

**MOORPARK CITY COUNCIL
AGENDA REPORT**

To: Honorable City Council

From: Steven Kueny, City Manager *SKC*

Prepared by: Nancy Burns, Senior Management Analyst

Date: March 21, 2008 (CC Meeting of 4/2/08)

Subject: Consider First Amendment to Affordable Housing Purchase and Sale Agreement Between City and Pardee Homes for Twenty-Five Condominiums to be Sold to Eligible Low Income Buyers Within Specific Plan No. 2

BACKGROUND

On February 15, 2006, the City of Moorpark ("City") entered into an Affordable Housing Purchase and Sale Agreement with Pardee Homes ("Affordable Housing Agreement") to set forth matters pertaining to the developer's provision of twenty-five (25) dwelling units in Specific Plan No. 2 at "affordable housing cost" for eligible low income households.

DISCUSSION

The 25 dwelling units referenced above are located in Pardee's Waverly Place, a 102-unit condominium community in Specific Plan No.2 ("Project"). The completion of the 102 units is anticipated in eight phases. The California Department of Real Estate Final Subdivision Public Report (Condominium) ("Public Report") identifies the monthly HOA assessment as each phase of this community is completed. The projected HOA assessment for the first phase is \$371.03 per month, \$245.47 per month for the second phase, and \$213.08 per month at build out, as the maintenance costs of the community are spread among more homeowners.

The developer is required by Section 4.3 of the Affordable Housing Agreement to provide \$120.00 for each dollar or portion thereof which the monthly HOA fees for the affordable units exceed \$100.00. Pardee will provide \$339,240 (120 x \$213.08 - \$100.00) to the City, as a one-time contribution to assist the 25 low income buyers in managing homeownership costs, when HOA dues increase in the future.

The developer will provide a temporary subsidy to all buyers in the Project for any part of the monthly assessment which exceeds \$213.08, as provided in the Waverly Place Subsidy Agreement, until built out. As an insurance against the HOA fees being higher than the projected \$213.08 at build out amount and per the attached First Amendment to the Affordable Housing Agreement, developer will also deposit in an escrow account, mutually agreed upon by the City and developer, \$120.00 for each dollar or portion thereof the monthly HOA fees identified in the more recent Public Report that exceeds \$213.08 for each affordable unit. For example, the developer will deposit \$3,886.80 ($\$120 \times (\$245.47 - \$213.08)$) for each affordable unit that closes in the second phase of the Project.

If the Public Report for the last phase of the Project shows that the monthly HOA assessment is greater than \$213.08, then the City shall be entitled to withdraw all funds, principal plus interest, remaining in the Account that are needed to offset the amount of the monthly HOA assessment for each affordable unit in the Project. If there are any funds left in the account after the City's final withdrawal, then Developer may withdraw the balance. If sufficient funds do not remain in the Account at that time to fund the monthly HOA fees, then the developer shall cure such deficiency within 10 days notice.

STAFF RECOMMENDATION

Approve First Amendment to Affordable Housing Purchase and Sale Agreement, subject to final language approval of City Manager and City Attorney and authorize City Manager to execute the amendment.

Attachment I: First Amendment to Affordable Housing Purchase and Sale Agreement

ATTACHMENT I

**FIRST AMENDMENT TO
AFFORDABLE HOUSING PURCHASE AND SALE AGREEMENT**

This First Amendment to the Affordable Housing Purchase and Sale Agreement is made and entered into as of this ____ day of ____, 2008, by and between PARDEE HOMES, a California corporation ("Developer"), and the CITY OF MOORPARK ("City"), with respect to the following facts:

A. On February 15, 2006, the Developer and the City entered into the Affordable Housing Purchase and Sale Agreement (the "Affordable Housing Agreement").

B. The Affordable Housing Agreement applies to the Project, as that term is defined in the fifth Recital of the Affordable Housing Agreement. The Project is Tract Map No. 5045-6 consisting of Five (5) phases and collectively is referred to as Waverly Place or the Project.

