

**ORDINANCE NO. 2022-023**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SAN BUENAVENTURA, CALIFORNIA, APPROVING A  
DEVELOPMENT AGREEMENT WITH HOFER  
PROPERTIES, LLC, VENTURA OLIVAS COMPANY,  
LLC, AND WF GOLF COURSE, LLC**

**WHEREAS**, In December 2019, the City Council approved the Olivas Park Specific Plan (“Specific Plan”), which outlined the responsibilities of the City and the property owners within the Specific Plan area as it relates to the public improvements within the area; and

**WHEREAS**, The Specific Plan contemplated that a development agreement would be prepared to memorialize the responsibilities for public improvements and describe how the property owners would provide a substantial public benefit that might not otherwise be available to the City; and

**WHEREAS**, On September 13, 2021, the City Council endorsed 15 conceptual deal points that had been negotiated with the property owners and directed staff to prepare a development agreement that incorporated those deal points (“Development Agreement”); and

**WHEREAS**, On July 21, 2014, the City Council certified the Final Environmental Impact Report (EIR-11-10-4397, SCH #1995081004) (“FEIR”) and adopted findings and a statement of overriding considerations and Mitigation and Monitoring and Reporting Plan for the Olivas Park Drive Extension Project, which involved the extension of Olivas Park Drive, a levee/floodwall along the north side of the Santa Clara River, General Plan amendments for land use changes for parcels and reclassification of the Olivas Park Drive roadway extension, and zone changes for parcels within the project boundary; and

**WHEREAS**, An Addendum to the FEIR was approved by City Council on December 2, 2019 with the adoption of the Specific Plan which consolidated past City Council actions for infrastructure, land uses and environmental review into a single document for future development of the area.

**WHEREAS**, Pursuant to California Government Code Section 65867, the Planning Commission considered the Development Agreement at a duly noticed public hearing held on November 9, 2022, and recommended, unanimously, that the City Council approve it; and

**WHEREAS**, The City Council considered this matter at a duly noticed public hearing held on December 5, 2022;

**The Council of the City of San Buenaventura does ordain as follows:**

**Section 1. Recitals.** The foregoing recitals are true and correct and are incorporated herein as findings.

**Section 2. Compliance with CEQA.** The FEIR was prepared in compliance with the requirements of CEQA and was approved and certified by the City Council as described above, and incorporated herein by this reference.

**Section 3. Findings regarding the Development Agreement.** The City Council finds that the proposed Development Agreement:

- a. Is consistent with the objectives, policies, general land uses and programs specified in the City General Plan and the Olivas Park Specific Plan;
- b. Is in conformity with public convenience, general welfare, and good land use practices;
- c. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor be detrimental or injurious to property or persons in the general neighborhood or to the general welfare of the residents of the City as a whole;
- d. Will not adversely affect the orderly development of property or the preservation of property values; and
- e. Is consistent with the provisions of Government Code Sections 65864 et seq.

**Section 4. Development Agreement Approval.** The City Council hereby approves the Development Agreement with Hofer Properties LLC, Ventura Olivas Company LLC, and WF Golf Course LLC (attached hereto as Exhibit "1").

**Section 5. Effective Date.** This Ordinance takes effect 30 days after its final passage and adoption.

**Section 6. Publication.** The City Clerk is directed to cause a summary of this ordinance to be published in the official newspaper at least once within fifteen days after its adoption showing the vote thereon.

At a regular meeting of the City Council of San Buenaventura held on December 5, 2022, this Ordinance was introduced by the following vote:

Ayes: Councilmembers Sanchez-Palacios, Brown, Johnson, Halter, Friedman, Deputy Mayor Schroeder, and Mayor Rubalcava

Noes: None

Absent: None

The foregoing Ordinance was adopted by the City Council of San Buenaventura on December 12, 2022, and ordered published by posting the following vote:

Ayes: Councilmembers Sanchez-Palacios, Brown, Johnson, Halter, Friedman, Deputy Mayor Schroeder, and Mayor Rubalcava

Noes: None

Absent: None

  
\_\_\_\_\_  
Sofia Rubalcava  
Mayor

ATTEST:

  
\_\_\_\_\_  
Michael B. MacDonald  
City Clerk



APPROVED AS TO FORM  
Andy Heglund, City Attorney

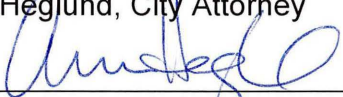
By:  11/30/2022  
\_\_\_\_\_  
Andy Heglund, City Attorney Date

Exhibit 1: Development Agreement

# **ATTACHMENT A**

RECORDED AT THE REQUEST OF  
City Clerk  
City of San Buenaventura  
A California Charter Law Municipal Corporation

WHEN RECORDED RETURN TO  
City Clerk  
City of San Buenaventura  
501 Poli Street, Room 204  
Ventura, CA 93002

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(Space Above Line For Recorder's Use)

## **DEVELOPMENT AGREEMENT**

Olivas Park Specific Plan

“Olivas Park Project”

Hofer Properties, LLC  
Ventura Olivas Company, LLC  
WF Golf Course, LLC



**DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF SAN BUENAVENTURA  
And**

**HOFER PROPERTIES, LLC,  
VENTURA OLIVAS COMPANY, LLC And  
WF GOLF COURSE, LLC**

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This Development Agreement ("Agreement") is entered into and recorded with the Ventura County Clerk/County Recorder by and among the City of San Buenaventura, a California Charter Law Municipal Corporation ("City") and the three entities listed below (collectively, "Owner", as further defined below):

Hofer Properties, LLC (individually, "Hofer")  
Ventura Olivas Company, LLC ("individually, "VOC")  
WF Golf Course, LLC (individually, "WF")

**R E C I T A L S**

A. To provide for orderly planning, City has the authority pursuant to California Government Code Sections 65300 and 65301 to include in its General Plan land within its boundaries and, pursuant to Section 65450, to adopt specific plans for any part of the area covered by the General Plan.

B. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Legislation") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries for the development of such property, in order to, among other things: encourage and provide for the development of public facilities; support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage an investment in and commitment to comprehensive planning; provide assurance to the applicants for development projects that they

may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such development agreements.

C. Pursuant and subject to the Development Agreement Legislation, the City's police powers, and Chapter 24.550 of the City's Municipal Code, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries thereby establishing the conditions under which such property may be developed in the City.

D. By electing to enter into this Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers by any Member of the City Council to the extent such limitation is provided in the Development Agreement Legislation.

E. The terms and conditions of this Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, the City Council of City, and Owner, and have been found to be fair, just, and reasonable.

F. City finds and determines that this Agreement will be in the best interests of its citizens and that the public health, safety and welfare will be served by entering into this Agreement.

G. All of the procedures of the California Environmental Quality Act have been met with respect to this Agreement.

H. City was incorporated on March 10, 1866, and the City Charter was approved by the voters on January 7, 1932, and has been amended by the voters from time to time thereafter.

I. Hofer is the fee or equitable owner of approximately 76.35 acres of real property located within the Olivas Park Specific Plan, hereinafter referred to as the "Hofer Property" as identified in Exhibit A, attached hereto and made a part herein by this reference. VOC is the fee or equitable owner of approximately 49.27 acres of real property located within the Olivas Park Specific Plan, hereinafter referred to as the "VOC Property" as identified in Exhibit B, attached hereto and made a part herein by this reference. WF is the fee or equitable owner of approximately 7.16 acres of real property located within the Olivas Park Specific Plan, hereinafter referred to as the "WF Property" as identified in

Exhibit C, attached hereto and made a part herein by this reference. The Hofer Property, the VOC Property, and the WF Property are referred to collectively hereinafter as “the Property.”

J. The City approved the Olivas Park Specific Plan in December of 2019. The Specific Plan outlines potential uses of the Property, memorializes the responsibility of the City and Owner regarding certain public improvements, and indicates that a development agreement will be entered to finalize the details for the completion of the improvements.

K. City and Owner desire that the Property be developed pursuant to the land uses and conditions of approval of the Olivas Park Specific Plan and the mitigation measures contained in the Final Environmental Impact Report (State Clearinghouse No. 1995081004) for the Olivas Park Drive Extension Project certified by City on August 4, 2014 (“Olivas Park EIR”), as updated by the Addendum to the Olivas Park EIR approved in connection with the Olivas Park Specific Plan (2019). Such development and the accompanying conditions and requirements are referred to as the “Project” hereinafter.

L. The City Council of City hereby finds and determines that:

(1) The environmental impacts of the Project as presently approved have been reviewed and all measures deemed feasible to mitigate adverse impacts thereof have been incorporated into the City approvals for the Project.

(2) No other mitigation measures for environmental impacts created by the Project, as presently approved, shall be required for development of the Project unless mandated by law.

(3) City may, pursuant to and in accordance with its rules, regulations, and ordinances, conduct an environmental review of subsequent discretionary entitlements for the development of the Project or any changes, amendments, or modifications to the Project. The City, as a result of such review, may impose additional measures (or conditions) to mitigate as permitted by law the adverse environmental impacts of such development entitlement which were not considered or mitigated at the time of approval of the Project.

M. City Council of City has approved this Agreement by Ordinance No. \_\_\_\_\_ adopted on \_\_\_\_\_, 2022, and effective on \_\_\_\_\_, 2022 (the “DA Ordinance”).

NOW, THEREFORE, in consideration of the above Recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto do hereby agree as follows:

1. Incorporation of Recitals. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. Definitions. In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:

2.1 "City" is the City of San Buenaventura.

2.2 "County" is the County of Ventura.

2.3 "Deposit Agreement" means the "Deposit Reimbursement and Advance Agreement" previously entered into between the parties, dated February 9, 2015.

2.4 "District" means the Ventura County Watershed Protection District.

2.5 "Effective Date" means the date upon the notarized execution by the authorized representative of all parties to the Agreement, but no sooner than the 31<sup>st</sup> day following the final passage and adoption of the ordinance approving the Agreement. In the event of a referendum of the DA Ordinance, the Effective Date shall not occur unless and until the DA Ordinance becomes effective after approval by the voters.

2.6 "Existing Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land or the procedures associated with obtaining approvals for the same ("Land Use Regulations"), including, without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property listed on Exhibit D attached hereto and incorporated herein by this reference, which are a matter of public record on the Effective Date of this Agreement. "Existing Land Use Regulations" does not include any City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain;
- (f) The regulations and requirements of the Uniform Codes that are governed by Section 15.4 of this Agreement.

The reason that items (a) through (f) are excluded from the definition of Existing Land Use Regulations is to further clarify that the City is retaining all rights and powers as to these items, regardless of the date that the regulations or actions are taken, and that the City's exercise of rights relating to these topics is unaffected by this Agreement.

2.7 "Financing District" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982, (California Government Code Sections 53311 *et seq.*, as amended, and referred to herein as the "Mello-Roos" Law); an assessment district formed pursuant to the Landscaping and Lighting Act of 1972, (California Streets and Highways Code Sections 22500 *et seq.*, as amended); a special assessment district formed pursuant to the Municipal Improvement Act of 1913, (California Streets and Highways Code Section 10100, *et seq.*, as amended); or any other special assessment district pursuant to State law or by virtue of the City's status as a Charter Law City, formed for the purposes of financing the construction, improvement, maintenance and/or operational costs of public improvements, facilities, services and/or public facilities fees within a specific geographical area of the City.

2.8 "Future General Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City that are not Existing Land Use Regulations that are adopted to protect public health and safety and that are equally applicable to all properties in the City, including the Property, after the Effective Date and that as stipulated in Section 16.6 of this Agreement,



may be applicable to the Property, the Project and the Individual Owners.

