

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**To:** Honorable City Council

**From:** Steven Kueny, City Manager 

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

**Date:** June 8, 2006 (CC Mtg. of June 21, 2006)

**Subject:** Consider Approval of an Affordable Housing Purchase and Sale Agreement Between the City and Shea Homes, Limited Partnership, for Vesting Tentative Tract Map 5133

**BACKGROUND**

California Health & Safety Code Section 33413(b)(2)(A)(i) requires that "at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income." Consistent with this requirement, the City's inclusionary policy, as stated in the 2000-2005 Housing Element, is to require that fifteen percent (15%) of all residential units developed within the redevelopment area must be affordable to low and very low income households.

**DISCUSSION**

Shea Homes, the developer of the Canterbury Lane project, received City approval to develop seventy-nine (79) attached and detached condominium units on approximately 9.2 acres, with conditions of approval for Vesting Tentative Tract Map No. 5133 (VTTM 5133) and Residential Planned Development Permit No. 1998-1 (RPD 98-1) both in City Council Resolution No. 99-1666. In addition, Minor Modification No. 1 for this project was approved July 17, 2001, Minor Modification No. 2, approved June 14, 2002, and Resolution No. 2003-2106, adopted July 2, 2003. The above approvals initially anticipated 79 units in the project; at a later time

the project was determined to be in substantial conformance with the original project approvals with seventy-seven (77) units in total.

The attached Affordable Housing Purchase and Sale Agreement sets forth requirements pertaining to the affordable units and related fees for this project and satisfies conditions of approval stipulating an Affordable Housing Agreement and an Affordable Housing Implementation and Resale Restriction Plan.

Due to proposed adjustments to the 100-year flood plain identified on the Flood Insurance Rate Map (FIRM) published by the Federal Emergency Management Agency (FEMA), this project has been able to construct only twenty-six (26) units, instead of the anticipated 77 units. For this reason, the attached Affordable Housing Purchase and Sale Agreement provides for an adjustment to the number of low income units to be provided within this development at this time. As thirty-four percent (34%) of the planned number of 77 units can be built on the site at this time, 34% of the initially anticipated seven (7) low income units (2.38 units) are required to be provided now. Two (2) units will be constructed and thirty-eight percent (38%) of the difference between the estimated market price of \$540,000.00 and the Affordable Sales Price of \$160,000.00 for one low income unit (38% of \$540,000.00 less \$160,000.00) or One Hundred Forty-Four Thousand Four Hundred Dollars (\$144,400) will be provided as a One-Time Affordable Housing Fee.

The initial conditions of approval of the project stipulated specific fees to be paid in lieu of providing very low income units, and those fees will still be paid, in total, and adjusted for increases in the Consumer Price Index (CPI), as indicated in the Affordable Housing Purchase and Sale Agreement ("Agreement").

The Agreement enables the City to purchase either of the two (2) affordable units if eligible low 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 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 the Moondance project (Tract 5307), the TR Partners project (Tract 5181), and has been approved for the Pardee development (Tract 5045) and William Lyon Homes (Tract 5405).

In addition, the City will have the right to purchase two additional units at market price for resale to a moderate, low or very low income household.

**STAFF RECOMMENDATION**

Approve the Affordable Housing Purchase and Sale Agreement, subject to final language approval by the City Manager and City Attorney; authorize City Manager to execute said Agreement; and direct the City Clerk to cause said Agreement to be recorded in the Office of the Recorder of the County of Ventura.

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 SHEA HOMES, LIMITED PARTNERSHIP (hereinafter referred to as "Developer"), and the City of Moorpark ("City").

RECITALS

WHEREAS, California Health & Safety Code Section 33413(b)(2)(A)(i) requires that "at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate income"; and

WHEREAS, California Health & Safety Code Section 33413(c)(1) requires such dwelling units to remain affordable for the longest feasible time, but for not less than 45 years for homeownership units; 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, Developer received City approval to develop seventy-nine (79) attached and detached condominium units on approximately 9.2 acres, generally located southerly of SR 118, easterly of Moorpark Avenue, westerly of Spring Road and north of the Arroyo Simi, consistent with the conditions of approval for Vesting Tentative Tract Map No. 5133 (VTTM 5133) and Residential Planned Development Permit No. 1998-1 (RPD 98-1), both in City Council Resolution No. 99-1666; Minor Modification No. 1, approved July 17, 2001; Minor Modification No. 2, approved June 14, 2002; and Resolution No. 2003-2106, adopted July 2, 2003, all collectively referred to herein as the "Conditions of Approval" and VTTM 5133 and RPD 98-1 are collectively referred to as the Project; and

