



**CITY OF HAYWARD**  
**AGENDA REPORT**

AGENDA DATE 2/14/06

AGENDA ITEM 4

WORK SESSION ITEM \_\_\_\_\_

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT:** Eden Shores East Residential Project - Approval of Partial Assignment and Assumption of Mount Eden Business and Sports Park Community Development Agreement from Hayward Oliver Owners, LLC, to Standard Pacific Corporation and SCC-Canyon II, LLC

**RECOMMENDATION:**

It is recommended that the City Council adopt the attached resolution approving the partial assignment and assumption of the Mount Eden Business and Sports Park Community Development Agreement for the Eden Shores East Residential Project from Hayward Oliver Owners, LLC, to Standard Pacific Corporation and SCC-Canyon II, LLC.

**DISCUSSION:**

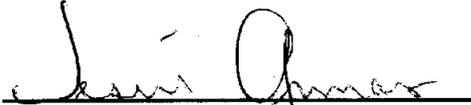
In 1999, the City Council approved the Mount Eden Business and Sports Park Community Development Agreement with then-owners, The Gordon Oliver Estate and Trust and The Alden Oliver Trust ("Development Agreement"). The Development Agreement expressly authorized assignment to Duc Housing Partners, Inc. The Development Agreement also provided that any subsequent assignment required the prior written consent of the City.

In 2001, the City Council approved the assumption of the Development Agreement by Hayward Oliver Owners, LLC, (a Duc Housing subsidiary) of the entire Mount Eden Project. Simultaneously, the City Council approved the assignment and assumption of the Development Agreement, as it related to the Oliver West portion of the project, to Standard Pacific and Acacia Credit Fund 7 LLC. Under this latter assignment, Acacia, a holding company, became the owner of record of Oliver West, with Standard Pacific retaining an exclusive option to repurchase Oliver West from Acacia for development of the Oliver West parcels. Oliver West has since been built out in the manner contemplated by the Development Agreement.

On November 15, 2005, the City Council approved a general plan amendment and an amendment to the Development Agreement, along with other land use entitlements, allowing residential development on a portion of Oliver East previously designated light manufacturing and business park. Hayward Oliver Owners is now requesting approval of a partial assignment and assumption of the Development Agreement, as it pertains to the proposed residential development of Oliver East, by Standard Pacific and SCC-Canyon II, LLC, a Delaware limited liability company. Under the proposed arrangement, SCC-Canyon will be the owner of record of

the residential portion of Oliver East and Standard Pacific will have the right to purchase the lots for development. This land banking transaction is similar to the one used for Oliver West by Standard Pacific and Acacia in 2001.

Staff has reviewed the financial capability of both Standard Pacific and SCC-Canyon and has determined that they have the financial capacity to perform the tract obligations of Eden Shores East (the residential portion of Oliver East). In addition, because the proposed Partial Assignment and Assumption Agreement holds both Standard Pacific and SCC-Canyon responsible for performing the obligations of the Development Agreement, as it relates to Eden Shores East, staff recommends approval of the partial assignment and assumption of the Development Agreement.



Jesús Armas, City Manager

Attachments: Exhibit A: Draft Partial Assignment and Assumption Agreement  
Exhibit B: Letter from Steven G. Delva, Division President of Standard Pacific  
Resolution

WHEN RECORDED, MAIL TO:

City Attorney  
City of Hayward  
777 B Street  
Hayward, CA 94541-5007

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**PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT**

THIS PARTIAL ASSIGNMENT AND ASSUMPTION AGREEMENT (herein "**this Agreement**") is entered by and among HAYWARD OLIVER OWNERS, LLC, a Delaware limited liability company ("**Developer/Assignor**"), STANDARD PACIFIC CORP., a Delaware corporation ("**SPC**"), and SCC-CANYON II, LLC, a Delaware limited liability company ("**Assignee**"), effective as of \_\_\_\_\_, 2006.

**RECITALS**

- A. Developer/Assignor's predecessors-in-interest, The Gordon Oliver Estate and Trust and The Alden Oliver Trust and the City of Hayward entered into that certain Mount Eden Business and Sports Park Community Development Agreement, recorded in the Official Records of Alameda County on December 13, 1999 as Instrument No. 1999443129 (the "**Original Development Agreement**"). The Original Development Agreement has been amended pursuant to that certain Amendment to Mount Eden Business and Sports Park Community Development Agreement Relating to Development of Eden Shores East, a Portion of Oliver East Property, as approved by the City Council of the City of Hayward on November 22, 2005, by Ordinance No. 05-17, and dated as of February 3, 2006 and recorded in the Official Records of Alameda County on February 7, 2006 as Instrument No. 200604803 (the "**Amendment to Development Agreement**"). The Original Development Agreement, as amended by the Amendment to Development Agreement, is referred to herein as the "**Development Agreement**". The Development Agreement relates to the development of, among other property, the real property described on Exhibit "A" attached hereto and incorporated herein by this reference (herein the "**East Side Residential**").
- B. Assignee, as successor-by-assignment to SPC, closed the purchase of the East Side Residential from Developer/Assignor on February \_\_, 2006.
- C. Effective February \_\_, 2006, Assignee entered into a rolling option arrangement with SPC, which arrangement grants SPC the exclusive option to purchase all or portions of the East Side Residential from Assignee (the "Option to Purchase"). Such rolling option arrangement contemplates that SPC will exercise its Option to Purchase upon the development of the East Side Residential parcels in accordance with the terms of the Development Agreement.
- D. With each purchase of a portion of the East Side Residential pursuant to the Option to Purchase, Assignee will assign to SPC all of Assignee's interests under the Development