2.9 “Olivas Park Drive Levee” means the proposed levee and flood wall that is to be approximately 5,400 linear feet in length and will run along the north side of the Santa Clara River to protect the area within the Olivas Park Specific Plan from flooding, as well as all associated improvements and structures. The final design and alignment of the Levee is subject to adjustment pursuant to the completion of Construction Plans, Contract Documents, and Specifications for the Olivas Drive Levee (Drawing No. 2016-D-18, Specification No. 2016-019).

2.10 “Olivas Park Drive Extension” means the project that includes the construction of Olivas Park Drive as a four-lane Secondary Arterial between Golf Course Drive and Auto Center Drive, including the installation of sewer, potable water, stormwater drainage, the drainage basin indicated on the construction drawings, street lighting, traffic signals and signage, sidewalks, landscaping, landscaping irrigation, and bike lanes. All components of this project are referred to herein as the “Olivas Park Drive Extension” or the “Extension of Olivas Park Drive.” The final design and alignment of the extension is subject to adjustment pursuant to the completion of the Construction Plans, Contract Documents, and Specifications for the Olivas Park Drive Extension, Drawing No. 2016-D-018, Specification No. 2016-019.

2.11 "Owner" means the person(s) having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof. As of the Effective Date of the Agreement, Owner means Hofer, VOC and WF, collectively. Hofer, VOC, and WF are sometimes referred to herein as “Individual Owner(s).” All obligations and duties referenced as being those of the “Owner” herein require all of the Individual Owners of the Property to act jointly. The City shall not be considered an “Owner” for purposes of any of the obligations and duties of the Owner under this Agreement.

2.12 "Project" or “Projects” has the meaning set forth in Recital K, above.

2.13 “Project Improvements” means the Olivas Park Drive Extension project and the Olivas Park Drive Levee project, collectively.

2.14 "Property" has the meaning set forth in Recital I, above.

2.15 "Subsequent Development Approvals" means all development approvals specified in the Olivas Park Specific Plan required

subsequent to the Effective Date in connection with development of the Project.

2.16 "Subsequent Land Use Regulation" means any Land Use Regulation that is not an Existing Land Use Regulation.

3. Interest of Owner. Owner represents and warrants that it has the fee title or equitable interest in the Property, and that all other persons holding legal or equitable interests in the Property are to be bound by this Agreement. Owner further represents and warrants that it has the authority to bind Owner's share of the Property with this Agreement. Owner shall be required to obtain any necessary subordination agreements to effectuate the recordation of this Agreement in a primary position to any liens, mortgages or deeds of trust on the Property.

4. Exhibits. The following documents are referred to in this Agreement attached hereto, incorporated herein, and made a part hereof by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
Exhibit A	Hofer Property
Exhibit B	VOC Property
Exhibit C	WF Property
Exhibit D	Existing Land Use Regulations
Exhibit E	Hofer Roadway Right-of-Way Dedication
Exhibit F	VOC Roadway Right-of-Way Dedication
Exhibit G	Roadway Right-of-Way Abandonment
Exhibit H	Hofer Levee Dedication
Exhibit I	VOC Levee Dedication
Exhibit J	WF Levee Dedication
Exhibit K	Public Utilities Dedications
Exhibit L	City Levee Dedication
Exhibit M	List of Existing Fee Programs
Exhibit N	Request for Notice of Default to Mortgagee

5. Term of Agreement.

5.1 Term. The term of this Agreement shall commence on the

Effective Date and shall extend until the later of the following two dates: (1) Ten (10) years after the Effective Date; or (2) five (5) years after the date of issuance of the Letter of Map Revision described in Section 10.6 below. Notwithstanding the prior sentence, this Agreement may be sooner terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto. Also notwithstanding the first sentence of this Section, the Owner's maintenance obligations contained in Section 11 and the parties' obligations for defense, indemnification and hold harmless in Section 22 shall remain in perpetuity for the life of the Project Improvements, if the Project Improvements are constructed, or, in the case of the obligations for defense, indemnification and hold harmless, until the obligations are fully carried out.

5.2 Termination by Litigation. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order, after exhaustion of any appeals, directing the City to set aside the DA Ordinance and/or this Agreement or otherwise abrogating the approval by the City Council of City of this Agreement.

6. Overview of Permitted Use and Density. The permitted uses of the Property are those authorized by the Existing Land Use Regulations. The rights of Owner to develop the Property and the limitations on those rights are further set forth in Section 16, below.

7. Public Benefits. In accordance with City policy, specific public benefits are provided to City beyond those already forthcoming through Project approvals in return for the vested right to develop the Project in accordance with the Olivas Park Specific Plan provided herein. These specific public benefits include enhanced flood protection and reclamation of land through the Owner's funding of one hundred percent (100%) of the design, engineering, construction documents, bid documents, bid costs, construction and maintenance of the Olivas Park Drive Levee. The Owner's commitment of this funding is a material inducement to the City in entering into this Agreement, and if the funding is not provided in the manner and time period set forth in this Agreement, the Agreement shall become null and void. The construction of the levee and the Olivas Park Drive Extension will also benefit the public and the City. The extension of Olivas Park Drive and the construction of a levee along the Santa Clara River has been a priority for the City since the 1980's to improve traffic circulation, especially with regard to Johnson Drive, Olivas Park Drive, and the 101 freeway. Owner is dedicating property to the City for the extension of Olivas Park Drive. The levee and that extension will also stimulate economic development. Improvements to the



undeveloped land (buildings, parking lots, infrastructure), will increase the property value and subsequent tax revenue to the City.

8. Olivas Park Drive Extension and Property Dedications/Right of Entry. One of the conditions of approval for the Olivas Park Specific Plan is the requirement for the Olivas Park Drive Extension. This extension was analyzed in the Olivas Park EIR. Provided that the Owner is in full compliance with all provisions of this Agreement, and subject to the terms and conditions in this Agreement, the City will fund one hundred percent (100%) of the costs to design, engineer, prepare construction and bid documents, and construct the Olivas Park Drive Extension with previously collected or future collected Transportation Mitigation Fees. Owner agrees to dedicate all right-of-way necessary for the Olivas Park Drive Extension as follows. Owner agrees to provide to the City executed and recorded Irrevocable Offers of Dedication no later than one week prior to the date the City Council is scheduled to consider the award of the construction contract for the extension of Olivas Park Drive and for the Olivas Park Drive Levee construction (“Construction Contract Consideration Date”). The transmission of the Irrevocable Offers of Dedication to the City shall be accompanied by a preliminary title report prepared by a title company approved by the City. The Irrevocable Offers of Dedication shall be contingent only upon the City awarding the construction contract for the Project Improvements. The property to be dedicated and abandoned is as follows: (1) Hofer agrees to offer to dedicate to the City the roadway right-of-way described in the Right-of-Way Dedication attached hereto as Exhibit E; (2) VOC agrees to offer to dedicate to the City the roadway right-of-way described in the Right-of-Way Dedication attached hereto as Exhibit F; and (3) City agrees to abandon the excess roadway right-of-way described in the Right-of-Way Abandonment attached hereto as Exhibit G. Owner additionally agrees to grant the Public Utilities Easements described and depicted in Exhibit K. The form of the Irrevocable Offers of Dedication shall be subject to the approval of the City Attorney and must be effective for the dedication of the subject real property free and clear of any liens or encumbrances which would potentially interfere with the use of the subject property for the Olivas Park Drive Extension. Owner agrees to have all signatures notarized, and to execute any and all additional documentation necessary to effectuate and record the dedications. The City shall accept the offers of dedication for Exhibits E and F after awarding the public works contract for the Olivas Park Drive Extension. The City shall either accept the offers of dedication depicted in Exhibit K, when appropriate, or shall coordinate with the respective public utility for acceptance. The City shall be responsible for the recordation of its acceptance of the dedications. Except for the obligation of the last sentence, the dedications are at no

cost to the City. Owner additionally agrees to grant to the City all temporary rights of entry upon the Property necessary for construction, as determined by the City.

9. Olivas Park Drive Levee Construction and Property Dedication/Rights of Entry. One of the conditions of approval for the Olivas Park Specific Plan is the requirement for the Olivas Park Drive Levee to protect the area within the Olivas Park Specific Plan from flooding. Subject to the terms and conditions in this Agreement, Hofer, VOC, and WF, collectively, will pay one hundred percent (100%) of the design, engineering, construction documents, bid documents, bid costs, construction and maintenance of the Olivas Park Drive Levee. Such costs shall include all costs incurred by the District in connection with the Olivas Park Drive Levee. Owner agrees to dedicate in fee property needed for the construction of the Olivas Park Drive Levee as follows. The Owner agrees to provide to the City executed and recorded Irrevocable Offers of Dedication no later than one week prior to the Construction Contract Consideration Date. The transmission of the Irrevocable Offers of Dedication to the City shall be accompanied by a preliminary title report prepared by a title company approved by the City. The Irrevocable Offers of Dedication shall be contingent only upon the City awarding the construction contract for the Project Improvements. The dedication shall be to the City, or upon the City's election, to the District. The property to be dedicated is as follows: (1) Hofer agrees to offer to dedicate to the City the property described in the Levee Dedication attached hereto as Exhibit H; (2) VOC agrees to offer to dedicate to the City the property described in the Levee Dedication attached hereto as Exhibit I; and (3) WF agrees to offer to dedicate to the City the property described in the Levee Dedication attached hereto as Exhibit J. The form of the Irrevocable Offers of Dedication shall be subject to the approval of the City Attorney and must be effective for the dedication of the subject real property free and clear of any liens or encumbrances which would potentially interfere with the use of the subject property for the Olivas Park Drive Levee. Owner agrees to have all signatures notarized, and to execute any and all additional documentation necessary to effectuate and record the dedications. The City or District shall accept the offers of dedication for Exhibits H, I, and J after awarding the public works contract for the Olivas Park Drive Levee. The City shall be responsible for the recordation of its acceptance of the dedications. Except for the obligation of the last sentence, the dedications are at no cost to the City or the District. City shall dedicate the remaining property needed for the Olivas Park Drive Levee, as described on Exhibit L. Owner additionally agrees to grant to the City all temporary rights of entry upon the Property necessary for construction, as determined by the City.

10. Engineering Estimates/Public Bidding/Contract Award/Contract Management/Owner Deposit and Funding for the Project Improvements.

10.1 Engineering Estimates and Funding Guarantee by the Owner. At the conclusion of the final design of the Olivas Park Drive Extension and the Olivas Park Drive Levee, the City will obtain an engineer's estimate of the probable construction costs, including construction oversight and construction management, for each facility. The City shall bear the costs of the preparation of the estimate for the Olivas Park Drive Extension and Owner shall bear the cost of the estimate for the Olivas Park Drive Levee. Upon receipt of the estimate for the Olivas Park Road Extension, the City will verify whether or not it wishes to proceed to the public bidding stage and will notify Owner of its determination within 30 days of receipt of the estimate. If the City decides not to proceed to public bidding, the City will have the option to terminate this Agreement by providing notice to Owner. If it exercises its option to terminate the Agreement, the City shall take any other necessary steps to release the Property from the dedication requirements contained in this Agreement. Upon receipt of the estimate for the Olivas Park Drive Levee, the City will promptly provide the same to Owner. Owner will have thirty (30) days to notify the City if Owner wishes to proceed to the public bidding stage for the Olivas Park Drive Levee. If Owner chooses to proceed with Olivas Park Drive Levee project, Owner shall notify the City of its election within the thirty (30) day time period, and deposit with the City Treasurer a funding guarantee in a form satisfactory to the City Manager and the City Attorney for one-hundred percent (100%) of the estimated construction costs for the Olivas Park Drive Levee within fifteen (15) days of its election. If Owner elects not to proceed to the public bidding stage for the construction of the Olivas Park Drive Levee, this Agreement shall automatically terminate.

