ITEM 8.B.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: Honorable City Council

FROM: Barry K. Hogan, Community Development Director
Prepared By: Joseph Fiss, Principal Planner

DATE: October 30, 2006 (CC Meeting of 11/15/2006)

SUBJECT: Consider General Plan Amendment No. 2003-04, Zone Change No. 2003-03, Development Agreement No. 2004-02, Tentative Tract Map No. 5464, and Residential Planned Development Permit No. 1994-01 Modification No. 6 for Thirty-six (36) Single-family Homes on 28.69 Acres North of Championship Drive and West of Walnut Canyon Road, on the Application of Toll Brothers, Inc.

BACKGROUND

The Public Hearing for this project was opened on July 19, 2006, and continued to the August 2, 2006 hearing, to allow staff time to work with the applicant to clarify details in the draft Development Agreement and to provide additional information on questions raised by City Council. At the August 2, 2006 hearing, the City Council took testimony from the applicant and the public, and continued the open public hearing to September 20, 2006, to resolve issues related to construction access, multi-purpose trails, and oak tree preservation. This public hearing was subsequently continued to the November 15, 2006, to allow the developer an opportunity to resolve concerns with several residents of the existing Moorpark Country Club Estates project and to work with the Homeowner's Association regarding the rights and responsibilities of the existing, and any proposed, homeowner's association. No further changes were required to the plans.

DISCUSSION

At the August 2, 2006 and September 20, 2006 public hearings, there were several comments regarding transferring of approximately three and a half (3-1/2) acres of future Homeowner's Association (HOA) Open Space property to this project. Although Toll Brothers currently owns the property in fee, there was a concern that this property was contracted to be turned over to the HOA for their use and maintenance.

The City Attorney has researched this issue and met with Toll's attorney and determined that, under the Covenants, Conditions, and Restrictions (CC&Rs), Toll is not restricted from encumbering property within the tract (Moorpark Country Club Estates) and after encumbering said property, Toll is allowed to subsequently turn said property over to the Homeowner's Association with such encumbrances. The CC&Rs do not allow the Homeowners Association (HOA) to refuse to accept the property. In this case, Toll is proposing to encumber a portion of the property, known as Lot E of Tract 4928-3, primarily with residential lots and streets.

Staff has spoken with the HOA President and the HOA Attorney regarding the resolution of these concerns. The HOA Board has not taken an official position on this project, with the exception of holding a vote to determine whether or not the homeowners desire that Tract 5464 (the "Mazur" project) be a part of the existing HOA, if the project is approved by the City of Moorpark. On November 6, 2006 the HOA Board met to count votes submitted for the Mazur annexation proposal. The ballots were submitted in a double blind envelope as prescribed by state law, and three homeowners were appointed to count the ballots. There are a total of 201 active accounts in Department of Real Estate phases 1-9. From these eligible lots, a total of 107 ballots were submitted. The results are as follows:

- 81 ballots cast were in favor of the annexation
- 21 ballots cast were against the annexation
- 5 ballots cast abstained

The CC&R's require a 2/3 majority vote (135 yes votes) in the affirmative in order to approve the annexation. Therefore, the proposed annexation did not pass, and this property will not be considered for inclusion in the existing HOA. Special Condition of Approval Number 17 has been amended to reflect that a separate HOA will be created for this project. It has been represented to staff that this vote is not a referendum on either project.

Toll Brothers has informed staff that the Fire District has indicated that it does not need the helipad site for fire fighting purposes. Toll Brothers has indicated its desire to make this site a park for the use of the residents of this subdivision, subject to the acceptance of the park maintenance by the HOA. This change would provide a private park on the north side of Championship Drive for use of the residents. This change would require a Permit Adjustment application.

As the Council may recall the other issues of construction access and preservation of the oak tree have been resolved. More detailed discussion is contained in attachment 1 and in special conditions 23 through 26 of attachment 6.

In addition to the above issue, minor corrections to the Initial Study are required. Section III-77 refers to the potential presence of polychlorinated biphenyls (PCBs) in a

pole-mounted transformer on this site. Mitigation Measure 7-4 was mistakenly dropped, and will be added as follows:

> "Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits, the subsequent environmental assessment shall include visual observation of the pole-mounted transformer for any leakage or staining. If leakage or staining on or around the transformer appear to have occurred, then the project applicant shall inform (in the form of written communication) the utility company which is responsible for mitigating any leakage or staining, and for changing the fluids in the transformer. The project applicant shall also provide copies of the letter to the Ventura County Public Works Department, the City Engineer and Community Development Department demonstrating that communication has occurred between the applicant and the utility company."