WHEREAS, Condition No. 39 of the above referenced Conditions of Approval requires the following:

(1) Low Income Housing

(A) Developer shall provide seven (7) three (3) bedroom units of not less than 1,160 square feet in size, to be sold to buyers who meet the criteria for low income households established by the United States Department of Housing and Urban Development for the County of Ventura (80% of Median Income). Four (4) of

said units shall be provided within the development project and scheduled as follows:

- i. The first unit shall be constructed no later than the construction of the twenty-fifth (25<sup>th</sup>) unit.
- ii. The second unit shall be constructed no later than the construction of the fiftieth (50<sup>th</sup>) unit.
- iii. The third unit shall be constructed no later than the construction of the seventy-fifth (75<sup>th</sup>) unit.
- iv. The fourth unit shall be constructed prior to the construction of the last unit.

(B) Three (3) of the required units may be provided outside the development project through such means or methods as purchase buy-downs, or other means approved by the City. The Developer shall be responsible for all costs related to providing the affordable units and shall be responsible for providing the City with verification that the units provided outside the development project are units previously not affordable to low income households. The Developer shall also be responsible for providing the affordable units as follows:

- i. If the affordable units are located within the Moorpark Redevelopment Project Area the units shall be provided on a one-for-one basis.
- ii. If any of the affordable units are located outside of the Moorpark Redevelopment Project Area, the units shall be provided on two units for each required units basis.

The initial sales price, location of the units, buyer eligibility, resale restrictions, respective role of the City and the Developer, and any other item determined necessary by the City shall be set forth in the Affordable Housing Implementation and Resale Restriction Plan, which shall be approved by the City Council prior to recordation of the first final Tract Map for this project.

The Developer and City shall, prior to the occupancy of the first residential unit for the Project, execute an Affordable Housing Agreement that incorporates the Plan in total and is consistent with this Agreement.

## (2) Very Low Income Housing

In lieu of constructing the five (5) Very Low income affordable housing units required, Developer shall pay a fee of Sixty Thousand Dollars (\$60,000) for each of the five units, or a total of Three Hundred Thousand Dollars (\$300,000) to the City (In-Lieu Fee) which shall be used by the City for the purpose of providing housing affordable to Very-Low income households. A pro-rata portion of the In-Lieu Fee in the amount of Three Thousand Seven Hundred Ninety-Seven Dollars and Forty-Seven Cents (\$3,797.47)

per unit shall be paid prior to issuance of the building permit for each dwelling unit in the development project. (This is based on 79 units.)

Commencing October 1, 2001, and annually thereafter, the In-Lieu Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all In-Lieu Fees have been paid. The CPI increase shall be determined by 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 for the preceding twelve month period covering June to June. In the event there is a decrease in the CPI for any annual indexing, the In-Lieu Fee shall remain at its then current amount until such time as the next subsequent indexing which results in an increase.

(3) Preparation Fee

Developer shall pay to City the amount of Five Thousand Dollars (\$5,000.00) for the City's cost to prepare the affordable housing plan and agreement required pursuant to this Condition; and

WHEREAS, during the design process, the Project was determined to be in "substantial conformance" with the original Conditions of Approval with seventy-seven (77) units in total, rather than 79; and

WHEREAS, the above-referenced In Lieu Fee of \$300,000 that results in \$3,797.47 per unit, based on 79 originally anticipated units, was adjusted to Three Thousand Eight Hundred Ninety-Six Dollars and Ten Cents (\$3,896.10) for each of 77 units, and said fee has been adjusted on an annual basis, beginning October 1, 2001, due to a 4.62% increase in the CPI, which resulted in a fee of Four Thousand Seventy-Six Dollars and Ten Cents (\$4,076.10); on October 1, 2002, due to a 1.68% increase in CPI, resulting in an adjusted fee of Four Thousand One Hundred Forty-Four Dollars and Forty-Five Cents (\$4,144.45); on October 1, 2003, due to a 2.42% increase in CPI, resulting in an adjusted fee of Four Thousand Two Hundred Forty-Four Dollars and Seventy Cents (\$4,244.70); on October 1, 2004, due to a 3.97% increase in CPI, resulting in an adjusted fee of Four Thousand Four Hundred Thirteen Dollars and Thirty Cents (\$4,413.30); and on October 1, 2005, due to a 3.61% increase in CPI, resulting in an adjusted fee of Four Thousand Five Hundred Seventy-Three Dollars (\$4,573.00) for each of 77 units; and

