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***DEVELOPMENT AND ANNEXATION AGREEMENT BY AND BETWEEN:
HARRIS GRADE PARTNERS, LP;
PATRICK J. McCARTHY and BRIDGET M. McCARTHY;
DONALD M. JENSEN and LYNN D. GRAY;
LOMPOC RANCH JOINT VENTURE;
JOE A. SIGNORELLI, JR.;
ADAM PETER SIGNORELLI;
GUS TOM SIGNORELLI;
THE TOWBES GROUP, INC.;
AND THE CITY OF LOMPOC***

**PERTAINING TO SANTA BARBARA COUNTY
ASSESSOR'S PARCEL NUMBERS**

**097-250-002
097-250-005
097-250-040
097-250-050
097-250-051
097-250-062
097-250-069**

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THIS DEVELOPMENT AND ANNEXATION AGREEMENT ("Agreement") is entered into on _____, _____, by and between **HARRIS GRADE PARTNERS, LP, a California limited partnership; PATRICK J. McCARTHY AND BRIDGET M. McCARTHY, husband and wife, as community property; DONALD M. JENSEN AND LYNN D. GRAY, husband and wife, as community property; LOMPOC RANCH JOINT VENTURE, a California partnership; JOE A. SIGNORELLI, JR., as his sole and separate property; ADAM PETER SIGNORELLI, as his sole and separate property; GUS TOM SIGNORELLI, as his sole and separate property; THE TOWBES GROUP, INC., a California corporation ("Owners"), and THE CITY OF LOMPOC, a California municipal corporation ("City")** pursuant to the authority of Sections 65864 et seq. of the Government Code of the State of California, with reference to the following facts:

A. Government Code Sections 65864 et seq. authorize the City to enter into an agreement with any person having a legal or equitable interest in real property.

B. Owners own fee simple title to that certain real property described in Exhibit A to this Agreement ("the Property"). The Property consists of approximately 143.88 acres located in the County of Santa Barbara, currently designated as APN 097-250-002, 097-250-005, 097-250-040, 097-250-050, 097-250-051, 097-250-062, and 097-250-069. The property is a portion of the area known as the "Wye." A map showing Owners and Assessors' Parcel numbers is attached hereto as Exhibit B.

C. It is the City's and Owners' joint intention that the Property be included within the City's corporate boundaries and subject to the City's jurisdiction so that orderly development of the Property consistent with the City's General Plan and the Specific Plan is possible. To this end, Owners applied to the City for (i) amendment to the City's Sphere of Influence, (ii) annexation of the Property to the City, (iii) approval of amendment GP 02-01 to the City's General Plan, (d) zoning ordinance amendment ZC 02-01, and (e) approval of a Specific Plan No. SP 04-01.

D. Owners intend to develop the Property with a variety of uses, including residential development and recreational uses ("the Project"). Because of the Property's size and physical attributes, construction and completion of the Project will take substantial time. The risks and uncertainties associated with the long-term nature of development of the Project could deter Owners from making the financial and planning commitments necessary to accomplish the development of the Project. In recognition of this fact, the parties desire to enter into this Agreement in order to reduce uncertainties regarding ultimate construction of the Project.

E. Pursuant to the California Environmental Quality Act, Public Resources Code sections 21000 et seq. ("CEQA"), City has prepared environmental documents applicable to general plan and zoning amendments, the specific plan, and this Agreement, consisting of Revised Final Environmental Impact Report (EIR) 02-01, SCH No. 2002091045, including the Burton Ranch Specific Plan Revised Final Environmental Impact Report EIR 02-01 List of Revisions ("Revised FEIR").

F. On _____, the Planning Commission of the City, at a duly noticed public hearing, and following appropriate environmental review, recommended that the City Council certify the Revised FEIR, adopt the Mitigation Monitoring and Reporting Program (MMRP), and approve this Agreement, general plan and zoning amendments, and the Specific Plan.

G. On _____, following a duly noticed public hearing, and consistent with the requirements of CEQA, the City Council certified the Revised FEIR, adopted the MMRP, approved the general plan and zoning amendments, approved the Specific Plan, adopted Ordinance No. _____() approving this Agreement, made appropriate findings that the provisions of this Agreement are consistent with the City's General Plan and the Specific Plan, and authorized the execution of this Agreement. The City Council further found that the required environmental documents had been completed in compliance with CEQA and the Environmental Guidelines of the City, and that Council had reviewed and considered the environmental documents prior to taking action on the general plan and zoning amendments, the Specific Plan, and this Agreement.

H. City has determined that the Project is a development for which a development and annexation agreement is appropriate. Development of the Property will further the comprehensive planning objectives as set forth in City's General Plan, including the provision of housing necessary to satisfy the requirements of City's Housing Element and avoidance of possible incompatible development upon the Property if developed under Santa Barbara County jurisdiction.

I. A substantial amount of time, effort, and coordination have been expended by the Planning Commission, the City Council of the City, and the various agencies and staff of the City to negotiate and review this Agreement. All impacts of the general plan and zoning amendments, Specific Plan, and this Agreement have been addressed in appropriate environmental documents, which have been certified after thorough study by all appropriate agencies. The City has complied with all applicable provisions of CEQA and the Environmental Guidelines of the City in approving the general plan and zoning amendments, the Specific Plan, and this Agreement. The City Council has determined that approval of this Agreement is consistent with the General Plan, is fair, just, and reasonable, and will best serve the economic interests of the City's citizens and the public health, safety, and welfare. The City further has determined that the adoption of this Agreement is an appropriate exercise of the City's police powers to regulate the development of the Property during the term of this Agreement.

J. The Specific Plan contains policies, standards, and criteria for uses of land, development of infrastructure, and architectural and site design that supplement the City's standards, and provides measures for implementation of Specific Plan policies. The Specific Plan advances City's long-range planning goals, consistent with City's General Plan, by providing for urban development away from prime agricultural lands as directed by the Santa Barbara County Local Agency Formation Commission.