C. Paragraph 4.3 of the Affordable Housing Agreement states:

"Developer agrees that, in the event the monthly HOA fees for the affordable units exceed \$100.00 for each affordable low income unit, Developer shall deposit \$120.00 for each dollar or portion thereof of the monthly HOA fees that are in excess of \$100.00 into a City administered trust to assist with future HOA fees for each affected affordable low income unit. This is a one time payment to assist the qualified low income buyers whether said buyers or City initially purchases the affordable unit from the developer."

D. On October 25, 2007, the California Department of Real Estate issued a Final Subdivision Public Report (Condominium) (the "Public Report") for Phase 1 of Tract Map No. 5045-6 and on November 15, 2007, the Public Report for Phase 2 of Tract Map No. 5045-6 was issued.

E. The Public Report for Phase 1 states that the monthly Home Owners Association ("HOA") assessment against each condominium unit at build-out of Waverly Place will be \$213.08 but that, under an interim budget, the monthly HOA assessment initially will be \$371.03. The Public Report for Phase 2 indicates that when both the Phases 1 and 2 of Waverly Place have been released, the monthly HOA assessment will be \$245.47.

F. The Developer has agreed to subsidize the monthly HOA assessments for all buyers in Waverly Place in the amount that such monthly assessments exceed \$213.08 until project build-out, at which time the monthly assessment is projected to be \$213.08. Any Subsidy Agreement with the 25 buyers of the affordable units must be pre-approved in writing by the City.

G. Developer shall deposit in an escrow account, mutually agreed upon by the City and developer, \$120.00 for each dollar or portion thereof of the monthly HOA fees identified in the Public Report, for the appropriate phase, that exceeds \$213.08 for each affordable unit.

THEREFORE, IN LIGHT OF THE FOREGOING, IT IS MUTUALLY AGREED THAT:

1. The Developer shall pay any initial capital or other one time fees, such as the Initial Capital Contribution for all phases.

2. Section 4.3.1 is hereby added to the Affordable Housing Agreement as follows:

4.3.1 For each affordable low income unit:

(a) The Developer shall, at the close of escrow for the unit, make the one time payment set forth in section 4.3 to the City in the amount of \$13,569.60 (120 x (\$213.08 - \$100.00)).

(b) The Developer shall, beginning with the first monthly HOA assessment following the Subsidy Commencement Date and continuing until the Subsidy Termination Date, as those terms are defined in the Subsidy Agreement, pay the amount of the monthly HOA assessment in excess of \$213.08 to the Home Owners Association on the terms set forth in the Subsidy Agreement;

(c) Upon the signing of this First Amendment, and executing an Escrow Agreement, in substance as Attachment "A", with the City and with an Escrow Agent mutually acceptable to Developer and to City, Developer shall open an interest bearing account (the "Account"), which may be a money market account and which need not be federally insured. Developer shall deposit funds as stipulated in Sections (d) and (e) of this Section 4.3.1 and shall provide an accounting of funds being deposited, and shall comply with all other provisions of said Escrow Agreement. Both the City and the Developer shall have the right to withdraw funds from the Account based on the terms set forth in these subsections (d) and (e), respectively, upon mutual agreement of both parties.

(d) The Developer shall, prior to the close of escrow for each affordable unit, deposit into the Account an amount equal to 120 times the difference between \$213.08 and the amount of the monthly HOA assessment stated in the latest Public Report for the Project, *e.g.*, if the latest Public Report states that the monthly HOA

assessment will be \$245.47, then the Developer would deposit \$3,886.80 (= 120 x (\$245.47 - \$213.08)) into the Account. If the last Public Report states a monthly HOA assessment of \$213.08 or less, then the Developer shall be entitled to withdraw all funds remaining in the Account and the Account shall then be closed.

“(e) If a subsequent Public Report shows a monthly HOA assessment which exceeds that which was stated in an earlier Public Report, then the Developer shall promptly deposit additional funds to reflect the difference between the earlier HOA assessment and the more recently stated HOA assessment. This amount shall equal the difference between the previous monthly HOA assessment and the revised monthly assessment, times 120, times the number of affordable units affected and shall be deposited into the Account within 30 days of the release of the recent Public Report.

