issued for the Project within the area that was covered by the Oxnard Town Center Specific Plan and Developer agrees to be bound by the applicable requirements and limitations of the Cooperation Agreement for those portions of the Project that were governed by the Oxnard Town Center Specific Plan. Notwithstanding any language in this Paragraph 14 to the contrary, if on or after the effective date of this Agreement, Ventura is in breach of any material provision of the Cooperation Agreement, the City and Developer shall have no further obligations under this Paragraph 14 of the Agreement; provided, however, that any such waiver of this Paragraph 14 shall not be deemed to affect any other obligation of the City or Developer otherwise established by this Agreement.

**15. Compliance Review.**

(a) Periodic Review. Pursuant to Government Code section 65865.1, the City Manager shall, not less than once in every twelve (12) months, review the Project and this Agreement to ascertain whether or not the Developer is in full compliance with the terms of this Agreement (the "Periodic Review").

(b) Review Procedure. During a Periodic Review, Developer shall provide information reasonably requested by the City Manager that the Project is being developed in good faith compliance with the terms of this Agreement. Upon completion of a Periodic Review, the City Manager shall submit a report to the City Council setting forth the City Manager's findings. If, as a result of a Periodic Review, the City Council finds and determines on the basis of substantial evidence that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City shall issue a written "Notice of Non-Compliance" to the Developer specifying the grounds therefore and all facts demonstrating such non-compliance. The Developer's failure to cure the alleged non-compliance within ninety (90) days after receipt of the notice, or, if such non-compliance is not capable of being cured within ninety (90) days, the Developer's failure to initiate all actions required to cure such non-compliance within ninety (90) days after receipt of the notice, shall constitute a default under this Agreement on the part of the Developer and shall constitute grounds for the termination of this Agreement by the City as provided below.

(c) Termination or Modification for Non-Compliance. Pursuant to Government Code section 65865.1, if the City Council finds and determines, on the basis of substantial evidence, that the Developer has not complied in good faith with the terms or conditions of this Agreement, the City Council may modify or terminate this Agreement. Any action by the City with respect to the termination or modification of this Agreement shall comply with the notice and public hearing requirements of Government Code section 65867 in addition to any other notice required by law. Additionally, the City shall give the Developer written notice of its intention to terminate or modify this Agreement and shall grant the Developer a reasonable opportunity to be heard on the matter and to oppose such termination or modification by the City.

**16. Modification, Amendment or Cancellation by Mutual Consent.** Pursuant to Government Code section 65868, this Agreement may be amended or canceled, in whole or in part, by mutual written consent of the City and the Developer or their successors in interest. Public notice of the parties' intention to amend or cancel any portion of this Agreement shall be given in the manner provided by Government Code section 65867. Any amendment to the Agreement shall be subject to the provisions of Government Code section 65867.5. Amendments to this Agreement shall be governed by the Applicable Law of the Project.

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

Upon the written request of Owner for a Minor Amendment, the Development Services Department Director 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 consistent with the findings adopted by the City in approving the Project, and does not have the potential to create greater environmental impacts than those identified in the environmental document adopted upon City's approval of this Agreement. 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.

**17. Defaults, Notice and Cure Periods, Events of Default and Remedies.**

**17.1 Default By the Developer.**

**17.1.1. Default.** If the Developer does not perform its obligations under this Agreement in a timely manner, the City may exercise all rights and remedies provided in this Agreement, provided the City shall have first given written notice to the Developer as provided in Paragraph 22(a) hereof, and provided further the Developer may appeal such declaration in the manner provided in, and subject to all terms and provisions of, Paragraph 17.

**17.1.2. Notice of Default.** If the Developer does not perform its obligations under this Agreement in a timely manner, the City through the City Manager may submit to the Developer a written notice of default identifying with specificity those obligations of the Developer under this Agreement which have not been timely performed. Upon receipt of any such written notice of default, the Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of any such written notice of default and shall complete the cure of any such default(s) no later than one hundred and twenty (120) days after receipt of any such written notice of default, or within such longer period as is reasonably necessary to remedy such default(s), provided the Developer shall commence the cure of any such default(s) within such one hundred and twenty (120) day period and thereafter diligently pursue such cure at all times until any such default(s) is cured.