WHEREAS, during the commencement of construction, but prior to approval of final building permits for any dwelling units in the project, the Federal Emergency Management Association ("FEMA") issued its updated Digital Flood Insurance Rate Map ("DFIRM"). The DFIRM shows that 51 of the residential units within Tract 5133 are within the floodway, and are therefore unbuildable under Federal and State law; and

WHEREAS, the City of Moorpark has appealed the draft DFIRM, but such appeal, even if successful, will not necessarily alter the designation on the 51 units in question; and

WHEREAS, the Ventura County Water Protection District and the Federal Emergency Management Agency have determined that if certain improvements are made to the Arroyo Simi, the course of flooding in a storm event would change to the extent that the DFIRM could be revised to remove the 51 units from the floodway, thereby making them developable; and

WHEREAS, approximately thirty-four percent (34%) of the 77 units in the Project will be constructed at the time this Agreement was negotiated and executed, resulting in the pro-rata requirement that 2.38 affordable units be constructed as part of the first 26 units of the Project.

NOW, THEREFORE, IT IS AGREED by and between Developer and 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 Affordable Housing Implementation and Resale Restriction Plan and Affordable Housing Agreement referred to in the recitals.

1.2 The parties agree that two (2) of the first twenty-six (26) dwelling units approved for occupancy in Tract 5133 shall consist of three (3) bedroom units of not less than 1,160 square feet, and shall be sold to buyers who meet the criteria for low income households (80% of median income). The 2 units referenced above are referred to as the "affordable units" or "affordable housing units".

1.3 City shall be responsible for marketing the affordable units, selecting and qualifying eligible buyers for the units, and overseeing the escrow processes to sell the affordable units to low 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 income households for the longest feasible time. Developer 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 Conditions of Approval.

**SECTION 2. Affordable Housing Fees**

2.1 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 In Lieu Fee (Affordable Housing Fee) in the amount of Four Thousand Five Hundred Seventy-Three Dollars (\$4,573.00) shall be paid prior to issuance of the building permit for each of the 77 dwelling units in the Project. In the event the Affordable Housing Fee has not been paid for any of the first 26 units in the Project, such fees shall be paid prior to occupancy of the first unit in the Project. Commencing on October 1, 2006, 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 June over the prior month of June. 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.

2.2 In addition to the fee referenced in Section 2.1, Developer shall also pay One Hundred Forty-Four Thousand Four Hundred Dollars (\$144,400.00) to the City prior to the first occupancy of the Project. Developer acknowledges that this payment is intended to compensate the City for approximately Thirty-Eight Percent (38%) of the difference between the estimated market price (\$540,000.00) and the Affordable Sales Price (\$160,000.00) for a low income household of 4 for one unit. City agrees to use this payment at its sole discretion for the purpose of assisting in the provision of housing affordable to very low, low and moderate income households. This fee shall be adjusted, beginning October 1, 2006, and annually thereafter until paid, based on the increase in the Consumer Price Index (C.P.I.) for all urban consumers within the Los Angeles/Orange County/Riverside metropolitan area, using the month of June as reference point for calculating annual change. In the event there is a decrease in the CPI for any annual indexing, the In-Lieu Fee shall remain at its then current amount until such time as the next subsequent indexing which results in an increase. At such time as additional units are constructed in this development, any funds deposited with the City pursuant to this Section 2.2 shall be credited without interest toward the Affordable Housing Fee due to the City for the remaining units in the Project.

### SECTION 3. Terms of Sale.

3.1 This Agreement shall supersede Condition No. 39 of TTM 5133, as set forth in Resolution No. 99-1666, and Condition No. 2 of RPD No. 98-1, also as set forth in Resolution No. 99-1666. If any conflict exists between this Agreement and the Conditions of Approval for Tract Map No. 5133 and/or RPD No. 98-1, the provisions of this Agreement 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 the project which has been designated for an affordable unit, before the close of escrow for that affordable unit.

