



10B

DATE: October 23, 2007

TO: Mayor and City Council

FROM: Director of Community and Economic Development

SUBJECT: Legacy Eden Shores Project – Approval of Partial Assignment and Assumption of Mount Eden Business and Sports Park Community Development Agreement from Hayward Oliver Owners, LLC, to Eden Shores Associates I, LLC, and Eden Shores Associates II, LLC

RECOMMENDATION

That the City Council adopts the attached resolution approving the partial assignment and assumption of the Mount Eden Business and Sports Park Community Development Agreement for the Legacy Eden Shores Project from Hayward Oliver Owners, LLC, to Eden Shores Associates I, LLC, and Eden Shores Associates 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 is 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.

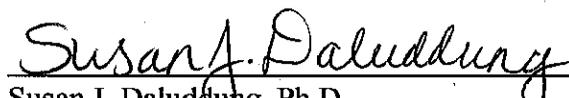
On February 14, 2006, the City Council approved a partial assignment and assumption of the Development Agreement, as it pertained to a proposed residential development of a portion of the Oliver East property (the “Eden Shores East project”), from Hayward Oliver Owners, LLC, to Standard Pacific and SCC-Canyon II, LLC, a Delaware limited liability company. Under the proposed arrangement, SCC-Canyon became the owner of record of the Eden Shores East project,

and Standard Pacific acquired the right to purchase the lots for development. The Bridgeport and Crossings projects contemplated by the Eden Shores East land use approvals are currently under construction.

In November 2006, the City Council authorized a land use study for the remaining 60 acres of the Oliver East property. Legacy Partners, Inc., the developer, and Eden Shores Associates I and Eden Shores Associates II, the owners of the property, have submitted applications for a new project on the remaining 60 acres of Oliver East, which applications are being considered by the City Council separately from this assignment request.

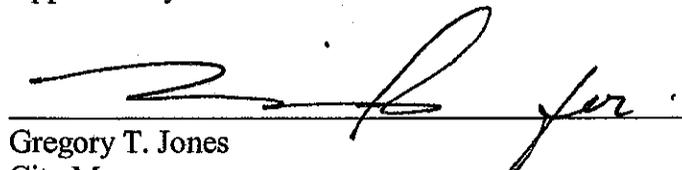
Staff has reviewed the financial capability of Eden Shores Associates I and Eden Shores Associates II and has determined that they have the financial capacity to perform the tract obligations of Legacy Eden Shores East. In addition, because the proposed Partial Assignment and Assumption Agreement holds both Hayward Oliver Owners and the Eden Shores Associates entities responsible for performing the obligations of the Development Agreement, as it relates to Legacy Eden Shores, staff recommends approval of the partial assignment and assumption of the Development Agreement.

Recommended by:



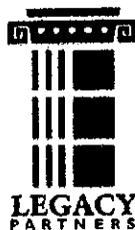
Susan J. Daluddung, Ph.D
Director of Community and Economic Development

Approved by:



Gregory T. Jones
City Manager

Attachments: Exhibit A. Letter from Steve Dunn Requesting Assignment of Development Agreement, dated October 18, 2007
Exhibit B. Draft Partial Assignment and Assumption Agreement
Draft Resolution



October 18, 2007

Investment
Management

Property
Management

Marketing
Services

Asset
Management

Acquisitions &
Development

Disposition
Services

Design
Services

Construction
Management

Mr. Gregory T. Jones
Office of the City Manager
City Hall, 4th Floor
777 B Street
Hayward, CA 94541

RE: Assignment of Development Agreement

Dear Mr. Jones:

Please accept this letter as our request for the City of Hayward's consent of the enclosed Assignment of the Mount Eden Shores Business and Sports Park Community Development Agreement.

In support of our request, also enclosed please find the Legacy Partners Executive Summary, Biographies of Key Legacy Personnel, as well as the Consolidated Financial Statement and Supplemental Information for Legacy Partners Commercial, LLC and Subsidiaries.

We look forward to your favorable reply.

Thank you,

Steven M. Dunn
Senior Vice President
Acquisitions and Development

Cc: Nancy Chau
Gregg Hall
Bridget Metz

Enclosures as noted

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Legacy Partners Commercial, Inc.
4000 East Third Avenue, Suite 600
Foster City, California 94404
Attention: Robert Phipps

(SPACE ABOVE THIS LINE FOR RECORDER'S USE)

ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION OF DEVELOPMENT AGREEMENT (herein the "Agreement") is dated as of this 6 day of June, 2007 by and among HAYWARD OLIVER OWNERS, LLC, a Delaware limited liability company ("Developer/Assignor"), and EDEN SHORES ASSOCIATES I, LLC, a Delaware limited liability company and EDEN SHORES ASSOCIATES II, LLC, a Delaware limited liability company (collectively, "Assignee").

