

**MOORPARK CITY COUNCIL
AGENDA REPORT**

To: Honorable City Council

From: Steven Kueny, City Manager *SK*

Prepared by: Nancy Burns, Senior Management Analyst *Nancy Burns*

Date: May 10, 2006 (CC Mtg. of May 17, 2006)

Subject: Consider Approval of an Affordable Housing Purchase and Sale Agreement Between the City and William Lyon Homes, Inc. for Vesting Tentative Tract Map 5187

BACKGROUND

Government Code Section 65580 articulates the vital importance of decent housing for all Californians, and the importance of cooperative participation of public and private sectors to expand housing opportunities for all economic levels. To this end, a Development Agreement, entered into on January 23, 2002, between the City and West Pointe Homes, for the residential development of property known as Vesting Tentative Tract Map (VTTM) 5187, RPD 99-2, Zone Change No. 99-01 (ZC 99-1), included a provision for the acquisition of a parcel of approximately two acres, on which to construct twenty (20) dwelling units affordable to low, very low, and moderate income households. The referenced Development Agreement stipulated the provision of five (5) units for low income, five (5) units for very low income, and ten (10) units for moderate income households. It also provides for a fee of Seventy Thousand Dollars (\$70,000.00) to be paid for each affordable unit fewer than 20.

DISCUSSION

The City Council adopted Resolution No. 2003-2111 on August 20, 2003, approving Tentative Tract Map (TTM) No. 5405 and Residential Planned Development (RPD) Permit No. 2003-01 for the development of seventeen (17) affordable units, in satisfaction of the above Development Agreement obligation.

The attached Affordable Housing Purchase and Sale Agreement satisfies the Development Agreement requirement for an Affordable Housing Agreement and

Affordable Housing Implementation and Resale Restriction Plan. The Agreement enables the City to purchase any of the seventeen (17) affordable units if eligible low, very low, or moderate income buyers have not been identified when the units are completed and ready for sale. In that event, the City will re-sell the units to qualified low, very low, and moderate income buyers and will cause long term covenants to be recorded against the properties, which will ensure their affordability to low and very low income households for at least 45 years. This is the same process used for Colmer's Moondance project (Tract 5307) and the TR Partners project (Tract 5181).

All of the required fees have been adjusted to reflect the current Consumer Price Index and certain fees will be paid by the Developer upon execution of this Agreement. In addition, funds will be collected from the Developer through each sale escrow for approximately two years' additional property tax. This is being done to assist buyers of the affordable units, in the event that property tax is based on market value of the homes rather than the Affordable Sales Price.

STAFF RECOMMENDATION

Approve the Affordable Housing Purchase and Sale Agreement, subject to final language approval by the City Manager and City Attorney, and authorize City Manager to execute said Agreement.

Attachment: Affordable Housing Purchase and Sale Agreement

**AFFORDABLE HOUSING
PURCHASE AND SALE AGREEMENT**

THIS AFFORDABLE HOUSING PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into as of the _____ day of _____, 2006, by and between WILLIAM LYON HOMES, a California corporation, (hereinafter referred to as "Developer"), and the CITY OF MOORPARK ("City").

RECITALS

WHEREAS, on February 6, 2002, the Moorpark City Council adopted Resolution No. 2002-1938, approving Vesting Tentative Tract Map No. 5187 and Residential Planned Development (RPD) Permit No. 99-02 for the development of two hundred fifty (250) single family detached residential units (Project); and

WHEREAS, RPD 99-02 requires the execution of an Affordable Housing Agreement between the City and the Developer to set forth the procedure for meeting an affordable housing requirement of ten percent (10%) of the total number of approved dwelling units (for RPD 99-02); and

WHEREAS, a Development Agreement between the City and West Pointe Homes, Inc., was entered into on January 23, 2002, (Development Agreement) and Section 6.11 of said Development Agreement stipulates the provision of twenty (20) affordable units on a parcel of approximately two acres in size within the Redevelopment Agency project area; and of the 20 affordable units, five (5) are to be affordable to low income households, five (5) are to be affordable to very low income households, and ten (10) are to be affordable to moderate income households; and