10.2 Public Bidding, Payment Guarantee and Cash Deposit by the Owner. If the City elects to proceed to the public bidding stage with the Olivas Park Drive Extension project, and Owner elects to request the City to proceed to the public bidding stage with the Olivas Park Drive Levee project, the City shall be responsible for conducting the public bidding process for both projects. The bid documents will be structured such that the two projects will be separate bid schedules to ensure that the costs of each project can be separately calculated throughout the construction process. The lowest responsible bidder will be determined by the City, based upon the lowest combined bid amounts of the two projects. Once the City has determined the lowest responsible bidder, it will notify Owner of the bid amounts and components. The City and Owner will have up to 45 days from notification to Owner to cancel the projects for any reason by giving

written notice to the other party. If either the City or Owner exercises its right to cancel the projects, the City will reject all bids, and this Agreement shall terminate. If neither the City nor Owner elects to cancel the Project Improvements, by the 48<sup>th</sup> day following the notification to Owner of the bid amount and components, Owner shall deliver to the City Treasurer, or to an alternative person agreed upon in writing by the parties, a letter of credit payable to the City in an amount that equals one hundred and ten percent (110%) of the total construction bid amount for the Olivas Park Drive Levee project and the proportionate share of all construction management fees and other contract services necessary to carry out the construction of the Project Improvements. The costs for the contract services necessary to carry out and oversee the construction shall be shared by the parties proportionately, based upon the respective bid amounts of the bids selected for the Olivas Park Drive Levee project and the Olivas Park Drive Extension project. The letter of credit shall be in a form approved in writing by the City Manager and the City Attorney, and the entity issuing the letter of credit must be preapproved in writing by the City Manager. Owner shall be responsible for submitting the form of the letter of credit to the City Manager and the City Attorney and the issuer information to the City Manager in time to gain their written approval of the form and issuer prior to its submission to the City Treasurer. The City's ability to draw on the letter of credit shall be conditioned solely upon: (1) the City's award of the construction contract for the Olivas Park Drive Levee and (2) the City's affirmation that Owner has failed to deposit the funding as required in the following sentence. Within two business days of the City's notification to Owner that it has awarded the construction contract for the Olivas Park Drive Levee, Owner shall deposit with the City a sum equal to one hundred and ten percent (110%) of the total construction bid amount for the Olivas Park Drive Levee project, and the proportionate share of all construction management fees and other contract services necessary to carry out the construction of the Project Improvements. Upon receipt of this funding, the City shall release the letter of credit.

10.3 Award and Implementation of Construction Contract for the Project Improvements. If, after determination of the lowest responsible bidder and review of the bid per Section 10.2, the City elects to proceed with the Olivas Park Drive Extension project, and the Owner elects to proceed with the Olivas Park Drive Levee project and has deposited all the required funds, the City shall be responsible for the contract award, management, and oversight of the construction process for both projects, subject to the costs sharing outlined in this Agreement. The City shall bear all costs of such award, management and oversight as it relates to the Olivas Park Drive Extension, and Owner shall be responsible for all such

costs as it relates to the Olivas Park Drive Levee project. The City shall be entitled to draw from the Owner deposit account for all expenses it incurs in carrying out the Olivas Park Drive Levee project. The City shall not be reimbursed for its internal administrative costs associated with the bidding of the Project Improvements. Once expenditures from Owner's deposit commence, the City shall provide financial summaries of the Project costs associated with the Olivas Park Drive Levee on a bi-monthly basis, and shall promptly provide accountings upon request.

10.4 Change Orders. The City shall be responsible for paying the additional costs associated with any and all approved change orders to the construction contract relating to the Olivas Park Drive Extension project. City shall complete the Olivas Park Drive Extension notwithstanding any such additional costs, albeit the timing of construction shall subject to the availability of funding. Owner shall be responsible for paying the additional costs associated with any and all approved change orders to the construction contract relating to the Olivas Park Drive Levee project. The City will not approve any change order that causes the total cost of the Olivas Park Drive Levee project to exceed one hundred and ten percent (110%) of the bid amount for the Olivas Park Drive Levee without consulting with the Owner. Owner shall provide the City with a single point of contact (Owner representative) for purposes of such consultation and ensure that the consultation is promptly completed. Discretion regarding whether to approve or deny a requested change order shall remain with the City. Should City require additional funding from Owner, within ten (10) days of the City's written request, Owner shall be responsible for depositing with the City an amount sufficient to cover additional costs associated with any and all City-approved change order(s) to the construction contract relating to the Olivas Park Drive Levee project. Owner shall be responsible for any and all project delays caused by Owner's delay in providing the required funding. If any such change orders relating to the Olivas Park Drive Levee project requires approval by the City Council, Owner shall be provided at least 72-hours advance notice of the public meeting at which the change order will be considered.

10.5 Project Completion. Upon completion of the Olivas Park Drive Levee project, the City shall coordinate the transfer of the Olivas Park Drive Levee to the District. The City and Owner agree to execute all necessary documentation to effectuate the transfer. The City shall provide Owner with the approved record drawings of the Olivas Park Drive Levee improvements promptly after obtaining said drawings. In addition, the City shall provide Owner with an accounting of all funds expended on the Olivas Park Drive Levee Project within

thirty (30) days of the date of the City's final payment or the recordation of the Notice of Completion, whichever is later. Within forty-five (45) days of the issuance of the final accounting, either (1) the City shall refund to Owner any funds remaining in the deposit account; or (2) Owner shall pay to the City any shortfall between the balance of the account and the total payments made by the City for the Olivas Park Drive Levee project.

10.6 Letter of Map Revision from Federal Emergency Management Agency. The District is the entity that will formally apply to the Federal Emergency Management Agency ("FEMA") for the Letter of Map Revision ("LOMR") relating to the property within the Olivas Park Specific Plan that will be removed from the flood plain by the construction of the Olivas Park Drive Levee. Upon completion of the Olivas Park Drive Levee's construction and approved record drawings, Owner shall provide to the District any information, documentation, and funding necessary for the processing of the application to FEMA. Owner shall use commercially reasonable efforts to provide such information, documentation, and funding as soon as practicable, and shall endeavor to do so within 30 days after completion of construction. Once the application has been filed by the District, Owner and the City shall promptly provide any additional information or documentation necessary for the processing of the application.

10.7 Use of Stockpiled Dirt. Owner, at Owner's expense, previously has caused certain dirt to be stockpiled for future use on Owner's Property. Owner agrees to make this stockpiled dirt available to the contractor awarded the contract for the Olivas Park Drive Levee and Olivas Park Drive Extension at no costs. The stockpiled dirt would first be made available for the Olivas Park Drive Levee, and if there is remaining dirt, for the Olivas Park Drive Extension. Owner will be responsible to pay the costs of any and all testing deemed necessary by the City to determine the suitability of utilizing the dirt for those projects within thirty (30) days of being invoiced for said costs.

11. Maintenance Costs. Once completed, Owner shall be responsible for all of the costs of operating and maintaining the Olivas Park Drive Levee improvements, the sidewalks constructed as part of the Olivas Park Drive Extension, and certain other infrastructure improvements set forth in Table 4-1 of the Olivas Park Specific Plan, including street lighting, landscaping, irrigation systems and equipment, and stormwater facilities, for the life of the improvements. This obligation shall survive the termination or expiration of this Agreement. Owner, at Owner's sole expense, may utilize a Financing District to effectuate this



obligation, and the City shall, at no expense to it, cooperate in the formation and implementation of such a District. If Owner chooses to utilize a Financing District, all required engineer reports will be prepared by an engineer selected and managed by the City, at Owner's expense. If a Financing District is established, the fees assessed shall be subject to annual adjustment to cover inflation and increases in maintenance costs. If a Financing District is established, property owned by the City within the district shall not be subject to any assessment by such district for as long as it is owned by the City, however, any such property later conveyed to a private party shall be subject to maintenance assessments after such conveyance. Owner may propose an alternative method of permanently guaranteeing the payment of the maintenance costs, provided, however, that the City shall have the sole discretion to approve or disapprove the proposed method. Owner's commitment to pay the ongoing maintenance costs for the Olivas Park Drive Levee and other infrastructure improvements described above is a material inducement to the City's entry into this Agreement. To the extent there is any inconsistency between the Deposit Agreement and this Agreement regarding the potential formation of a Financing District, this Agreement shall control. If Owner fails to establish a sufficient mechanism for guaranteeing the payment of maintenance costs and/or fails to make any payment required to cover such costs, the City may, as a separate remedy in addition to all other legal rights, terminate this Agreement in full or just as to an Individual Owner. In addition, during the period of default of this obligation, the City shall have no obligation to issue any permit, approval, or land use approval for any development of the Property. Except as indicated above, City shall be responsible for all of the costs of maintaining the Olivas Park Drive Extension improvements, including the street and traffic signals.

12. Repair/Replacement of Levee. This Agreement deliberately does not obligate the parties to repair and/or reconstruct the Olivas Park Drive Levee in the event of the failure of the Levee and/or other events that result in the District determining that it is no longer willing or able to operate the levee. Owner acknowledges that in the event the Olivas Park Drive Levee no longer provides adequate flood protection, Owner's Property may be redesignated by FEMA, and access to Owner's Property via the Olivas Park Drive Extension may be compromised. Owner further acknowledges that, notwithstanding any implication to the contrary in the Cooperative Agreement for Santa Clara River Levee at Olivas Park Drive between the City and District, City will not be responsible for the operation or maintenance of the Olivas Park Drive Levee, including but not limited to any work necessary to obtain a FEMA certification, in the event the District relinquishes the levee to City, provided, however, that City will cooperate with any Owner's efforts to do so. In such an event, all property dedicated for the

construction of the Olivas Park Drive Levee shall be returned to the party that contributed such property, unless the parties reach an agreement that provides for the repair and/or replacement of the levee.

13. Water Supply to Development on the Property. The City will provide water service to future development on the Property in accordance with, and the Individual Owners shall comply with, City's Water Rights Dedication and Water Resource Net Zero Policy (San Buenaventura Municipal Code Chapter 22.180) as it is in effect each time that Owner applies for building permits for the specific structures to be provided water service. Notwithstanding any other provision of this Agreement, Owner shall be subject to fees, dedication and any other requirements for water service that are in effect at the time Owner obtains building permits for each specific uses or structure, even if those fees and requirements are modified after the Effective Date. No provision of this Agreement shall limit the City's authority to regulate water service under applicable law, including Cal. Water Code sections 350, *et seq.* and the City's Water Shortage Event Contingency Plan, and any future amendments thereto.

14. Timing of Development; *Pardee Construction* case. The parties acknowledge that Owner cannot at this time predict when, or at the rate at which, the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since 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 resulted in a later adopted initiative restricting the timing of development, it is the parties' intent to cure that deficiency by acknowledging and providing that Owner shall have the right to develop the Property in such order, at such rate, and at such times as Owner deems appropriate within the exercise of its subjective business judgment, subject only to the Olivas Park Specific Plan and the terms and conditions of this Agreement.