RECITALS

- A. Developer/Assignor's predecessors-in-interest, The Gordon Oliver Estate and Trust and The Alden Oliver Trust and the City of Hayward (the "City") 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 "Property").
- B. Assignee acquired fee title to the Property from Developer/Assignor on September 15, 2006 (the "Acquisition Date").
- C. 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 Property.
- D. Article 6 of the Development Agreement requires the consent of the City to the assignment.

A G R E E M E N T

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

1. For good and valuable consideration, the receipt of which is hereby acknowledged, Developer/Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's rights, benefits, burdens, duties and obligations under the Development Agreement with respect to the Property and delegates to Assignee all of Assignor's burdens, duties and obligations that accrue after the Acquisition Date of this Assignment under the Development Agreement with respect to the Property. 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 Property. Assignee acknowledges that Developer/Assignor has previously made one or more partial assignments of the Development Agreement to a party or parties that acquired from Developer/Assignor other property subject to the Development Agreement, and that this Assignment assigns only Developer/Assignor's rights and obligations with respect to the Property.

2. Notwithstanding any other provision of this Agreement, Assignee hereby assumes and agrees to perform all of the "Owner's Obligations" under the Development Agreement with respect to the Property. At such time as Assignee no longer owns any portion of the Property, Assignee shall be released from all of the "Owner's Obligations" under the Development Agreement, provided Assignee is not in default of the Development Agreement at such time. Notwithstanding the release of Assignee pursuant to the preceding sentence, as between Developer/Assignor and Assignee, Developer/Assignor shall not be deemed to have assumed such "Owner's Obligations" after any such release of Assignee.

3. Assignee hereby acknowledges and agrees that development of the Property is subject to all of the burdens and obligations of the "Owner" of the Property under the Development Agreement and Assignee is obligated to, and shall, fully perform all of the duties and obligations of the "Owner" under the Development Agreement with respect to the Property.

4. Nothing in this Assignment is intended to release, or releases, Developer/Assignor and Duc Housing Partners, Inc. ("Duc") (Developer/Assignor and Duc being sometimes collectively referred to herein as 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, recorded in the Official Records of Alameda County on October 15, 2001 as Instrument No. 2001392229, and effective September 25, 2001.

5. For purposes of Section 14.18 of the Development Agreement, the address of OWNER is as follows:

OWNER: Legacy Partners Commercial, Inc.
4000 East Third Avenue, Suite 600
Foster City, California 94404
Attention: Robert Phipps
FAX: (650) 572-9527

With a copy to: DLA PIPER US LLP
550 South Hope Street, Suite 2300
Los Angeles, California 90071
Attn: Pamela Westhoff
Fax: (213) 330-7547

6. This Agreement shall be recorded in the Office of the Alameda County Recorder.
7. If there is any dispute, action, lawsuit or proceeding relating to this Assignment, or any default hereunder, whether or not any action, lawsuit or proceeding is commenced, the non-prevailing party shall reimburse the prevailing party for its attorneys' fees, expert witness fees and all fees, costs and expenses incurred in connection with such dispute, action, lawsuit or proceeding, including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal, in collection of any judgment or in appearing in any bankruptcy proceeding.
8. Each party hereto covenants and agrees to perform all acts to prepare, execute and deliver such written agreements, documents, instruments, statements, filings and notices as may be reasonably necessary to carry out the terms and provisions of this Assignment.
9. The individuals executing this Agreement represent and warrant that they have the right, power, 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.
10. This Assignment may only be amended or modified by a written instrument signed by all of the parties hereto.
11. This Assignment shall be binding upon and inure to the benefit of the heirs, successors and assigns of the respective parties hereto. Assignee shall have the right to reassign these rights and obligations only in connection with a conveyance of the fee title to the Property.
12. This Assignment sets forth the entire understanding between the parties hereto with respect to all matters discussed herein and supersedes any and all prior agreements whether written or oral regarding such matters. Should any term, condition, covenant or provision of this Assignment be held to be invalid or unenforceable, the remainder of this Assignment shall continue in full force and effect.
13. This Assignment may be executed in several counterparts and, when so executed, shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatory to the original and the same counterpart. A facsimile signature shall be deemed an original signature.

[Next page is signature page]

IN WITNESS WHEREOF, Developer/Assignor and Assignee 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: LEWIS V. MILLIGAN
Title: AUTHORIZED SIGNATORY

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: _____

[signatures continued on next page]

IN WITNESS WHEREOF, Developer/Assignor and Assignee 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

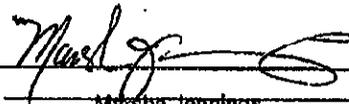
By: _____
Name: _____
Title: _____

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: **Marsha Jennings**
Authorized Signatory

[signatures continued on next page]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

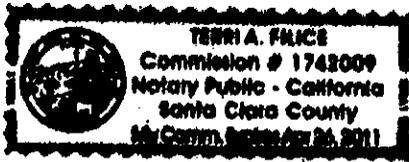
State of California
County of Santa Clara } ss.