WHEREAS, the same Section 6.11 of the Development Agreement requires that if fewer than 20 dwelling units are approved by the City, the first unit deducted from the 20 required units is to be a moderate income unit, the second such unit a low income unit, and the third such unit a very low income unit, and the Developer shall pay Seventy Thousand Dollars (\$70,000.00) to the City for each such unit fewer than 20. This fee shall be adjusted annually, beginning March 1, 2005, by any increase in the Consumer Price Index (CPI), and must be paid prior to the occupancy of the 50th unit in Tract 5187. The CPI increase shall be determined by using the information provided by the U. S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year, using the month of December over the previous December. In the event there is a decrease in the CPI for any annual indexing, the fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. The CPI increase for March 1, 2005, and March 1, 2006, is 4.4% and 4.5%, respectively and

the \$70,000.00 fee is adjusted to Seventy-Six Thousand Three Hundred Sixty-Nine Dollars (\$76,369.00) as of the date of this Agreement; and

WHEREAS, in addition to the above, the same Section 6.11 of the Development Agreement provides that, in lieu of constructing ten (10) low income and five (5) very low income affordable units, for each of the two hundred fifty (250) dwelling units in Tract 5187, the developer shall pay to the City an In Lieu Fee which shall be used by the City at its sole discretion for the purpose of providing housing that is affordable to low or moderate income households. This In Lieu Fee of Three Thousand Four Hundred Dollars (\$3,400.00) shall be paid prior to the issuance of each building permit for each dwelling unit in Tract 5187, as stipulated in Section 6.11 of the Development Agreement, and shall be adjusted by any increase in the Consumer Price Index (CPI) in the same manner and at the same time as described above. The CPI increase for March 1, 2005, and March 1, 2006, is 4.4% and 4.5%, respectively and the \$3,400.00 fee is adjusted to Three Thousand Seven Hundred Ten Dollars (\$3,710.00) as of the date of this Agreement; and

WHEREAS, on August 20, 2003, the Moorpark City Council adopted Resolution No. 2003-2111, approving Tentative Tract Map No. 5405 and Residential Planned Development (RPD) Permit No. 2003-01 for the development of seventeen (17) affordable single family detached units on approximately 3.15 acres; and

WHEREAS, said Resolution No. 2003-2111 stipulates that an Affordable Housing Agreement between the Developer and the City of Moorpark must be entered into prior to Final Map approval for this subdivision and prior to the occupancy of the first residential unit; said Affordable Housing Agreement must be consistent with the requirements of Resolution 2002-1938 approving Tentative Tract Map 5187, and shall incorporate an Affordable Housing Implementation and Resale Restriction Plan, which Plan includes the initial sales price, buyer eligibility, resale restrictions, respective role of the City and the Developer, and any other item determined necessary by the City; and

WHEREAS, the Developer and City desire that these dwelling units which are affordable to low, very low and moderate income households shall remain available at affordable housing cost to, and occupied by, low and moderate income households for the longest feasible time, but for not less than forty-five (45) years of homeownership, to ensure consistency with the City's provision of affordable housing units in other development projects; and

WHEREAS, affordable housing cost is defined in California Health and Safety Code Section 50052.5(b), with the components of affordable housing cost as found in Section 6920 of Title 25 of the California Code of Regulations; and

WHEREAS, on May 17, 2006, on the request of the Developer, the City Council approved a Final Map for Tract No. 5187 with only 248, not 250, lots for construction of single family detached residential units; and

WHEREAS, Section 6.11 of the Development Agreement provides for the Developer to pay closing costs for each of the affordable units, not to exceed \$5,000.00, one for the subsequent increase in this annual basis or the Consumer Price Index. As of March 1, 2006, this amount has been adjusted to \$5,455.00; and

WHEREAS, Section 3 of the herein referenced Development Agreement provides that any person who acquires an interest in the property referenced therein is deemed to have consented to be bound by the Development Agreement.

NOW, THEREFORE, IT IS AGREED by and between the Developer and the City as follows:

SECTION 1. General Terms.

1.1 The parties agree that this Affordable Housing Purchase and Sale Agreement satisfies the requirements of the referenced Development Agreement and Resolution No. 2002-1938 for Tract 5187, and Resolution No. 2003-2111 for Tract 5405 for an Affordable Housing Implementation and Resale Restriction Plan and Affordable Housing Agreement.