It was noted that portions of the Mitigation Monitoring Program were unclear as to whether the mitigations applied to Tract 5463 (Husted) or Tract 5464 (Mazur), without referring back to the narrative. Mitigation Measures 1-1, 1-2, 1-5, and 1-6 have been amended to clarify that they apply to Tract 5464 (Mazur) and Mitigation Measures 1-3 and 1-4 have been amended to clarify that they apply to Tract 5463 (Husted) (See Attachment 2).

The legislative changes shown in attachment 6 reflect all of the changes either directed by Council or recommended by staff since the Planning Commission action.

STAFF RECOMMENDATION

1. Continue to receive public testimony, and close the public hearing.
2. Adopt Resolution No. 2006-____ adopting a Mitigated Negative Declaration and approving General Plan Amendment No. 2003-04.
3. Introduce, for first reading, Ordinance No. ___ approving Zone Change No. 2003-03, and set December 6, 2006, for second reading.
4. Introduce, for first reading, Ordinance No. ___ to adopt the Development Agreement No. 2004-02, and set December 6, 2006, for second reading.
5. Adopt Resolution No. 2006-____ approving Tentative Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01 subject to Conditions of Approval.

ATTACHMENTS:

1. September 20, 2006 Agenda Report (without attachments).
2. Pages 5-3 and 5-4 of the Initial Study as Amended.

3. Draft Resolution No. 2006-___ adopting a Mitigated Negative Declaration and Approving General Plan Amendment No. 2003-04.

4. Draft Ordinance No. ___ approving Zone Change No. 2003-03.

5. Draft Ordinance No. ___ adopting Development Agreement No. 2004-02.

6. Draft Resolution No. 2006-___ approving Tentative Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

FROM: **Barry K. Hogan, Community Development Director**
Prepared By: Joseph Fiss, Principal Planner

DATE: **September 6, 2006 (CC Meeting of 09/20/06)**

SUBJECT: **Consider General Plan Amendment No. 2003-04, Zone Change No. 2003-03, Development Agreement No. 2004-02, Tentative Tract Map No. 5464, and Residential Planned Development Permit No. 1994-01 Modification No. 6 for Thirty-Six (36) Single-Family Homes on 28.69 Acres North of Championship Drive and West of Walnut Canyon Road, on the Application of Toll Brothers, Inc.**

BACKGROUND

The Public Hearing for this project was opened on July 19, 2006 and continued to the August 2, 2006 hearing to allow staff time to work with the applicant to clarify details in the draft Development Agreement and to provide additional information on questions raised by City Council. At the August 2, 2006 hearing, the City Council took testimony from the applicant and the public, and continued the open public hearing to September 20, 2006 to resolve issues related to construction access, multi-purpose trails, and oak tree preservation.

DISCUSSION

Staff has been working with the applicant on the site planning issues and with the City Attorney on the Homeowner's Association issues. The City Council directed that the applicant revise the plans to preserve the sixty (60") inch Heritage Oak tree in place, and to provide a multi-purpose trail on site. The applicant has designed a crib wall, which will be built into the slope, ranging from a height of five (5') feet to twenty-five (25') feet. Staff has added a condition of approval requiring construction of a twelve (12') foot wide multi-purpose trail, along the east side of the site with the location and design subject to review and approval of the Community Development Director. The multi-purpose trail will be designed to take advantage of its proximity to the tree.

Additionally, it was originally thought that construction access could safely be taken from Sarazen Drive, however, after reevaluation, it was determined that all major construction traffic, heavy equipment, and commercial vehicles would need to enter and exit the site from Walnut Canyon Road. A condition of approval has been added to this effect.

At the public hearing, there were several comments regarding transferring of approximately three and a half (3-1/2) acres of future Homeowner's Association (HOA) Open Space Property to this project. Although Toll Brothers currently owns the property in fee, there was a concern that this property was contracted to be turned over to the HOA for their use and maintenance.