**17.1.3. Procedure for Failure to Cure Default.** If after the cure period provided in Paragraph 15.1.2 has elapsed, the City Manager finds and determines the Developer, or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the City's Development Services Director shall make a report to the Planning Commission and then set a public hearing before the Planning 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 the Developer, or its successors, transferees and/or assigns, as the case may be, has not cured a default under this Agreement pursuant to this Paragraph 17, and that the City shall terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Developer, its successors, transferees and/or assigns shall be entitled to appeal that finding and determination to the City Council. Such right of appeal shall include, but not be limited to, an objection to the manner in which the City intends to modify this Agreement if the City intends, as a result of a default of the Developer or one of its successors or assigns, to modify this Agreement. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Paragraph 17 or this Agreement shall be construed as modifying or abrogating the City Council's review of Planning Commission actions.

**17.1.4. Termination or Modifications of Agreements.** The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the applicable appeal periods. There shall be no modifications of this Agreement unless the City Council acts pursuant to Government Code

sections 65967.5 and 65868, irrespective of whether an appeal is taken as provided in Paragraph 17. Notwithstanding any other provision of this Agreement to the contrary, but subject to the provisions of Paragraph 20(e), in the event that (a) the Developer or any of its successors assigns some, but not all, of its rights under this Agreement in connection with a sale of some, but not all, of the Property and (b) thereafter the Developer or one or more of its successors in interest under this Agreement is in default under this Agreement and either the Developer or one or more of its successors in interest under this Agreement is not in default under this Agreement, then any remedy the City may have the right to take under this Agreement including the right of termination or modification of this Agreement shall only apply to the party(ies) that is (are) in default and the portion(s) of the Property owned by such party(ies), and shall not apply to the Developer or any successor and/or assignee of the Developer under this Agreement that is not in default hereunder.

#### **17.1.5. Lender Protection Provisions.**

**17.1.5.1. Notice of Default.** In addition to the notice provisions set forth in Paragraph 20(a), the City shall send a copy of any notice of default sent to the Developer or any of its successors or assigns to any lender that has made a loan then secured by a deed of trust against the Property, or a portion thereof, provided such lender shall have (a) delivered to the City written notice in the manner provided in Paragraph 22(a) of such lender's election to receive a copy of any such written notice of default and (b) provided to the City a recorded copy of any such deed of trust. Any such lender that makes a loan secured by a deed of trust against the Property, or a portion thereof, and delivers a written notice to the City and provides the City with a recorded copy of any such deed of trust in accordance with the provisions of this Paragraph 17 is herein referred to as a "Qualified Lender."

**17.1.5.2. Right of a Qualified Lender to Cure a Default.** If the Developer, or any of its applicable successors or assigns, fails to timely cure any default under this Agreement within the time periods specified in Paragraph 17, then the City shall send a written notice of any such failure to timely cure any such default to each Qualified Lender. From and after receipt of any such written notice of failure to cure, each Qualified Lender shall have the right to cure any such default, provided the Qualified Lender(s) commence the cure of any such default within thirty (30) days after receipt of any such written notice of failure to cure and thereafter diligently pursue the cure thereof to completion. If the nature of any such default is such that a Qualified Lender cannot reasonably cure any such default without being the owner of the Property, or the applicable portion thereof, then so long as the Qualified Lender(s) is (are) proceeding to foreclose the lien of its deed of trust against the Property, or the applicable portion thereof, and after completing any such foreclosure promptly commence the cure of any such default and thereafter diligently pursue the cure of such default to completion, such Qualified Lender shall be deemed to be diligently pursuing the cure of any such default. Any lender that has made a loan to a party that owns a single family dwelling unit (whether a detached single family home, a townhome or a condominium), provided such party is not a developer of the Property or a portion, thereof shall not be deemed to be a Qualified Lender.

**17.1.5.3. Exercise of City's Remedies.**

Notwithstanding any other provision of this Agreement, the City shall not exercise any right or remedy granted under this Agreement or otherwise arising out of a default under the Agreement by the Developer or any of its successors or assigns during the period of time which the Developer, any of its successors or assigns, and/or a Qualified Lender has the right to cure any such default pursuant to this Paragraph 17.

**17.2 Default by the City.**

**17.2.1. Default.** In the event the City does not accept, process or render a decision in a timely manner 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 City and Developer, or in the event the City otherwise defaults under the provisions of this Agreement, the 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 the Developer has first complied with the procedures in Paragraph 17.2.