15. Public Works. While developing the Property, when Owner is required to construct any public works facilities which will be dedicated to City or any other public agency or public utility upon completion, Owner shall perform such work in the same manner and subject to the same requirements as would be applicable to City or such other public agency or public utility should it have undertaken such construction, including the payment of prevailing wages, and shall fully comply with all requirements of the California Labor Code and the corresponding regulations in the California Code of Regulations.



16. Development of the Property, Vesting, Limitations on Vesting.

16.1 Rights to Develop. Owner shall have a vested right to develop the Property in accordance with, and to the extent of the Existing Land Use Regulations, as implemented through the Subsequent Development Approvals consistent with such Existing Land Use Regulations. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, and the maximum height and size of proposed buildings shall be those set forth in the Existing Land Use Regulations. Except as otherwise provided in this Agreement, new requirements, rules, policies, ordinances, resolutions, regulations or procedures which are in conflict with the Existing Land Use Regulations, whether adopted by initiative or otherwise, limiting the development of the Property shall be deemed to conflict with the Existing Land Use Regulations and shall therefore not be applicable to the development of the Property. In exchange for the vested right to develop pursuant to this Agreement, Owner expressly waives for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, the right to challenge or contest the validity of any condition of approval consistent with the Existing Land Use Regulations or this Agreement.

16.2 Payment of City Development Fees and Charges. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to pay only all City development fees and charges that are in force and effect on the Effective Date of this Agreement except as provided herein. A list of existing fee programs is contained in Exhibit M, which list is incorporated herein by this reference. The rate or the amount of the fee or charge that Owner shall pay shall be the fee or charge in effect on the date that the applicable fee or charge is due under applicable law and normal City policy and procedures. Therefore, any adjustment in the rate or amount of those fees and charges that occur after the Effective Date are applicable to the Project. Except as otherwise provided by this Agreement, new, different, or additional development fee programs that are adopted by the City after the Effective Date shall not apply to the Property for the time period commencing on the Effective Date, and ending on the earlier of the following two dates: (1) the date upon which this Agreement expires or is terminated; or (2) the four-year anniversary of the issuance of issuance of the LOMR. Notwithstanding the last sentence, in the event that a future ruling or determination by the California Department of Industrial Relations or of any court within the State of California indicates that the exemption from new fees such as that outlined in the last sentence would cause the private development by the Individual Owners to be considered “public works” under the

California Labor Code, and become subject to, among other things, the provisions of the California Labor Code relating to the payment of prevailing wage, then the exemption for new fees shall not apply, and development shall be subject to all applicable fees, regardless of the date upon which they were enacted. This Agreement shall have no effect on fees, charges, taxes or assessment imposed by other public agencies, even if the City is required to collect the fees, charges, taxes or assessments on behalf of the other agencies.

16.3 Utility Connection Charge. Owner agrees to pay all sewer and water connection costs imposed by the City in the San Buenaventura Municipal Code and to pay all other utility connection costs required by San Buenaventura Municipal Code or other regulations, as those imposed costs and charges exist at the time Owner makes the utility connection.

16.4 Future Amendments of Uniform Codes Shall Apply. This Agreement does not prevent the City from adopting and/or amending in compliance with State law and applying to the Property and the Project any and all of the Uniform Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the Project and Property subject to this Agreement. Such Uniform Codes and the City Amendments thereto include those contained in Division 12 of the City's Municipal Code, as it is amended from time to time, as well as all other Uniform Codes utilized by the City, including the Uniform Fire Code.

16.5 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the requirements, rules, policies, ordinances, resolutions, and regulations governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. City shall not apply Subsequent Land Use Regulations that conflict with the Existing Land Use Regulations to the Project or Property. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Existing Land Use Regulations, and as provided by this Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters, except as otherwise required by this Agreement. City may, at the request of an Individual Owner, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the

cost of which shall be borne by the Individual Owner.

16.6 City Authority to Adopt and Apply Future General Regulations Regarding Health and Safety. This Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to Owner, the Project and the Property, provided the City Council adopts findings that a failure to apply such Future General Regulations would result in a condition injurious or detrimental to the public health and safety. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council at which Owner was provided at least ten (10) days advance written notice.

16.7 Additional Limitations, Reservations, and Exceptions to Vesting Relating to Land Use Regulations. Notwithstanding any other provision of this Agreement, the following regulations, as amended from time to time, shall apply to the development of the Property, even if the regulations are modified or adopted after the Effective Date:

(a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure, provided they are not inconsistent with the Olivas Park Specific Plan.

(c) Regulations governing:

- (1) The control and abatement of public nuisances; and
- (2) Storm water run-off from the Property (but not new fees regarding storm water run-off, i.e., this provision is not intended to alter the obligations set forth in Section 16.2 with regard to storm water fees).

16.8 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Olivas Park

Specific Plan. Nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations, on the basis of Subsequent Land Use Regulations not in conflict with the Olivas Park Specific Plan, or on the basis of all other regulatory and discretionary rights reserved to the City under this Agreement. Nothing in this Agreement shall be construed as limiting the City's discretion in carrying out its future obligations under the California Environmental Quality Act in connection with Subsequent Development Approvals, and the City is retaining full discretion to carry out the California Environmental Quality Act as it deems appropriate.

16.9 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

16.10 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

17. Changes and Amendments to Project. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Olivas Park Specific Plan. In the event the Owner finds that a change in the Olivas Park Specific Plan is necessary or appropriate, the Owner shall apply for an amendment to the Olivas Park Specific Plan to effectuate such change. If approved by City, any such change in the Olivas Park Specific Plan shall be incorporated herein as an addendum to this Agreement and may be further changed from time to time as provided in this Section. Owner, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor, without regard to the outcome of the request for amendment or change to this Agreement.

18. Potential for Owner to Receive Credit for Olivas Park Drive Levee Cost Against Transportation Mitigation Fee Otherwise Due Upon Development of Property. The City intends to fund its obligations for the Olivas Park Road Extension from previously collected Transportation Mitigation Fees (“TMF”), as well as from such TMF it will collect in the future, including the TMF collected from Owner. Once 100% of the City’s expenditures for the Olivas Park Road Extension project, including, but not limited to, design costs, engineering costs, planning costs, bidding costs, construction costs, project management costs, construction management costs, inspection costs, legal costs, litigation costs, and any other City expenditures related to the Olivas Park Road Extension project and all of its components, including the sewer connection fees for the decommissioning of the Montalvo sewer facility, have been fully paid for by TMF funding actually collected by the City, consistent with the City’s TMF Program, Owner will be entitled to partial reimbursement for the costs to construct the Olivas Park Drive Levee to the extent additional TMF funding is available. Any such available TMF funding shall be distributed to Owner on an annual basis, as follows: 66.56% to Hofer, 26.76% to VOC, and 6.68% to WF. Any reimbursement payments received by Owner shall not exceed the cost Owner incurred for the Olivas Park Drive Levee.

19. Building Permits. The City shall not be required to issue building permits or other permits for the Project if Owner is not in full compliance with this Agreement, except that, as to obligations that are not joint and several, a building permit shall not be withheld from an Individual Owner if that Individual Owner is not responsible for the non-compliance of another Individual Owner.

20. Periodic Review of Compliance with Agreement.

20.1 City Compliance Review. City shall review this Agreement at least once during every twelve (12) month period from the Effective Date of this Agreement. City may review the Agreement as to Individual Owners if appropriate. Owner or Individual Owner or successors shall reimburse City for the reasonable and necessary costs of this review, within thirty (30) days of written demand from City.

20.2 Owner Good Faith Compliance. During each periodic review by City, Owner is required to demonstrate good faith compliance with the terms of this Agreement. Individual Owners agree to furnish such evidence of good faith compliance as City in the exercise of its discretion may require.

21. Binding Effect of Agreement. The burdens of this Agreement

bind and the benefits of the Agreement inure to the successors-in-interest to the parties, in accordance with the provisions of and subject to the limitations of this Agreement.

22. Indemnity and Cost of Litigation.

22.1 Allocation of Responsibility for Claims, Liabilities, Litigation. Except as otherwise provided by this Agreement, the parties hereby allocate responsibility for claims, liabilities, and litigation relating to the subject matter of the Project, the Property and this Agreement as follows: (1) claims or litigation arising from or related to the Olivas Park Drive Extension project shall be allocated 100% to the City; (2) claims or litigation arising from or related to the Olivas Park Drive Levee project, including but not limited to any failure of the levee, shall be allocated 100% to Owner; (3) claims or litigation arising from or related to both the Olivas Park Drive Extension and the Olivas Park Drive Levee shall be allocated proportionally as between the City and Owner based upon the respective construction costs of those two projects as reflected in the construction bids and any change orders, or, if the bidding has not yet occurred, based upon the respective engineer's estimates for those projects; (4) third party legal challenges to the approval this Agreement shall be allocated 100% to Owner; (5) third party legal challenges relating to Subsequent Development Approvals shall be allocated 100% to the Individual Owner to whose property the challenged actions or permits relate; (6) claims, administrative proceedings, liabilities, or litigation relating to or concerning any hazardous substances or hazardous waste at any place within the Property shall be allocated 100% to the Individual Owner of the affected Property; (7) claims, administrative proceedings liabilities, or litigation arising out of any construction or improvements on the Property, other than the construction and improvements comprising the Olivas Park Drive Extension project, that relate to compliance or noncompliance with the California Labor Code, including the payment of prevailing wages, shall be allocated 100% to the Individual Owner upon whose Property the construction or improvements occurs; and (8) any other claims, liabilities or litigation arising out of or related to the Project, the Property, or this Agreement not covered by numbers (1) through (7), above, shall be allocated 100% to Owner or Individual Owner, unless the claim, liability or litigation arises from the City's negligence or wrongdoing, including the negligence or wrongdoing of the City's officers or employees, in which case the City shall be responsible for the claim to the extent of its negligence or wrongdoing, and the Owner's or Individual Owner's liability shall be reduced accordingly.

22.2 Indemnification, Defense and Hold Harmless. The party that is allocated responsibility for claims, liability, and litigation in Section 22.1 (“Indemnitor”) shall indemnify, protect, defend, and hold harmless the party entitled to protection from the claim, liability, and litigation (“Indemnitee”), and Indemnitee’s officers, employees, or agents thereof, from said claims, liabilities and litigation. All parties shall fully cooperate in the defense against such claims, liabilities and litigation by providing testimony, documents, and related information. If the Indemnitee is made a party to any administrative proceeding or litigation, the Indemnitee shall be entitled to legal counsel meeting the Indemnitee’s approval paid for by Indemnitor. Each party shall promptly notify all other parties of any claim, lawsuits or written threat thereof that party receives relating to the Project, the Property, the Project Improvements, or this Agreement. Indemnitor shall be responsible for all attorney fees and litigation costs, and shall be responsible for promptly satisfying any final judgments or awards of damages. In the situation where both Owner, or an Individual Owner, and City have some portion of responsibility for the claims, liability, or litigation, the responsible parties shall coordinate in good faith and carry out their respective obligations in a fair and equitable manner based upon their respective responsibility. Acceptance by Indemnitee of insurance certificates and endorsements required under this Agreement or as a condition of approval does not relieve Indemnitor from liability under this indemnification and hold harmless clause. This indemnification requirement shall extend beyond the termination or expiration of this Agreement until all obligations are satisfied.

22.3 Release. Owner and each Individual Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms and/or operation of this Agreement.