If the Public Report for the last phase of the Project shows that the monthly HOA assessment is greater than \$213.08, then the City shall be entitled to withdraw all funds, principal plus interest, remaining in the Account that are needed to offset the amount of the monthly HOA assessment for each affordable unit in the Project. If sufficient funds do not remain in the Account at that time to fund the HOA subsidy as provided herein, then Developer shall cure such deficiency within 10 days notice of the deficiency. If there are any funds left in the account after the City’s final withdrawal, then Developer may withdraw any funds remaining with written consent from the City and the Account will be closed.

3. Except as amended above, the Affordable Housing Agreement shall remain in full force and effect.

Attachment “A” Escrow Agreement

CITY:

DEVELOPER:

CITY OF MOORPARK

PARDEE HOMES, a California corporation

By: _____

By: _____

Jim Bizzelle, Vice President,
Community Development

Its: _____

ATTACHMENT
A

Escrow Agreement

This Escrow Agreement is dated as of _____, 2008 (the "Agreement") and is among **Pardee Homes, Inc.**, a California corporation, (Developer), the **City of Moorpark**, a municipal corporation, ("City") and **XX**, a XX, as escrow agent (the "Escrow Agent").

WHEREAS, Developer and City have entered into an Affordable Housing Purchase and Sale Agreement dated February 15, 2006, . and

WHEREAS, Developer and City then entered into a First Amendment ("Amendment") to the Affordable Housing Purchase and Sale Agreement dated _____, and

WHEREAS, pursuant to the Amendment, the parties agreed to enter into this Escrow Agreement to accomplish the intent and purposes of the Amendment.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, and for other good, fair and valuable considerations and reasonably equivalent value, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Escrow Agent, the Developer and the City do agree as follows, intending to be legally bound:

Section 1. Establishment of Escrow Account

(a) The Developer hereby deposits with the Escrow Agent the sum of \$120.00 for each dollar or portion thereof the monthly HOA fees identified in the more recent California Department of Real Estate Final Subdivision Public Report (Condominium) that exceeds \$213.08 for each affordable unit that has closed. For example, the developer will deposit \$3,886.80 ($\$120 \times (\$245.47 - \$213.08)$) for each affordable unit that shall close in the second phase of the Pardee's Waverly Place. The deposited funds shall be held in escrow by the Escrow Agent for each affordable unit sold to a First Time Home Buyer. The Escrow Agent accepts said sum and agrees to establish and maintain a separate account (the "Escrow Account") therefor in its capacity as Escrow Agent pursuant to the terms of this Agreement. The parties to this Agreement agree that the Escrow Account balance shall at all times be no less than \$500.00, after subtraction of Escrow Account Fees, until the Escrow Account is closed. If the amount of a Demand exceeds the available escrow funds, minus \$500.00, an amount equal to the available escrow funds minus \$500.00 shall be disbursed to the City and the unpaid balance of the Demand shall be disbursed to City when Developer has deposited sufficient funds into the Escrow Account.

(b) The Developer and the City shall each furnish the Escrow Agent with a completed Form W-8 or Form W-9, as applicable.

Section 2. Investments

(a) The Escrow Agent agrees to invest and reinvest funds in the Escrow Account, but only upon written instructions signed by an authorized agent of the City.

(b) The parties recognize and agree that the Escrow Agent will not provide supervision, recommendations or advice relating to either the investment of moneys held in the Escrow Account or the purchase, sale, retention or other disposition of any permitted investment.

(c) Interest and other earnings on permitted investments shall be added to the Escrow Account. Any loss or expense incurred as a result of an investment will be borne by the Escrow Account.

(d) The Escrow Agent is hereby authorized to execute purchases and sales of permitted investments through the facilities of its own trading or capital markets operations or those of any affiliated entity, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Escrow Agent shall send statements to each of the parties hereto on a monthly basis reflecting activity in the Escrow Account for the preceding month. Although the Developer and the City each recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional cost, the Developer and the City hereby agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for the Escrow Account if no activity occurred for such month.