**17.2.2. Notice of Default.** Prior to the exercise of any other right or remedy arising out of a default by the City under this Agreement, the Developer shall first submit to the City a written notice of default stating with specificity those obligations which have not been performed under this Agreement. 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 such default(s) no later than thirty (30) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided the City shall continuously and diligently pursue each remedy at all times until such default(s) is cured.

**17.3 Monetary Damages.** The Developer and the City acknowledge that neither the City nor the Developer would have entered into this Agreement if either were liable for monetary damages under or with respect to this Agreement or the application thereof. Both the City and the Developer agree and recognize that, as a practical matter, it may not be possible to determine an amount of monetary damages which would adequately compensate the 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 such exposure. Therefore, the City and the Developer agree that neither shall be liable for monetary damages under or with respect to this Agreement or the application thereof, and the City and the Developer covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement. This foregoing waiver shall not be deemed to apply to any fees or other monetary amounts specifically required to be paid by the Developer to the City pursuant to this Agreement. The foregoing waiver shall also not be deemed to apply to any fees or other monetary amounts specifically required to be paid or credited by the City to the Developer pursuant to this Agreement, including, but not limited to any fee credits specifically required to be credited by City to Developer or its assignee(s).

**18. Administration of Agreement and Resolution of Disputes.** The Developer shall at all times have the right to appeal to the City Council any decision or determination made by any employee, agent or other representative of the City concerning the Project or the interpretation and administration of this Agreement. All City Council decisions or determinations regarding the Project or the administration of this Agreement shall also be subject to judicial review pursuant to Code of Civil Procedure section 1094.5, provided that, pursuant to Code of Civil Procedure section 1094.6, any such action must be filed in a court of competent jurisdiction not later than ninety (90) days after the date on which the City Council's decision becomes final.

**19. Recordation of this Agreement.** Pursuant to Government Code section 65868.5, the City Clerk shall record a copy of this Agreement in the Official Records of the County within ten (10) days after the mutual execution of this Agreement.

**20. Constructive Notice and Acceptance.** Every person or entity who now or hereafter owns or acquires any right, title or 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 such person acquired an interest in the Property.

**21. No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the City, the Developer and their respective successors and assigns. No other person or entity shall have any right of action based upon any provision of this Agreement.

**22. Miscellaneous.**

(a) Notices. All notices which are allowed or required to be given hereunder shall be in writing and (1) shall be deemed given and received when personally delivered or (2) shall be deemed given when the same are deposited in the United States mail, with postage prepaid, to be sent by registered or certified mail or overnight mail service, addressed to the applicable designated person by one party to the other in writing, and shall be deemed received on the second business day after such mailing.

If to City:

City of Oxnard  
300 West Third Street  
Oxnard, California 93030  
Attention: City Manager  
Tel. No.: (805) 385-7430  
Fax No.: (805) 385-7595

with a copy to:

City of Oxnard  
305 West Third Street  
Oxnard, California 93030  
Attention: Development Services Director  
Tel. No.: (805) 385-7877  
Fax No.: (805) 385-7854

City of Oxnard  
300 West Third Street  
Oxnard, California 93030  
Attention: City Attorney  
Tel. No.: (805) 385-7483  
Fax No.: (805) 385-7423

City of Oxnard  
305 West Third Street  
Oxnard, California 93030  
Attention: Planning Manager  
Tel. No.: (805) 385-7863  
Fax No.: (805) 385-7417

Oxnard Development Company, LLC  
199 Figueroa Street, Suite 400  
Ventura, CA 93001  
Tel. No.: (805) 641-2121  
Fax No.: (805) 641-2122

With a copy to:

Brownstein Hyatt Farber Schreck, LLP  
21 East Carrillo Street  
Santa Barbara, CA 93101  
Attention: Peter N. Brown  
Tel. No.: (805) 963-7000  
Fax No.: (805) 965-4333

(b) Severability. If any part of this Agreement is declared invalid for any reason, such invalidity shall not affect the validity of the remainder of the Agreement. The other parts of this Agreement shall remain in effect as if this Agreement had been executed without the invalid part. The City and the Developer intend and desire that the remaining parts of this Agreement continue to be effective without any part or parts that have been declared invalid.

(c) Entire Agreement: Conflicts. This Agreement represents the entire agreement between the City and the Developer with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether oral or written, between the

City and the Developer with respect to the matters contained in this Agreement. Should any or all of the provisions of this Agreement be found to be in conflict with any other provision or provisions found in the Applicable Law of the Project then the provisions of this Agreement shall govern and prevail.