1.2 The parties agree that the seventeen (17) units to be sold to buyers who meet the criteria for very low, low and moderate income (50%, 80% and 120% of median income, respectively) are to be located within RPD 2003-01 and shall consist of four (4) four (4) bedroom and two (2) bath single family detached units with no less than 1,200 square feet to be sold to buyers who meet the criteria for low income (80% percent or less of median income), and four (4) four (4) bedroom and two (2) bath single family detached units with no less than 1,200 square feet to be sold to buyers who meet the criteria for very low income (50 percent or less of median income), and nine (9) four (4) bedroom and two (2) bath single family detached units with a minimum of 1,200 square feet to be sold to buyers who meet the criteria for moderate income (120% of median income). The seventeen (17) units referenced above are collectively referred to as the "affordable units" or "affordable housing units".

1.3 Developer agrees that City shall be responsible at its sole discretion for marketing the affordable units, selecting and qualifying eligible buyers for these units, and overseeing the escrow processes to sell the affordable units to low, very low, and moderate income households, including but not limited to all necessary contracts and related documents (Affordability Documents) to ensure that referenced affordable units remain occupied by low and moderate income households for the longest feasible time. Developer further agrees that the difference between the Affordable Sales Price (as referenced in Section 4.2 of this Agreement) paid by a qualified buyer and market value shall be retained by City as a second deed of trust. In the event of termination of this Agreement, Developer shall in any event comply with the Development Agreement and the conditions of approval for the Project and Tract 5405 and RPD 2003-01.

1.4 All of the affordable units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income persons to satisfy a portion of the City's RHNA (Regional Housing Needs Assessment) obligation. None of the affordable units required by this Agreement shall duplicate or substitute for the affordable housing requirement of any other developer or development project.

SECTION 2. Affordable Housing Fees.

2.1 Prior to occupancy of the fiftieth (50th) residential unit in Tract 5187, Developer agrees to pay City a One Time Fee of Two Hundred Twenty-Nine Thousand One Hundred Seven Dollars (\$229,107.00) and City agrees to use said money at its sole discretion for the purpose of providing housing affordable to very low, low and moderate income households. This amount shall be adjusted on March 1, 2007, by any increase in the Consumer Price Index (CPI) and annually thereafter on each March 1 until paid in full. The CPI increase shall be determined by using the information provided by the U. S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the amount due shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

If for any reason fewer than seventeen (17) lots are included in the recorded final map for Tract No. 5405, then Developer agrees to pay Seventy-Six Thousand Three Hundred Sixty-Nine Dollars (\$76,369.00) to City for each lot fewer than seventeen (17) lots. Developer further agrees that any payments due to City under such event shall be paid to City at the same time and adjusted in the same manner as the One Time Fee referenced above. City agrees to use any payments received under such event at its sole discretion for the purpose of providing housing affordable to very low, low and moderate income households.

2.2 In addition to the One Time Fee, Developer agrees to pay to the City a fee which shall be used by the City at its sole discretion for the purpose of providing housing affordable to very low, low and moderate income households. The Affordable Housing Fee in the amount of Three Thousand Seven Hundred Ten Dollars (\$3,710.00) shall be paid prior to issuance of the building permit for each of 241 dwelling units in the Project (excludes the 7 model home lots, for which the Affordable Housing Fee has been paid prior to execution of this Agreement). Commencing on March 1, 2007, and annually thereafter, the Affordable Housing Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all required fees have been paid. The CPI increase shall be determined by using the information provided by the U. S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the Affordable Housing

Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

2.3 Developer agrees that as a result of two fewer lots for the construction of single family detached residential units in the Final Map for Tract No. 5187 and for prepayment of the Affordable Housing Fee for the seven (7) model home lots in Tract No. 5187 to pay City Thirty-Three Thousand Three Hundred Ninety Dollars (\$33,390.00) upon the execution of this Affordable Housing Purchase and Sale Agreement. City agrees to use said money at its sole discretion for the purposes of providing housing affordable to very low, low and moderate income households.

SECTION 3. Terms of Sale.

3.1. If any conflict exists between this Affordable Housing Purchase and Sale Agreement or the Development Agreement for Tract 5187 or the conditions of approval for the Project, the provision providing the City the most favorable language for assisting eligible first time home buyers who meet the qualifications of very low, low and moderate income shall prevail.

3.2. Developer shall satisfy all mechanic's, laborer's, materialman's, supplier's, or vendor's liens and any construction loan or other financing affecting any unit or lot in RPD 2003-01 before the close of escrow for that unit.