Agreement (and SPC will assume all of Assignee's obligations under the Development Agreement) with respect to each such portion of the East Side Residential purchased by SPC (herein the "Assigned Parcel(s)").

- E. Assignee meets the requirements of Article 6 of the Development Agreement for obtaining the City's consent to an assignment of Developer/Assignor's rights thereunder with respect to the East Side Residential.
- F. Article 6 of the Development Agreement requires the consent of the City to the assignment.

## AGREEMENTS

NOW, THEREFORE, DEVELOPER/ASSIGNOR AND ASSIGNEE HEREBY AGREE AS FOLLOWS:

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Developer/Assignor does hereby, sell, transfer, assign, convey and deliver to Assignee all of the rights and interest of the "Owner" under the Development Agreement with respect to the East Side Residential. Notwithstanding the foregoing assignment from Developer/Assignor to Assignee, Developer/Assignor shall remain obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to the East Side Commercial (as defined in Section 4 below) or any portion of the property covered by the Development Agreement other than the East Side Residential, which duties and obligations arose and/or accrued at any time prior to or during the period Developer/Assignor had any legal or equitable interest in all or any portion of the East Side Commercial or such other portions of the property covered by the Development Agreement other than the East Side Residential, and shall be subject to all the terms and conditions thereof. Upon the execution of this Agreement and written consent of the City of Hayward, Assignee shall become substituted for Developer/Assignor as the "Owner" under the Development Agreement with respect to the East Side Residential.

2. Following the date of the City's consent to the covenants, terms and conditions of this Agreement, upon each transfer by Assignee to SPC of an Assigned Parcel, and the assignment to SPC of the interests of Assignee under the Development Agreement (and the assumption by SPC of the obligations of Assignee under the Development Agreement) with respect to each Assigned Parcel, the City will be deemed to have automatically consented to each such assignment without the necessity of any further action on the part of Assignee, SPC or the City, and SPC shall become substituted for the Assignee as the "Owner" under the Development Agreement with respect to all rights and obligations of the "Owner" relating to the Assigned Parcel(s). Each of Assignee and SPC, alone, shall have all of the rights of the "Owner" under the Development Agreement with respect to the portions of the East Side Residential held in fee title by such party from time to time.

3. Notwithstanding any other provision of this Agreement, Assignee and SPC each hereby assumes and agrees to perform all of the "Owner's Obligations" under the Development Agreement with respect to the East Side Residential. At such time as Assignee no longer owns

any portion of the East Side Residential, Assignee shall be released from all of the "Owner's Obligations" under the Development Agreement, provided neither SPC nor Assignee is in default of the Development Agreement at such time.

4. Assignee and SPC each hereby acknowledges and agrees that development of the East Side Residential is subject to all of the burdens and obligations of the "Owner" of the East Side Residential under the Development Agreement and Assignee and SPC are each obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to the East Side Residential. Assignee further acknowledges and agrees that Developer/Assignor and Duc Housing Partners, Inc. ("**Duc**") (Developer/Assignor and Duc being sometimes collectively referred to herein as the "**Oliver East Commercial Parties**") have specific obligations under the Development Agreement with respect to the parcel of real property adjacent to, and to the south of the East Side Residential (the "**East Side Commercial**").

5. Nothing in this Agreement is intended to release, or releases, the Oliver East Commercial Parties from the burdens and obligations they assumed pursuant to that certain Assumption Agreement entered into between the Oliver East Commercial Parties and the City effective September 25, 2001.

6. All of the covenants, terms and conditions set forth herein shall be binding upon and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

7. This Agreement shall be recorded in the Office of the Alameda County Recorder.

8. The individuals executing this Agreement represent and warrant that they have the right, power, and legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Developer/Assignor and the Assignee.

[Signatures appear on next page]

IN WITNESS WHEREOF, the parties hereto do hereby agree to the full performance of the terms set forth herein.

DEVELOPER/ASSIGNOR

HAYWARD OLIVER OWNERS, LLC,  
a Delaware limited liability company

By: DUC HOUSING PARTNERS, INC.  
a California corporation, member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: HAYWARD OLIVER MANAGERS, LLC,  
a Delaware limited liability company,  
its sole Managing Member

By: Lakeside Hayward Realty Advisors,  
LLC, a California limited liability company

By: Lakeside Capital Partners I,  
LLC, a California limited liability company,  
its Managing Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ASSIGNEE

SCC-CANYON II, LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SPC

STANDARD PACIFIC CORP., a  
Delaware corporation

By: \_\_\_\_\_  
Steven G. Delva  
Authorized Representative

CITY OF HAYWARD CONSENT

The City Council of the City of Hayward hereby consents to the covenants, terms and conditions of the foregoing Assignment and Assumption Agreement, by Resolution \_\_\_\_\_ on \_\_\_\_\_.