(d) Further Assurances. The City and the Developer agree to perform, from time to time, such further, acts and to execute and deliver such further instruments reasonably necessary to effect the intents and purposes of this Agreement, provided that the intended obligations of the City and the Developer are not thereby modified.

(e) Inurement and Assignment. This Agreement shall inure to the benefit of and bind the successors and assigns of the City and the Developer, and may be assigned by either the City or the Developer to any party or parties purchasing all or any part of the Property or any interest therein pursuant to the provisions of this Paragraph 20(e). The specific rights and obligations of this Agreement shall be deemed covenants running with the land that concern and affect the Property. Prior to Developer's assignment of any rights, duties or obligations under this Agreement, the Developer shall present such information to the City as will reasonably demonstrate to the City's satisfaction that the proposed successor and/or assignee has the financial ability and experience to fulfill those specific rights, duties and obligations under the Agreement that the successor and/or assignee would assume. City shall have the right to approve the proposed successor and/or assignee, provided that the City's approval may not be unreasonably withheld. As of the effective date of the assignment, City shall provide Developer with a release in writing of Developer's obligations under this Agreement arising subsequent to the effective date of the assignment with respect to the Property or such portion thereof that is subject to the assignment. Upon the completion of any phase or tract of development of the Project as reasonably determined by the City, the City shall release that completed phase or tract from further obligations under this Agreement. The release of a completed phase or tract from further obligations under this Agreement does not release that phase or tract from any applicable and duly executed and recorded conditions, covenants and restrictions or any ongoing environmental mitigation measures that are a specific obligation of that completed phase or tract, as required by applicable Project environmental documents. The provisions of this Paragraph 20(e) shall be self-executing and shall not require the execution or recordation of any further document or instrument.

(f) Negation of Agency. The City and the Developer acknowledge that, in entering into and performing under this Agreement, each is acting as an independent entity and not as an agent of the other in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers, partners or employer/employee.

(g) Attorneys' Fees. In the event of any claim, dispute or controversy arising out of or relating to this Agreement, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses not limited to taxable costs, including, but not limited to telephone calls, photocopies, expert witness, travel, and reasonable attorneys' fees and costs

to be fixed by the court. Such recovery shall include, but not limited to, court costs, out-of-pocket expenses and attorneys' fees on appeal, if any. The court shall determine who is the "prevailing party," whether or not the dispute or controversy proceeds to final judgment. If the City or Developer is reasonably required to incur such out-of-pocket expenses and attorneys' fees as a result of any claim arising out of or concerning this Agreement or any right or obligation derived hereunder, then the prevailing party shall be entitled to recover such reasonable out-of-pocket expenses and attorneys' fees whether or not an action is filed.

(h) 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.

(i) Force Majeure. In the event of changed conditions, litigation filed to challenge the Project approvals, changes in local, state or federal laws or regulations, floods, delays due to strikes, inability to obtain materials, civil commotion, fire, acts of God, or other circumstances which substantially interfere with carrying out the Project or with the ability of either the City or the Developer to perform its obligations under this Agreement, and which are not due to actions on the part of the Developer or the City and are beyond the reasonable control of the Developer and the City, the Developer and the City agree to bargain in good faith to modify this Agreement as may be necessary to achieve the goals and preserve the original intent of this Agreement.

(j) Paragraph Headings. The paragraph headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

(k) Time of Essence. Time is of the essence of this Agreement, and all performances required hereunder shall be completed within the time periods specified. Any failure of performance shall be deemed as a material breach of this Agreement.

(l) Counterparts. This Agreement and any modifications hereto may be executed in any number of counterparts with the same force and effect as if executed in the form of a single document.

(m) Indemnification. The Developer agrees, as a condition of approval of this Agreement, to indemnify, defend and hold harmless at the Developer's expense, the City, the City Council, and the City's agents, officers and employees from and against any claim, action or proceeding commenced within the applicable time period, to attack, review, set aside, void or annul the approval of this Agreement, or the Project's environmental documentation or to determine the reasonableness, legality or validity of any provision hereof or obligation contained herein.

The City shall promptly notify the Developer of any such claim, action or proceeding of which the City receives notice, and the City will cooperate fully with the Developer in the defense thereof. The Developer shall reimburse the City for any court costs and reasonable attorneys' fees which the City may be required to pay as a result of any

such claim, action or proceeding. The City may, in its sole discretion, participate in the defense of any such claim, action or proceeding, but such participation shall not relieve the Developer of the obligations of this Paragraph.