3.3 Developer agrees if it sells any of the affordable units directly to a qualified low income buyer, a City approved homebuyer education training workshop, and execution of City approved documents for the transaction, including a promissory note, deed of trust, and resale restriction agreement and option to purchase (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 low 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 low income units shall be provided by Developer and occupied by qualified buyers (or at City's sole discretion sold to City) on terms consistent with this agreement and the Conditions of Approval as specified in the following schedule:

Prior to Final Inspection Approval of	# of Low Income Units
23 <sup>rd</sup> Market Unit	1 <sup>st</sup> and 2 <sup>nd</sup>

3.6 The first two (2) required affordable units shall be identified as Unit No. 8 and Unit No. 13. The City Manager or designee may approve different unit numbers within the project so long as each unit contains no less than 1,160 square feet.

3.7 At such time as additional units are constructed in this Project, the following schedule shall apply with regard to the provision of the remaining affordable units.

Prior to Final Inspection Approval of	# of Low Income Units
41 <sup>st</sup> Unit	3 <sup>rd</sup>
56 <sup>th</sup> Unit	4 <sup>th</sup>

63rd	5 <sup>th</sup>
70th	6th
73rd	7th

City shall determine at its sole discretion which of the affordable units within the project will be sold to each qualified low income buyer and which units shall be the affordable units..

3.8 No less than thirty (30) days prior to the offering for sale to the general public of the 26<sup>th</sup> unit in the Project, Developer shall provide City with a written notice of said intended sale. Said notice shall include the proposed sale price. Within thirty (30) days of receiving said notice, City may purchase the above-referenced unit and enter into escrow at the stated price or such other price as may be negotiated by the parties. If City does not respond in writing, accepting the offer within thirty (30) days of receiving Developer's notice of intended sale, Developer may proceed with offering the affected unit for sale to the general public. Developer warrants that said price shall be no higher than what would be offered to a bona fide qualified purchaser from the general public. City warrants that if it exercises its right to purchase, it will purchase said unit for the purpose of reselling it to a qualified first time home buyer with income not exceeding moderate income. Upon mutual agreement of the City and Developer, said first time home buyer may be substituted for City with the requirement that the City will work with the buyer to finance the purchase of the unit. Buyer shall receive all the same new home warranties as the buyers of any market rate unit in the Project. In the event the City does not exercise its right to purchase a unit under this paragraph, Developer agrees to extend this right for one (1) unit of the remaining fifty-one (51) units.

Developer also agrees to offer for sale to City no fewer than one (1) unit (two if the City doesn't exercise its right to purchase Unit 26) of the remaining fifty-one (51) units in the Project in the same manner as referenced above. This unit shall have no fewer than three (3) bedrooms and two (2) baths and contain no fewer than 1,160 square feet. The location of this unit shall be selected by the Director of Community Development prior to issuance of the twenty-seventh (27<sup>th</sup>) residential building permit for the Project.

Developer shall also give the City right of first refusal to acquire any of the first 23 units that fall out of escrow, not otherwise required to be sold to the City or a qualified buyer as a part of the Developer's affordable housing requirement, as provided for in the Affordable Housing Purchase and Sale Agreement. Upon receipt of Developer's written notice, City shall have thirty (30) days to enter into escrow to purchase any units offered for sale, and proceed to timely closing of escrow.

**SECTION 4. Conditions of Purchase and Sale.**

4.1 If a qualified low income buyer is identified by City prior to or at the time of completion of either one of the affordable units, and by the date on which final inspection approval is issued for said unit, 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 income buyer 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 herein specified, subject to market conditions and income limits at time of sale, and to enter into escrow accordingly. 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-income buyers shall not exceed affordable housing cost, adjusted for family size appropriate for the unit, as defined in Sec. 50052.5(b)(3) of California Health and Safety Code. For a household of 4, the current monthly "affordable housing cost" is 30% times 70% of \$79,500.00, the current median income for a household of 4 in Ventura County, divided by 12. This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below. (See Section 50052.5(c) of the Health and Safety Code.) The Affordable Sales Price for a low income household of 4 is One Hundred Sixty Thousand Dollars (\$160,000.00) under current market conditions, based upon the following assumptions:

Low Income Buyer  
Household of Four

Item	Detail	Amount
Affordable Sales Price		\$160,000
Down Payment	5% of Affordable Sales Price	\$8,000
Loan Amount	Affordable Sales Price less down payment	\$152,000
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$167/mo.
HOA		\$100/mo.
Fire Insurance		\$25/mo.
Maintenance		\$20/mo.
Utilities		\$162/mo.