3.3. Developer agrees if it sells any of the affordable units directly to a qualified low or moderate income buyer, as provided for in this Agreement, all requirements of the buyer, including, but not limited to, completion of a City approved homebuyer education training workshop, and execution of the Affordability Documents, shall be included as a requirement of the sale. The language of all such documents shall be approved by City at its sole discretion.

3.4. The parties agree that prior to and upon the sale of an affordable unit to a qualified buyer or City, City may at its sole discretion take any actions and impose any conditions on buyer eligibility and on said sale or subsequent sale of the unit to ensure ongoing affordability to very low, low and moderate income households and related matters. After the sale of an affordable unit by Developer to a qualified buyer or City, City shall have sole responsibility for approving any subsequent sale of that housing unit and enforcing the Affordability Documents. Developer further agrees that City has the sole discretion to make all determinations on buyer eligibility including but not limited to income and household size.

3.5. Developer agrees that the required affordable units in Tract 5405 shall be provided by Developer and ready for occupancy by qualified buyers (or at City's sole discretion sold to City) on terms consistent with this agreement and the Development Agreement, as follows:

The first ten units (5 moderate, 2 low, 3 very low) shall be constructed and ready for occupancy prior to the 100th occupancy in Tract 5187, and the next 7 units (4 moderate, 2 low, 1 very low) shall be constructed and ready for occupancy prior to the occupancy of the 150th unit in Tract 5187.

For purposes of this Section 3., ready for occupancy means final inspection approval of the City's Building Official and Director of Community Development.

3.6. The location of the units to be sold to very low, low and moderate income households in Tract 5405 shall be determined by the City Manager or his/her designee.

SECTION 4. Conditions of Purchase and Sale.

4.1. If a qualified low, very low, or moderate income buyer, as applicable, is identified by City prior to or at the time of final inspection approval of any one of the affordable units, Developer shall open escrow for the sale of said unit as provided for in this Agreement, and shall enter escrow directly with the buyer identified by City, and proceed to closing of said escrow. If a qualified low, very low, or moderate income buyer, as appropriate, has not been identified at the time Developer receives its final inspection approval for an affordable unit, City agrees to purchase the affordable unit required to be provided by Developer for the amount as specified in Section 4.2, subject to market conditions and income limits at time of sale, and at the time as provided for in this Agreement. Developer and City agree to use their best efforts to complete the close of escrow within forty-five (45) days of the final inspection approval of an affordable unit.

4.2. The Affordable Sales Price for the low and moderate income buyers shall not exceed affordable housing cost, adjusted for family size appropriate for the unit, as defined in Sec. 50052.5(b) of California Health and Safety Code. Section 50052.5(h) of the California Health and Safety Code, provides that "adjusted for family size appropriate to the unit" means a household of five (5) persons in the case of a four-bedroom unit. Affordable housing cost includes the components identified in Section 6920 of Title 25 of the California Code of Regulations, such as principal and interest, mortgage insurance, if applicable, insurance, property taxes and assessments, utilities, and homeowner association fees (if applicable). (See Section 50052.5(c) of the California Health and Safety Code.)

The assumptions associated with the following Affordable Sales Price tables for 4-bedroom units for very low, low, and moderate income households (of any size) include a 5% down payment based on the Affordable Sales Price, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, no HOA dues, fire insurance of \$25.00 per month, maintenance costs of \$20.00 per month, and utilities of \$209.00 per month.

4.3 Affordable housing cost for a very low income household of four (4) is 30% times 50% of \$79,500, the current median income for a household of four (4) in Ventura County, divided by 12, and includes the cost components referenced in Section 4.2. The Affordable Sales Price for a very low income household of four (4) or fewer will be One Hundred Nine Thousand Dollars \$109,000, under current market conditions, with the assumptions as shown below.

Very Low Income Household of Four or Fewer Persons
(4 bedrooms 2½ or 3 baths, approximately 1,289 or 1,487 square feet)

Item	Detail	Amount
Affordable Sales Price		\$109,000
Down Payment	5% of Affordable Sales Price	\$5,450
Loan Amount	Affordable Sales Price less down payment	\$103,550
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$114/mo.
Fire insurance		\$25/mo.
Maintenance		\$20/mo.
Utilities		\$209/mo.

The initial purchase price for a very low income household of five (5) or more will be based on affordable housing cost for the actual household size. At this time, the Affordable Sales Price for a household of 5 is \$121,000, and \$133,000 for a household of 6.

