

**CITY OF LOMPOC
PLANNING COMMISSION STAFF REPORT**



DATE: September 14, 2016
TO: Members of the Planning Commission
FROM: Lucille T. Breese, AICP, Planning Manager
RE: Time Extension Request –
Mosaic Walk Development - LOM 555

AGENDA ITEM NO. 1

A request, submitted by Marshall Ochylski, representing the property owner, Tri W Enterprises, Inc. for Planning Commission review and consideration of:

- 1) **LOM 555** - time extension for the Vesting Tentative Subdivision Map LOM 555 to subdivide a 5.13 acre parcel of land into 60 residential parcels.
- 2) **Development Agreement** – to establish a Community Facilities District (CFD) to cover the cover the cost of operation and maintenance of the project frontage along the property site. The Planning Commission will make recommendations to the City Council regarding the above noted requests.

The property is approximately 5.13 acres in area located at the intersection of Ocean Avenue and U Street (Assessor Parcel Number 091-110-034 and 091-110-035).

A Mitigated Negative Declaration was prepared pursuant to the provisions of the California Environmental Quality Act (CEQA); distributed to the State Clearinghouse (SCH No. 2006051019); and was certified by the City Council on August 1, 2006. An addendum has been prepared for the Development Agreement pursuant to CEQA.

Scope of Review:

The Planning Commission is being asked to consider:

- If the Conditions of Approval are appropriate for the time extension; and
- If the required Findings of Fact can be made.

Planning Commission Action:

- 1) Adopt Resolution No. 841(16) granting a time extension for Vesting Tentative Subdivision Map (LOM 555), for the River Terrace Project based upon the Findings of Fact in the Resolution and subject to the attached draft Conditions of Approval, and adopting the MND Addendum prepared pursuant to CEQA guidelines Section 15162 and 15164;
- 2) Adopt Resolution No. 844(16) recommending City Council approval of the Development Agreement requiring a Community Facility District be formed prior to recordation of the final Subdivision Map provide funding for operation and maintenance of project necessitated public improvements; or
- 3) Provide alternative direction.

Background:

On July 10, 2006, the Planning Commission adopted Resolution 506(06) approving LOM 555, a request by The Olson Company, to subdivide a 5.13 acre parcel of land into 60 parcels. Additionally, on August 1, 2006 the City Council approved the Preliminary/Precise Development Plan (DR 05-30) for the sixty residential-unit project.

The proposed project consists of detached single family homes and a common area. Of the 60 proposed units, nine are designated as affordable. There are two floor plans offering home with 1,309 square feet and 1,690 square feet. Each unit features an attached two car garage and will have a ten foot side yard. There are four elevation styles including Spanish, Monterey, Eclectic, and Italian. There will be 27 guest parking spaces provided.

Discussion:

During the June 21, 2016 joint City Council and Planning Commission meeting, the following points were discussed.

- Vesting Tentative Subdivision Map

When an applicant proposes a Vesting Tentative Map (VTM), the City may apply only the local ordinances, policies, and standards in effect at the time the VTM is deemed complete for processing. The City of Lompoc currently has no standards or additional requirements for a developer to process a VTM, although this will be a matter for discussion during the current Zoning Ordinance Update. It was also pointed out that the City currently has ten older maps that are ready to expire in 2016/17. These maps received seven years of automatic time extensions during the economic downturn between 2008 and 2013.

- Development Agreement

The discussion of how the City may wish to proceed to add additional requirements for a VTM could be held during the Zoning Ordinance Update process. A Development Agreement (DA) is a negotiated agreement between the Council and a developer. A DA is one option for the City to negotiate with a developer and gain additional negotiated benefit to the City later in the development process, especially when a number of years have passed between the project approval and the request for time extension. Since the approval of an older map:

- There may have been new development surrounding the site which could affect traffic congestion and noise analysis ;
- There may have been changes to the environmental setting, including additional regulatory requirements that were not considered in the original approval;
- There may have been other changes which may affect off-site lighting and infrastructure;
- There may have been additional development which would have increased the public service demands on schools, parks, emergency services in a cumulative manner;
- There may have been significant increase in the cost of City services and/or an increase in Impact Fees following the original approval.

At the June 21, 2016 meeting direction was provided to staff to negotiate with developers and include additional conditions and/or fees with future time extension requests. On May 11, 2016, correspondence was received from Marshall Ochylski requesting a time extension for LOM 555 (Attachment No. 3)

Time Extension Request

The Subdivision Map Act allows the approval of a tentative map to be extended by the City for up to 6 years after the initial term, in addition to several one-time extensions by the State Legislature over the past decade, as shown below. Section 66452.6 of the *Subdivision Map Act* states:

- (a) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months.*
- (e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an*

advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider’s application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

	Effective	Duration	Expiration Date
Vesting Date	Dec 20, 2005		
City Approval Date	July 10, 2006	24 months /	July 10, 2008
PC time extension (included SB 1185 – Auto 1 yr extension)	Oct 8, 2008	24 months	July 10, 2010
AB 333 auto ext	Jan 28, 2010	24 months	July 10, 2012
AB 208 auto ext	Sept 26, 2011	24 months	July 10, 2014
AB 116 auto ext	Oct 21, 2013	24 months	July 10, 2016
Current Request	Sept 14, 2016	48 months	July 10, 2020
Total		14 years	

The basis for the legislative extensions was that the state was in an economic crisis and allowing automatic map extensions would be beneficial for the economic recovery because developers would be able to build and not have to re-start the entitlement process at the beginning, thus saving time and money which could be passed on to the consumer.

LOM 555 has had seven years of automatic legislative extensions, one year of City-approved extension, and its two year initial term, for a total of ten years. Allowing four more years with this request will provide a fourteen year life for this map. There are numerous changes to State and City requirements that would be considered if the LOM were presented as a new project. The Conditions of Approval for the original project in 2006 need to be reviewed and re-evaluated and further extension would result in the Conditions of Approval for the project being more obsolete.

Development Agreement

The City is proposing a Development Agreement be signed whereby the applicant agrees to establish a Community Facilities District (CFD) prior to recordation of the final subdivision map. The CFD will cause each of the new property owners to be responsible

for the cost of operation and maintenance of required public improvements for the property instead of the City general fund bearing the cost. This financing method will provide a resource stream for maintenance of the project site frontage. Council approval is required. The applicant will receive a four year time extension and will not have to request additional time. This will allow a total of 14 years with final expiration of the map and all land use entitlements on July 10, 2020, if the final map is not recorded by that date.