K. The City, by electing to enter into this Agreement, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Councilmembers, that such action will serve to bind the City and future City Councils to the obligations of this Agreement and limit future exercise of certain governmental and proprietary powers of the City. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement, rather than deferring its actions to some undetermined future date.

NOW THEREFORE, in consideration of the terms and provisions of this Agreement, the Parties agree as follows:

Section 1. Definitions.

1.01 Defined Terms. The following terms used in this Agreement, unless the context otherwise requires, shall have the following meanings:

- (a) "Agreement" means this Development and Annexation Agreement.
- (b) "Applicable Law of the Project" means those ordinances, rules, regulations and official policies of the City in effect as of the execution of the Agreement which are listed on Exhibit C.
- (c) "CEQA" means the California Environmental Quality Act, California Public Resources Code Section 21000 et seq.
- (d) "City" means the City of Lompoc.
- (e) "Revised FEIR" means that certain Revised FEIR prepared in connection with the adoption of the Burton Ranch Specific Plan Revised FEIR 02-01, SCH No. 2002091045, including the Burton Ranch Specific Plan Revised Final Environmental Impact Report EIR 02-1 List of Revisions.
- (f) "Effective Date" means the date of approval of the annexation of the Property to the City by the Santa Barbara County Local Agency Formation Commission.
- (g) "Future Discretionary Entitlements" means subdivision maps, preliminary precise plans of development, conditional use permits, and other discretionary permits which may be necessary to develop the Project.
- (h) "MMRP" means the Mitigation Monitoring and Reporting Program adopted by the City Council on _____.
- (i) "Mortgagee" means the holder of any mortgage or the beneficiary of any deed of trust covering all or part of the Property or any successor or assignee of any such mortgage holder or beneficiary, provided that such mortgage holder or beneficiary has delivered written notice to the City stating its desire to receive notices of default pursuant to Section 7.02.
- (j) "Owners" collectively means Harris Grade Partners, LP; Patrick J. McCarthy and Bridget M. McCarthy; Donald M. Jensen and Lynn D. Gray; Lompoc Ranch Joint Venture; Joe A. Signorelli, Jr.; Adam Peter Signorelli; Gus Tom Signorelli; The Towbes Group, Inc.; or their successors in interest and assignees pursuant to this Agreement.
- (k) "Project" means the development of the Property in accordance with the Specific Plan.

(l) "Property" means that certain real property described in Exhibit A attached hereto and by this reference incorporated in this Agreement.

(m) "Specific Plan" means that certain Specific Plan No. SP 04-01.

1.02 Additional Defined Terms. To the extent that any capitalized terms contained in this Agreement are not defined above, such terms shall have the meaning otherwise ascribed to them in this Agreement.

Section 2. Obligations of Owners.

In consideration of the City's entering into this Agreement, Owners shall provide the specific benefits to the City listed in Sections 3.03 and 3.03.01. The parties acknowledge that the execution of this Agreement by City is a material consideration for Owners' agreement and ability to construct the Project and to comply with the MMRP. The Parties agree that the consideration to be received by the City pursuant to this Agreement and the rights secured to Owners pursuant to this Agreement constitute sufficient consideration to support the covenants and agreements of the City and Owners.

Section 3. Development of the Property.

3.01 Vested Right to Develop; Effect of Agreement. As a material inducement to Owners for the development of the Property, City agrees that Owners shall have the vested right to develop the Property in accordance with the Specific Plan and MMRP, which are incorporated herein by this reference, subject to Future Discretionary Entitlements. Owners and City agree that development of the Project includes the construction of residential structures, site improvements, and public improvements as set forth in the Specific Plan. Owners recognize and agree that Future Discretionary Entitlements are necessary to develop the Property.

3.02 Permitted Uses; Development Standards. The permitted uses of the Property; the density and intensity of use; the maximum height, bulk, and size of proposed structures; provision for reservation or dedication of land for public purpose and location of public improvements; location of public utilities; and other terms and conditions of development applicable to the Property shall be those set forth in the Specific Plan.

3.03 Special Benefits to City. Owners have agreed to provide the following benefits to the City, which benefits could not otherwise be gained but for approval of this Agreement:

3.03.01 Public Services Maintenance Fund. In addition to payment of the City's development impact fees consistent with Section 3.05 hereof, Owners shall pay to City \$1,500 per residential unit to provide City with supplemental funding to insure operation and maintenance of public facilities dedicated to fire protection, police protection, and library services, consistent with mitigation measures PS-2.1.1, PS-4 and PS-6.1 of the Project's Revised FEIR. Said funds shall be paid to City incrementally for each residential unit at issuance of building permit for each such unit.

3.03.02 Additional Benefits.

The Parties agree that this Agreement provides the following additional benefits to the City:

- a. Development of the Property with high quality residential units that will assist in supporting a stable employment and retail customer base for the City;
- b. Provision of supplementary funds for the maintenance and operation of needed public facilities for the Property and for the City as a whole;
- c. Construction of transportation improvements that are located within State of California jurisdiction and thus outside the City's permit jurisdiction;
- d. Improvement of the access to the Property and transportation circulation in the Wye area;
- e. Avoidance of piecemeal development by master-planning a large contiguous area prior to individual property owners seeking development project approvals;
- f. Provision for coordinated development policies for the Burton Ranch that will result in a high quality, aesthetically pleasing development pattern;
- g. Provision of development standards in the Specific Plan that are appropriate for the Wye's semi-rural environment;
- h. Provision of comprehensive environmental review of all potential development in the Burton Ranch to insure that impacts that could result from development of separate properties are considered as a whole and mitigated appropriately;
- i. Creation of a "sense of place" for the Burton Ranch that has its roots in Lompoc's early development history; and
- j. Creation of employment opportunities in the construction trades over the extended period of project development.