23. Project as a Private Undertaking/Relationship of Parties. It is specifically understood and agreed by and between the parties hereto that that neither the City nor Owner or Individual Owner is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this

Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

24. Mortgagee Protection. Neither entering into this Agreement nor committing a default under this Agreement shall defeat, render invalid, diminish, or impair the lien of mortgagees having a mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No mortgagee shall have an obligation or duty under this Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a mortgage on the Property or any portion thereof, the mortgagee shall be subject to the terms and conditions of this Agreement. The term of this Agreement shall not be extended based on the fact that a mortgagee held title to the Property for all or any part of the term of this Agreement.

25. Notice of Default to Mortgagee; Right to Cure.

25.1 Timely Notice to City Clerk. If the City Clerk timely receives notice, on the form set forth on Exhibit N attached hereto and incorporated herein by this reference, from a mortgagee requesting a copy of any Notice of Default given to an Individual Owner under the terms of the Agreement, the City shall endeavor to provide a copy of that notice to the mortgagee within ten (10) days of sending the Notice of Default to Owner. City shall have no liability for damages or otherwise to the Individual Owner, the Individual Owner's successor, or to any mortgagee or successor therefor for failure to provide such notice.

25.2 Mortgagee Right to Cure. The Mortgagee shall have the right, but not the obligation, for a period up to thirty (30) days after the receipt of such notice from the City to cure or remedy, or to commence to cure or remedy, the default unless a further extension of time to cure is granted in writing by the City. However, to avail itself of the rights provided by this Section, a Mortgagee must notify the City in writing of its intent to attempt to remedy or cure within fifteen (15) days of the date of the Notice of Default from City to Mortgagee. A failure by a Mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section. By providing the notice to City, Mortgagee is agreeing and consenting to the provisions of this Section and is further waiving the right to claim a prior lien on the Property.

25.3 Reservation of City's Rights During Cure Period. In return



for City granting to the Individual Owner, the Individual Owner's successors and transferees, and the Mortgagees of each of them, the time period referenced in the Section above to remedy or cure a default, the Individual Owner, the Individual Owner's successors and transferees, and the Mortgagees of each of them agree that once a default by an Individual Owner ("Individual Owner Default") occurs, the City may take the actions set forth below and lien and burden the Property for the costs thereof -- irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:

- (a) Abate public nuisances following the City-adopted public nuisance ordinance;
- (b) Remedy any substantial health or safety threat posed by the Property, construction, or other activities going on on the Property;
- (c) Screen any unsightly appearance on the Property for aesthetic purposes provided that such appearance is unpermitted and inconsistent with the Existing Land Use Regulations;
- (d) Abate weeds; and,
- (e) Control noise, dust, or other offensive conditions on the Property.

26. Mortgagee Rights. The parties hereto agree that this Agreement shall not prevent or limit an Individual Owner, in any manner, at the Individual Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property or any portion thereof. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Individual Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Individual Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days or receipt of an invoice from City.

Any Mortgagee of the Property shall be able to rely upon the provisions hereof and except as expressly provided in this Agreement, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

27. Assignment.

27.1 Right to Assign. An Individual Owner, shall have the right to sell, transfer, or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Sections 66410, *et seq.*, or the San Buenaventura Municipal Code) to any person, partnership, joint venture, firm, limited liability company, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Any transferring Individual Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of this Agreement may be obtained from the County Clerk/County Recorder of the County of San Buenaventura, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of this Agreement or any extension thereof.

(b) No less than thirty (30) business days prior to any such sale, transfer, or assignment, the Individual Owner shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, in a form acceptable to the City Attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the Individual Owner under this Agreement. Where multiple sales, transfers, or assignments are contemplated by the Individual Owner to more than one purchaser, transferee, or assignee, said Assignment and Assumption Agreement shall expressly specify and apportion shared obligations amongst various purchasers, transferees, or assignees. Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall be

null and void and shall constitute a material default by the Individual Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (b) of this Section, the burdens of this Agreement placed upon the Individual Owner shall run with the land and shall be binding upon any purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed.

27.2 Release of Transferring Individual Owner.

Notwithstanding any sale, transfer, or assignment, a transferring Individual Owner shall continue to be obligated under this Agreement unless such transferring Individual Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Individual Owner of **ALL** of the following conditions:

(a) the Individual Owner no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust.

(b) the Individual Owner is not then in default under this Agreement.

(c) the Individual Owner or purchaser has provided City with the notice and executed Assignment and Assumption Agreement required under Paragraph (b) of Section 27.1 above.

(d) The purchaser, transferee, or assignee provides City with security equivalent to or better than any security previously provided by Individual Owner to secure performance of its obligations hereunder.

(e) Individual Owner has reimbursed City for any and all City costs associated with Individual Owner's transfer of all or a portion of the Property.

(f) Individual Owner has reimbursed City for any and all costs relating to this Agreement, except those costs that are expressly identified in this Agreement as being solely borne by the City.

27.3 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

28. Amendment or Cancellation of Agreement. This Agreement shall

not be amended, modified, or canceled, in whole or in part, unless in writing signed by all parties hereto, and only by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867, and 65867.5 and Chapter 24.550 of the City's Municipal Code. The provisions of this Section do not impact the right of the City to terminate this Agreement, because of Owner's breach or failure to comply in good faith with the requirements of this Agreement or as to an Individual Owner because of the Individual Owner's breach or failure to comply in good faith with the requirements of this Agreement.

29. Enforcement. Unless amended or canceled as herein provided, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general or specific plan, zoning, subdivision, or building regulations adopted by the City which alter or amend the rules, regulations, or policies governing permitted uses of the land, density and design.

30. Enforced Delay, Default, Remedies and Termination.

30.1 Default by Owner. If the City alleges an Individual Owner Default, the City shall conduct a hearing utilizing the Annual Review procedures in Section 19 before the City may terminate this Agreement. However, such a hearing is not necessary in situations where this Agreement provides for "automatic" termination. Also, no hearing shall be required where the Individual Owner Default involves the failure by Individual Owner to reserve or dedicate any property pursuant to this Agreement or to the Olivas Park Specific Plan, or to pay fees and charges as required by the applicable regulations and this Agreement as they become due, and each failure shall constitute a separate material Individual Owner Default. It shall also be deemed an Individual Owner Default for more than forty-five (45) days to pass from City's written demand for reimbursement of any reimbursable costs under this Agreement and the receipt by City of such reimbursement. In the event of an Individual Owner Default, and in addition to any other remedy available to the City, the City shall have the right to change the Land Use Regulations that apply to the Property.

30.2 Default by City. If an Individual Owner alleges a City default by written notice served on the City in accordance with Section 33 hereof, and alleges that the City has not cured the default within ninety (90) days, an Individual Owner may pursue any legal or equitable remedy available to it under this Agreement.

30.3 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future notice of the same or any other default.

30.4 Judicial Review; Remedies. In the event City elects to terminate this Agreement pursuant to the provisions of this Agreement, an Individual Owner may challenge such termination by instituting legal proceedings in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination. An Individual Owner may not sue or file an action against the City, its officers, its employees, or its representatives for damages, monetary compensation, loss of income, lost profit, or any monetary award based upon, or in relation to, this Agreement. An Individual Owner's sole remedy in the event the City breaches this Agreement is writ of mandate and/or injunctive relief.

31. Events of Default. An Individual Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

(a) If a warranty, representation, or statement made or furnished by an Individual Owner to City is false or proves to have been false in any material respect when it was made;

(b) More than forty-five (45) days have passed since City's making of a written request to an Individual Owner for payment or reimbursement for a fee or service authorized or agreed to pursuant to this Agreement;

(c) More than forty-five (45) days have passed since City's making of a written request of an Individual Owner to correct the failure by an Individual Owner to reserve or dedicate any property pursuant to the Olivas Park Specific Plan, or to pay fees and charges as required by the applicable regulations and this Agreement as they become due; or,

(d) Thirty (30) or more days have passed since City's written demand for a cure of an alleged default not otherwise specified above without a cure and thereafter a finding and determination upon the basis of substantial evidence is made by City's City Council that the Individual Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

32. Attorney's Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

33. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and presumed delivered upon actual receipt by personal delivery or within ten (10) calendar days following deposit thereof in United States Mail. Notice required to be given to City shall be addressed as follows:

To City: City of San Buenaventura  
City Manager  
501 Poli Street, Room 204  
Ventura, CA 93002

With a copy to: City Attorney's Office  
City of Ventura  
501 Poli Street, Room 213  
  
Ventura, CA 93002

Community Development Director  
City of Ventura  
501 Poli Street, Room 133  
Ventura, CA 93002

(which shall not constitute notice under this Agreement)

Notices required to be given to Owners shall be addressed as follows:

To Owner Hofer: John M. Hofer  
6800 Auto Center Drive  
Ventura, CA 93003

With a copy to: Neal Maguire  
Ferguson Case Orr Paterson LLP  
1050 South Kimball Road  
Ventura, CA 93004

(which shall not constitute notice under this Agreement)

To Owner VOC: Ventura Olivas Company  
1294 East Main Street  
Ventura, CA 93001  
Attention: Allen F. Camp

To Owner WF: WF Golf Course LLC  
2550 Overland Avenue, Suite 200  
Los Angeles, CA 90064  
Attention: Louis Wolff, Manager

WF Golf Course LLC  
2550 Overland Avenue, Suite 200  
Los Angeles, CA 90064  
Attention: Billy Wolff, General Counsel

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

34. Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event an Individual Owner or Individual Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Individual Owner or Individual Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Individual Owner or Individual Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.

35. Rules of Construction and Miscellaneous Terms.

(a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.

(b) The time limits set forth in this Agreement may be extended by mutual written consent of the parties in accordance with the procedures for adoption of the Agreement.

(c) This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to third party beneficiaries, shall have any right of action based upon any provision of this Agreement.

(d) Headings are descriptive only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

36. Running with Land. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be

enforceable by the City or by any present or future owner of any of the land described in Exhibits A, B and C.

37. Joint and Several Liability of Owner. The liability and obligations of all of the individual persons or entities collectively referred to herein as “Owner” shall be joint and several, while the liability of all of the individual persons or entities referred to herein as “Individual Owner” shall not be joint and several when this Agreement refers to Individual Owners.

38. Waiver. In the event that either City or Individual Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

39. Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Ventura.

40. Entire Agreement. This Agreement and the exhibits hereto contain the complete, final, entire, and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Agreement shall be null and void.

41. Counterparts. This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

42. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.



IN WITNESS WHEREOF this Development Agreement has been executed by the authorized representatives of the parties hereto.

CITY:

CITY OF SAN BUENAVENTURA  
A California Charter Law Municipal  
Corporation

BY: \_\_\_\_\_  
Mayor

ATTEST:  
CITY CLERK

BY: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
City Attorney

OWNER:

HOFER PROPERTIES, LLC

BY: \_\_\_\_\_  
(Signature)

John M. Hofer  
(Typed Name)

Its: Manager  
(Title)

BY: \_\_\_\_\_  
(Signature)

Paul B. Hofer, III  
(Typed Name)

Its: Member  
(Title)

ADDRESS: 6800 Auto Center Drive

Ventura, CA 93003

TELEPHONE: \_\_\_\_\_

FACSIMILE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

OWNER:

VENTURA OLIVAS COMPANY, LLC

BY: \_\_\_\_\_  
(Signature)

Allen F. Camp  
(Typed Name)

Its: Manager

ADDRESS: 1294 East Main Street  
Ventura, CA 93001

TELEPHONE: 805.641.2121

E-MAIL: [allen.camp@sfox.com](mailto:allen.camp@sfox.com)

OWNER:

WF GOLF COURSE, LLC

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Louis Wolff  
(Typed Name)

Its: \_\_\_\_\_  
Member  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
Member  
(Title)

ADDRESS: 2550 Overland Avenue,  
#200  
Los Angeles, CA 90064

TELEPHONE: \_\_\_\_\_

FACSIMILE: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

ALL-PURPOSE ACKNOWLEDGMENT

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, personally appeared

\_\_\_\_\_

- personally known to me -OR-
- 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.