Environmental Determination.

On August 1, 2006 the City Council adopted Resolution No. 5359(06) certifying a Mitigated Negative Declaration (SCH No. 200651019) for the Mosaic Walk 60-unit Residential Development. The Council made the required California Environmental Quality Act (CEQA) Findings of Fact. The document was prepared pursuant to the provisions of CEQA.

An Addendum to the MND has been prepared for the time extension and Development Agreement and is included as Attachment 4. The Addendum finds neither the time extension nor the Development Agreement are substantial changes that would result in new significant environmental effects or a substantial increase in severity of significant environment effects. The proposed Planning Commission resolution for approval of the time extension contains a section adopting the MND Addendum.

Noticing:

Sept 4, 2016 - Notice of the Public Hearing was published in the Lompoc Record;
Sept 2, 2016 - Notices were mailed to property owners within 300 feet by US mail; and
the project site was posted by City staff.

Attachments:

- 1) [Resolution No. 841\(16\) and Conditions of Approval for time extension](#)
- 2) [Resolution No. 844\(16\) recommending Council approval of a Development Agreement and adoption of MND Addendum](#)
- 3) [Request for Time Extension dated May 6, 2016](#)
- 4) [MND Addendum](#)

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RESOLUTION NO. 841 (16)

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOMPOC
APPROVING A TIME EXTENSION FOR LOM 555 – MOSAIC WALK**

WHEREAS, a request was submitted by Marshall Ochylski, representing the property owner, Tri W Enterprises, Inc., for consideration of a time extension for Vesting Tentative Subdivision Map (LOM 555) to subdivide an existing 5.13 acre parcel of land to create 60 residential parcels and common area. The project is known as Mosaic Walk and is located in the *Medium Density Residential, Planned Development (R-2, PD)* Zoning District at the southeast corner of Ocean Avenue and U Street (Assessor Parcel Numbers: 91-110-34, 35); and

WHEREAS, the request was considered by the Planning Commission at a duly-noticed public meeting on September 14, 2016; and

WHEREAS, at the meeting of September 14, 2016, _____ was present to answer Planning Commissioners' questions and address their concerns; and

WHEREAS, at the meeting of September 14, 2016, _____ spoke in favor of and _____ spoke in opposition to the requested time extension; and

WHEREAS, on August 1, 2006, the City Council adopted Resolution No. 5359(06) certifying the Mitigated Negative Declaration (SCH No. 200651019) for the Mosaic Walk project and Findings of Fact as required by the California Environmental Quality Act (CEQA). An addendum has been prepared pursuant to CEQA.

NOW, THEREFORE, THE LOMPOC PLANNING COMMISSION RESOLVES AS FOLLOWS:

SECTION 1: The Planning Commission has reviewed and hereby accepts the findings and determinations in the MND Addendum, attached as Attachment 4 to the staff report for this agenda item, and hereby adopts that MND Addendum.

SECTION 2: The time extension request for LOM 555 was made in a timely manner and the approved project still meets applicable City standards, based upon the Development Agreement required to compensate the City for operation and maintenance of public improvements required for the project, therefore, the planning commission finds that granting the extension of time meets the provisions of the City Subdivision Ordinance and the legislative intent of the State and is consistent with the City's General Plan.

SECTION 3: Subject to the attached conditions of approval, LOM 555 is extended four years and will expire on July 10, 2020.

The foregoing resolution, on motion by Commissioner _____, seconded by Commissioner _____, was adopted at the regular Planning Commission meeting of September 14, 2016 by the following vote:

AYES:

NOES:

Lucille T. Breese, AICP, Secretary

Ron Fink, Chair

[Attachment: Exhibit A - Conditions of Approval](#)

**CONDITIONS OF APPROVAL
LOM 555 – VESTING TENTATIVE SUBDIVISION MAP TIME EXTENSION
MOSAIC WALK – APN: 91-110-34 AND 91-110-35**

The following Conditions of Approval apply to the time extension for LOM 555 the “Project”, requested by Marshall Ochylski, received by the Planning Division May 11, 2016 and reviewed by the Planning Commission on September 14, 2016.

I. PLANNING

Planning - General Conditions

- P1. All applicable provisions of the Lompoc City Code are made a part of these conditions of approval in their entirety, as if fully contained herein.
- P2. In conformity with Sections 17.140.010, 17.152.010, and 17.152.020 of the Lompoc City Zoning Ordinance, the violation of any condition listed herein shall constitute a nuisance and a violation of the Lompoc City Zoning Ordinance and the Lompoc City Code. In conformity with Section 1.24.010 of the Lompoc City Code, a violation of the Lompoc City Code and the Lompoc City Zoning Ordinance is a misdemeanor and shall be punishable as provided by law. In addition to criminal penalties, the City may seek injunctive relief. The applicant agrees to pay for all attorney’s fees and costs, including, but not limited to, staff time incurred by the City in obtaining injunctive relief against the applicant as a result of a failure of the applicant to fully perform and adhere to all of the Conditions of Approval.
- P3. Owner agrees to and shall indemnify, defend, protect, and hold harmless City, its officers, employees, agents and representatives, from and against any and all claims, losses, proceedings, damages, causes of action, liabilities, costs and expenses, including reasonable attorney’s fees, arising from or in connection with, or caused by (i) any act, omission or negligence of Owner, or their respective contractors, licensees, invitees, agents, sublessees, servants or employees, wherever on or adjacent to the Property the same may occur; (ii) any use of the Property, or any accident, injury, death or damage to any person or property occurring in, or on or about the Property, or any part thereof, or from the conduct of Owner’s business or from any activity, work or thing done, permitted or suffered by Owner or its sublessees, contractors, employees, or invitees, in or about the Property, other than to the extent arising as a result of City’s sole active negligence or to the extent of any willful misconduct of the City; and (iii) any default in the performance of any obligations of Owner’s part to be performed under the terms of this Agreement, or arising from any negligence of Owner, or any such claim or any action or proceeding brought thereon; and in case any action or proceedings be brought against the City, its officers, employees, agents and representatives, by reason of any such claim, Owner, upon notice from City, shall defend the same at its expense by counsel reasonably satisfactory to City.