(e) The Developer and the City acknowledge and agree that the delivery of the escrowed property is subject to the sale and final settlement of permitted investments. Proceeds of a sale of permitted investments will be delivered on the business day on which the appropriate instructions are delivered to the Escrow Agent if received prior to the deadline for same day sale of such permitted investments. If such instructions are received after the applicable deadline, proceeds will be delivered on the next succeeding business day.

Section 3. Disbursement of Funds from Escrow Account

If the Final Subdivision Public Report for the last phase of the Waverly Place shows that the monthly HOA assessment is greater than \$213.08, then the City shall be entitled to withdraw all funds, principal plus interest, remaining in the

Escrow Account that are needed to offset the amount of the monthly HOA assessment for each affordable unit in the Waverly Place. Upon receipt of a written demand for disbursement from City (through its authorized agent(s)) ("Demand") and after expiration of forty-five (45) days from receipt of the Demand, Escrow Agent shall promptly disburse the Demand, in full, unless the Escrow Agent receives a written objection from Developer prior to expiration of the forty-five (45) day period ("Objection"). If a timely Objection is to the entirety of the Demand, Escrow Agent shall not disburse any amount pending further joint instructions from Developer and City or pursuant to court order. If a timely Objection is to a portion of the Demand, Escrow Agent shall promptly disburse to City the undisputed portion of the Demand and Escrow Agent shall not disburse any funds subject to an Developer Objection pending further joint instructions from Developer and City or pursuant to court order.

If the Final Subdivision Public Report for the last phase of the Waverly Place shows that the monthly HOA assessment is less than \$213.08, then the Developer shall be entitled to withdraw all funds with the written consent of the City. Upon receipt of a written demand for disbursement from Developer (through its authorized agent(s)) ("Demand") and after expiration of forty-five (45) days from receipt of the Demand, Escrow Agent shall promptly disburse the Demand, in full, unless the Escrow Agent receives a written objection from City prior to expiration of the forty-five (45) day period ("Objection"). If a timely Objection is to the entirety of the Demand, Escrow Agent shall not disburse any amount pending further joint instructions from Developer and City or pursuant to court order. If a timely Objection is to a portion of the Demand, Escrow Agent shall promptly disburse to Developer the undisputed portion of the Demand and Escrow Agent shall not disburse any funds subject to the City Objection pending further joint instructions from Developer and City or pursuant to court order.

Section 4. Concerning the Escrow Agent

Notwithstanding any provision contained herein to the contrary, the Escrow Agent, including its officers, directors, employees and agents, shall:

- (a) not be liable for any action taken or omitted under this Agreement so long as it shall have acted in good faith and without gross negligence;
- (b) have no responsibility to inquire into or determine the genuineness, authenticity, or sufficiency of any securities, checks, or other documents or instruments submitted to it in connection with its duties hereunder;
- (c) be entitled to deem the signatories of any documents or instruments submitted to it hereunder as being those purported to be authorized to sign such documents or instruments on behalf of the parties hereto, and shall

be entitled to rely upon the genuineness of the signatures of such signatories without inquiry and without requiring substantiating evidence of any kind;

(d) be entitled to refrain from taking any action contemplated by this Agreement in the event that it becomes aware of any disagreement between the parties hereto as to any facts or as to the happening of any contemplated event precedent to such action;

(e) have no responsibility or liability for any diminution in value of any assets held hereunder which may result from any investments or reinvestment made in accordance with any provision which may be contained herein;

(f) be entitled to compensation for its services hereunder as per Exhibit A attached hereto, which is made a part hereof, and for reimbursement of its out-of-pocket expenses including, but not by way of limitation, the fees and costs of attorneys or agents which it may find necessary to engage in performance of its duties hereunder, all to be paid by the Developer and the City, and the Escrow Agent shall have, and is hereby granted, a prior lien upon any property, cash, or assets of the Escrow Account, with respect to its unpaid fees and nonreimbursed expenses, superior to the interests of any other persons or entities;