Witness my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

CAPACITY CLAIMED  
BY SIGNER

- INDIVIDUAL(S)
- OFFICER(S) (TITLE[S]):  
\_\_\_\_\_
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

\_\_\_\_ Chairperson \_\_\_\_\_

\_\_\_\_\_

SIGNER IS REPRESENTING:  
Name of person(s) or entity(ies):

\_\_\_\_\_  
\_\_\_\_\_

ALL-PURPOSE ACKNOWLEDGMENT

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, personally appeared  
\_\_\_\_\_

- personally known to me -OR-
- 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.

Witness my hand and official seal.

\_\_\_\_\_  
SIGNATURE OF NOTARY

CAPACITY CLAIMED  
BY SIGNER

- INDIVIDUAL(S)
- OFFICER(S) (TITLE[S]):  
\_\_\_\_\_
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER: \_\_\_\_\_

\_\_\_\_\_  
Chairperson \_\_\_\_\_

\_\_\_\_\_  
SIGNER IS REPRESENTING:  
Name of person(s) or entity(ies):  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT A**

**HOFER - PROPERTY**

Assessor's Parcel Numbers:

138-0-230-650  
138-0-230-890  
138-0-230-870  
138-0-230-880  
138-0-230-860  
138-0-230-900  
138-0-230-150  
138-0-230-740  
138-0-230-730  
138-0-230-130  
138-0-230-210

**EXHIBIT B**

**VOC - PROPERTY**

Assessor's Parcel Numbers:

179-0-050-150

179-0-050-160



**EXHIBIT C**

**WF - PROPERTY**

Assessor's Parcel Number:

138-0-230-820

## **EXHIBIT D**

### **EXISTING LAND USE REGULATIONS**

Olivas Park Specific Plan (2019), including the Condition of Approval contained in Resolution No. 2019-065.

The City's Zoning Regulations, San Buenaventura Municipal Code, Division 24, Section 24.100.010, *et seq.*, as amended as of Effective Date

The City's Subdivision Regulations, San Buenaventura Municipal Code, Division 26, Section 26.010.010, *et seq.*, as amended as of Effective Date

The City's Grading Regulations, San Buenaventura Municipal Code, Division 12, Part 2

The City's Floodplain Regulations, San Buenaventura Municipal Code, Division 12, Part 5

The City's California Model Water Efficient Landscape Ordinance

The Mitigation Monitoring & Reporting Program for the Olivas Park Drive Extension, adopted in Resolution Nos. 2019-066, 2015-024, and 2014-041.

**EXHIBIT E**

**HOFER ROADWAY RIGHT-OF-WAY DEDICATION**

**Parcel "H-S" Olivas Park Right of Way  
Hofer Properties**

That portion of Parcel A in the City of San Buenaventura, County of Ventura, State of California recorded in Book 11 page 12 of Parcel Maps filed in the County Recorder's office of said county, described as follows:

A variable width strip of land bounded as follows:

On the west by the west line of said parcel A, shown having a bearing of N 24°15'20" W and a distance of 1278.58',

On the North by the south line of the Olivas Park Drive street and utility easement granted per instrument number 97-020270 recorded on 18 February 1997 in the Recorder's office of said county,

On the east by the southeasterly prolongation of the easterly sideline of Perkin Drive street and utility easement granted in said deed, shown as S 17° 24' 47" W, 505.91',

On the south by a line 10' southerly from and parallel to the centerline of Olivas Park Drive and its prolongation per that map 79 MR 46 filed September 1977 in the office of said County Surveyor.

Together with:

A strip of land, lying 42.00 feet Northerly and Northeasterly of, and 48.00 feet Southerly and Southwesterly of the following described line,

Beginning on the line shown as C-17 on said parcel map South 17°22'15" West 42.00 feet from it's northerly end,

South 73°36'46" East 89.39 to the beginning of a curve, concave southerly, having a radius of 2000.00 feet, thence,

Through said curve easterly an arc-length 34.83 feet, through a delta angle of 0°59'53", thence,

South 72° 37' 44" East 83.30 feet, to the beginning of a curve, concave southerly, having a radius of 554.00 feet, thence,

Through said curve easterly an arc-length 223.33 feet, through a delta angle of 23°05'49", thence,

South 49° 31' 55" East 273.36 feet, to the beginning of a curve, concave northerly, having a radius of 546.00 feet, thence,

Through said curve easterly an arc-length 86.23 feet a delta angle of 9°02'55" to the eastern line of said Parcel A.

The easterly sidelines to lengthen or shorten at the East line of said Parcel A, and the westerly sidelines to lengthen or shorten on the said southeasterly prolongation of the easterly sideline of Perkin Drive.

Containing 2.15 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura

**EXHIBIT F**

**VOC ROADWAY RIGHT-OF-WAY DEDICATION**

**Parcel "C-S" Olivas Park Right of Way  
Ventura Olivas Co. LLC**

That portion of Parcel 2 in the City of San Buenaventura, County of Ventura, State of California filed in Book 65 page 32 of Parcel Maps in the County Recorder's office of said county, described as follows:

Beginning at a point on the west line of said Parcel 2 of said map, shown as South 00°38'37" West 3986.92 feet, being southerly along said West line 215.31 feet from the northerly point of said line, a point of on a non-tangent curve with a radius of 504 feet to which point a radial line bears North 06°46'37" East

Easterly through said curve an arc-length of 220.91 feet, through a delta angle of 25°06'50", thence,

North 71° 39' 47" East 461.84 feet, to be beginning of a curve having a radius of 1904.00, thence,

Easterly through said curve an arc-length of 155.81 feet, through a delta angle of 04°41'18", to the beginning of a compound curve concave northwesterly, having a radius of 15 feet, thence,

Northeasterly, northerly, and northwesterly an arc-length of 26.12 feet, through a delta angle of 99°45'28", thence,

North 65°38' 08" East, thence, 68.14 feet, to the beginning of a non-tangent curve having a radius of 15.00 feet, to which point a radial line bears South 72° 49' 20" West, thence,

Southerly and southeasterly through said curve an arc-length of 26.01 feet, through a delta angle of 99°20'19", to the beginning of a compound curve concave northwesterly, having a radius of 1904.00 feet, thence,

Northeasterly through said curve an arc-length of 714.55 feet, through a delta angle of 21°30'09" to the west line of Ventura Road per said Parcel Map, thence

South 00°35'13" West along said west line, 126.84 feet to the beginning of a non-tangent curve concave northwesterly having a radius of 1991.00 feet, to which point a radial line bears South 49°47'11" East thence,

Southwesterly through said curve an arc-length of 63.41 feet through a delta angle of 01°49'29", to the west line of that "Easement for Right of Way and Subsurface Flood Control Facilities to the City of San Buenaventura" recorded on 12 August 1999 as instrument 99-153625 in the County Recorder's office of said County, thence along said west line,

South 00°35'13" West 20.66 feet, to the beginning of a non-tangent curve concave northerly having a radius of 2006.00 feet, to which point a radial line bears South 42° 33' 17" East thence,

Southwesterly through said curve an arc-length of 847.92 feet through a delta angle of 24° 13'06", thence,

South 71° 39' 49" West, 461.84 feet, to the beginning of a curve concave northerly, having a radius of 606.00 feet, thence,

Along said curve an arc-length of 254.66 feet, through a delta angle of 24°04'40" , to the west line of said Parcel 2, thence

Along the west line of said Parcel 2, North 00°38'37" East, 102.49 feet, to the point of beginning

Containing 3.85 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

---

Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura



**EXHIBIT G**

**WF ROADWAY RIGHT-OF-WAY ABANDONMENT**

**Parcel "V-W": Road Abandonment  
WF Golf Course LLC**

That portion of Olivas Park Drive as shown on the Final Parcel Map LD-908 in the City of San Buenaventura, County of Ventura, State of California recorded in Book 63 page 99 of Parcel Maps in the County Recorder's office of said county, described as follows:

Beginning at a point on the north line of Parcel 4 of said map, being S 72°37'08" E along said north line 151.58 feet from the Northernmost Corner of said Parcel,

South 72°37'08" East along said north line 743.48 feet to the northeast line of said parcel,

thence, North 24°15'48" West 69.39 feet, along said northeast line, thence,

North 72°37'28" West 697.37 feet, thence

South 17°22'52" West 51.80 feet to the point of beginning.

Containing 0.86 acres more or less.

*This real property description has been prepared by me  
or under my direction in conformance with the provisions  
of the Professional Land Surveyors Act, October 10,  
2021.*

---

Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura

**EXHIBIT H**

**HOFER LEVEE DEDICATION**

**Parcel "H-L" Levee Parcel  
Hofer Properties**

That portion of Parcel A in the City of San Buenaventura, County of Ventura, State of California recorded in Book 11 page 12 of Parcel Maps filed in the County Recorder's office of said county, described as follows:

Beginning at a point at the southeast end of the west line of said parcel A, shown having a bearing of N 24°15'20" W and a distance of 1278.68', along the southwest line of said Parcel A shown as having a bearing of North 50°54'35" West and a distance of 513.57 feet,

South 50°54'35" East, 92.12 feet, thence,

North 39°07'05" East 2.00 feet, to the beginning of a non-tangent curve, having a radius of 107.50 feet, to which point a radial line bears South 39°05'25" East, thence,

Easterly along said curve an arc-length of 86.98 feet, through a delta angle of 46°21'37", thence, North 82° 41' 45" East, 353.80 to the southeastern line of said Parcel A, thence,

Along said eastern line North 49°19'07" East 272.39 feet thence,

South 82° 58' 22" West, 403.30 feet, , thence,

South 74° 27' 13" West, 192.80 feet, thence,

South 77° 53' 45" West, 61.52 feet, thence,

South 05° 38' 36" East, 10.27 feet, to the beginning of a non-tangent curve having a radius of 55.62 feet to which point a radial line bears South 09°05'49" East, thence,

Westerly along said curve through an arc-length of 39.98 feet, through a delta angle of 41° 11'16", thence,

North 51° 04' 39" West, 232.14 Feet, to the said West line, thence,

Along said west line South 24°15'20" East, 83.63 feet to the point of beginning.