Owner further agrees to and shall indemnify, defend, protect, and hold harmless the City, its officers, employees, agents and representatives, from and against any and all actions brought by any third party to challenge the Project or its approval by the City, including environmental determinations. Such indemnification shall include any costs and expenses incurred by Agency and City in such action(s), including reasonable attorney’s fees.

- P4. The conditions hereby imposed are in addition to the conditions imposed by PC Resolution No. 506(06) and PC Resolution No. 629(08). In the case of any conflicts, the conditions listed herein shall prevail.
- P5. The Vesting Tentative Subdivision Map expires on July 10, 2020, as a result of the approval of this time extension. The time extension is contingent upon City Council adoption of the Development Agreement required by condition P7.
- P6. The applicant shall notify the City of Lompoc Planning Division of a change of ownership for the property or a change of project representative within 30 days of such a change at any time during the City process prior to final Certificate of Occupancy.
- P7. The applicant shall enter into a Development Agreement in a form acceptable to the City to compensate the City for the Project's share of the cost of operation and maintenance of the U Street project frontage. The Project's share of such operation and maintenance costs will be calculated as a percentage of project generated PM peak hour traffic trips generated vs. total PM peak hour traffic trips.
- P8. A Community Facilities District (CFD) shall be established prior to recordation of the final Subdivision Map to fill the requirements of the approved Development Agreement.

I, Marshall Ochylski, the applicant, do hereby declare under penalty of perjury that I accept all conditions imposed by the Planning Commission in their approval of the time extension for Vesting Tentative Subdivision Map LOM 555. As applicant, I agree to comply with these conditions and all other applicable laws and regulations at all times.

Name

Date

RESOLUTION NO. 844 (16)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LOMPOC RECOMMENDING THAT THE CITY COUNCIL APPROVE AND EXECUTE A DEVELOPMENT AGREEMENT BY AND BETWEEN TRI W ENTERPRISES, INC. AND THE CITY OF LOMPOC

WHEREAS, a request was received from Marshall Ochylski representing the property owner, Tri W Enterprises, Inc., for Planning Commission consideration of a Development Agreement for Mosaic Walk a 60-unit residential development. The site is approximately 5.13 acres located at the intersection Ocean Avenue and U Street. (Assessor Parcel Number: 091-110-034 and 091-110-035); and

WHEREAS, the Development Agreement was considered by the Planning Commission at a duly-noticed public meeting on September 14, 2016; and

WHEREAS, at the meeting of September 14, 2016, _____ was present and answered Planning Commissioners' questions and addressed their concerns; and

WHEREAS, at the meeting of September 14, 2016, _____ spoke in favor and _____ spoke in opposition of the project; and

WHEREAS, on August 1, 2006 the City Council adopted Resolution 5359(06) certifying the Mitigated Negative Declaration (SCH No. 2006051019) for the Mosaic Walk project and Findings of Fact as required by the California Environmental Quality Act (CEQA). An addendum has been prepared pursuant to CEQA.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF LOMPOC RESOLVES AS FOLLOWS:

SECTION 1: After hearing testimony, considering the evidence presented, and due deliberation of the matters presented, the Planning Commission finds that the Development Agreement:

- A. Is consistent with the objectives, policies, land uses, and programs specified in the City's General Plan;
- B. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area, nor detrimental or injurious to property or persons in the general neighborhood, nor to the general welfare of the residents of the City as a whole;
- C. Will not adversely affect the orderly development of property or the preservation of property values;

- D. Will provide to City an annual City Operation and Maintenance Fee payment;
- E. Will provide additional benefits to the City; to wit:
 - i. Development of the property with high quality residential units that will assist in supporting a stable employment and retail customer base for the City;
 - ii. Supplementary funds for the maintenance and operation of needed public facilities for the Property;
 - iii. Construction of transportation improvements that are located within State of California jurisdiction and thus outside the City's permit jurisdiction;
 - iv. Creation of employment opportunities in the construction trades over the period of project development.
 - v. Consistency with Government Code Sections 65864 through 65869.5.

SECTION 2: Based upon the foregoing, it is recommended that the City Council approve the draft Ordinance attached hereto as Exhibit A and execute the Development Agreement.

The foregoing resolution, on motion by Commissioner _____, seconded by Commissioner _____ was adopted at the regular Planning Commission meeting of September 14, 2016, by the following vote:

AYES:

NOES:

Lucille T. Breese, AICP, Secretary

Ron Fink, Chair

[Attachment: Exhibit A – Draft Ordinance No. XXXX\(16\)](#)

ORDINANCE NO. XXXX(16)

**An Uncodified Ordinance Of The City Of Lompoc
County of Santa Barbara, State of California,
Approving a Development Agreement
By and Between Tri W Enterprises, Inc.
And The City of Lompoc**

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LOMPOC DOES HEREBY
ORDAIN AS FOLLOWS:**

SECTION 1. FINDINGS. The City Council of the City of Lompoc (City) hereby finds the Development Agreement by and between Tri W Enterprises, Inc, and the City of Lompoc, attached hereto as Exhibit "A" (Development Agreement), pertaining to Mosaic Walk 60 units (Project), approximately 5.13-acre site is located at the intersection of Ocean Avenue and U Street (Assessor Parcel Number: 091-110-034 and 091-110-035) (Property):

A. Is consistent with the objectives, policies, land uses, and programs specified in the City's General Plan;

B. Will not be detrimental to the health, safety, and general welfare of persons residing in the immediate area of the Project, nor detrimental or injurious to property or persons in the general neighborhood thereof, nor to the general welfare of the residents of the City as a whole;

C. Will not adversely affect the orderly development of property or the preservation of property values;

D. Will provide to the City an annual City Operation and Maintenance Fee payment;

E. Will provide additional benefits to the City, to wit:

i. Development of the Property with high quality residential units that will assist in supporting a stable employment and retail customer base for the City;

ii. Supplementary funds for the maintenance and operation of needed public facilities for the Property and for the City as a whole;

iii. Creation of employment opportunities in the construction trades over the extended period of project development; and

iv. Consistency with Government Code sections 65864 through 65869.5.

SECTION 2. Pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, on August 1, 2006, the City Council adopted Resolution No. 5359(06) certifying the Mitigated Negative Declaration for the Project (SCH No. 2006051019) and

adopted Findings of Fact for the Project. The City Council now adopts the findings and determinations in the MND Addendum for the Project, attached to the staff report for this agenda item, and hereby adopts that MND Addendum.