The City Attorney has researched this issue and met with Toll's attorney and determined that, under the Covenants, Conditions, and Restrictions (CC&Rs), Toll is not restricted from encumbering property within the tract (Moorpark Country Club Estates) and after encumbering said property Toll is allowed to subsequently turn said property over to the Homeowner's Association with such encumbrances. The CC&Rs do not allow the Homeowners Association (HOA) to refuse to accept the property. In this case, Toll is proposing to encumber a portion of the property, known as Lot E of Tract 4928-3, primarily with residential lots and streets. Staff has added condition of approval Number 26, as follows: "The maintenance of any new streets, as well as a pro-rata share of the entryway and gates, shall be the responsibility of the Homeowners Association for Tract 5464."

STAFF RECOMMENDATION

1. Continue to receive public testimony, and close the public hearing.
2. Adopt Resolution No. 2006-____ adopting a Mitigated Negative Declaration and approving General Plan Amendment No. 2003-04.
3. Introduce, for first reading, Ordinance No. ___ approving Zone Change No. 2003-03, and set October 4, 2006, for second reading.
4. Introduce, for first reading, Ordinance No. ___ to adopt the Development Agreement No. 2004-02, and set October 4, 2006, for second reading.
5. Adopt Resolution No. 2006-____ approving Tentative Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01 subject to Conditions of Approval.

ATTACHMENTS:

1. Updated project exhibits.
2. Draft Resolution No. 2006-___ Adopting a Mitigated Negative Declaration and Approving General Plan Amendment No. 2003-04.
3. Draft Ordinance No. ___ Approving Zone Change No. 2003-03.
4. Draft Ordinance No. ___ adopting Development Agreement No. 2004-02.
5. Draft Resolution No. 2006-___ Approving Tentative Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01.

Table 1
Mitigation Monitoring Program

EIR Section/Mitigation Program		Timing of Mitigation	Responsible Party(ies)	Monitoring Action
3.1	**Aesthetics**			
Mitigation Measures				
1-1	Prior to issuance of construction permits, the project applicant shall work with the City of Moorpark planning staff to strategically plant native tree species (e.g., California Sycamores or other native tree species) and/or other native plants on the north and east facing manufactured slope (on Mazur Parcel below lots 25-30) situated above the proposed detention basin that would screen homes on lots 25-30 from view of vehicles traveling southbound on Walnut Canyon Road.	Prior to issuance of construction permits	Applicant, Community Development Director	Site inspection
1-2	Prior to issuance of construction permits, the project applicant shall work with the City of Moorpark planning staff to create a palette of natural plant species to be planted on the manufactured slopes below the project site (Mazur Parcel) and the proposed detention basin along Walnut Canyon Road to emulate the surrounding natural environment.	Prior to issuance of construction permits	Applicant, Community Development Director	Review of plans, site inspection
1-3	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits, the applicant, shall provide for the dedication of 67.2 acres of open space within the City of Moorpark in lieu of providing on-site (Husted Parcel) open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. This shall be accomplished either through purchase of land approved by the City or payment of fee for City to purchase open space.	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits	Applicant, Community Development Director	Completion of land dedication/receipt of fees
1-4	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits, the	Prior to recordation of the Final Tract	Applicant, City Engineer	Review of grading plans

CC ATTACHMENT 2

Table 1

Mitigation Monitoring Program (contd.)

	EIR Section/Mitigation Program	Timing of Mitigation	Responsible Party(ies)	Monitoring Action
	applicant shall submit grading plans to the City Engineer for review to ensure that the proposed Husted Parcel subdivision plan meets grading standards set forth in Section 17.38.100, landform grading standards of Section 17.38.110 and hillside street standards of Section 17.38.120 of the Hillside Management Ordinance. The Husted subdivision grading plan shall be approved at the discretion of the City Engineer.	Map, initiation of rough grading or issuance of any subsequent permits		
1-5	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits, the applicant, shall provide for the dedication of 18 acres of open space within the City of Moorpark in lieu of providing on-site (Mazur Parcel) open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. This shall be accomplished either through purchase of land approved by the City or payment of fee for City to purchase open space.	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits	Applicant, Community Development Director	Completion of land dedication/receipt of fees
1-6	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits, the applicant shall submit grading plans to the City Engineer for review to ensure that the proposed Mazur Parcel subdivision plan meets grading standards set forth in Section 17.38.100, landform grading standards of Section 17.38.110 and hillside street standards of Section 17.38.120 of the Hillside Management Ordinance. The Mazur subdivision grading plan shall be approved at the discretion of the City Engineer.	Prior to recordation of the Final Tract Map, initiation of rough grading or issuance of any subsequent permits	Applicant, City Engineer	Review of grading plans
3.2	**Agricultural Resources**			
Mitigation Measures				