The assumptions associated with the above purchase price for low income households 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 of \$160,000.00, homeowners' association dues of \$100 per month, fire

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insurance of \$25 per month, maintenance costs of \$20 per month, and utilities of \$162 per month for a household of 4, assuming a 3 bedroom unit.

4.3 In the event the monthly HOA fees for the affordable units exceed \$100.00, for each affordable 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 unit.

4.4 Developer acknowledges that changes in market conditions may result in changes to the Affordable Sales Price, down payment amounts, mortgage interest rates, and other factors for the low income units. Furthermore, if "affordable housing cost", as defined in Section 50052.5(b) 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.

4.5 In the event the City, at 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 4 persons and consistent with all requirements of this section 4. 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 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.

4.6 In addition to its closing costs as the seller, Developer shall pay all of buyer's closing costs for each unit, not to exceed \$6,000 per unit. Beginning October 1, 2007, and on October 1<sup>st</sup> for each of fifteen subsequent years, the maximum \$6,000 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 County/Riverside metropolitan area during the prior year. The calculation shall be made using the month of June over the prior year month of June. 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 at its sole discretion for one or more of the required units) in their acquisition of a unit from Developer, not Developer's acquisition of a unit from one or more third parties. Developer's escrow cost 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.

4.7 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.

#### SECTION 5. Quality of Construction.

Developer warrants that the quality of materials and construction techniques of the affordable units sold to eligible low income buyers or City shall in all manner be identical to that of all other units constructed in this project and subject to all Conditions of Approval and shall meet all Building Codes.

#### SECTION 6. Amenities and Warranties.

Developer acknowledges that the affordable units will not be occupied by City but, if purchased by City, will be sold to qualified low income buyer(s). Developer agrees to provide the same amenities and home warranties associated with the affordable units purchased by City as the amenities and home warranties associated with the market rate units. Developer declares 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. City shall have the same choices of finish options as purchasers of market rate units in the Project and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of market rate units shall be provided to City or buyer(s) of the affordable units, including, but not limited to, color and style choices for carpeting and other floor coverings, counter tops, roofing materials, exterior stucco and trim of any type, fixtures, and other decorative 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 the project, 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

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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 Developer:

9.1.1 Failure by Developer to duly perform, comply with and observe any of the conditions, terms, or covenants of the conditions of approval, or this Agreement, if such failure remains uncured ten (10) days after written notice of such failure from City to 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 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 City's interests hereunder are not

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

9.1.5 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 this project or property on which this 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 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 the City may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the 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 the 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.

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 this project 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

S:\Assistant City Manager\Everyone\Agreements & Amendments\Shea Af Hsg Purch & Sale Agmt Shea-5133-052506-Updated from Redline 061506.DOC

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. Joint Preparation.

This agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.

SECTION 18. 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 19. Entire Agreement.

This Agreement and the Conditions of Approval for this project 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. Should any provision of this agreement be in conflict with any provision of the Conditions of Approval, the provision providing City the most favorable language for assisting eligible first time home buyers who meet the qualifications of low income households shall prevail.

SECTION 20. 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 21. 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.

SECTION 22. Relationship of the Parties.

Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.

SECTION 23. Recordation of Agreement and Amendments.

This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City prior to occupancy of the first unit in the Project.

SECTION 24. Cooperation Between City and Developer.

City and Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.

SECTION 25. Rules of Construction.

The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Conditions of Approval or the Agreement Regarding Conditions of Approval (Tract 5133) By and Between the City of Moorpark and Shea Homes, Inc., the provision providing the most favorable language for assisting eligible low income first time home buyers, as determined by City at its sole discretion shall prevail.

City:

CITY OF MOORPARK

By \_\_\_\_\_  
Patrick Hunter  
Mayor

Developer:

SHEA HOMES, LIMITED PARTNERSHIP

By \_\_\_\_\_  
J.F. Shea, Co., Inc., a Nevada  
Corporation, its General Partner

Attest:

By \_\_\_\_\_  
CITY Clerk

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

Shea Homes, Limited Partnership  
30699 Russell Ranch Road  
Suite 290  
Westlake Village, CA 91361  
Attn: Steve Seemann  
Assistant Secretary

SIGNATORY INFORMATION TO BE PROVIDED