SECTION 3. The City Council hereby approves the Development Agreement and directs the City Manager to execute the Development Agreement on behalf of the City within ten days after the effective date of this Ordinance.

SECTION 4. The City Clerk shall cause the Development Agreement to be recorded with the Santa Barbara County Recorder.

SECTION 5. This ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

This Ordinance was introduced on _____, 2016, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on _____, 2016, by the following electronic vote:

PASSED AND ADOPTED this ___th day of ___ 2016, by the following electronic vote:

AYES: Council Member(s):
NOES: Council Member(s):
ABSENT: Council Member(s):

Bob Lingl, Mayor
City of Lompoc

Attest:

Stacey Haddon, City Clerk
City of Lompoc

[Exhibit A – Development Agreement](#)

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

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

(SPACE ABOVE FOR RECORDER'S USE ONLY)
Exempt from filing/recording fees per Govt. Code §27383

DEVELOPMENT AGREEMENT

TRI W ENTERPRISES, INC.

&

CITY OF LOMPOC

September, 2016

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EXHIBITS

Exhibit “A” – Legal Description of MW Property

Exhibit “B” – MW Project Description

Exhibit “C” – Tentative Map No. LOM 555 & Conditions of Approval

Exhibit “D” – Assignment and Assumption Agreement

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“**Agreement**”) is made and entered into this ___ day of September, 2016 by and between the CITY OF LOMPOC, a municipal corporation organized and existing under the laws of the State of California (the “**City**”), and Tri W Enterprises, Inc, a California limited liability company (“**MW**”), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code. The City and MW may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

- A. MW is the owner of certain real property located in the City and more particularly described in Exhibit “A” attached hereto (the “**MW Property**”).
- B. MW proposes to develop the MW Property as a medium density residential project to be known as the Mosaic Walk Project (the “**MW Project**”). The Project consists of sixty (60) residential units and common area. A description of the MW Project is attached hereto as Exhibit “B”.
- C. The City and MW mutually recognize this represents a unique opportunity to work cooperatively in formulating and carrying out a development plan that will have a beneficial impact on the area in which the MW Property is located, as well as on the City as a whole. To that end, the Parties have cooperated in designing a development plan which advances their mutual goals.
- D. The City Council certified the Mitigated Negative Declaration (MND) for the MW Project in Resolution No. 5359(06) on August 1, 2005. The City Council found the MND was legally adequate, and it satisfied the requirements of the California Environmental Quality Act (“**CEQA**,” California Public Resources Code Section 21000 *et seq.*), the CEQA Guidelines (California Code of Regulations Section 15000 *et seq.*) and applicable ordinances and regulations of the City.
- E. On July 10, 2006, the Planning Commission adopted Resolution No. 506(06), approving Tentative Map No. LOM 555 (the “**Map**”) for the MW Project. On August 1, 2006, the City Council approved land use entitlements for the MW Project, consisting of the following: (i) Ordinance No. 1531(06), approving Zone Change No. 05-04 to zone the site as Medium Density Residential, Planned Development (R-2, PD) (the “**Zone Change**”), and (ii) Resolution No. 5359(06), approving Development Plan DR 05-30. The foregoing resolutions, ordinances and approvals, and all plans and other documents approved therein, along with the MND, collectively are referred to herein as the “**Project Approvals.**” The Project Approvals shall include any other discretionary land use and development approvals by the City relating to the Project, including, but not limited to, Development Review Board Approval and Subdivision/Development Review Committee Approval.

- F. This Agreement will enable the City to realize significant benefits, in the form of additional residential opportunities for the local community, and thereby will contribute toward generation of benefits and enhancement of the quality of life for both current and future residents of the City. Consequently, entering into this Agreement is acknowledged to be to the mutual benefit of the Parties.
- G. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development of such property and establishing certain reciprocal rights and obligations related to such development.
- H. MW has legal and equitable interests in the real property situated in the City which is the subject of this Agreement, and, therefore, satisfies the statutory requirements to enter into this Agreement. The legal owner of the MW Property, by his signature below, consents to this Agreement.
- I. On September X, 2016, the City Council made all required findings and determinations relating to this Agreement and approved this Agreement by its adoption of Ordinance No. XXXX(16). In doing so, the City Council determined this Agreement complies with and is consistent with all applicable plans, ordinances and regulations of the City.
- J. The City Council finds execution of this Agreement and the performance of and compliance with the terms and conditions set forth herein by the Parties: (i) is in the best interests of the City, (ii) will promote the public convenience, general welfare and good land use practices in the City, (iii) will promote preservation and enhancement of land values in the City, (iv) will encourage the development of the Project by providing a reasonable level of certainty to MW and (v) will provide for orderly growth and development in a manner consistent with the General Plan and other plans and regulations of the City.

NOW, THEREFORE, in consideration of the above Recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and obligations of the Parties set forth herein, the Parties agree as follows:

- 1. **Annual Payment to City; Use of MW Property; MW Project Development Requirements.**
 - a. Annual Payment to City. MW, including its successors in interest and assigns shall make an annual City Operation and Maintenance Fee payment as referenced in c.(B) below (“O&M Payment”). The amount of the O&M Payment on the first Payment Due Date (as defined in Subsection 1.b.) shall be nine thousand eight hundred and seventy three dollars (\$9,873). The O&M Payment shall increase annually based on

Engineering News Record's Construction Cost Index (ENRCCI) for the twelve months ending in April, as published in April of the preceding year, up to a maximum of 2%; provided, that any percentage increase of ENRCCI that exceeds the annual 2% limit will be carried over and applied the following year, or any year thereafter, if the ENRCCI index increase for that year is less than 2%. If ENRCCI is at any time no longer available, then a comparable economic indicator, as reasonably determined by City, shall be used to determine the annual adjustment. The O&M Payment is together referred to herein as the "Payment".

b. Payment Due Date. The first Payment shall be due upon the issuance of the tax bill issued subsequent to the establishment of the CFD, and shall be due on that same date annually thereafter during the term of this Agreement and any renewal or extension hereof ("Payment Due Date").

c. Community Facilities District. In order to reduce the shortfall in funds needed to maintain the public infrastructure associated with MW Property due to City Council Resolution XXXX(16), City shall establish, and MW shall provide all necessary assistance, to form a Community Facilities District ("CFD") including the MW Property to pay for services eligible for funding pursuant to Government Code Section 55413, from Special Taxes, for the City Operation and Maintenance Fee as described in Section 1.a. above.