RESOLUTION NO. 2006 -____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND APPROVING GENERAL PLAN AMENDMENT NO. 2003-04 FOR A CHANGE OF LAND USE DESIGNATIONS ON 28.69 ACRES NORTH OF CHAMPIONSHIP DRIVE AND WEST OF WALNUT CANYON ROAD AND 43.04 ACRES NORTH OF CHAMPIONSHIP DRIVE AND EAST OF GRIMES CANYON ROAD, BOTH ON THE APPLICATION OF TOLL BROTHERS, INC.

WHEREAS, on June 28, 2005, the Planning Commission adopted Resolution Nos. PC-2005-483 and PC-2005-484, recommending that the City Council adopt a Mitigated Negative Declaration and approve General Plan Amendment No. 2003-04, to amend the General Plan land-use designations from Rural Low Residential (RL), Medium Low Density Residential (ML) and Open Space-2 (OS-2) to Medium Low Density Residential (ML) and Open Space-2 (OS-2), on 28.69 acres located north of Championship Drive and west of Walnut Canyon Road (Site 1), and from Rural Low Residential (RL), Open Space-2 (OS-2) and Public Institutional (PUB) to Medium Low Density Residential (ML), Open Space (OS-2) and Public Institutional (PUB), on 43.04 acres located north of Championship Drive and east of Grimes Canyon Road (Site 2), both on the application of Toll Brothers, Inc.; and

WHEREAS, at duly noticed public hearings on July 19, 2006, August 2, 2006, September 20, 2006, and November 15, 2006, the City Council considered the agenda reports for the projects affected by General Plan Amendment No. 2003-04 and any supplements thereto and written public comments; opened the public hearings and took and considered public testimony both for and against the proposals, closed the public hearings and reached decisions on this matter; and

WHEREAS, the City Council has read, reviewed, and considered the proposed Mitigated Negative Declaration prepared for the projects referenced above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. ENVIRONMENTAL DOCUMENTATION: The City Council finds and declares as follows:

A. The Mitigated Negative Declaration and Initial Study prepared for these projects, attached as Exhibit C, are complete and have been prepared in compliance with CEQA, and City CEQA Procedures.

B. The City Council has considered information in the environmental document in its deliberations of these projects before making decisions concerning the projects and the Mitigated Negative Declaration.

C. The Mitigation Measures have been incorporated into the project conditions of the accompanying Vesting Tentative Tract Map and Residential Planned Development for these projects.

D. The Mitigated Negative Declaration reflects an independent judgment of the City Council.

SECTION 2. ADOPTION OF MITIGATED NEGATIVE DECLARATION: The Mitigated Negative Declaration prepared in connection with General Plan Amendment 2003-04, Zone Change 2003-03, Development Agreement Nos. 2004-02 and 2004-01, Tentative Map Nos. 5464 and 5463, Residential Planned Development Permit No. 1994-01 Modification No. 6, and Residential Planned Development Permit No. 2003-04 is hereby adopted.

SECTION 3. CITY COUNCIL APPROVAL: General Plan Amendment 2003-04 is approved, amending the General Plan Land Use Map for Sites 1 and 2 as shown in Exhibits "A" and "B" attached hereto.

SECTION 4. The effective date of General Plan Amendment No. 2003-04 shall be concurrent with the effective date of the Ordinances for Zone Change No. 2003-03 and Development Agreement Nos. 2004-02 and 2004-01, whichever occurs last.

SECTION 5 CERTIFICATION OF ADOPTION: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 15th day of November, 2006.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Attachments:

Exhibit A – General Plan Amendment Map for Site 1: 28.69 Acres West of Walnut Canyon Road

Exhibit B – General Plan Amendment Map for Site 2: 43.04 Acres East of Grimes Canyon Road