4.4 For a low income household of four(4), the current monthly “affordable housing cost” is 30% times 70% of \$79,500, the current median income for a household of four (4) in Ventura County, divided by 12. The Affordable Sales Price for a household of four (4) and fewer is One Hundred Sixty-Eight Thousand Dollars (\$168,000) for both size units, under current market conditions, with the assumptions as shown below.

Low Income Household of Four or Fewer Persons
(4 bedrooms 2½ or 3 baths, approximately 1,289 or 1,487 square feet)

Item	Detail	Amount
Affordable Sales Price		\$168,000
Down Payment	5% of Affordable Sales Price	\$8,400
Loan Amount	Affordable Sales Price less down payment	\$159,600
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$175/mo.
Fire Insurance		\$25/mo.
Maintenance		\$20/mo.
Utilities		\$209/mo.

The initial purchase price for a low income household of five (5) or more will be based on affordable housing cost for the actual household size. At this time, the Affordable Sales Price for a household of 5 is \$184,000 and \$201,000 for a household of 6.

4.5 For a moderate income household, the current monthly “affordable housing cost” is not less than twenty-eight percent (28%) of the gross income of the individual household, and not greater than thirty-five percent (35%) times one hundred ten percent (110%) of area median income, adjusted for household size appropriate to the unit (35% x 110% x \$85,900) (California Health and Safety Code Section 50052.5(b)(3)). The Affordable Sales Price is Three Hundred Thirty-Eight Thousand Dollars (\$338,000) for a household of four (4) or fewer persons, under current market conditions, with the assumptions as shown below.

Moderate Income Household of Four or Fewer Persons
(4 bedrooms 2½ or 3 baths, approximately 1,289 or 1,487 square feet)

Item	Detail	Amount
Affordable Sales Price		\$338,000
Down Payment	5% of Affordable Sales Price	\$16,900
Loan Amount	Affordable Sales Price less down payment	\$321,100
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$352/mo.
Fire Insurance		\$25/mo.
Maintenance		\$20/mo.
Utilities		\$209/mo.

The initial purchase price for a moderate income household of five (5) or more will be based on affordable housing cost for the actual household size. At this time, the Affordable Sales Price for a moderate income household of 5 is \$368,000 and \$398,000 for a household of 6.

4.6. Developer and City acknowledge that changes in market conditions may result in changes to the Affordable Sales Price, Market Price, down payment amounts, mortgage interest rates, anticipated property tax, and other factors for the low and moderate income buyers. Furthermore, if “affordable housing cost”, as defined in Section 50052.5 of California Health and Safety Code, should change in the future, the above guidelines will be modified to achieve substantially the same result as would otherwise have been obtained had it not been changed.

In the event City, in its sole discretion, purchases one or more of the affordable units from Developer in lieu of a qualified buyer, the Affordable Sales Price shall be based on a household size of four (4) persons, consistent with all provisions of this Agreement. Developer agrees that prior to and upon the sale of a required unit to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City may at its sole discretion take any actions and impose any conditions on said sale or subsequent sale of the unit to ensure ongoing affordability to low and moderate income

households and related matters. After the sale of a housing unit by Developer to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City, not Developer, shall have sole responsibility for approving any subsequent sale of that affordable housing unit.

4.7 In addition to its closing costs as the seller, Developer shall pay all of buyers' closing costs, up to a maximum of Five Thousand Four Hundred Fifty-Five Dollars (\$5,455.00) per unit. Beginning on March 1, 2007, and on March 1 for each of fifteen (15) subsequent years, the maximum amount per unit to be paid for closing costs shall be increased annually by any percentage increase in the Consumer Price Index (CPI) for All Urban Consumers for Los Angeles/Orange/Riverside metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the amount due shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. The referenced Developer funded closing costs shall be for the benefit of qualified buyers (or City in lieu of qualified buyers as determined by City in its sole discretion for one or more of the required units) in their acquisition of a unit from Developer. The Developer's payment of buyer's escrow costs shall not exceed the then applicable maximum amount per unit regardless of the number of escrows that may be opened on a specific unit prior to the closing of the initial sale to a qualified buyer or City in lieu of a qualified buyer.