MW shall agree to pay the costs to the City for forming the CFD by entering into a deposit and reimbursement agreement to pay those costs. The CFD shall be established prior to the recordation of the final subdivision map of the MW Project to fund, in perpetuity, the following:

- A) The annual O&M Payment associated with public infrastructure within the Maintenance Area shall be made from funds collected in the CFD. The Maintenance Area is defined as one hundred percent (100%) of the MW Project roadway frontage.

The following categories, excluded from Operation and Maintenance within the Maintenance Area, shall be funded and provided by the Home Owners Association (HOA): trees, landscaping, irrigation and water meter; provided, that the recorded CC&Rs for the project shall include a reference to this Agreement and require the HOA to fund those costs and if not paid, after written notice from the City of that failure, allow, but not require, the City to perform that maintenance work and recover those costs from the HOA, plus interest.

d. Covenants, Conditions, & Restrictions. MW shall record Covenants, Conditions, & Restrictions (the "CC&Rs") for the MW Project in a form satisfactory to the City. In addition to meeting any requirements specified for the Project in the Project's conditions of approval, the CC&R's shall incorporate the

applicable provisions of this Agreement, and shall also provide the City is a third party beneficiary to the CC&Rs.

e. Development Standards. Except as otherwise specifically provided in this Agreement, the MW Project shall be developed in accordance with the Project Approvals and the Applicable Regulations (as defined below); provided, however, that the City reserves certain authority under its police power to take actions necessary to protect the public health and safety, which actions are generally applicable on a citywide basis and are actually effective upon general categories or areas of properties, do not disproportionately burden the MW Property or the MW Project relative to other similarly situated properties or projects, and cannot be legally relinquished or restricted by this Agreement; and this Agreement shall be subject thereto. For reference purposes, Tentative Tract Map No. LOM 555 is attached hereto as Exhibit “C.”

f. Rules and Regulations. Pursuant to Government Code Section 65866, and except as otherwise provided in this Agreement, the regulations, rules and official policies of the City governing (i) permitted uses within the MW Project, (ii) density and intensity of use within the MW Project, (iii) design, improvement and construction standards and specifications for the MW Project (including, but not limited to, the maximum heights, locations and sizes of buildings) within the MW Project, (iv) the provisions for vehicular access and parking within the MW Project, (v) other zoning standards pertaining to the MW Project, (vi) the requirements for any reservation or dedication of land for public purposes in connection with the MW Project, (vii) environmental impact mitigation measures required in connection with the MW Project, and (viii) all other terms and conditions of development of the MW Project shall be those regulations, rules and official policies which are in effect on the Effective Date, as modified and/or supplemented by other MW Project Approvals (collectively, the “Applicable Regulations”). The Applicable Regulations include the State of California Building, Fire, Electrical, Plumbing and Mechanical Codes, the California Energy Efficiency Standards and all other similar ordinances, codes, rules and regulations mandated by State of California law which establish construction standards that are intended to be applied ministerially to the construction of building improvements on all private property in the City. Other ordinances, regulations and official policies of the City which are adopted thereafter may be applicable to the MW Project, to the extent that they are not in conflict with the Applicable Regulations.

g. Federal and State Laws. To the extent required by Government Code Section 65869.5, this Agreement shall not preclude the application to the MW Property of changes in City rules, regulations or official policies, the terms of which are specifically mandated and required (as opposed to permitted) by federal or State of California laws. In the event such federal or State of California laws prevent or preclude compliance with one or more provisions of this Agreement that substantially and negatively effects the Project’s ability to remain in existence, MW may elect (i) to have the remaining provisions of this Agreement remain in full force and effect, and continue to be binding, or (ii) to terminate this Agreement. Where

any State of California or federal law allows the City to exercise any discretion or to take any action with respect to that law, the City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

2. **Term of Agreement and Timing of Development.**

a. Effective Date; Term. The term of this Agreement shall commence on the effective date of the ordinance approving this Agreement (the “**Effective Date**”), and shall terminate twenty (20) years after the Effective Date. Prior to expiration of any term of this Agreement, the City, in its sole discretion, may by ordinance unilaterally renew this Agreement for an additional term of twenty (20) years. Each renewal ordinance shall require Planning Commission review and City Council approval, after public hearings before each body.

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

c. Term of Approvals. The Project Approvals shall remain valid and in effect for four additional years to August 16, 2020 and the City shall take no action to rescind, revise or otherwise modify the Project Approvals, except at the request of or with the written consent of MW, or as otherwise permitted by this Agreement.

3. **Cooperation between Parties in Implementation of this Agreement.** Subject to Subsection 2.b, MW and the City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and construction and development of the MW Project in accordance with the terms of this Agreement. MW, in a timely manner, shall provide the City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents.

4. **Obligations of City.**

a. Additional Entitlements. The City shall review and use all reasonable efforts to expeditiously process any subdivision map, parcel map, use permit, variance, design review or other discretionary approval which may be submitted in connection with development and construction of the MW Project.

b. Permits. The City shall review and use all reasonable efforts to expeditiously process construction drawings and plans for the MW Project, and to issue building permits and certificates of occupancy for the MW Project.

5. **Interests of Other Property Owners.** MW has no knowledge of any reason why it, and any other persons holding legal or equitable interests in the MW Property as of the date on which title to the MW Property vested of record in the current owner, will not be bound by this Agreement.

6. **No Property Interest; Binding Effect.**

a. Covenant. This Agreement shall bind, and inure to the benefit of, the respective Parties and their successors in interest, including their heirs, representatives, assigns, partners and investors, and all other persons and entities acquiring any rights or interests in the MW Property, or any portion thereof, whether by operation of law or in any other manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land.

b. No Property Interest. Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, title to the MW Property.