3.04 Applicable Rules, Regulations, and Policies. The ordinances, rules, regulations, and official policies governing the Property shall be those ordinances, rules, regulations, and official policies in effect on the date of City's execution of this Agreement which are listed on attached Exhibit C ("Applicable Law of the Project"), which is incorporated in this Agreement by this reference. Three sets of the documents comprising the Applicable Law of the Project shall be compiled. One set shall be sealed and lodged with the City Clerk with instructions not to destroy for the term of this Agreement plus five years. One set shall be retained by City's Community Development Director, and one set shall be provided to Owners' attorney. Nothing contained herein shall limit the ability of the City to exercise its power of eminent domain on the Property or any portion thereof.

3.05 Reserved Rights. Except as listed on Exhibit C, the City specifically reserves the right to apply all ordinances, rules, regulations, and official policies in effect at the time applications for future entitlements are made which are not in conflict with this Agreement, including but not limited to building codes, fire codes, other construction codes, processing fees, and impact fees; provided, however, that City agrees not to increase development impact fees (including Quimby Fees adopted pursuant to Government Code Section 66477) for the Project subject to this Agreement for five (5) years after the date this Agreement is approved by the City Council. In addition, the following changes to the Applicable Law of the Project shall apply to development of the project:

a. Land use regulations, ordinances, policies, programs, and fees specifically adopted or undertaken by City in order to comply with regional, state, or federal laws, plans or regulations, provided that, in the event such regional, state, or federal laws, plans, or regulations prevent or preclude compliance with one or more provisions of this Agreement, such provision or provisions shall be modified or suspended only to the extent necessary to comply with such regional, state, or federal laws, plans, or regulations.

b. City land use regulations, ordinances, resolutions, and policies adopted after the Effective Date of this Agreement that are applicable city-wide and not in conflict with or more restrictive than the Applicable Law of the Project and which do not impose additional burdens on such development of the Property hereunder.

c. City land use regulations, ordinances, resolutions, and policies adopted after the Effective Date of this Agreement which conflict with the Applicable Law of the Project, but to whose application Owners have consented in writing.

3.06 Timing of Development. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties in that case to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development prevailing over the parties' agreement, it is the intent of the Parties to this Agreement to cure that deficiency, except as provided in this Agreement, such that Owners shall have the right (without obligation) to develop the Property in such order and at such rate and times as Owners deem appropriate within the exercise of Owners' subjective business judgment.

3.07 Moratoria and Growth Control. No City-imposed moratorium or growth control measure, whether relating to the rate, timing, or sequencing of the development or construction of all or any part of the Property, whether imposed by ordinance, initiative, resolution, policy, order, or otherwise, and whether enacted by the City Council, an agency of City, the electorate, or otherwise, affecting parcel or subdivision maps, whether tentative, vesting tentative, or final, building permits, occupancy certificates, or other entitlements to use or service approved, issued, or granted within City or portions of City, shall apply to the Property to the extent such moratorium or other limitation is in conflict with this Agreement; provided, however, the provisions of this Section shall not affect City's compliance with moratoria or other limitations mandated by other governmental agencies, court-imposed moratoria, or other limitations necessary for public health or safety, excluding moratoria.

Section 4. Amendment of Agreement and Development Plan.

4.01 Amendment of Agreement and Specific Plan. During the term of this Agreement, this Agreement and the Specific Plan may be amended from time to time only by mutual consent of the parties or their successors in interest, in accordance with California Government Code section 65868. Amendments to this Agreement and any exhibits thereto shall be governed by the Applicable Law of the Project.

4.02 a. Minor Amendments to Agreement. Any amendment to this Agreement which does not relate to the term of this Agreement, the payment of fees, or the permitted uses set forth in the Specific Plan may be processed and approved by City as a "Minor Amendment." Examples of Minor Amendments include, without limitation, amendments which do not substantially alter the obligations of Owners or City, considering the Agreement as a whole.

b. Minor Amendments to Specific Plan. Minor Amendments to the Specific Plan shall be treated as provided in Section IX of the Specific Plan, entitled "Implementation."

Upon the written request of Owners for a Minor Amendment, the Community Development Director shall determine whether the requested amendment is a Minor Amendment and whether it is consistent with the Applicable Law of the Project. The determination whether such amendment is a Minor Amendment shall refer to whether the change in this Agreement is minor and not material in the context of the overall Project. If the Community Development Director finds that the proposed amendment is a Minor Amendment and consistent with the Applicable Law of the Project, he/she may approve said Minor Amendment without notice and public hearing. If he/she determines that the proposed amendment is not a Minor Amendment or is inconsistent with the Applicable Law of the Project, he/she shall forward the proposed amendment to the Planning Commission and City Council for processing.

Section 5. Implementation of this Agreement.

5.01 Effective Date. This Agreement shall be deemed in full force and effect on the Effective Date, which is the date of approval of the annexation of the Property to the City by the Santa Barbara County Local Agency Formation Commission.

5.02 Term. The term of this Agreement shall commence upon the Effective Date and shall terminate on the seventh (7th) anniversary of the Effective Date. The running of this term shall be automatically stayed for the period of time during which the Parties in good faith apply to a court of competent jurisdiction for relief pursuant to this Agreement.

5.03 Annexation. Within ninety (90) days following the approval of this Agreement by the City Council, the City shall apply to the Santa Barbara Local Agency Formation Commission to annex the Property. City and Owners shall use their best efforts to complete the annexation within one (1) year after the filing of an application deemed complete by LAFCO. Owners shall pay all fees and costs associated with the annexation.

