



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Parks
Department No.: 052
For Agenda Of: August 18, 2009
Placement: Set Hearing for
August 25, 2009
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: N/A

TO: Board of Supervisors
FROM: Department Daniel C. Hernandez (568-2461) *DA*
Director
Contact Info: Mike Gibson, Business Manager (568-2477)

SUBJECT: Amendment to Agreement with Developers for Providence Landing Park

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors set a hearing for August 25, 2009 to:

- a) Approve an amendment to an agreement with Capital Pacific Homes, developer of Providence Landing Park, to establish responsibility for payment for future maintenance of the park.

Summary Text:

As part of the development of the Providence Landing housing subdivision, Capital Pacific Homes (CPH) was conditioned to construct a park that would be available for public use. CPH has been responsible for maintenance of the park until it is accepted by the County. Upon acceptance by the County, CPH was to make a lump sum payment to the County as part of the establishment and maintenance of a Community Facilities District (CFD) to finance ongoing maintenance and operation of the park. The CFD, including all properties that have been purchased by homeowners, has been in place since January 2005. Each year the Board of Supervisors sets an assessment for purchased properties (currently \$672 per year).

The proposed amendment is the second to the original agreement. It provides for the following:

1. CPH shall transfer clear, unencumbered, insurable title to the park to the County
2. Upon not more than 30 days after execution of the amendment, CPH will make a payment of \$115,000 to the CFD for use in maintenance of the park (the funds have already been deposited in an escrow account for payment to the County)

3. Beginning fiscal year 2012-13 and all years thereafter all residential parcels that remain unsold will be assessed at the same amount as those properties which have been purchased

The intention following execution of this amended agreement is to concurrently contract with the Providence Landing Homeowners Association (HOA) to operate and maintain the park. The CFD will continue as the mechanism for financing the park and assessments of the properties will be based on a Board approved budget submitted by the HOA.

Background:

The Providence Landing subdivision was approved on July 9, 2002. The project consisted of approximately 141 acres with 267 single family detached homes and 61 attached affordable residential units. Included in the acreage is a 12 acre park that is to be dedicated to the County. On June 22, 2004 the Board approved the final map and approved an agreement to develop the park. The CFD was formed on January 11, 2005.

Fiscal and Facilities Impacts:

Budgeted: Yes

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative:

CPH will contribute \$115,000 to the CFD. Future assessments to properties will be determined based on the annual budget submitted by the HOA in concert with the fund balance existing fund balance in the CFD each year.

Staffing Impacts: None

Attachments: Attachment 1 – Second Amendment to Agreement to Maintain a Public Park

Authored by:

Daniel C. Hernandez, 568-2461

cc:

- John McInnes, Assistant CEO
- Mike Ledbetter, Deputy County Counsel
- Mike Gibson, Park Department
- John Jayasinghe, County Executive Office
- Gavin Moores, Capital Pacific Homes

Return one executed original to Parks Dept.

**SECOND AMENDMENT TO THE
AGREEMENT TO MAINTAIN
A PUBLIC PARK**

This SECOND AMENDMENT TO AGREEMENT TO MAINTAIN A PUBLIC PARK (“Amendment”) is made by and among CPH LOMPOC, LLC, a Delaware Limited liability company (“Developer”), THE CHANNEL ISLANDS YMCA, a non-profit organization (“YMCA”), and the COUNTY OF SANTA BARBARA (“County”), based upon the following facts:

R E C I T A L S

A. Developer, YMCA and County are parties to that certain Agreement to Maintain a Public Park dated July 7, 2004 (the “Agreement”) in connection with the development of a residential development located in the southern portion of Vandenberg Village, County of Santa Barbara, California referred to as the Providence Landing Development and a 12 acre parks site to be created by Developer for park, open space and recreational purposes (the “Park”).