7. **Transfers and Assignments.**

a. Not Severable from Ownership Interest in the MW Property. This Agreement shall not be severable from MW's Interest in the MW Property and, subject to Section 7.c., any transfer of the MW Property shall automatically operate to transfer the benefits and burdens of this Agreement with respect to the transferred MW Property or transferred portions, as applicable.

b. Transfer Rights. MW may freely sell, transfer, exchange, hypothecate, encumber or otherwise dispose of its interest in the MW Property, without the consent of the City. MW shall, however, give written notice to the City, in accordance with Section 9, of any transfer of the MW Property, disclosing in such notice (1) the identity of the transferee of the MW Property (the "**Property Transferee**") and (2) the address of the Property Transferee as applicable.

c. Release upon Transfer. Upon the sale, transfer, exchange or hypothecation of the rights and interests of MW to the MW Property, MW shall be released from its obligations under this Agreement to the extent of such sale,

transfer or exchange with respect to the MW Property if (1) MW has provided written notice of such transfer to City; and (2) the Property Transferee executes and delivers to City a written agreement in which the Property Transferee expressly and unconditionally assumes all of the obligations of MW under this agreement with respect to the MW Property in the form of Exhibit D attached hereto (the "Assumption Agreement") Upon such transfer of the MW Property and the express assumption of MW's obligations under this Agreement by the transferee, the City agrees to look solely to the transferee for compliance with the provisions of this agreement. Any such transferee shall be entitled to the benefits of this Agreement as MW hereunder and shall be subject to the obligations of this Agreement. Failure to deliver a written Assumption Agreement hereunder shall not affect the transfer of the benefits and burdens as provided in Subsection 7.a, provided that the transferor shall not be released from its obligations hereunder unless and until the executed Assumption Agreement is delivered to the City.

d. MW's Right to Retain Specified Rights or Obligations. MW may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which MW shall retain; provided, that MW gives written notice of such retained rights, interests and/or obligations to the City Manager, prior to or concurrently with the sale, transfer or assignment of the MW Property, or portion thereof. MW's purchaser, transferee or assignee shall then have no interest in or obligations for such retained rights, interests and/or obligations, and this Agreement shall continue to apply to MW with respect to such retained rights, interests and/or obligations.

- 8. Mortgagee's Protections.** The Parties agree this Agreement shall not prevent or limit MW, in any manner, at its sole discretion, from encumbering the MW Property, or any portion thereof or any improvements thereon, by any mortgage, deed of trust or other security device. The City acknowledges the lender(s) providing such financing may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with MW and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification; provided that such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or beneficiary of a deed of trust, or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure ("**Mortgagee**") on the MW Property shall be entitled to the following rights and privileges:

a. Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the MW Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform MW's obligations, or to guarantee such performance, prior to taking title to all or a portion of the MW Property.

b. Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the MW Property, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Default delivered to MW.

c. Mortgagee's Time to Cure. The City shall provide a copy of any Notice of Default to the Mortgagee within ten (10) days after sending the Notice of Default to MW. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such Notice of Default. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee obtaining possession of the MW Property, or any portion thereof, and such Mortgagee seeks to obtain possession, then such Mortgagee shall have until thirty (30) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default; provided, further, that a Mortgagee shall not be required to cure any non-curable default of MW, which default shall be deemed cured upon any Mortgagee obtaining possession.

d. Cure Rights. Any Mortgagee who takes title to all of the MW Property, or any part thereof, pursuant to foreclosure of a mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of MW under this Agreement as to the MW Property, or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of MW arising prior to acquisition of title to the MW Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all monetary obligations due under this Agreement for the MW Property, or portion thereof acquired by such Mortgagee, have been paid to the City.

e. Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving MW, then the times specified in Subsection 8.c., above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

9. Notices.

a. Form of Notice. All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested, or by overnight delivery service. Notice to the Parties shall be addressed as follows (or, in the case of an assignee, at the address specified by such assignee in a written notice to the City and MW):

To City: City of Lompoc
 Attn: Planning Manager
 100 Civic Center Plaza
 Lompoc, CA 93436

With a copy to: Joseph Pannone, City Attorney
 Aleshire & Wynder, LLP
 2361 Rosecrans Avenue, Suite 475
 El Segundo, CA 90245

To MW: Tri E Enterprises, Inc.
 Attn: Marshall Ochylski
 Post Office Box 14327
 979 Osos Street, Suite F7
 San Luis Obispo, CA 93406

With a copy to: _____

b. Change of Address. Any Party (and any assignee) may change the address to which notices are to be sent (and/or the person to whose attention notices are to be directed) at any time by giving written notice of such change in the manner provided above.

10. **Covenants Run with the Land.** The terms of this Agreement are legislative in nature, and apply to the MW Property, as a regulatory ordinance. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and shall inure to the benefit of their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the MW Property, or any portion thereof, and any interest therein, whether by sale, operation of law or other manner.
11. **Conflict with State or Federal Law.** In the event State of California or federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified, as reasonably agreed to by the Parties and as may be necessary to comply with such State of California or federal laws or regulations. Notwithstanding the foregoing, MW shall have the right to challenge, at their sole cost, in a court of competent jurisdiction, any law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, then this Agreement shall remain unmodified and in full force and effect; provided, that if the City incurs any costs, including reasonable attorney's fees and court costs, as a result of that challenge, then MW shall pay those costs reasonably incurred by the City.

- 12. Procedure for Modification because of Conflict with State or Federal Laws.** In the event State of California or federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City relating to the Project, then, subject to Subsection 1.g., above, and this Section 12., the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or State of California law or regulation. Any such modification of this Agreement must be approved by the City Council in accordance with Section 13, below, subject to its reasonable governmental discretion.
- 13. Amendment of Agreement.** This Agreement may be amended from time to time by mutual consent of the Parties, in accordance with the provisions of Government Code Section 65868. If the request for amendment is initiated by MW, then all City costs, including attorney's fees, associated with processing such amendment shall be borne by MW.
- 14. Interpretation and Enforcement of Agreement.**
- a. Complete Agreement.** This Agreement represents the complete understanding between the Parties, and supersedes all prior agreements, discussions and negotiations relating to the subject matter hereof. No amendment, modification or cancellation of this Agreement shall be valid unless in writing and executed by the Parties, other than pursuant to Subsection 17.a., below.
 - b. Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, then the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect, unless such invalidation renders any remaining provisions impossible or impractical to enforce.
 - c. Applicable Law.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California and any applicable laws of the United States of America.
 - d. Prevailing Party.** In the event of any action or proceeding brought by either Party against the other to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable costs and expenses, including attorneys' fees, incurred in connection therewith.
 - e. Authority of Signatories.** The Parties represent and warrant that the persons signing this Agreement on their behalves have full authority to bind the respective Parties, and that each and every term of this Agreement is fully enforceable in all respects at the time this Agreement is executed and shall remain fully enforceable at all times during which the Agreement is in effect and, where indicated, beyond the term of this Agreement. Such enforceability shall pertain to both the substantive provisions of this Agreement and any remedies available for violation of the Agreement by either Party.