(g) be entitled and is hereby granted the right to set off and deduct any unpaid fees and/or nonreimbursed expenses from amounts on deposit in the Escrow Account;

(h) be under no obligation to invest the deposited funds or the income generated thereby until it has received a Form W-9 or W-8, as applicable, from the Developer and the City, regardless of whether such party is exempt from reporting or withholding requirements under the Internal Revenue Code of 1986, as amended;

(i) be, and hereby is, jointly and severally indemnified and saved harmless by the Developer and the City from all losses, liabilities, costs and expenses, including attorney fees and expenses, which may be incurred by it as a result of its acceptance of the Escrow Account or arising from the performance of its duties hereunder, unless such losses, liabilities, costs and expenses shall have been finally adjudicated to have resulted from the willful misconduct or gross negligence of the Escrow Agent, and such indemnification shall survive its resignation or removal, or the termination of this Agreement;

(j) in the event that (i) any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder or (ii) the Escrow Agent shall be uncertain as to how to proceed in a situation not explicitly addressed by the terms of this Agreement whether because of conflicting demands by the other parties hereto or otherwise, be permitted to

interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. The parties hereto other than the Escrow Agent further agree to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to same;

(k) have only those duties as are specifically provided herein, which shall be deemed purely ministerial in nature, and shall under no circumstance be deemed a fiduciary for any of the parties to this Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument or document between the other parties hereto, in connection herewith, including without limitation the Amendment. This Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred from the terms of this Agreement or any other agreement. IN NO EVENT SHALL THE ESCROW AGENT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (i) DAMAGES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES WHICH RESULT FROM THE ESCROW AGENT'S FAILURE TO ACT IN ACCORDANCE WITH THE STANDARDS SET FORTH IN THIS AGREEMENT, OR (ii) SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES;

(l) have the right, but not the obligation, to consult with counsel of choice and shall not be liable for action taken or omitted to be taken by Escrow Agent either in accordance with the advice of such counsel or in accordance with any opinion of counsel to the Developer addressed and delivered to the Escrow Agent; and

(m) have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees, and shall not be responsible for the misconduct or negligence of such agents, attorneys, custodians and nominees appointed by it with due care.

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, provided, however, that each of the other parties hereto desiring to provide such directions shall provide to the Escrow Agent an incumbency certificate listing persons with authority to act hereunder, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Developer or the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and

compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Developer or the City, as the case may be, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Any banking association or corporation into which the Escrow Agent may be merged, converted or with which the Escrow Agent may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any banking association or corporation to which all or substantially all of the corporate trust business of the Escrow Agent shall be transferred, shall succeed to all the Escrow Agent's rights, obligations and immunities hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

No printed or other matter in any language (including, without limitation, prospectuses, notices, reports and promotional material) that mentions the Escrow Agent's name or the rights, powers or duties of the Escrow Agent shall be issued by the other parties hereto or on such parties' behalf unless the Escrow Agent shall first have given its specific written consent thereto.

The Escrow Agent shall not be obligated to perform any obligation hereunder and shall not incur any liability for the nonperformance or breach of any obligation hereunder to the extent that it is delayed in performing, unable to perform or breaches such obligation because of acts of God, war, terrorism, fire, floods, strikes, electrical outages, equipment or transmission failures, or other causes reasonably beyond its control; provided that the Escrow Agent shall use commercially reasonable efforts consistent with accepted corporate trust industry practices to maintain performance without delay or resume performance as soon as reasonably practicable under the circumstances

Section 5. Attachment of Escrow Fund; Compliance with Legal Orders

In the event that any escrow property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the property deposited under this Agreement, the Escrow Agent is hereby expressly authorized, in its sole discretion, to obey and comply with all writs, orders or decrees so entered or issued, which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction, and in the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the parties hereto or to any other person, firm or corporation, by reason of such compliance

notwithstanding such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

Section 6. Tax Matters

(a) Reporting of Income. The Escrow Agent shall report to the Internal Revenue Service, as of each calendar year-end, and to [Developer or City, as applicable] all income earned from the investment of any sum held in the Escrow Account against the Developer or the City, as and to the extent required under the provisions of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code").