5.04 Processing Future Discretionary Entitlements. Upon submission by Owners of all completed applications for Future Discretionary Entitlements for the Project and payment of all processing and other fees, including costs of technical studies and environmental review, City shall promptly and diligently complete all steps necessary to process such applications, including but not limited to the holding of all required public hearings and provision of notice for such public hearings. Future Discretionary Entitlements shall comply with the Applicable Law of the Project. City agrees that any action taken regarding Future Discretionary Entitlements or any conditions of approval imposed upon the issuance of the Future Discretionary Entitlements shall not be in conflict with or inconsistent with this Agreement and the Applicable Law of the Project. Any tentative map included within the future entitlements that includes a subdivision, as defined in Government Code Section 66473.7, shall comply with the provisions of Government Code Section 66473.7.

5.05 Environmental Review. In approving this Agreement, the Specific Plan and general plan and zoning amendments, City has taken whatever actions are required by CEQA and the Environmental Guidelines for the City. The City has imposed mitigation measures through the Revised FEIR and this Agreement to the fullest extent the City considers feasible and necessary at this time. Accordingly, the City determines that Future Discretionary Entitlements shall be subject to only such further environmental review as required by CEQA and the Revised FEIR.

5.06 Other Governmental Permits. Owners shall apply from time to time for other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project in connection with the development of, or provision of services to, the Project. City shall cooperate with Owners in their efforts to obtain such permits and approvals, and City shall provide any documents or certificates reasonably required to process and obtain such permits and approvals.

5.07 City's Exercise of Eminent Domain Powers. City shall cooperate with Owners in implementing this Agreement and any Future Discretionary Entitlements, including, without limitation, the exercise by the City of its eminent domain powers if necessary to provide off-site improvements, so long as City in its independent exercise of judgment, and following all applicable procedures, shall have made the required findings, as provided by law and properly supported by evidence, that the use of such eminent domain power is necessary and proper.

5.08 Defense of Agreement. City shall take all actions which are necessary or advisable to uphold the validity and enforceability of this Agreement. Owners shall reimburse City for all its costs and attorney's fees incurred in defending this Agreement. If this Agreement is adjudicated or determined to be invalid or unenforceable, City agrees, to the extent permitted by law, to consider modifications to this Agreement to render it valid and enforceable. If this Agreement is adjudicated or determined to be unenforceable, Owners shall reimburse City for all fees and/or costs assessed against the City by the Court. The filing of any third party lawsuit(s) against City or Owners relating to the Project, this Agreement, the Project approvals, or other development issues affecting the Property shall not delay or stop the development, processing, or construction of the Project, the approval of any Future Discretionary Entitlements, or issuance of ministerial approvals, unless the third party obtains a court order preventing such activity. City shall take no action, directly or indirectly, which would in any way result in such an order, including, but not limited to, stipulating to, agreeing to, or failing to oppose any such order.

5.09 Indemnification and Hold Harmless. Owners shall indemnify and hold City harmless as follows:

a. Owners, on behalf of themselves and their successors and assigns, shall defend and hold harmless City, its council, boards, commissions, officers, attorneys, agents, employees, and consultants (City), from and against any claims, demands, actions, suits, liabilities and judgments of every kind and nature regardless of the merit of same arising out of or in any way related to the approval by City of this Agreement and entitlements and development permits necessary to the development of the Property, including costs of investigations, attorney's fees, and court costs in the defense of any actions (Claim). The provisions of this Section shall not apply to the extent such Claim is proximately caused by the actual negligence or willful misconduct of City.

b. If Owners assume the defense of any such Claim or proceeding, Owners shall select counsel reasonably acceptable to City to conduct the defense of such Claim or proceeding, shall take all steps reasonably necessary in the defense or settlement thereof, and shall at all times bear all costs and expenses in connection with defending against such Claim or proceeding. At its sole discretion, City shall be entitled to participate in the defense of any such action, with its own counsel and at Owners' expense.

c. If Owners have assumed the defense of any Claim or proceeding in accordance with this Agreement, Owners may consent to a settlement of, or the entry of any judgment arising from, any such Claim or proceeding only with the prior written consent of City, which consent shall not be unreasonably withheld; provided, however, that Owners shall pay or cause to be paid all amounts arising out of such settlement or judgment, concurrently with the effectiveness thereof, or shall obtain and deliver to City, prior to the execution of such settlement, a general release executed by the person not a party hereto, which general release shall release City from any and all liability in such matter; provided, further, that Owners shall not be authorized to encumber any of the assets of City or to agree to any restriction that would apply to City or to its conduct of business; and provided, further, that a condition to any such settlement shall be a complete release of City, its council, boards, commissions, officers, attorneys, agents, employees, and consultants, with respect to any such Claim.

d. If Owners do not assume the defense of any Claim or proceeding resulting from or arising out of any Claim or proceeding against City in accordance with the terms of this Agreement, City may defend against such Claim or proceeding in such a manner as it may deem appropriate, including settling such Claim or proceeding after giving notice of the same to Owners, on such terms as City may deem appropriate. The cost of such defense shall, upon written demand by City, be fully reimbursed to City by Owners on a monthly basis as costs are incurred. If Owners seek to question the manner in which City defended such Claim or proceeding or the amount of or nature of any such settlement, Owners shall have the burden to prove by a preponderance of the evidence that City did not defend such Claim or proceeding in a reasonably prudent manner.

e. Within thirty (30) days after the service of any lawsuit, Owners shall provide the City with either a litigation bond, a letter of credit approved by the City Attorney, or a cash deposit sufficient to cover the estimated cost of defense of any Claim or proceeding against City.

Section 6. Annual Review, Default, and Remedies.