By \_\_\_\_\_  
Jesús Armas  
City Manager, City of Hayward

Attest: \_\_\_\_\_  
Angelina Reyes, City Clerk

Approved as to form:

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



## STANDARD PACIFIC HOMES

February 8, 2006

Mr. Jesus Armas  
City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541-5007

Re: Request for Consent to Assignment of Rights under Mt. Eden  
Business and Sports Park Community Development Agreement

Dear Jesus:

As you are aware, Standard Pacific is under contract with Hayward Oliver Owners, LLC to acquire Lots 2,3,12,13, and 14 of Tract 7065, which lots comprise the residential portion of the Eden Shores East project (the "Property"), and is entering into a rolling option arrangement with SCC-Canyon II, LLC ("SCC"), an entity of Saybrook Capital ("Saybrook"), pursuant to which Standard Pacific will assign its rights to purchase the Property to SCC. In connection, and concurrent with that assignment and SCC's closing of its acquisition of the Property, SCC, as the owner of the property will enter into an option and a construction agreement with Standard Pacific for Standard Pacific's purchase of groups of finished lots (as improved by Standard Pacific under the construction agreement) from time to time. We are now requesting that the City consent to the assignment by Hayward Oliver Owners, LLC, the current owner of the Property, of its rights under the Mt. Eden Business and Sports Park Development Agreement, as amended, to SCC, in accordance with the provisions of the form of partial assignment and assumption agreement we previously provided you. Pursuant to your request, while Standard Pacific will not be receiving an assignment of any rights under the Development Agreement when SCC initially closes its acquisition of the Property, Standard Pacific has agreed to assume all of the obligations of the owner of the Property under the Development Agreement concurrent with the closing of SCC's acquisition of the Property.

By way of some further background on rolling option arrangements, a rolling option provides a builder/ developer the opportunity to purchase property in increments at a predetermined price and time. The option is secured by a deposit that is forfeitable in the event the purchaser elect not to exercise its option for future purchases. In accordance with this arrangement, Standard Pacific and SCC will enter into an option agreement and a construction agreement. Pursuant to the terms of the option agreement, Standard Pacific has the exclusive right and option to purchase the lots

contained the Property beginning on July 1, 2006, and ending on October 1, 2007. In accordance with the terms of the Construction Agreement, Standard Pacific will agree to perform the construction of the on-site and off-site improvements required for the development of the Property. This rolling option transaction with SCC provides Standard Pacific working capital to use for the development of the Property. The cost of the improvements to the Property is expected to be in excess of \$19,500,000.

Standard Pacific, one of the nation's largest homebuilders, has built homes for more than 82,000 families during its 40-year history. The Company constructs homes within a wide range of price and size targeting a broad range of homebuyers. Standard Pacific operates in some of the strongest housing markets in the country with operations in major metropolitan areas in California, Texas, Arizona, Colorado, Florida, the Carolinas and Nevada. In 2005, the Company delivered in excess of 11,400 homes with revenues of \$4.0 billion and net income \$441 million.

SCC is one of the largest non-bank providers of lot option capital to publicly traded homebuilders in the United States. Since its inception in 1999, SCC has acquired over 11,000 lots on rolling option terms similar to those being utilized for the Property. As of 12/31/05, SCC had total assets of \$398,670,214 and a net worth of \$126,786,848. Currently, SCC owns properties in 10 states and has active options with 11 publicly traded U.S. homebuilders. Attached is SCC's marketing brochure along with a copy of its 12/31/05 balance sheet.

In summary, Standard Pacific has the financial strength and commitment to make the Property one of the premier neighborhoods in the Bay Area.

If you have any questions about this request for the consent of the City, or will require further information before making a final decision, please let me know.

We do very much appreciate our relationship with the City, and the continuing courtesy and cooperation we have experienced in our dealings with the City.

Very truly yours,



STEVEN G. DELVA  
Division President

SGD:\_\_\_

# DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

*mal*  
*2/9/06*

**RESOLUTION APPROVING THE PARTIAL ASSIGNMENT  
AND ASSUMPTION OF THE MOUNT EDEN BUSINESS  
AND SPORTS PARK COMMUNITY DEVELOPMENT  
AGREEMENT AS IT RELATES TO THE EDEN SHORES  
EAST RESIDENTIAL PROJECT**

BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to negotiate and execute all documents necessary to effectuate the partial assignment and assumption of the Mount Eden Business and Sports Park Community Development Agreement, as said development agreement relates to the Eden Shores East Residential project, from Hayward Oliver Owners, LLC, to Standard Pacific Corporation and SCC-Canyon II, LLC, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2006

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

**APPROVED AS TO FORM:**

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**City Attorney of the City of Hayward**