(b) Preparation and Filing of Tax Returns. The Developer or the City is required to prepare and file any and all income or other tax returns applicable to the Escrow Account with the Internal Revenue Service and all required state and local departments of revenue in all years income is earned in any particular tax year as and to the extent required under the provisions of the Code.

(c) Payment of Taxes. Any taxes payable on income earned from the investment of any sums held in the Escrow Account shall be paid by the Developer or the City, whether or not the income was distributed by the Escrow Agent during any particular year as and to the extent required under the provisions of the Code.

(d) Unrelated Transactions. The Escrow Agent shall have no responsibility for the preparation and/or filing of any tax or information return with respect to any transaction, whether or not related to the Agreement [or a related agreement], that occurs outside the Escrow Account.

Section 7. Resignation or Removal of Escrow Agent

The Escrow Agent may resign as such following the giving of thirty (30) days prior written notice to the other parties hereto. Similarly, the Escrow Agent may be removed and replaced following the giving of thirty (30) days prior written notice to the Escrow Agent by the other parties hereto. In either event, the duties of the Escrow Agent shall terminate (30) days after receipt of such notice (or as of such earlier date as may be mutually agreeable); and the Escrow Agent shall then deliver the balance of the moneys or assets then in its possession to a successor escrow agent as shall be appointed by the other parties hereto as evidenced by a written notice filed with the Escrow Agent.

If the other parties hereto have failed to appoint a successor prior to the expiration of thirty (30) days following receipt of the notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for

the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon all of the parties hereto.

Section 8. Termination

This Agreement shall terminate upon receipt of a letter, signed on behalf of the Developer and the City by authorized representative thereof, the Escrow Agent agrees to sell the investments held in the Escrow Account and to pay the full balance and proceeds of the Escrow Account to the Developer or the CITY or as the Developer and the City shall direct.

Section 9. Notices

Any notice, consent or request to be given in connection with any of the terms or provisions of this Agreement shall be in writing and be given in person, by facsimile transmission, courier delivery service or by mail, and shall become effective (a) on delivery if given in person, (b) on the date of delivery if sent by facsimile or by courier delivery service, or (c) four business days after being deposited in the mail, with proper postage for first-class registered or certified mail, prepaid.

Until notified in writing by the appropriate party of a change to a different address, notices shall be addressed as follows:

(i) if to the Developer:

[INSERT DEVELOPER INFO]

Attention:

Fax Number:

(ii) if to the City:

Attention: Steven Kueny, City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

Fax Number: _____

(iii) if to the Escrow Agent:

[INSERT ESCROW AGENT INFO]

Fax Number: (____) _____

Section 10. Waiver of Trial by Jury

Each party hereto hereby agrees not to elect a trial by jury of any issue triable of right by jury, and waives any right to trial by jury fully to the extent that any such right shall now or hereafter exist with regard to this Agreement, or any claim, counterclaim or other action arising in connection herewith. This waiver of right to trial by jury is given knowingly and voluntarily by each party, and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue.

Section 11. Governing Law, Counterparts

This Agreement shall be construed in accordance with the laws of the State of California. It may be executed in several counterparts, each one of which shall constitute an original and all collectively shall constitute but one instrument.

Section 12. Amendment, Modification or Waiver

This Agreement may be amended or modified and any term of this Agreement may be waived if such amendment, modification or waiver is in writing and signed by all parties.

Section 13. Assignments of Interests

No assignment of the interest of any of the parties hereto shall be binding upon the Escrow Agent unless and until written evidence of such assignment in form satisfactory to the Escrow Agent shall be filed with and accepted by the Escrow Agent.

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement as of the date first above written.

Pardee Homes

By _____

Its

City of Moorpark

By _____

Its City Manager

XXXXXXX

As Escrow Agent

By _____

Its