f. Indemnification. MW and its successors and assigns agree to and shall defend, indemnify and hold harmless the City and its agents, officers and employees in any action brought by a person or entity not a party to this Agreement (i) challenging the City's approval of this Agreement, (ii) challenging the validity of this Agreement, or (iii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution or enforcement of this Agreement. This obligation applies to any and all claims, damages, awards and expenses, including, but not limited to, reasonable attorney's fees and costs of litigation. The City may make all reasonable decisions with respect to its representation in any legal proceeding, including selection of its and its officers', employees' and agents' own legal defense counsel.

g. Waiver and Delays. Failure by any Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or failure by any Party to exercise its rights upon a default by another Party, shall not constitute a waiver of any right to demand strict performance by such other Party in the future.

h. Third Party Actions. Nonperformance by any Party shall not be excused because of a failure of a third person, except as specifically provided herein.

i. Force Majeure. Neither Party shall be deemed to be in default for failure or delay in performance of any of its obligations under this Agreement if caused by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, government agencies and their regulations, or other causes beyond the reasonable control of the Party claiming the force majeure. If any such event shall occur, the term of this Agreement and the time for performance of any obligations hereunder shall be extended by the period of time that such events prevent either Party from proceeding with such performance.

15. Effect on Property.

a. Estoppel Certificate. Any Party may, at any time and from time to time, deliver written notice to the other Party requesting certification in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended, or, if amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, describing the nature and extent of any such default. A Party receiving a request hereunder shall execute and return such certificate to the requesting Party within thirty (30) days following the receipt thereof. The City Manager of the City shall have the authority to execute any such certificate requested by MW. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

b. Release of Lots from Agreement. Promptly upon the written request of MW, the City shall execute a document, in a recordable form, releasing any lot, parcel or condominium unit for which a final subdivision map or condominium plan has been recorded, and which has been sold or leased, from the effects of this Agreement, and deliver such document to MW.

16. Periodic Review of Compliance with Agreement.

a. Annual Review. This Agreement shall be subject to annual review, pursuant to California Government Code Section 65865.1. At each annual anniversary of this Agreement, MW or the HOA, once created and operating, shall submit to the Planning Manager of City written documentation demonstrating good-faith compliance with the terms of this Agreement (the "**Annual Report**"), to the extent MW has taken or is required to take any action pursuant to this Agreement. Failure by MW or the HOA to submit the Annual Report in a timely manner shall not itself constitute a breach of this Agreement, unless the City has first given MW or the HOA, as applicable, additional notice thereof, and MW and the HOA have failed to submit the Annual Report within fifteen (15) days after receipt of such notice. MW and the HOA shall be responsible for all City costs, including any reasonable attorney's fees, associated with conducting such annual review. MW's responsibilities pursuant to this Subsection shall cease when the obligations to make the Payments ceases.

b. Contents of Report. The Annual Report and any supporting documents shall describe (i) any permits or other approvals which have been issued or for which application has been made, (ii) any development or construction activity which has commenced or has been completed, and (iii) any other activity carried out by MW in satisfaction of the requirements of the Project Approvals and this Agreement, since the date hereof or since the preceding annual review. The City shall review all the information contained in such report in determining the MW's good faith compliance with this Agreement.

c. Waiver. The City does not waive any claim of defect in performance by MW if, at the time of an annual review, the City does not propose immediately to exercise its remedies hereunder. However, in the event the City, within ninety (90) days following receipt of the Annual Report for any year, fails to review the information contained therein and/or to determine MW's good faith compliance with this Agreement, then MW can provide written notice to the City of the need for the City to complete the annual review. If the City fails to complete the annual review within thirty (30) City business days after receipt of that notice, then MW shall be deemed to be in good faith compliance with regard to the period covered by that Annual Report.

17. Violations.

a. Violation by MW.

i. MW shall be deemed in violation of the terms of this Agreement upon failure of MW to carry out any of its material obligations hereunder. A default on the part of an assignee pursuant to Section 7 shall not constitute a violation of this Agreement by MW.

ii. If the City believes MW to be in violation of this Agreement, then the City shall give MW thirty-days' (30-days') written notice specifying the nature of the alleged violation and, when appropriate, the manner in which the violation may be satisfactorily cured. Any penalties and interest shall accrue beginning on the date of the alleged violation, not the date of the City's notice. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation.

iii. After proper notice and 30-day notice period without cure, the City may take unilateral action to terminate or amend this Agreement as to MW.

b. Violation by City.

i. The City shall be deemed in violation of the terms of this Agreement upon failure of the City to carry out any of its material obligations hereunder.

ii. If MW believes the City to be in violation of this Agreement, then MW promptly shall provide written notice to the City, through its City Manager, to that effect, setting forth the grounds upon which a violation is claimed, facts in support of such grounds and the means through which such violation may be cured. The City shall have thirty (30) days following the date of receipt of the notice within which to take action to deny the claim, cure the violation or undertake substantial action toward the cure.

- 18. **Legal Enforcement.** Either Party may institute legal action solely to obtain specific performance of this Agreement. Any such legal action shall be brought in the Superior Court of Santa Barbara County, State of California, or in an appropriate federal court.
- 19. **Relationship of Parties.** In performing its obligations hereunder, MW is acting as an independent contractor and not as an agent or employee of the City. Further, nothing in this Agreement shall be construed as creating between MW and the City a partnership or joint venture for any purpose.
- 20. **Exhibits.** All exhibits referred to in, and attached to, this Agreement are incorporated herein by such reference.
- 21. **Recording of Agreement.** Within ten (10) days following the Effective Date, or any subsequent amendment hereof, the City Clerk shall file a fully executed copy hereof with the County Recorder of Santa Barbara County, State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement, to be effective as of the Effective Date as defined above.

“MW”

Tri W Enterprises, Inc.,
a California limited liability company

By: _____
Marshall Ochylski, Project Representative

“CITY”

CITY OF LOMPOC,
a municipal corporation

By: _____
Patrick Wiemiller, City Manager

APPROVED AS TO FORM.

Joseph Pannone, City Attorney

ATTEST.