(n) 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 Ventura, State of California.

(o) 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.

(p) 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 (acting through its City Manager) and Developer. 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 16 above. Each such operating memorandum shall become an attachment to this Agreement.

(q) Construction. This Agreement has been reviewed and revised by legal counsel for both Developer 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.

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

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

(s) 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 Developer 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 City and the Developer hereto have each executed this Agreement as of the date first written above.

Developer:

OXNARD DEVELOPMENT COMPANY,  
a California limited liability company

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

Name:

Its:

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

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

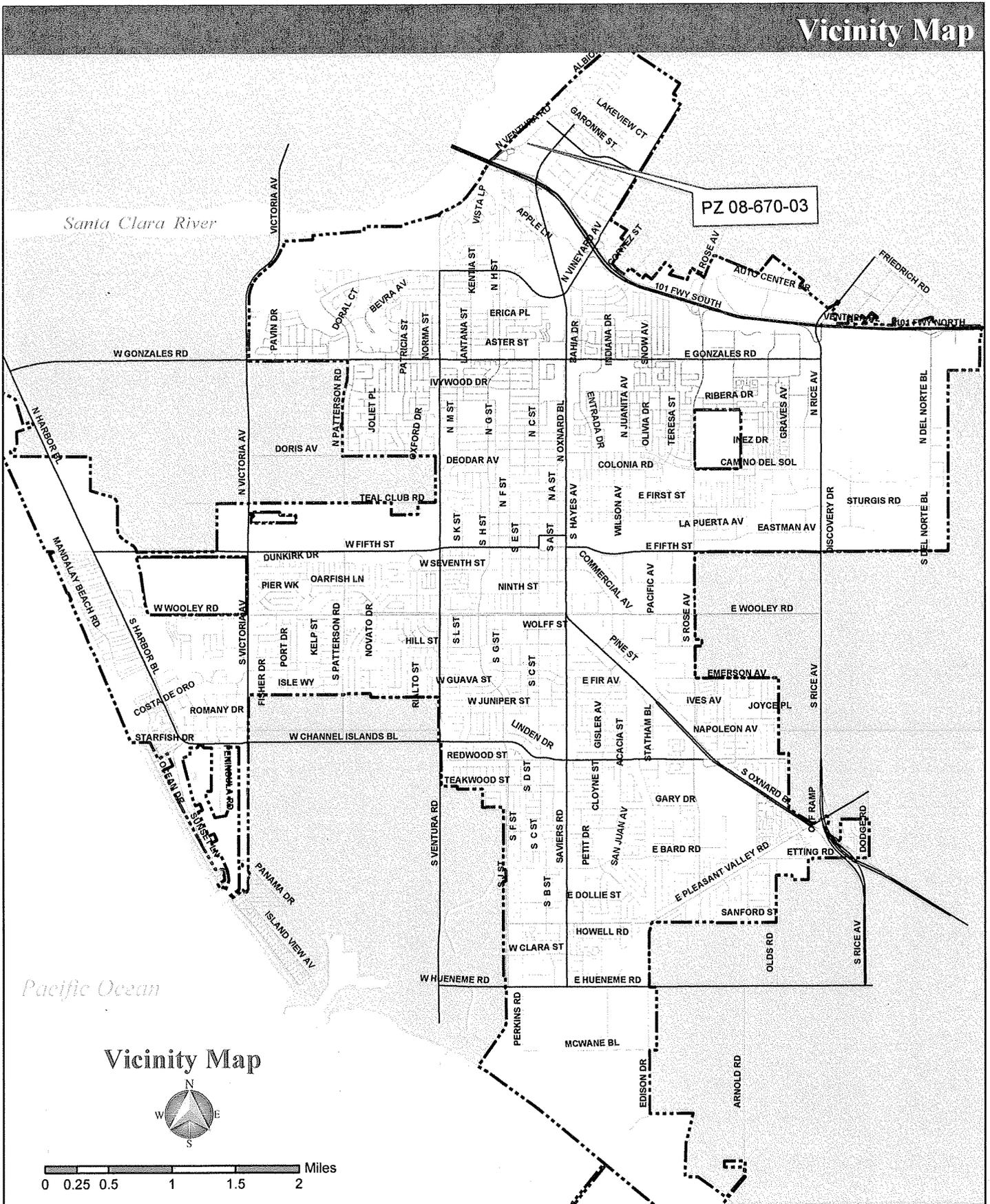
ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
\_\_\_\_\_, City Attorney