4.8 In addition to the aforementioned closing costs, as part of the sale of each affordable housing unit, Developer agrees to pay City two percent (2%) of the then applicable Affordable Sales Price (Processing Fee) to pay City for City staff time, contract services, out-of-pocket costs, and related costs for the services necessary to qualify eligible buyers, modify the Affordability Documents, if needed, and process the purchase transactions. Developer further agrees that this Processing Fee shall be paid to City at Developer's initial sale of each affordable housing unit, whether it is sold to a qualified buyer selected by City, or to City in lieu of a qualified buyer, as determined by City in its sole discretion.

4.9 Due to current uncertainty regarding the property tax basis for the affordable units (whether property tax will be based on market value as determined by the Ventura County Assessor or Affordable Sales Price), Developer shall, upon the close of escrow of each low and very low income unit, pay City a fee to approximate the additional tax burden for a period of two (2) years for the buyer(s) of each unit, in the event that property tax is levied on the market value rather than the Affordable Sales Price. The fee ("Contingent Property Tax Fee") shall be equal to two (2) times one percent (1%) of the difference between Four Hundred Fifty Thousand Dollars (\$450,000) and the Affordable Sales Price. For a low income household of 4 or fewer, the fee will be Two (2) times Two Thousand Eight Hundred Twenty Dollars (\$2,820), or Five Thousand Six Hundred Forty Dollars (\$5,640), based on the difference between \$450,000.00 and an Affordable Sales Price of \$168,000.00. City agrees to hold these funds in a separate account to be used to reimburse the low and very low income buyers, upon demonstration of payment of their property tax until such time as all of the

contingent Property Tax Fee is expended for its intended purpose as determined by the City at its sole discretion. In the event the basis for property tax becomes the Affordable Sales Price after the close of escrow of a very low or low income unit, the City may, at its sole discretion, use any remaining portion of the Contingent Property Tax Fee for the purpose of providing housing affordable to very low, low and moderate income households. The Contingent Property Tax Fee shall be paid as specified above for each very low and low income unit whether the initial sale is to a qualified buyer or to City for later resale to a qualified buyer.

SECTION 5. Quality of Construction. Developer warrants that the quality of materials and construction techniques of the units constructed in RPD 2003-01 shall in all manner be similar to that of single family units constructed in the City for moderate and high income priced units (including, but not limited to, Tract 5133) and subject to all Conditions of Approval for RPD 2003-01 and shall meet all Building Codes. This includes but is not limited to all windows, appliances, hardware, doors, lighting fixtures and plumbing fixtures. The City's Director of Community Development or his/her designee shall, prior to issuance of a building permit, pre-approve in writing the quality and type of all windows, appliances, hardware, doors, plumbing fixtures, lighting fixtures and other materials to ensure compliance with this Section 5.

SECTION 6. Amenities and Warranties. Developer acknowledges that the affordable units will not be occupied by the City but, if purchased by the City, will be sold to qualified very low, low and moderate income buyer(s). Developer agrees to provide the same amenities and home warranties associated with the units in Tract 5405 as the amenities and home warranties associated with the units in Tract 5187 for the maximum time required by State law, but in no event less than ten (10) years. Developer agrees that all such warranties shall inure to the benefit of and be enforceable by the ultimate occupants of the affordable units, and that all warranties by subcontractors and suppliers shall inure to the benefit of and be enforceable by such occupants. The qualified buyer (or City in lieu of a qualified buyer at its sole discretion) shall have the same choices of finish options as purchasers of the market rate units in other single family units constructed in the City for moderate and high income priced units (including but not limited to Tract 5133) and final walk-through approval of condition of unit before close of sale. Options usually provided to buyers of market rate units in the City shall be provided to City or buyer(s) of the units in RPD 2003-01, including, but not limited to, color and style choices for carpeting and other floor coverings, counter tops, sinks, exterior stucco and trim of any type, fixtures, and other decorative items. The City's Director of Community Development or his/her designee shall approve in writing the quality and type of all floor coverings, counter tops, sinks, light switches, stairway railings, closet doors and interior decorative items prior to installation of said items.

SECTION 7. Defense and Indemnity. Developer agrees to indemnify, hold harmless and defend at its sole expense, with counsel reasonably acceptable to City, any action brought against it or City by a purchaser of an affordable unit for any alleged construction defects or related problems, or any action brought by any party to approve, extend or renew any permit, related actions under CEQA, any subsequent

permits to implement/construct RPD 2003-01 and this Agreement. Developer further agrees to reimburse City for any court costs and/or attorneys' fees which City may be required by the court to pay as a result of any such action. City may, at its sole discretion, participate in the defense of any such action at City's cost, but such participation shall not relieve Developer of its obligation under this Section.