6.01 Annual Review. Each year during the term of this Agreement, the City shall review the compliance by Owners with the provisions of this Agreement.

a. The annual review shall be conducted by the Community Development Director and shall be limited to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. During this review, Owners shall be required to demonstrate compliance with the terms of this Agreement, including good faith, timely development of the Project. The City shall make available to Owners, as provided in Section 7.08, a copy of any public staff report and documents to be used or relied upon in conducting the review and, to the extent practical, related exhibits concerning Owners' performance hereunder, at least seven (7) days prior to any such periodic review. At the conclusion of this review, the Community Development Director shall make written findings, on the basis of substantial evidence, whether Owners or their successors in interest have complied with the terms and conditions of this Agreement.

b. If the Community Development Director finds and determines that Owners have not complied with such terms and conditions, the matter may be appealed to the City Council pursuant to Lompoc City Code sections 133, 8920, 8921, and 8922. Owners shall be permitted an opportunity to respond to the City's evaluation of their performance in a written statement and/or orally at any hearing.

c. If the City Council determines that Owners have not complied with the terms and conditions of this Agreement, the City may deliver to Owners a 30-day notice of default pursuant to Section 6.02 below. A party may exercise its rights and remedies relating to any such default only after the period for curing a default as set forth in Section 6.02 has expired without cure of the default.

d. The costs incurred by City in connection with the annual review process shall be borne by Owners.

e. In the event the City does not conduct compliance review, Owner shall be deemed to be in compliance for that year.

6.02 Default: General Provisions. No Party shall be in default of this Agreement unless it has failed to perform under this Agreement for a period of thirty (30) days after written notice from the other party of an event of default. The notice of default shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent and continuous prosecution to completion of the cure as soon as is reasonably possible shall be deemed a cure within such period.

6.02.01 Default of Owners. Any Owner shall be in default under this Agreement upon a finding and determination by the City Council that, upon the basis of substantial evidence, said Owner has not complied with any one or more of the material terms and conditions of this Agreement. Neither City nor Owners shall bear any obligation to the other under this Agreement should Owners fail to commence construction of the Project within the Term of this Agreement. The default of one Owner, however, shall not constitute a default of a second Owner unless the second Owner is independently in default under the provisions of this Agreement.

6.02.02 Default of City. The City shall be in default under this Agreement if it fails to comply with any material term or condition of this Agreement applicable to City. In the event of default, Owners' remedy shall be limited to specific performance of this Agreement. Damages are not an available remedy to Owners for City's default or breach of this Agreement.

6.02.03 Remedies Upon Default. Upon the default by any party under this Agreement, the party not in default shall have all rights and remedies provided by law, including but not limited to the right to terminate this Agreement pursuant to California Government Code Section 65865.1. Upon default by Owners, the City may, at its option, terminate or modify this Agreement in accordance with the procedures set forth herein, provided, however, that any modification of this Agreement by the City or pursuant to this Section shall be done with the intent to carry out the objective of this Agreement and to accomplish the plans for the development of the Project. In no event shall the City be liable for damages for default or breach of this Agreement.

6.03 Impossibility of Performance. Nonperformance by Owners or City hereunder shall not be deemed to be a default if such nonperformance is attributable to events beyond the reasonable control of Owners or City, such as acts of God, war, strikes, riots, floods, earthquakes, fires, casualties, acts of public enemy, other similar causes, the failure of any non-City governmental entity of competent jurisdiction to issue permits required for the development of the Project, litigation to set aside approval of the Project or this Agreement or any component thereof, or the issuance of a court order preventing development of the Project. If performance has been delayed by any such cause, this Agreement shall be extended for the period of the delay and such period shall commence to run from the time of the commencement of the cause, so long as notice by the non-defaulting party is sent to the other party within thirty (30) days after the commencement of the cause. Times of performance under this Agreement may also be extended in writing by Owners and City pursuant to mutual agreement.

Section 7. General Provisions.

7.01 Covenants Running with the Land. The provisions of this Agreement constitute covenants which shall run with the land comprising the Property, and the burdens and benefits hereof shall bind and inure to the benefit of each of the parties hereto and all successors in interest to the parties hereto.

7.02 Mortgagee Rights. City shall notify any Mortgagee who has sent City a written request for such notice of any event of default by Owners under this Agreement, and provide to any such Mortgagee the same opportunity to cure such event of default as is provided to Owners under this Agreement. Failure to so notify any Mortgagee shall not give rise to any liability on the part of City, provided that this Agreement shall not be terminated by City as to any Mortgagee for which either of the following is true:

a. the Mortgagee cures any default by Owners involving the payment of money within sixty (60) days after the notice of default; or

b. as to defaults requiring title or possession of the Property or any portion thereof to effectuate a cure: (i) the Mortgagee agrees in writing, within ninety (90) days after the written notice of default, to perform the proportionate share of Owners' obligations under this Agreement allocable to that part of the Property in which the Mortgagee has an interest conditioned upon such Mortgagee's acquisition of the Property or portion thereof by judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure; (ii) the Mortgagee commences foreclosure proceedings to reacquire title to the Property or applicable portion thereof within said ninety (90) days and thereafter diligently pursues such foreclosure to completion; and (iii) the Mortgagee promptly and diligently cures such default after obtaining title or possession. Subject to the foregoing, in the event any Mortgagee records a notice of default as to its mortgage or deed of trust, City shall consent to the assignment of all of Owners' rights and obligations under this Agreement to the Mortgagee or to any purchaser of Owners' interest at a foreclosure or trustee sale.