Containing 2.01 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 2, 2022*

Joseph Waltz, PLS 9427  
City Surveyor, City of San Buenaventura

**EXHIBIT I**

**VOC LEVEE DEDICATION**

**Parcel "C-L-1" Levee Parcel  
Ventura Olivas Co. LLC**

That portion of Parcel 2 in the City of San Buenaventura, County of Ventura, State of California filed in Book 65 page 32 of Parcel Maps in the County Recorder's office of said county, described as follows:

Beginning at a point on the west line of that "Easement for Right of Way and Subsurface Flood Control Facilities to the City of San Buenaventura" recorded on 12 August 1999 as instrument 99-153625 in the County Recorder's office of said County, southerly along said west line,  
South 00°35'13" West 648.42 feet, at the beginning of a non-tangent curve concave northerly having a radius of 2006.00 feet, to which point a radial line bears South 42° 33' 17" East thence,

Southwesterly through said curve an arc-length of 847.92 feet through a delta angle of 24° 13'06", thence,

South 71° 39' 49" West, 461.84 feet, to the beginning of a curve concave northerly, having a radius of 606.00 feet, thence,

Along said curve an arc-length of 254.66 feet, through a delta angle of 24°04'40" , to the west line of said Parcel 2, thence

South 00°38'37" West 157.70 feet, along said west line of said parcel 2, thence,

North 82°03'19" East, 100.90 feet, thence,

North 81°04'15' East, 297.30 feet, thence,

North 73°38'37' East, 349.89 feet, to the beginning of a curve concave northerly, having a radius of 2136.17 feet, thence,

Easterly through said curve an arc-length of 746.05 feet, through a delta angle of 20°00'37" to the extension of the west line of said Easement, thence,

Along said extension and west line North 00°35'13" East 93.66 feet, thence

Continuing along said west line North 54°31'31" East 29.14, thence,

Continuing along said west line North 00°35'13" East 125.89, to the point of beginning.

Containing 10.68 Acres more or less

*This legal description has ben prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

---

Joseph Waltz, PLS 9427  
City Surveyor, City of San Buenaventura

**Parcel "C-L-2" Levee Parcel  
Ventura Olivas Co. LLC**

That portion of Parcel 2 in the City of San Buenaventura, County of Ventura, State of California filed in Book 65 page 32 of Parcel Maps in the County Recorder's office of said county, described as follows:

A strip of land 41 feet wide, the southerly line of which is described as follows:

Beginning at a point on the west line of that Ventura Road as shown on said Parcel Map, being South 0°35'13" West 427.19 feet from the intersection of the West line of Ventura Road, with the South Line of Auto Center Drive, being the beginning of a non-tangent curve having a radius of 1904.00 feet, to which point bears South 47°30'15" East

Westerly through said curve an arc-length of 215.04 feet, through a delta angle of 06°26'21"

The Westerly sidelines of said strip to lengthen of that easement for Sewer Purposes to the City of San Buenaventura recorded on \_\_\_\_\_ as Instrument Number \_\_\_\_\_ in the office of the county recorder of said county, and the Eastern lines to lengthen or shorten at the said west line of said Ventura Road,

Containing 0.22 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 3, 2022.*

---

Joseph Waltz, PLS 9427  
City Surveyor,  
City of San Buenaventura

**EXHIBIT J**

**WF LEVEE DEDICATION**



**Parcel "W-L" Levee Parcel  
WF Golf Course LLC**

That portion of Parcel 4 as shown on the Final Parcel Map LD-908 in the City of San Buenaventura, County of Ventura, State of California filed in Book 63 page 99 of Parcel Maps in the County Recorder's office of said county, described as follows:

Beginning at the easternmost point of said Parcel 4,

North 50°54'46" West along the southerly line of said parcel 1539.94 feet to the southwest corner of said Parcel, thence,

Along the West line of said Parcel North 1°58'18" West 105.95 feet, to the northwest corner of said Parcel, thence,

Along the North line of said Parcel, South 72° 37' 08" East 46.92 feet, to a non-tangent curve concave easterly having a radius of 30.50 feet to which point a radial line bears North 65° 37' 59" West, thence,

Through said curve, southerly and southeasterly an arc-length of 40.07 feet, through a delta angle of 75°16'06", to a tangent line being parallel with and 37.50 feet from said Southerly line,

South 50°54'46" East 270.62 feet, thence

North 39°05'14" East 10.00 feet, thence,

South 50°54'46" East 150.00 feet, thence,

South 39°05'14" West 10.00 feet, thence,

South 50°54'46" East along said parallel line, 1008.53 feet, to the east line of said parcel, thence,

South 24°15'48" East, along said east line, 83.63 feet, to the POINT OF BEGINNING

Containing 1.36 acres, more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

---

Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura

**EXHIBIT K**

**PUBLIC UTILITIES DEDICATIONS**

**Parcel "C-Z" Sewer Easement  
Ventura Olivas Co. LLC**

That portion of Parcel 1 and Parcel 2 in the City of San Buenaventura, County of Ventura, State of California filed in Book 65 page 32 of Parcel Maps in the County Recorder's office of said county, described as follows:

A 15.00 foot wide strip of land, the eastern line of which is described as follows:

Beginning at a point on the north line of said Parcel 1 of said map, being North 53°58'26" West along said north line 13.05 feet from the intersection of said North line with the west line of that "Easement for Right of Way and Subsurface Flood Control Facilities to the City of San Buenaventura" recorded on 12 August 1999 as instrument 99-153625 in the County Recorder's office of said County,

South 18°41'36" East 33.28 feet to said west line, thence,

Along said west line South 00°35'13" West 425.89 feet to the intersection of said west line with the south line of said Parcel 1, thence,

Continuing along said west line South 00°35'13" West 53.23 feet, to the beginning of a non-tangent curve concave northwest, having a radius of 1863.50 feet and to which point a radial line bears South 49°43'40" East, thence

Through said curve a delta angle of 7°55'53", an arc length of 257.69 feet, thence,

South 3°26'13" West 54.06 feet to the North line of the Easement for Road purposes as Olivas Park Drive granted to the City of San Buenaventura on \_\_\_\_\_ as instrument number \_\_\_\_\_ in the office of the County Recorder of said county.

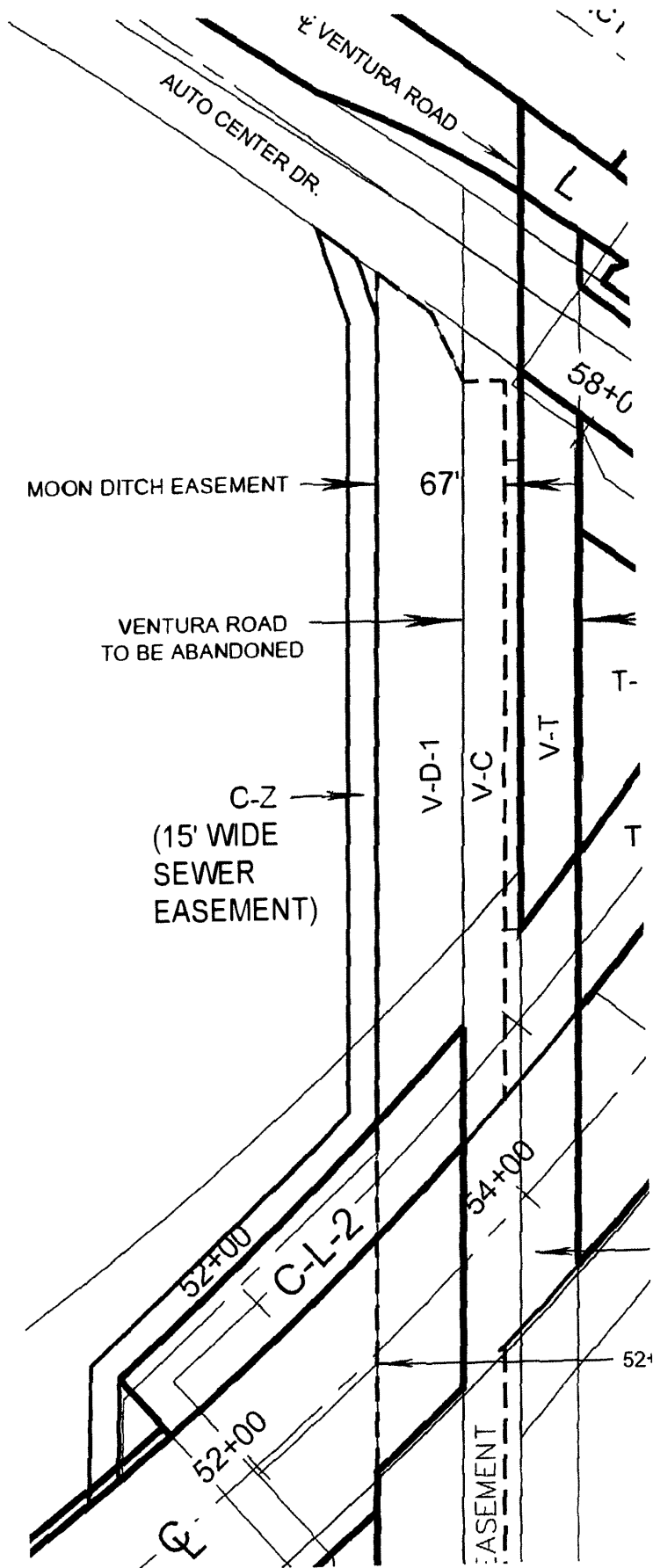
Said strip sidelines to lengthen or shorten on the Northerly side by the northerly line of said Parcel 1, and on the southerly side by the north line of said Olivas Park Dr. Easement for Road purposes.

Containing 0.25 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

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Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura



**Public Utility Easement "Pue - H"  
Hofer Properties**

That portion of Parcel A in the City of San Buenaventura, County of Ventura, State of California recorded in Book 11 page 12 of Parcel Maps filed in the County Recorder's office of said county, described as follows:

A 6.00 foot wide strip of land, the southerly line of which lies 42.00 feet northerly of the following described line:

Beginning on the line shown as C-17 on said parcel map South 17°22'15" West 42.00 feet from it's northerly end,

South 73°36'46" East 89.39 to the beginning of a curve, concave southerly, having a radius of 2000.00 feet, thence,

Through said curve easterly an arc-length 34.83 feet, through a delta angle of 0°59'53", thence,

South 72° 37' 44" East 83.30 feet, to the beginning of a curve, concave southerly, having a radius of 554.00 feet, thence,

Through said curve easterly an arc-length 223.33 feet, through a delta angle of 23°05'49", thence,

South 49° 31' 55" East 273.36 feet, to the beginning of a curve, concave northerly, having a radius of 546.00 feet, thence,