SECTION 8. Waiver. Developer hereby covenants not to bring any action against City to (a) attack, review, set aside, void, or otherwise annul this Agreement, in whole or in part, or (b) recover any compensation or obtain any relief for any injury, damage, loss, or deprivation of any right alleged to have been sustained as a result of City's action on any matter related to this Agreement.

SECTION 9. Defaults and Remedies. Each of the following shall constitute an "Event of Default" by the Developer:

9.1.1 Failure by Developer to duly perform, comply with and observe any of the conditions, terms, or covenants of TTM No. 5405 or RPD No. 2003-01, or this Agreement, or the Development Agreement for the Project, if such failure remains uncured ten (10) days after written notice of such failure from the City to the Developer in the manner provided herein or, with respect to a default that cannot be cured within ten (10) days, if the Developer fails to commence such cure within such ten (10) day period or thereafter fails to diligently and continuously proceed with such cure to completion.

9.1.2 Any representation or warranty contained in this Agreement or in any certificate or report submitted to City by Developer proves to have been incorrect in any material respect when made.

9.1.3 A court having jurisdiction shall have made or rendered a decree or order (a) adjudging Developer to be bankrupt or insolvent; (b) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement on behalf of Developer under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or of any state or other jurisdiction; (c) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of its properties; or (d) directing the winding up or liquidation of Developer, providing, however, that any such decree or order described in any of the foregoing subsections shall have continued unstayed or undischarged for a period of ninety (90) days.

9.1.4 The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment or execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure hereunder) or prior to sale pursuant to such sequestration, attachment, or execution. If Developer is diligently working to obtain a return or release of the property and the City's interests hereunder are not

imminently threatened in City's reasonable business judgment, then City shall not declare a default under this subsection.

9.1.5 The Developer shall have voluntarily suspended its business or dissolved.

9.1.6 Should there occur any default declared by any lender under any loan document or deed of trust relating to any loan made in connection with the Project or property on which the Project is to be constructed, which loan is secured by a deed of trust or other instrument of record.

9.2 Liens. Developer shall pay and promptly discharge when due, at Developer's cost and expense, all liens, encumbrances and charges upon the Project or the underlying property, or any part thereof or interest therein (except the lien of any mortgage, deed of trust or other recorded instrument securing any construction or permanent financing for the Project), provided that the existence of any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than forty-five (45) days after the performance thereof. Developer shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided that within ten days after service of a stop notice or ninety days after recording of a mechanic's lien, Developer shall deposit with City a bond or other security reasonably satisfactory to City in such amounts as City shall reasonably require, but no more than the amount required to release the lien under California law and provided further that Developer shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged, and shall, in any event, cause such lien, encumbrance or charge to be removed or discharged not later than sixty (60) days prior to any foreclosure sale. If Developer shall fail either to remove and discharge any such lien, encumbrance or charge or to deposit security in accordance with the preceding sentence, if applicable, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Developer shall, immediately upon demand therefor by City, pay to City an amount equal to all costs and expenses incurred by City in connection with the exercise by City of the foregoing right to discharge any such lien, encumbrance or charge. To the extent not paid, all costs and expenses paid by the City shall be a lien on the Property pursuant to Civil Code Section 2881.

9.3 Costs of Enforcement. If any Event of Default occurs, City may employ an attorney or attorneys to protect its rights hereunder. Subject to California Civil Code Section 1717, Developer promises to pay to City, on demand, the fees and expenses of such attorneys and all other costs of enforcing the obligations secured

hereby including without limitation, recording fees, receiver's fees and expenses, and all other expenses of whatever kind or nature, incurred by City in connection with the enforcement of the obligations secured hereby, whether or not such enforcement includes the filing of a lawsuit.

9.4 Remedies Not Exclusive. City shall be entitled to enforce payment and performance of any indebtedness or obligation of Developer arising under this Agreement and to exercise all rights and powers under this Agreement or any law now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured hereby may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Agreement nor its enforcement by court action shall prejudice or in any manner affect City's right to realize upon or enforce any other security now or hereafter held by City, it being agreed that City shall be entitled to enforce this Agreement and any other security now or hereafter held by City, as applicable, in such order and manner as City may in its absolute discretion determine. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Agreement to City may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by City, and it may pursue inconsistent remedies.