# Vicinity Map



PZ 08-670-03

## Vicinity Map



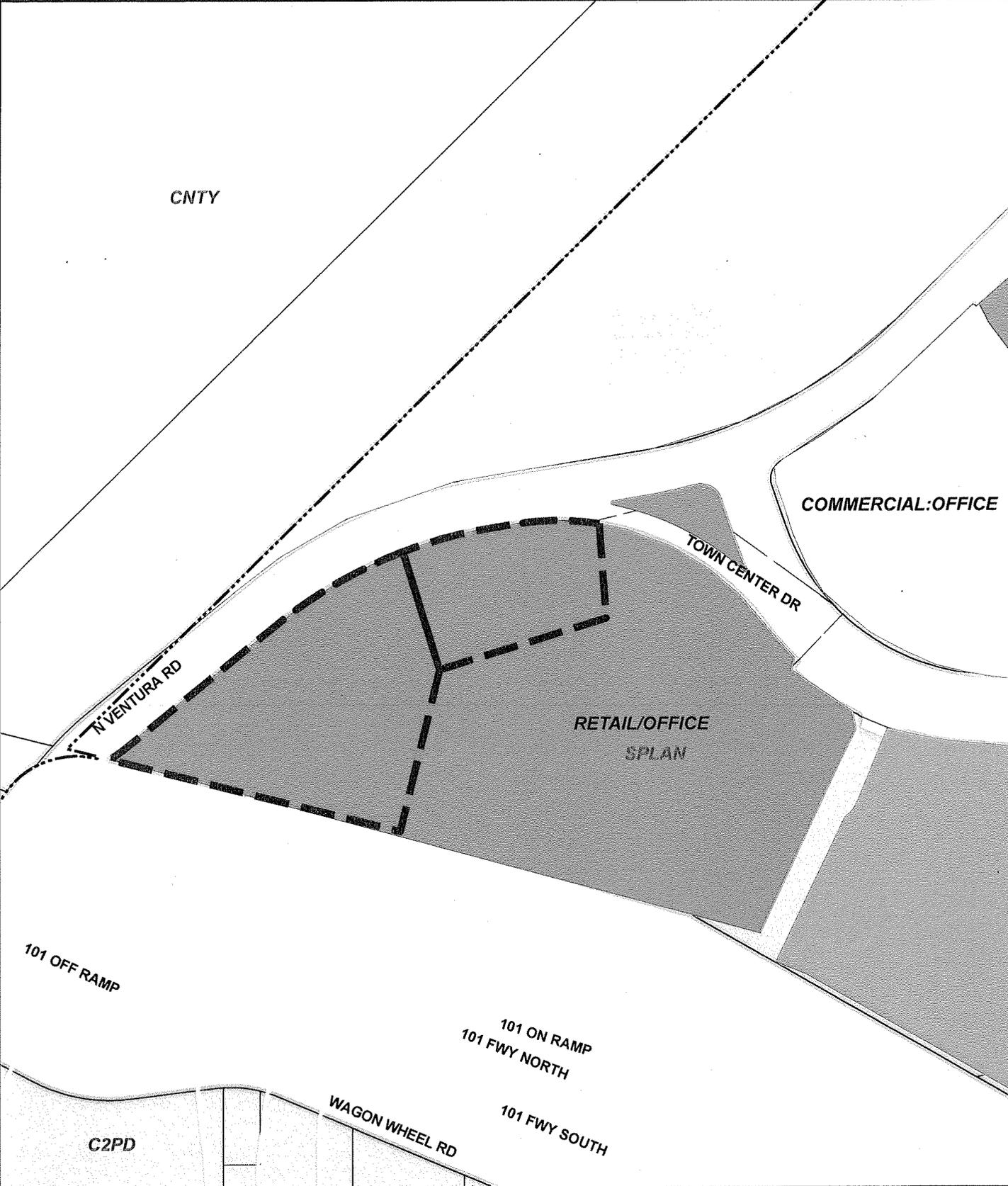
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Oxnard Planning  
September 8, 2008

PZ 08-670-03  
Location: 2710, 2750 N Ventura Rd  
APN: 132010008, 132010009  
Oxnard Development Company, LLC