7.03 Transfer of Property.

a. Right to Assign. Owners shall have the right to sell, assign, or transfer all or any portion of the real property comprising the Property to any person at any time during the term of this Agreement. Thirty (30) days prior to any such sale, assignment, or transfer, Owners shall notify City in writing of their intent to do so.

b. Liabilities Upon Transfer. Upon the delegation of all duties and obligations and the sale, transfer, or assignment of all or any portion of the Property, Owners shall be released from their obligations under this Agreement with respect to the Property, or portion thereof so transferred, arising subsequent to the effective date of such transfer if (i) Owners have provided to City thirty (30) days' written notice of such transfer and (ii) the transferee has agreed in writing (in the form attached as Exhibit D), prior to any such transfer, to be subject to all of the provisions hereof applicable to the portion of the Property so transferred. Upon any transfer of any portion of the Property and transferee's express assumption of Owners' obligations under this Agreement, City agrees to look solely to the transferee for compliance by such transferee with the provisions of this Agreement as such provisions relate to the portion of the Property ac-

quired by such transferee. A default by any transferee shall only affect that portion of the Property owned by such transferee and shall not cancel or diminish in any way Owners' rights hereunder with respect to any portion of the Property not owned by such transferee. The transferee shall be responsible for the reporting and annual review requirements relating to the portion of the Property owned by such transferee, and any amendment to this Agreement between City and a transferee shall affect only the portion of the Property owned by such transferee.

7.04 Severability. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, then to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

7.05 Project Approvals Independent. All Future Discretionary Entitlements which may be granted pursuant to this Agreement, and all land use entitlements or approvals which have been or may be issued or granted by City with respect to the Property, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if the City terminates this Agreement for any reason, such invalidity, unenforceability or termination of this Agreement or any part hereof shall not affect the validity or effectiveness of any Future Discretionary Entitlements or other land use approvals. In such cases, such Future Discretionary Entitlements will remain in effect pursuant to their own terms, provisions, and conditions of approval.

7.06 Further Actions. Each party shall promptly take such further actions and execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out this Agreement in order to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

7.07 Construction. This Agreement has been reviewed and revised by legal counsel for both Owners and City, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement, which shall be interpreted and enforced according to the plain meaning thereof. In the event of a conflict between this Agreement and the Specific Plan, this Agreement shall prevail.

7.08 Notices. All notices, approvals, acceptances, demands, and other communications required or permitted under this Agreement shall be in writing and delivered in person or by the U.S. Postal Service (postage prepaid, certified, return receipt requested) or by Federal Express or other similar overnight delivery service to the party to whom the notice is directed at the address of such party as follows:

To the City, to:

Attn: City Clerk
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

With Copies to:

City Attorney
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Katherine E. Stone, Special Counsel
Myers, Widders, Gibson, Jones & Schneider, L.L.P.
5425 Everglades Street
Ventura, CA 93003

Community Development Director
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

To Owners, to:

Harris Grade Partners, L.P.
c/o Martin Farrell Homes, Inc., General Partner
330 East Canon Perdido Street, Suite F
Santa Barbara, California 93101

The Towbes Group, Inc.
c/o Michael Towbes, Chairman
21 East Victoria Street
Santa Barbara, California 93101

John Gherini, Managing Partner
Lompoc Ranch Joint Venture
1114 State Street, Suite 230
Santa Barbara, CA 93101

Joe A. Signorelli, Jr.
1529 Riverside Drive
Lompoc, CA 93436

Gus Thomas Signorelli
1204 Diana Road
Santa Barbara, CA 93103

Adam Peter Signorelli
P.O. Box 1258
Lompoc, CA 93438

Donald M. Jensen and Lynn D. Gray
Jensen Design & Survey
4171 Market Street, Suite 4A
Ventura, CA 93003

Patrick J. McCarthy & Bridget M. McCarthy
633 E. Ventura Boulevard
Oxnard, CA 93030

With a Copy to:

Peter N. Brown, Esq.
Hatch & Parent
21 East Carrillo Street
Santa Barbara, CA 93101

Any written communication given by mail shall be deemed delivered two (2) business days after such mailing date; any written communication given by overnight delivery service shall be deemed delivered one (1) business day after the dispatch date; any delivery in person shall be deemed delivered when delivered to the party to whom it is addressed. Any party may change its address by giving the other written notice of its new address as provided above.

7.09 Estoppel Certificate. Within twenty-one (21) days following any written request which City or Owners may make from time to time, the other party shall execute and deliver to the requesting party a statement certifying that: (i) this Agreement is unmodified and in full force and effect, or, if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modification, and (ii) there are either no outstanding notices of default under this Agreement or specifying the dates and nature of any such default. The failure to deliver such a statement within such time shall constitute a conclusive presumption against the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no outstanding notices of default in the performance of the requesting party, except as may be represented by the requesting party.

7.10 No Third Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto. No other party shall have any right of action based upon any provisions of this Agreement.

7.11 Relationship of Parties. It is understood that Owners are not an agent of the City and that City is not an agent of Owners.

7.12 Waiver. No waiver of any provision of this Agreement shall be effective unless made in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy in respect to any occurrence or event shall be deemed a waiver of any right or remedy in respect to any other occurrence or event.

7.13 Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

7.14 Time of Essence. Time is of the essence of this Agreement.

7.15 Recordation. This Agreement, including all of Exhibits, shall be recorded, at Owners' sole cost and expense, if any, upon execution by the Parties.

7.16 Entire Agreement and Amendment. This Agreement, together with all documents and exhibits referred to herein, contains all of the agreements of the parties with respect to the matters contained herein, and no other prior agreement or understanding pertaining to any such matter shall be effective for any purpose. No provision of this Agreement may be amended except by an agreement in writing signed by the Parties hereto or their respective successors in interest.

7.17 Counterparts and Exhibits. This Agreement is executed in _____ counterparts, each of which is deemed to be an original. This Agreement consists of _____ pages, including notary acknowledgment forms, and, in addition, four (4) exhibits that constitute the entire understanding and agreement of the Parties to this Agreement. The following exhibits are incorporated herein for all purposes:

- Exhibit A: Legal Description of the Property
- Exhibit B: Ownership Map
- Exhibit C: Applicable Law of the Project
- Exhibit D: Transfer and Assumption of Obligations Agreement

7.18 Retention of Documents. Three originals of this Agreement, including all Exhibits and copies of the documents listed in Exhibit C, shall be prepared. One set shall be lodged with the City Clerk, one set shall be retained by the Community Development Director, and one set shall be retained by Owners' attorney.