Stacy Haddon, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION OF MW PROPERTY

DRAFT

**EXHIBIT “B”
PROJECT DESCRIPTION**

The proposed project consists of 60 detached single family homes and a common area. Of the 60 proposed units, nine are designated as affordable. There are two floor plans offering home with 1,309 square feet and 1,690 square feet. Each unit features an attached two car garage and will have a ten foot side yard. There are four elevation styles including Spanish, Monterey, Eclectic, and Italian. There will be 27 guest parking spaces provided.

The approximately 5.13-acre site is located at the south east corner of Ocean Avenue and U Street (APN 091-110-034 and 091-110-035).

DRAFT

EXHIBIT "C"
TENTATIVE MAP NO. LOM 555 & CONDITIONS OF APPROVAL

DRAFT

EXHIBIT “D”
ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“Agreement”) is made and entered into by and between _____, a California limited liability company (“Assignor”), and _____, a _____ (“Assignee”).

RECITALS

A. The City of Lompoc (“City”) and Assignor entered into that certain Development Agreement dated _____, 201_ (the “Development Agreement”), with respect to the real property located in the City of Lompoc, State of California more particularly described in Exhibit “A” attached hereto (the “Project Site”).

B. Assignor has obtained from the City certain development approvals and permits with respect to the development of the Project Site, including without limitation, approval of the Development Agreement for the Project Site (collectively, the “Project Approvals”).

C. Assignor intends to sell, and Assignee intends to purchase, the Project Site.

D. In connection with such purchase and sale, Assignor desires to transfer all of the Assignor’s right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Project Site. Assignee desires to accept such assignment from Assignor and assume the obligations of Assignor under the Development Agreement and the Project Approvals with respect to the Project Site.

THEREFORE, the parties agree as follows:

1. Assignment. Assignor hereby assigns and transfers to Assignee all of Assignor’s right, title, and interest in and to the Development Agreement and the Project Approvals with respect to the Project Site. Assignee hereby accepts such assignment from Assignor.
2. Assumption. Assignee expressly assumes and agrees to keep, perform, and fulfill all the terms, conditions, covenants, and obligations required to be kept, performed, and fulfilled by Assignor under the Development Agreement and the Project Approvals with respect to the Project Site.
3. Effective Date. The execution by City of the attached receipt for this Agreement shall be considered as conclusive proof of delivery of this Agreement and of the

assignment and assumption contained herein. This Agreement shall be effective upon its recordation in the Official Records of Santa Barbara County, California, provided that Assignee has closed the purchase and sale transaction and acquired legal title to the Project Site.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates set forth next to their signatures below.

“ASSIGNOR”

“ASSIGNEE”

RECEIPT BY CITY

The attached ASSIGNMENT AND ASSUMPTION AGREEMENT is received by the City of LompoC on this ___ day of _____, _____.

CITY OF LOMPOC

By: _____
City Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA BARBARA)

On _____, 2016 before me,
_____, a notary public, personally appeared
_____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s) or the entity upon behalf of which the
person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public _____

SEAL:

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)ss.
COUNTY OF SANTA BARBARA)

On _____, 2016 before me,
_____, a notary public, personally appeared _____ who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public _____

SEAL:

The Law Office of Marshall E. Ochylski

Post Office Box 14327
979 Osos Street, Suite F7
San Luis Obispo, California 93406-4327

Telephone: 805-544-4546 (Direct Line)
Cell Phone: 805-441-4466
E-mail: marshall@slollegal.com



May 6, 2016

Mr. Benjamin Ceregeres, Assistant Planner
Economic & Community Development Department - Planning Division
City of Lompoc
100 Civic Center Plaza
Lompoc, CA 93436

Subject: LOM 555
APN's: 91-110-34 & 91-110-35
1212 and 1300 West Ocean Avenue
Lompoc, California

In accordance with our telephone conversation, Tri W Enterprises, Inc., the owner of the above-referenced real property, would like to extend the current Subdivision Map (LOM 555) that is due to expire on July 10, 2016. Please see the enclosed General Application and Application Fee.

Please let me know if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Ochylski".

Marshall E. Ochylski,
Attorney at Law

MEO/ac
enclosures

cc: William McInerney,
Vice President of Finance & Chief Financial Officer
Tri W Enterprises, Inc.
Post Office Box 6149
Santa Maria, CA 93456-6149

RECEIVED

MAY 11 2016

City of Lompoc
Planning Division

**ADDENDUM TO MOSAIC WALK LOM 555
MITIGATED NEGATIVE DECLARATION
SCH #2006051019**

Background:

The City Council certified the Mitigated Negative Declaration (MND) for the Mosaic Walk 60-unit residential project on August 1, 2006. The applicant has applied for a time extension and a subsequent Development Agreement. From the original approval to the current request there has been a time lapse of ten years.

In accordance with State CEQA Guidelines Sections 15162 and 15164, this Addendum serves to analyze and disclose any environmental effects due to changes in the environmental baseline or revisions to the project since certification of the MND.

Project Description:

No changes to the proposed project description or design have been made. However, in the past eleven years, the following changes to the environmental and regulatory setting have occurred:

- The Applicant agreed to enter into a Development Agreement with the City of Lompoc to pay an annual City Operation and Maintenance Fee.

Pursuant to Government Code Section 66474.2.(a), “in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies, and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code.” Therefore the discrepancy in time between the certification of the MND in 2006 (when the tentative map application was submitted and deemed complete) to present day, would not change the standards that apply to the map.

Environmental Determination:

The Mosaic Walk MND (SCH No. 2006051019) is hereby incorporated by reference.

Section 15164 of the CEQA Guidelines states *“The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.”*

Section 15162(a) of the State CEQA Guidelines limits the preparation of a subsequent EIR to three situations:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measures or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measures or alternatives.

After review of the current environmental conditions and review of the Mosaic Walk MND, staff has determined that:

1. The revisions are not a substantial change to the project and will not create new significant impacts;
2. No substantial changes have occurred with respect to the circumstances in which the project will be undertaken which would involve new significant environmental impacts resulting from the project; and

3. No new information has become available since the preparation of the previous MND for the project which would result in new significant impacts, an increase in severity of significant impacts, or affect the feasibility of mitigation measures, or provide for different methods of mitigating significant impacts.

Therefore, this Addendum is prepared to affirm no changes to the analysis which was conducted in the Mosaic Walk (SCH No. 2006051019) are required.

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