# Riverpark Specific Plan



Oxnard Planning  
September 8, 2008

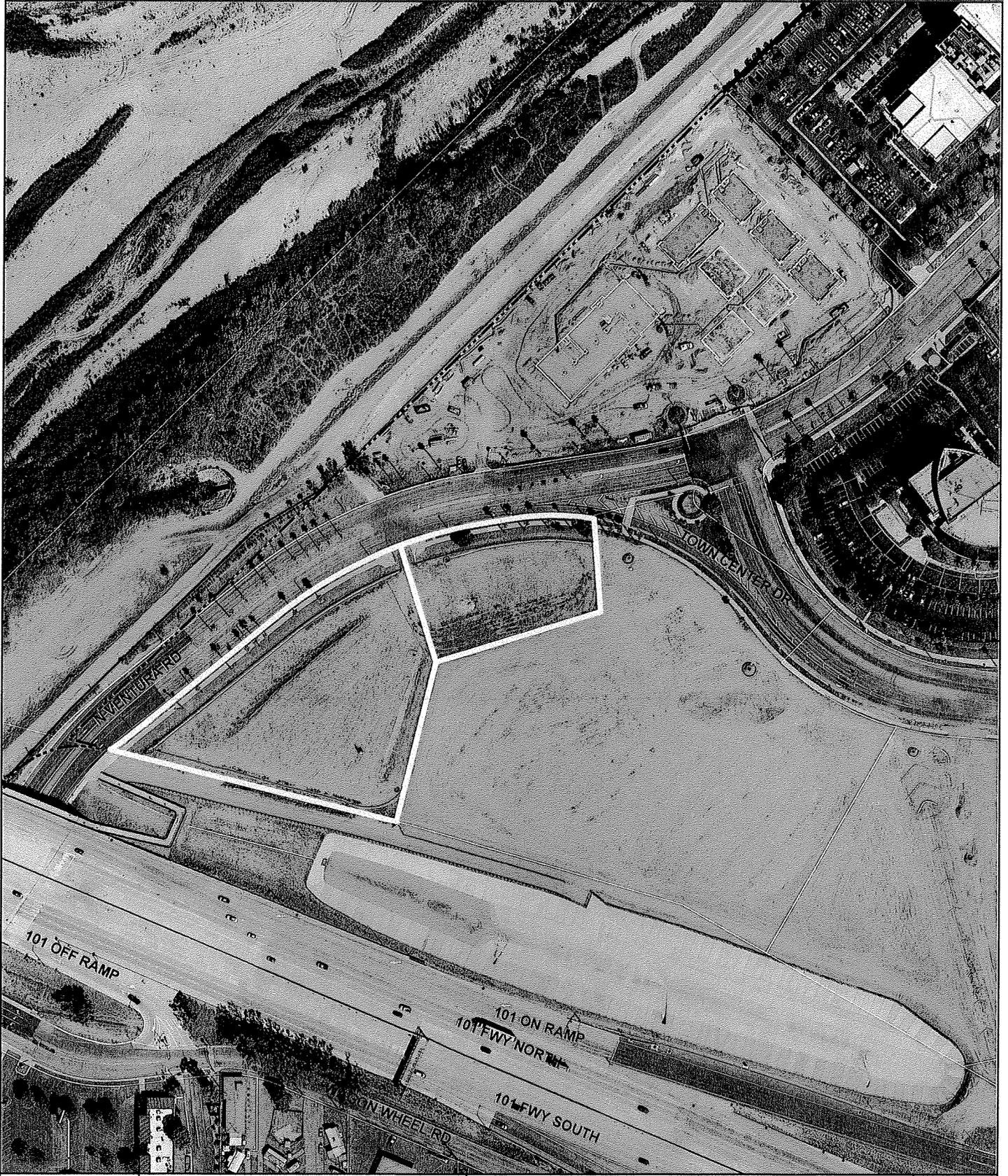
PZ 08-670-03  
Location: 2710, 2750 N Ventura Rd  
APN: 132010008, 132010009  
Oxnard Development Company, LLC

0 37.575 150 225 300 Feet

River Park Specific Plan

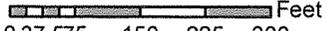
1:2,521

# Aerial Map



Oxnard Planning  
September 8, 2008

PZ 08-670-03  
Location: 2710, 2750 N Ventura Rd  
APN: 132010008, 132010009  
Oxnard Development Company, LLC



0 37.575 150 225 300 Feet

Aerial Map

2007 Aerial



1:2,521