IN WITNESS WHEREOF, Owners and City have executed this Agreement as of the date first hereinabove written.

Dated: _____, 200_

CITY OF LOMPOC, A California
Municipal Corporation

By: _____
Gary P. Keefe
City Administrator

ATTEST:

By: _____
Donna Terrones
City Clerk

OWNERS:

Dated: _____, 200_

HARRIS GRADE PARTNERS, LP,
A California Limited Partnership
[APN: 097-250-040]

By: MARTIN FARRELL HOMES, INC.,
A California Corporation,
General Partner

Jon Martin, Vice President

Dated: _____, 200_

PATRICK J. McCARTHY and
BRIDGET M. McCARTHY, Husband and Wife, as
Community Property
[APNs: 097-250-002 and 097-250-069]

By: _____
Patrick J. McCarthy

By: _____
Bridget M. McCarthy

Dated: _____, 200_

DONALD M. JENSEN AND LYNN D. GRAY,
Husband and Wife, as Community Property
[APNs: 097-250-002 and 097-250-069]

By: _____
Donald M. Jensen

By: _____
Lynn D. Gray

Dated: _____, 200_

LOMPOC RANCH JOINT VENTURE, A
California Partnership, as to an undivided
37.5% interest of Parcels _____
[APNs: 097-250-050, 097-250-051, 097-250-005
and 097-250-062]

By: _____
_____, General Partner

Dated: _____, 200_

JOE A. SIGNORELLI, JR., as His Sole and
Separate Property, as to an undivided
16.66% interest of Parcels _____
[APNs: 097-250-050, 097-250-051, 097-250-005
and 097-250-062]

By: _____
Joe A. Signorelli, Jr.

Dated: _____, 200_

ADAM PETER SIGNORELLI, as His Sole and
Separate Property, as to an undivided
16.67% interest of Parcels _____
[APNs: 097-250-050, 097-250-051, 097-250-005
and 097-250-062]

By: _____
Adam Peter Signorelli

Dated: _____, 200_

GUS TOM SIGNORELLI, as His Sole and Separate Property, as to an undivided 16.67% interest of Parcels _____
[APNs: 097-250-050, 097-250-051, 097-250-005 and 097-250-062]

By: _____
Gus Tom Signorelli

Dated: _____, 200_

THE TOWBES GROUP, INC., as to an undivided 12.5% interest of Parcels _____
[APNs: 097-250-050, 097-250-051, 097-250-005 and 097-250-062]

By: _____
Michael Towbes, Chairman

APPROVED AS TO FORM:

HATCH & PARENT

By: _____
Peter N. Brown

APPROVED AS TO FORM:

By: _____
Sharon D. Stuart
City Attorney

And
Myers, Widders, Gibson, Jones & Schneider, L.L.P.
5425 Everglades Street
Ventura, CA 93003

By: _____
Katherine E. Stone

EXHIBIT "A"

[Insert Legal Description of the Property]

EXHIBIT "B"

[Insert Ownership Map]

EXHIBIT "C"

Applicable Law of the Project

1. City of Lompoc's General Plan, adopted by Resolution No. 4641(97) on _____, 1997, as amended on [date Council approves the Development Agreement].
2. Specific Plan No. SP04-01.
3. City of Lompoc's Zoning Code, Municipal Code Chapter ____ Article _____, adopted by Ordinance No. 926(74) on May 21, 1974, as amended on [date Council approves the DA], except where inconsistent with the Specific Plan.
4. City of Lompoc's Architectural Review Guidelines, adopted by Ordinance No. 1405(95) on September 19, 1995, except where inconsistent with the Specific Plan.
5. City of Lompoc's Subdivision Ordinance, adopted by Ordinance No. 1371(92) on May 19, 1992, except where inconsistent with state law.

EXHIBIT "D"

TRANSFER AND ASSUMPTION OF OBLIGATIONS AGREEMENT

This Transfer and Assumption of Obligations Agreement ("Agreement") is entered into on _____, _____, ("Effective Date"), by and among the City of Lompoc, a California municipal corporation ("City"), as one party; _____ ("Transferor"), as the second party; and _____ ("Transferee"), as the third party, with reference to the following facts:

A. On _____, 2006, the City entered into that certain Development Agreement ("Development Agreement") with Transferor [and others] relating to that certain real property described in Exhibit "A" to the Development Agreement, also identified as being Santa Barbara County Assessor's Parcels numbered 097-250-002, 097-250-005, 097-250-040, 097-250-050, 097-250-051, 097-250-062, and 097-250-069 ("the Property"); and

B. On _____, 2006, Transferor and Transferee entered into that certain _____ ("Transfer Agreement") whereby, in connection with Transferee's acquisition from Transferor of the Property [or the portion thereof specified in such Transfer Agreement], as described in more detail in the attached Exhibit to this Agreement and incorporated herein by reference, being Santa Barbara County Assessor's Parcel(s) numbered 097-250-____, 097-250-____, 097-250-____, 097-250-____ ("the Transferred Property"), Transferor agreed to sell, transfer, and assign to Transferee all of Transferor's rights, duties, and obligations under the Development Agreement pertaining to the Transferred Property, and Transferee agreed to assume the same.

C. As a condition precedent to the execution of the Transfer Agreement, Section 7.03(b) of the Development Agreement requires Transferee to acknowledge and agree, in a writing that Transferee shall be subject to and bound by all of the provisions of the Development Agreement affecting the Transferred Property.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into the operative provisions of this Agreement, as well as the covenants, conditions, and obligations of the parties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Transferee, Transferor, and City agree as follows:

1. **Assignment.** On or before the Effective Date of this Agreement, Transferor and Transferee shall have executed the Transfer Agreement, whereby Transferor shall have agreed to assign, transfer, and convey to Transferee all of Transferor's rights, duties, and obligations under the Development Agreement pertaining to the Transferred Property, subject only to the execution of this Agreement.