B. Developer, YMCA and the County desire to modify the Agreement as set forth in this Amendment.

NOW, THEREFORE, in consideration for the mutual covenants and agreements set forth in this Amendment, the parties agree as follows (all capitalized terms not otherwise defined in this Amendment shall have the same meanings that they have in the Agreement):

1. Obligation to Maintain and Operate the Park: Paragraph 1 of the Agreement is amended to read as follows:

Upon Facility Acceptance, the Providence Landing Community Facilities District (“PLCFD”), whose governing board is the Board of Supervisors of Santa Barbara County, shall have overall responsibility for the maintenance and operation of the Park. Developer shall transfer clear, unencumbered, insurable title to the Park to County within thirty days after execution of the Second Amendment to this Agreement by all parties. Formal acceptance of title by action of County’s Board of Supervisors shall constitute Facility Acceptance.

If escrow is deemed necessary by either Developer or County, escrow fees shall be paid by Developer.

The combined amount of the Developer’s Maintenance Contribution and the Developer’s Reserve Payment still due and owing to the County is agreed to be One Hundred Fifteen Thousand Dollars (\$115,000), and shall be paid in total either within thirty days after execution by all parties of the Second Amendment to this Agreement, or be deposited on account with the County in advance of execution, whichever is more convenient for Developer.

Except as provided in this paragraph, all properties owned by Developer during County fiscal years 2009-10, 2010-11, and 2011-12 shall be deemed to be Property Owner Association Property within the meaning of the Rate and Method of Assessment for CFD No. 2004-1. Properties with finished homes constructed thereon and sold to a third party during that period shall thereafter be classified as Homeowner Property under the RMA. After sale of such

property to a third party, the new parcel owner shall be responsible for payment of the PLCFD tax on that parcel. For County fiscal year 2012-13, and in all years thereafter, such parcels may be deemed Residential Property and Developer shall be responsible for payment of the PLCFD tax in the full amount assessed by County for the year in question on all properties still owned by Developer, its successors in interest, owner/shareholders, agents or assignees. This provision shall survive the termination of this Agreement.

Other than those terms which survive the termination of this agreement either expressly or by their nature, after the performance of the obligations set forth herein Developer shall have no further rights or obligations under this Agreement.

2. Operation and Maintenance of the Park: Paragraph 3 of the Agreement is amended to read as follows:

a. County presently intends to contract with the Providence Landing Homeowners' Association ("PLHOA") for operation and maintenance of the Park, on condition that a mutually acceptable Operation Agreement is made between those entities. The model Operator Agreement attached hereto as Exhibit "B" is exemplary only and shall not be binding on the parties or on PLHOA.

b. YMCA shall have no obligations or rights with respect to the Park under this Agreement.

c. Developer shall continue to be obligated under Condition 130 of the Conditions of Approval to TM 14,487 to provide and maintain performance bonds for landscape installation and maintenance until January 7, 2010, as required by Condition Number 130.

d. No compensation shall be due or payable to Developer for past maintenance of the Park.

3. Notices: Paragraph 5 of the Agreement is amended to read as follows:

Any notice, consent or approval required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To Developer: Capital Pacific Homes
4050 Calle Real, Suite 200B, Santa Barbara, California 93110

To County: Santa Barbara County Parks
610 Mission Canyon Road, Santa Barbara, California 93105

Or at such other address or to such other person that the parties may from time to time designate. Notices and consents under this Section, which are sent by mail, shall be deemed to be received five (5) days following their deposit in the U.S. Mail.

4. No Other Amendments. Except as amended by the provisions of this Amendment, the Agreement continues unmodified and in full force and effect.

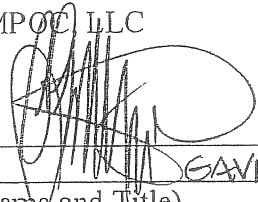
5. Counterparts/Facsimile. This Amendment may be executed in one or more counterparts and by facsimile signature, each of which counterpart/facsimile shall be deemed an original and all of which together shall constitute one and the same instrument.

6. Effective Date. This Second Amendment shall be effective as of the date last executed by the parties.

7. Signatories. All persons executing this Amendment warrant and represent that they have the authority to sign in the name of the entity on whose behalf this document is executed.

IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date last written below.