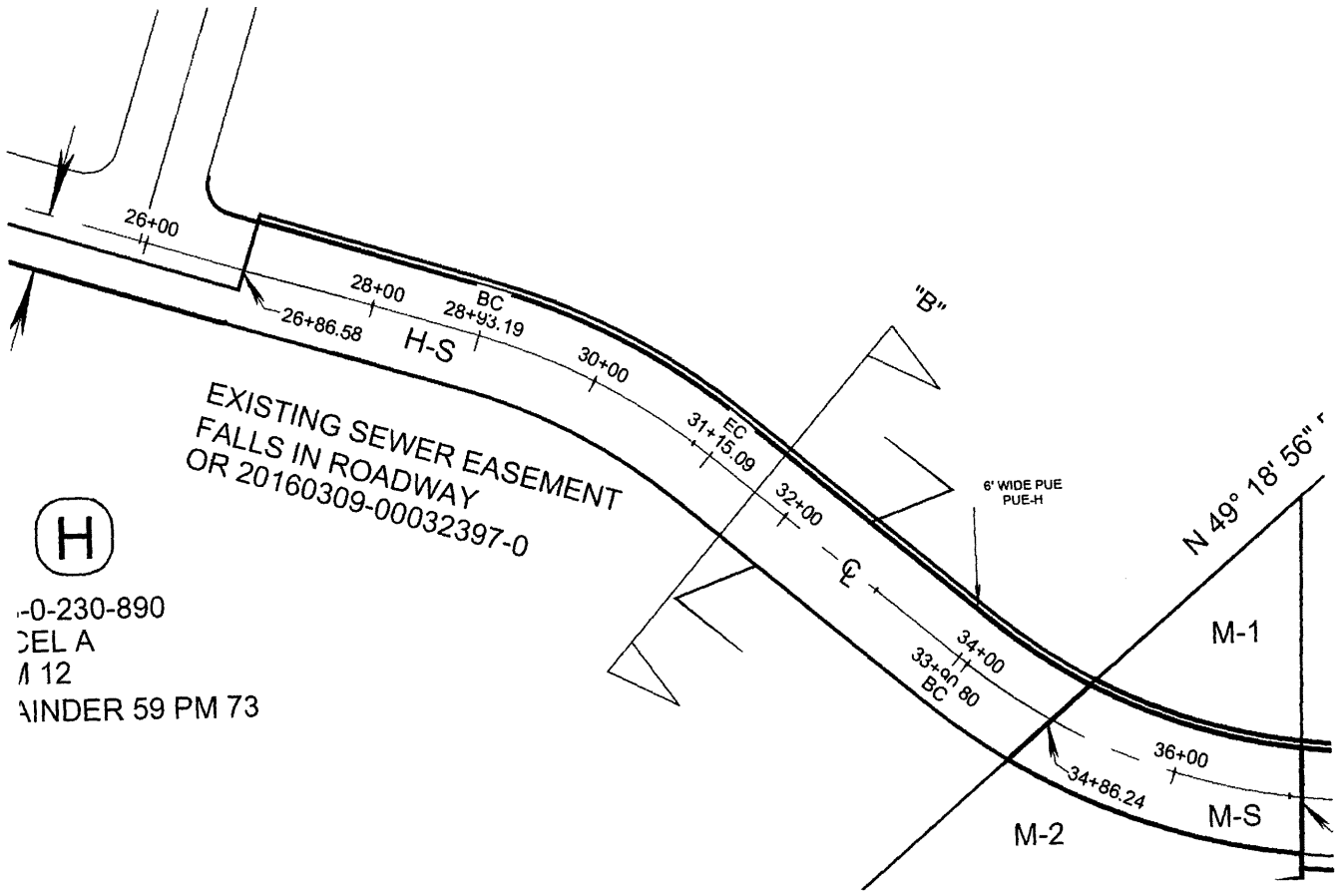
Through said curve easterly an arc-length 86.23 feet a delta angle of 9°02'55" to the eastern line of said Parcel A.

The easterly sidelines to lengthen or shorten at the East and West line of said Parcel A,

Containing 0.11 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

Joseph Waltz, PLS 9427  
City Surveyor, City of San Buenaventura



(H)

0-230-890  
 DEL A  
 12  
 AINDER 59 PM 73

EXISTING SEWER EASEMENT  
 FALLS IN ROADWAY  
 OR 20160309-00032397-0

"B"

6" WIDE PUE  
 PUE-H

N 49° 18' 56"

M-1

M-2

M-S

**Public Utility Easement "Pue-C"**  
**Ventura Olivas Co. LLC**

That portion of Parcel 2 in the City of San Buenaventura, County of Ventura, State of California filed in Book 65 page 32 of Parcel Maps in the County Recorder's office of said county, described as follows:

A 6.00 foot wide strip of land, the southerly line of which described as follows:

Beginning at a point on the west line of said Parcel 2 of said map, shown as South 00°38'37" West 3986.92 feet, being southerly along said West line 215.31 feet from the northerly point of said line, a point of on a non-tangent curve with a radius of 504 feet to which point a radial line bears North 06°46'37" East

Easterly through said curve an arc-length of 220.91 feet, through a delta angle of 25°06'50", thence,

North 71° 39' 47" East 461.84 feet, to be beginning of a curve having a radius of 1904.00, thence,

Easterly through said curve an arc-length of 155.81 feet, through a delta angle of 04°41'18", to the beginning of a compound curve concave northwesterly, having a radius of 15 feet, thence,

Northeasterly, northerly, and northwesterly an arc-length of 26.12 feet, through a delta angle of 99°45'28", thence,

North 65°38' 08" East, thence, 68.14 feet, to the beginning of a non-tangent curve having a radius of 15.00 feet, to which point a radial line bears South 72° 49' 20" West, thence,

Southerly and southeasterly through said curve an arc-length of 26.01 feet, through a delta angle of 99°20'19", to the beginning of a compound curve concave northwesterly, having a radius of 1904.00 feet, thence,

Northeasterly through said curve an arc-length of 496.99 feet, through a delta angle of 15° 00'11", to the west line of that Levee parcel to the City of San Buenaventura recorded on \_\_\_\_\_ as Instrument number \_\_\_\_\_.

Said strip sidelines to lengthen or shorten on the west by said west line and on the east by said Levee parcel.

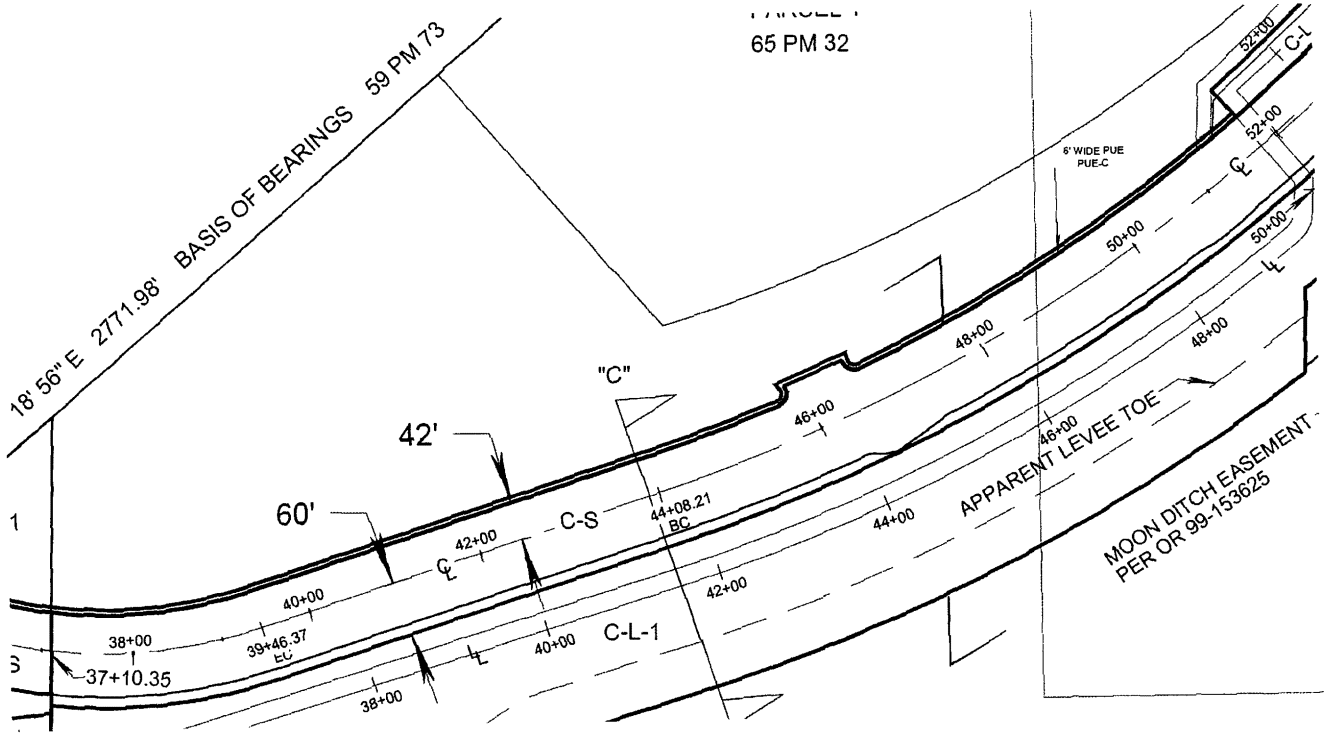
Containing 0.18 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022*

Joseph Waltz, PLS 9427  
City Surveyor, City of San Buenaventura

18' 56" E 2771.98' BASIS OF BEARINGS 59 PM 73

PARCEL 1  
65 PM 32





**EXHIBIT L**

**CITY LEVEE DEDICATION**

**Parcel "M-L" City Levee dedication  
City of San Buenaventura, former Montalvo Sanitary**

That portion of land in the City of San Buenaventura, County of Ventura, State of California recorded in Book 1381 page 237 of Official Records in the County Recorder's office of said county, described as follows:

Beginning at a point on the Northwest line of said land, being North 48°41'00" East along said northwest line 4.02 feet from the Westernmost corner of said Parcel,

North 48°41'00" East 206.69 feet along said Northwest line, thence,

North 82°19'56" East 437.62 feet, to the East line of said parcel, thence along said East line,

South 0°38'37" West, 149.50 feet, thence,

South 81°36'17" West 642.83 feet to the point of beginning,

Containing 1.85 acres more or less.

*This real property description has been prepared by me or under my direction in conformance with the provisions of the Professional Land Surveyors Act, November 1, 2022.*

Joseph Waltz, PLS 9427  
City Surveyor  
City of San Buenaventura

## **EXHIBIT M**

### **LIST OF CURRENT DEVELOPMENT FEES/CHARGES PROGRAMS**

Development fees are as follows:

- Parks and Recreation Facilities Tax;
- General Capital Improvement Tax;
- Service Area park Mitigation Fee;
- Fire Facility and Equipment Mitigation Fee;
- Sewer Connection Fee;
- Water Connection Fee;
- County Traffic Mitigation Fee;
- City Traffic Mitigation Fee;
- Quimby Fee;
- Public Park Fee;
- Air Quality Mitigation Fee;
- County of Ventura Flood Control Fee;
- VUSD School Fee;
- Net Zero Fee;

**EXHIBIT N**

**REQUEST FOR NOTICE OF DEFAULT UNDER  
DEVELOPMENT AGREEMENT**

Development Agreement:

Date:

Specific Plan No. \_\_\_\_\_, [Name of Development]

Planning Application No.

To: City Clerk and Director of Development Services, City of San Buenaventura

Pursuant to Section 25.1 of the above-referenced Development Agreement, request is hereby made by \_\_\_\_\_ as Mortgagee for the property (or portion thereof) to receive copies of any Notice of Default issued by City against Owner in accordance with the terms and conditions of such Development Agreement. Copies of any such Notices should be mailed to the following address:

\_\_\_\_\_ (Mortgagee)  
\_\_\_\_\_ (Person/Department)  
\_\_\_\_\_ (Address)  
  
\_\_\_\_\_ (City/State/Zip)  
\_\_\_\_\_ (Telephone No.)

A copy of this Notice should be filed with the project file to insure proper and timely notice is given. **Under the terms of said Development Agreement, \_\_\_\_\_ as Mortgagee is entitled to receive copies of any Notice of Default within ten (10) days of sending any such Notice to Owner. Failure to send any such Notice may have serious legal consequences for the City.**

This request is to remain in effect until revoked by \_\_\_\_\_ as Mortgagee or the Development Agreement is terminated.

The person executing this document on behalf of said Mortgagee warrants and represents that the entity he/she represents is a bona fide Mortgagee of said property and is entitled to receive copies of Notices of Default under said Development Agreement.

The undersigned declares the above information is true and correct under the penalty of perjury under the laws of the State of California.

Dated: \_\_\_\_\_, 20\_\_.

MORTGAGEE

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its: \_\_\_\_\_  
(title)

[Notary required]

This Notice is to be sent to both the City Clerk and Director of Development Services for the City of San Buenaventura, California or such other location as San Buenaventura City Hall may be located in the future.