2. **Acceptance of Assignment by Transferee.** Transferee hereby acknowledges that Transferee accepts the assignment under the Development Agreement and hereby acknowledges and assumes all of Transferor's rights, duties, liabilities, and obligations under the

Development Agreement relating to the Transferred Property. Transferee further acknowledges and agrees that Transferor is hereby released from such duties, liabilities, and obligations under the Development Agreement arising subsequent to the Effective Date of this Agreement with respect to the Transferred Property, and Transferee shall be solely responsible for compliance with such duties, liabilities, and obligations on and after the effective date of this Agreement.

3. **Acceptance of Assignment by City; Release of Transferor.** The City hereby accepts the assignment to Transferee of Transferor's rights, duties, liabilities, and obligations under the Development Agreement relating to the Transferred Property. The City further acknowledges and agrees that, by this Agreement, all of Transferor's rights, duties, and obligations under the Development Agreement pertaining to the Transferred Property are hereby assigned and transferred to Transferee. Transferor is hereby released from such duties, liabilities, and obligations under the Development Agreement with respect to the Transferred Property arising subsequent to the Effective Date of this Agreement, and the City agrees to look solely to Transferee for compliance by Transferee with the provisions of the Development Agreement as such provisions relate to the Transferred Property; provided that, a default by Transferee shall only affect the Transferred Property and shall not cancel or diminish in any way Transferor's rights under the Development Agreement with respect to that portion of the Property, if any, not transferred by Transferor to Transferee.

4. **Indemnification and Hold Harmless.** Transferee shall indemnify and hold City harmless as follows:

a. Transferee, on behalf of itself and its successors and assigns, shall defend and hold harmless City, its council, boards, commissions, officers, attorneys, agents, employees, and consultants ("City"), from and against any claims, demands, actions, suits, liabilities, and judgments of every kind and nature regardless of the merit of same arising out of or in any way related to the approval by City of this Transfer Agreement, entitlements, and development permits necessary to the development of the Property, including costs of investigations, attorney's fees and court costs in the defense of any actions ("Claim"). The provisions of this Section shall not apply to the extent such Claim is proximately caused by the actual negligence or willful misconduct of City

b. If Transferee assumes the defense of any such Claim or proceeding, Transferee shall select counsel reasonably acceptable to City to conduct the defense of such Claim or proceeding, shall take all steps reasonably necessary in the defense or settlement thereof, and shall at all times bear all costs and expenses in connection with defending against such Claim or proceeding. At its sole discretion, City shall be entitled to participate in the defense of any such action, with its own counsel and at Transferee's expense.

c. If Transferee has assumed the defense of any Claim or proceeding in accordance with this Agreement, Transferee may consent to a settlement of, or the entry of any judgment arising from, any such Claim or proceeding only with the prior written consent of City, which consent shall not be unreasonably withheld; provided, however, that Transferee shall pay or cause to be paid all amounts arising out of such settlement or judgment either concurrently with the effectiveness thereof or shall obtain and deliver to City, prior to the execution of such settlement, a general release executed by the person not a party hereto, which general release shall release City from any and all liability in such matter; provided, further, that Transferee shall

not be authorized to encumber any of the assets of City or to agree to any restriction that would apply to City or to its conduct of business; and provided, further, that a condition to any such settlement shall be a complete release of City, its council, boards, commissions, officers, attorneys, agents, employees, and consultants, with respect to any such Claim.

d. If Transferee does not assume the defense of any Claim or proceeding resulting from or arising out of any Claim or proceeding against City, in accordance with the terms of this Agreement, City may defend against such Claim or proceeding in such a manner as it deems appropriate, including settling such Claim or proceeding after giving notice of the same to Transferee, on such terms as City deems appropriate. The cost of such defense shall, upon written demand by City, be fully reimbursed to City by Transferee on a monthly basis as costs are incurred. If Transferee seeks to question the manner in which City defended such Claim or proceeding or the amount of or nature of any such settlement, Transferee shall have the burden to prove by a preponderance of the evidence that City did not defend such Claim or proceeding in a reasonably prudent manner.

e. Within thirty (30) days after service of any lawsuit, Transferee shall provide City with either a litigation bond, a letter of credit approved by the City Attorney, or a cash deposit sufficient to cover the estimated cost of defense of any Claim or proceeding against City.

5. **Severability.** Each provision, term, condition, covenant, and/or restriction of this Agreement, in whole and in part, shall be considered severable. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, then to the extent that the invalidity or unenforceability does not impair the application of this Agreement as intended by the parties, the remaining provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect.

6. **Relationship of Parties.** It is understood that neither Transferor nor Transferee is an agent of City and City is not an agent of Transferor or of Transferee, nor shall any terms or conditions of this Agreement or of the Development Agreement be interpreted to create a partnership, joint venture, or other joint enterprise between City, Transferee, and/or Transferor.

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

8. **Venue.** Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in a court of competent jurisdiction in the County of Santa Barbara, State of California, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

9. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. The signature page of this Agreement may be detached from and added to any counterpart of this Agreement identical in form.

IN WITNESS WHEREOF, City, Transferor, and Transferee have executed this Agreement as of the Effective Date hereinabove written.

_____ **(TRANSFEEE)**

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Its: _____

_____ **(TRANSFEROR)**

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

Its: _____

**CITY OF LOMPOC, a California
Municipal Corporation**

By: _____

Its: _____

ATTEST:

By: _____

Donna Terrones
City Clerk

APPROVED AS TO FORM:

By: _____

Sharon D. Stuart
City Attorney