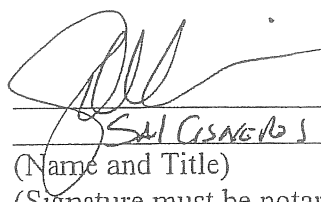
CPH LOMPOC LLC

By: 

GAVIN MODRES PIRES
(Name and Title)
(Signature must be notarized; attach jurat)

Dated: June 26th 2009

CHANNEL ISLANDS YMCA

By: 

SAL CASANOVA Pres & CEO
(Name and Title)
(Signature must be notarized; attach jurat)

Dated: July 10 / 2009

SANTA BARBARA COUNTY
BOARD OF SUPERVISORS

By: _____
Chair
Board of Supervisors

(signatures continued next page)

ATTEST:
MICHAEL F. BROWN

APPROVED:

By: _____
Clerk of the Board

By: Daniel Hernandez
Director, Santa Barbara
County Parks Department

APPROVED AS TO FORM:
DENNIS A. MARSHALL,
COUNTY COUNSEL

By: [Signature]
Deputy

SANTA BARBARA COUNTY
RISK MANAGEMENT

By: [Signature]

SANTA BARBARA COUNTY
AUDITOR-CONTROLLER

By: [Signature]

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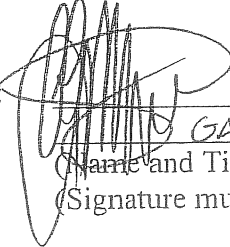
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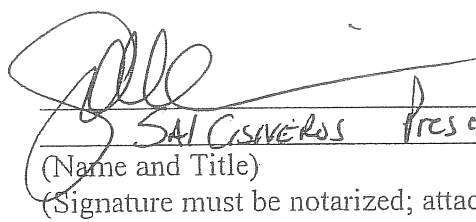
IN WITNESS WHEREOF, the parties have executed this Amendment effective as of the date last written below.

CPH LOMPOC, LLC

By:  _____
GAVIN MOORES PRES
(Name and Title)
(Signature must be notarized; attach jurat)

Dated: 6/26/09 _____

CHANNEL ISLANDS YMCA

By:  _____
SAL CISNEROS Pres & CEO
(Name and Title)
(Signature must be notarized; attach jurat)

Dated: 7/10/09 _____

SANTA BARBARA COUNTY
BOARD OF SUPERVISORS

By: _____
Chair
Board of Supervisors

(signatures continued next page)

ATTEST:
MICHAEL F. BROWN

By: _____
Clerk of the Board

APPROVED:

By: *Daniel Hernandez*
Director, Santa Barbara
County Parks Department

APPROVED AS TO FORM:
DENNIS A. MARSHALL,
COUNTY COUNSEL

By: *Dennis A. Marshall*
Deputy

SANTA BARBARA COUNTY
RISK MANAGEMENT

By: *Marianne Pa...*

SANTA BARBARA COUNTY
AUDITOR-CONTROLLER

By: *Mark A. Paul*

State of California

County of San In Barbara

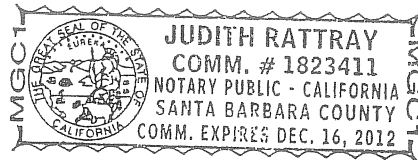
On June 26, 2009 before me, Judith Rattray, a Notary Public, personally appeared
Name of Notary

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

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

WITNESS my hand and official seal.

Judith Rattray
Signature



(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Santa Barbara }

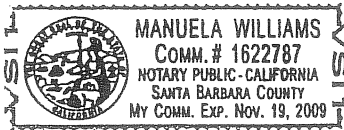
On July 10, 2009 before me, Manuela Williams
Date Here Insert Name and Title of the Officer

personally appeared Sal Cisneros
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Place Notary Seal Above

Signature Manuela Williams
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

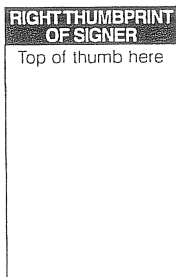
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____