9.5 Enforcement; Specific Performance. City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof.

9.6 Right of Contest. Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to City or the rights of City hereunder.

9.7 Action at Law; No Remedy Exclusive. City may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement. No remedy herein conferred upon or reserved by City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

9.8 Termination. City's rights and remedies set forth herein shall include as a cumulative remedy the right to terminate this Agreement if an Event of Default is not cured, pursuant to section 9.1 herein. Such termination shall, at a minimum, require full compliance by Developer with the conditions of approval for VTTM 5405, conditions of approval and the Development Agreement for the Project.

SECTION 10. Warranty of Authorized Signatories. Each of the signatories hereby warrants and represents that he or she is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

SECTION 11. Assignment. Developer agrees that City, at City's sole discretion, may assign this Agreement to the Redevelopment Agency of the City of Moorpark (Agency).

SECTION 12. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, legal representatives, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations and/or corporations connected with them, including, without limitation, their insurers, sureties and/or attorneys.

(b) Attorneys' Fees. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, suit or other proceeding, including any and all appeals or petitions therefrom.

(c) Severability. Should any part, term or provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

(d) Assistance of Counsel. Developer and City acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; and (iii) this Agreement is the result of negotiations between the Parties and the advice and assistance of their respective counsel. Each of the Parties has equally participated in the drafting and preparation of this Agreement, and it is the intention of the Parties that the construction or interpretation of this Agreement shall be made without reference to the Party who drafted any portion or particular provision of this Agreement or the relative size and or bargaining power of the Parties.

SECTION 13. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum

process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage, including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.

SECTION 14. Waiver of Protest Rights. Developer agrees that any fees and payments for the Project and Tract 5405 shall be made without reservation, and Developer expressly waives the right to payment of any such fees under protest pursuant to California Government Code Section 66020 and statutes amendatory or supplementary thereto, or any other applicable state or federal law.

SECTION 15. Action at Law; No Remedy Exclusive. City may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement. No remedy herein conferred upon or reserved by City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

SECTION 16. Notices. All notices and other communications which a party desires or is required to give respecting this Agreement must be in writing addressed to the recipient party at its address set forth beneath its signature to this Agreement and must be given personally (including by commercial messenger or courier) or by First Class United States Mail, postage prepaid. Notices shall be deemed to have been effectively given, if given personally, upon receipt (or upon attempted delivery if receipt is refused), and if mailed, three (3) business days following deposit in the United States Mail. A party may change its address for notices only by a notice given in the foregoing manner.

SECTION 17. Amendments and Waivers. No term or provision of this Agreement can be amended or waived, either orally or by a course of conduct, but only by an instrument in writing signed by the party against whom enforcement of such amendment or waiver is sought.

SECTION 18. Entire Agreement. This Agreement, the Development Agreement, and the conditions of approval for the Project and conditions of approval for Tract 5405 and RPD 2003-01 constitute the entire agreement and understanding of the parties with respect to its subject matter and they supersede all prior and

contemporaneous agreements and understandings of the parties with respect to that subject matter.

SECTION 19. Headings and Attachments. The title of this Agreement and the headings of its sections are for convenience of reference only and are not to be referred to in interpreting or construing this Agreement. However, all attachments and exhibits to this Agreement, as well as the Recitals, are a part of this Agreement.

SECTION 20. Governing Law and Interpretation. This Agreement is to be governed by and construed in accordance with the laws of the State of California. No term or provision of this Agreement is to be construed against a party by reason of its having drafted the same. This Agreement is made, entered into and executed in Ventura County, California, and any action filed in any court for the interpretation, enforcement or other action arising from any term, covenant or condition herein shall be filed in Ventura County.

CITY:

CITY OF MOORPARK

DEVELOPER:

WILLIAM LYON HOMES, INC.,
a California corporation

By _____
Patrick Hunter, Mayor

By _____
Thomas J. Mitchell, Senior Vice President
J. Desmond Bunting, Vice President

William Lyon Homes
23975 Park Sorrento, Suite 220
Calabasas, CA 91302

Attest:

By _____
City Clerk

City of Moorpark
Address: 799 Moorpark Avenue
Moorpark, California 93021