On June 6, 2007, before me, Terri A. Filice, Notary Public,
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Lewis V. Milligan,
Name(s) of Signer(s)

- personally known to me
- 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Terri A. Filice
Signature of Notary Public

OPTIONAL

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

Description of attached Document

Title or Type of Document: Assignment and Assumption of Development Agreement
Document Date: Undated Number of Pages: 10

Signer(s) Other Than Named Above: Hayward Olivier Managers, Eden Shores Associates I, LLC, Eden Shores Associates II, LLC and City of Hayward

Capacity(ies) Claimed By Signer

Signer's Name: Lewis V. Milligan

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

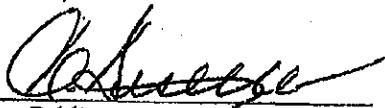
Signer is Representing: Hayward Oliver Owners, LLC

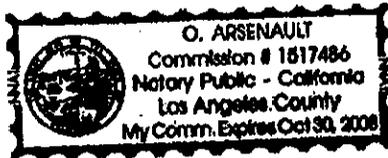
STATE OF CALIFORNIA)
)
COUNTY OF Los Angeles) ss

On June 16, 2007, before me, O. Arsenault, a Notary Public in and for said State, personally appeared Meredith Jennings, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

[AFFIX INK SEAL]


Notary Public



ASSIGNEE:

EDEN SHORES ASSOCIATES I, LLC,
a Delaware limited liability company

By: Legacy Partners II Hayward I, LLC,
a Delaware limited liability company,
its Administrative Member

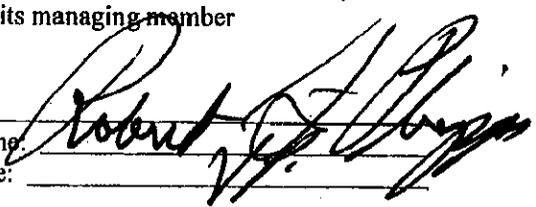
By: Legacy Partners Realty Fund II, LLC,
a Delaware limited liability company,
its managing member

By: Legacy Partners Investment Management
Services, LLC, a Delaware limited liability
company, its managing member

By: _____

Name: _____

Title: _____



EDEN SHORES ASSOCIATES II, LLC,
a Delaware limited liability company

By: Legacy Partners II Hayward II, LLC,
a Delaware limited liability company,
its Administrative Member

By: Legacy Partners II Eden Shores, Inc.,
a California corporation,
its managing member

By: _____

Name: _____

Title: _____





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 Development Agreement, by Resolution _____ on _____, 2007

By:

Gregory T. Jones
City Manager, City of Hayward

Attest:

Angelina Reyes, City Clerk

Approved as to form:

City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EDEN SHORES ASSOCIATES I, LLC PROPERTY

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

PARCEL 1:

REAL PROPERTY SITUATE IN THE CITY OF HAYWARD, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, BEING A PORTION OF LOT 1 AS SAID LOT 1 IS SHOWN ON THE MAP ENTITLED "TRACT 7065" FILED IN BOOK 261 OF MAPS AT PAGES 68-74 INCLUSIVE, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERN CORNER OF SAID LOT 1; THENCE ALONG THE SOUTHWESTERN LINE OF SAID LOT 1, NORTH 42°48'00" WEST, 279.64 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE SOUTHWESTERN LINE AND THE WESTERN LINE OF SAID LOT 1, THE FOLLOWING 14 (FOURTEEN) COURSES:

- 1) NORTH 42°48'00" WEST, 488.12 FEET,
- 2) SOUTH 89°50'57" EAST, 2.95 FEET,
- 3) NORTH 42°48'00" WEST, 10.00 FEET,
- 4) NORTH 47°12'00" EAST, 55.00 FEET,
- 5) NORTH 42°48'00" WEST, 84.09 FEET,
- 6) NORTH 47°12'00" EAST, 85.00 FEET,
- 7) NORTH 42°48'00" WEST, 170.00 FEET,
- 8) SOUTH 47°12'00" WEST, 140.00 FEET,
- 9) NORTH 42°48'00" WEST, 85.90 FEET,
- 10) NORTH 09°27'59" WEST, 109.68 FEET,
- 11) SOUTH 89°50'57" EAST, 7.98 FEET,
- 12) NORTH 00°09'03" EAST, 75.00 FEET,
- 13) NORTH 89°50'57" WEST, 24.40 FEET,
- 14) NORTH 00°09'03" EAST, 60.00 FEET, TO THE NORTHERN LINE OF SAID LOT 1; THENCE ALONG SAID NORTHERN LINE, SOUTH 89°50'57" EAST, 578.83 FEET TO THE NORTHEASTERN LINE OF SAID LOT 1; THENCE ALONG SAID NORTHEASTERN LINE, SOUTH 53°31'13" EAST, 381.72 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 1321.00 FEET, A DELTA OF 21°20'30"; THENCE ALONG THE SAID CURVE AN ARC LENGTH OF 492.05 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIAL WHICH BEARS, NORTH 32°57'16" EAST, HAVING A RADIUS OF 29.50 FEET, A DELTA OF 70°15'37"; THENCE ALONG SAID CURVE AN ARC LENGTH OF 36.18 FEET TO THE EASTERN LINE OF SAID LOT 1; THENCE ALONG SAID EASTERN LINE, SOUTH 13°12'53" WEST, 117.50 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 509.50 FEET, A DELTA OF 19°26'37"; THENCE

ALONG SAID CURVE AN ARC LENGTH OF 172.90 FEET; THENCE LEAVING SAID EASTERN LINE, SOUTH 46°27'58" WEST, 45.17 FEET TO A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIAL WHICH BEARS SOUTH 06°21'50" WEST, A RADIUS OF 229.50 FEET, A DELTA OF 40°50'10"; THENCE NORTHWESTERLY ALONG SAID CURVE AN ARC LENGTH OF 163.57 FEET; THENCE SOUTH 47°12'00" WEST, 47.00 FEET; THENCE NORTH 42°48'00" WEST, 254.03 FEET; THENCE SOUTH 47°12'00" WEST, 433.55 FEET TO THE POINT OF BEGINNING.

ALSO SHOWN AS NEW LOT 1 ON THE NOTICE OF LOT LINE ADJUSTMENT LLA-05-08 RECORDED JANUARY 23, 2006 AS INSTRUMENT NO. 2006-024219 OFFICIAL RECORDS.

PARCEL 2:

LOTS 6 THROUGH 8, INCLUSIVE, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 7065", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA ON OCTOBER 16, 2001, IN BOOK 261 OF MAPS PAGES 68 THROUGH 74, INCLUSIVE.

PARCEL 3:

LOTS 10, 11, 15, 16 AND 17 AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 7065", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA ON OCTOBER 16, 2001, IN BOOK 261 OF MAPS, PAGES 68 THROUGH 74, INCLUSIVE.

APN: 456-0097-003 (Affects: A portion of Parcel 1) and 456-0097-004 ptn (Affects: A portion of Parcel 1 and other property) and 456-0097-009 (Affects: A portion of Lot 6 of Parcel 2) and 456-0097-010 (Affects: A portion of Lot 6 of Parcel 2) and 456-0097-011 (Affects: A portion of Lot 7 of Parcel 2) and 456-0097-012 (Affects: A portion of Lot 7 of Parcel 2) and 456-0097-013 (Affects: A portion of Lot 8 of Parcel 2) and 456-0097-014 (Affects: A portion of Lot 8 of Parcel 2) and 456-0097-016 (Affects: Lot 10 of Parcel 3) 456-0097-017 (Affects: Lot 11 of Parcel 3) and 456-0097-021 (Affects: Lot 15 of Parcel 3) and 456-0097-022 (Affects: Lot 16 of Parcel 3) and 456-0097-023 (Affects: Lot 17 of Parcel 3)

EDEN SHORES ASSOCIATES II, LLC PROPERTY

Real property in the City of Hayward, County of Alameda, State of California, described as follows:

LOTS 4, 5 and 9, AS SHOWN ON THAT CERTAIN MAP ENTITLED "TRACT 7065", WHICH MAP WAS FILED IN THE OFFICE OF THE RECORDER OF THE COUNTY OF ALAMEDA COUNTY, STATE OF CALIFORNIA ON OCTOBER 16, 2001, IN BOOK 261 OF MAPS PAGES 68 THROUGH 74, INCLUSIVE.

APN: 456-0097-007 (Affects: Lot 4) and 456-0097-008 (Affects: Lot 5) and 456-0097-015 (Affects: Lot 9)

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

me
10/5/07

RESOLUTION APPROVING THE PARTIAL ASSIGNMENT
AND ASSUMPTION OF THE MOUNT EDEN BUSINESS
AND SPORTS PARK COMMUNITY DEVELOPMENT
AGREEMENT AS IT RELATES TO THE LEGACY EDEN
SHORES 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 Legacy Eden Shores project, from Hayward Oliver Owners, LLC, to Eden Shores Associates I, LLC, and Eden Shores Associates, II, LCC, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2007

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:

City Attorney of the City of Hayward