Exhibit C – Mitigated Negative Declaration

EXHIBIT A
GENERAL PLAN AMENDMENT 2003-04
SITE 1: 28.69 ACRES WEST OF WALNUT CANYON ROAD

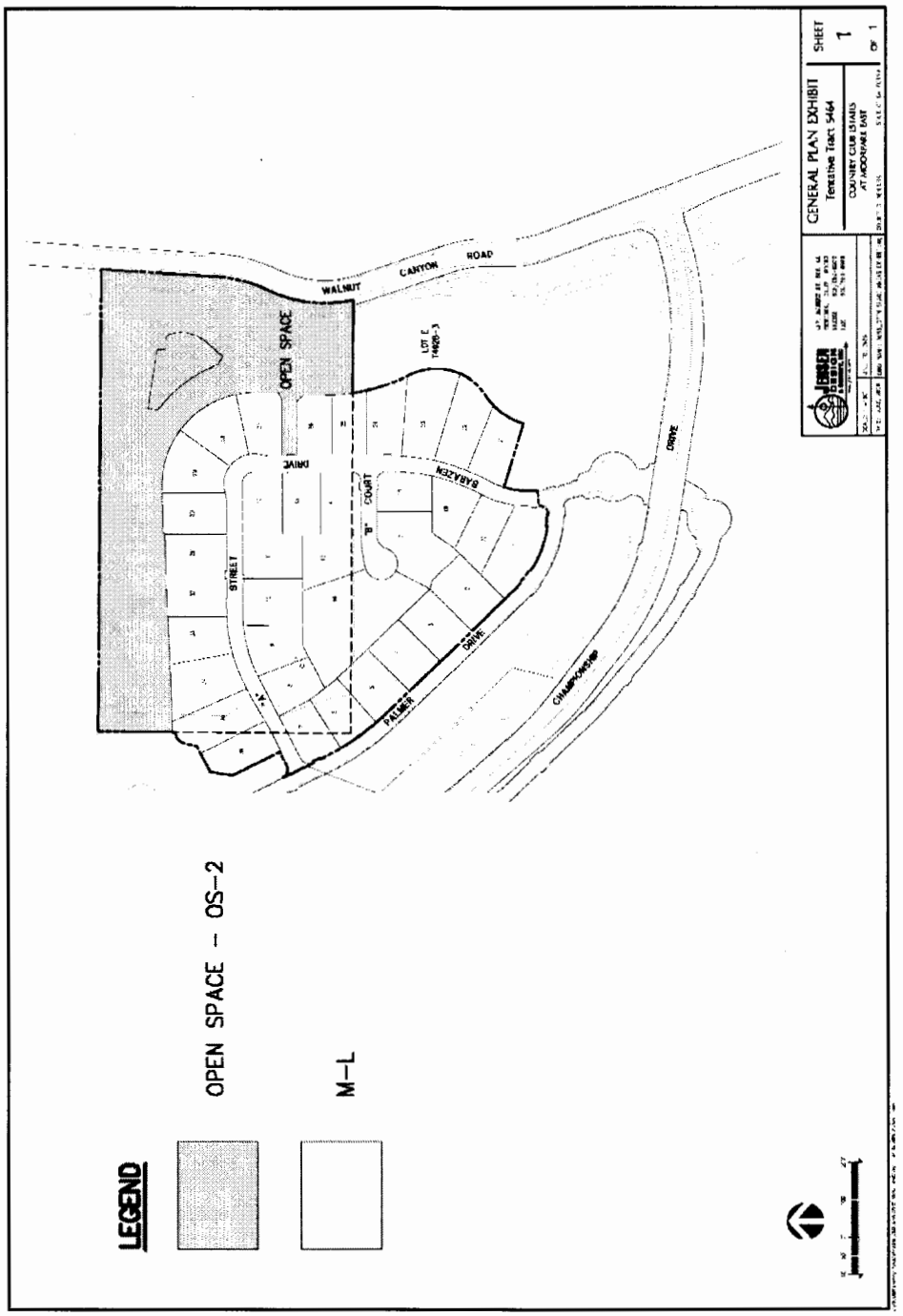


EXHIBIT B
GENERAL PLAN AMENDMENT 2003-04
SITE 2: 43.04 ACRES EAST OF GRIMES CANYON ROAD

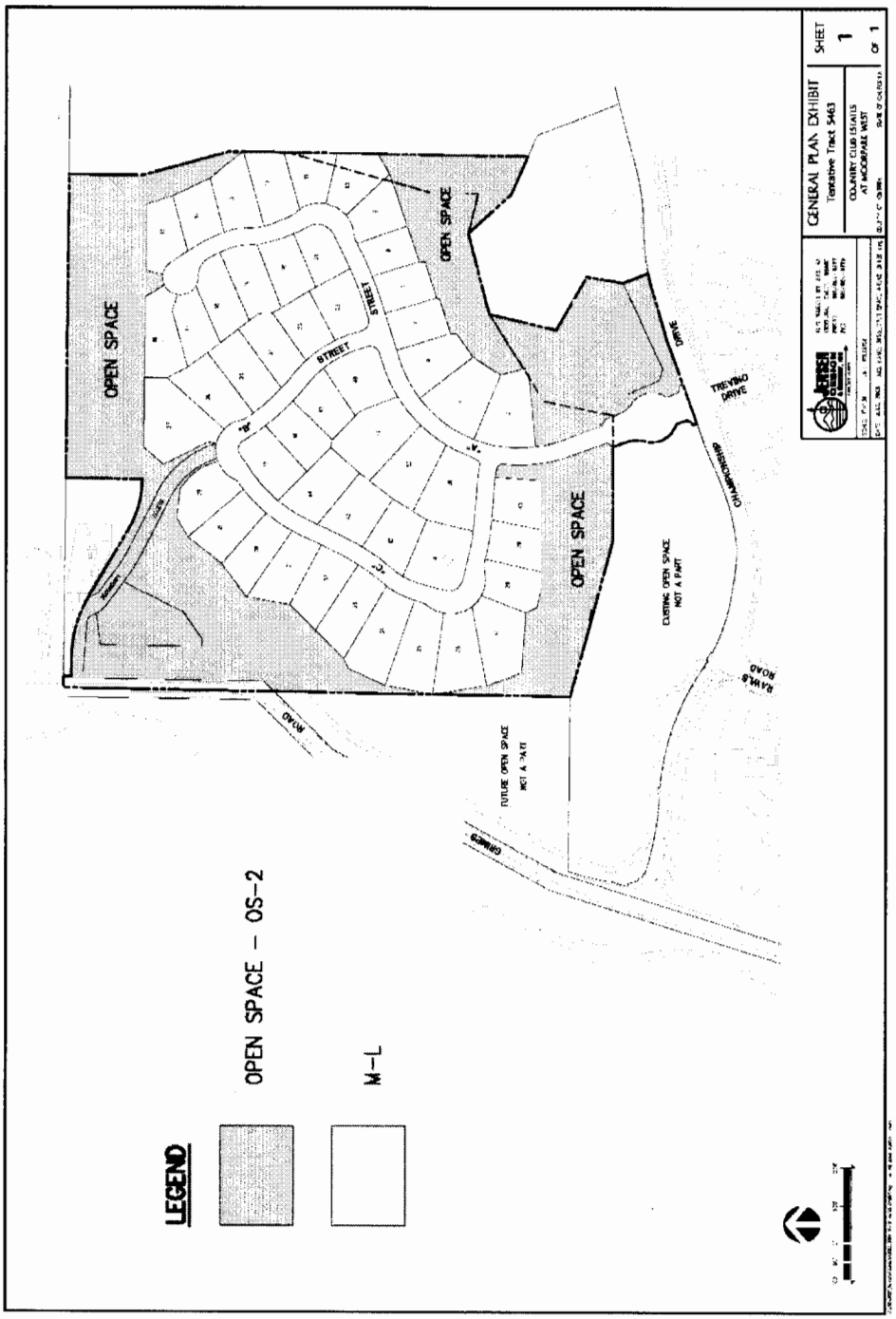


EXHIBIT C
MITIGATED NEGATIVE DECLARATION AND INITIAL STUDY

PROVIDED TO COUNCIL UNDER SEPARATE COVER
AND AVAILABLE ON THE
CITY'S HOMEPAGE

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ZONE CHANGE NO. 2003-03, FOR CHANGES OF ZONING ON 28.69 ACRES NORTH OF CHAMPIONSHIP DRIVE AND WEST OF WALNUT CANYON ROAD AND 43.04 ACRES NORTH OF CHAMPIONSHIP DRIVE AND EAST OF GRIMES CANYON ROAD, BOTH ON THE APPLICATION OF TOLL BROTHERS, INC.

WHEREAS, on June 28, 2005, the Planning Commission adopted Resolution Nos. PC-2005-483 and PC-2005-484, recommending approval to the City Council of Zone Change No. 2003-03, for changes of zoning from Rural Exclusive – 5 acre minimum lot size (RE-5ac), Residential Planned Development – 1.48 units per acre (RPD-1.48u) and Open Space – 500 acre minimum (OS-500ac) to Residential Planned Development – 2.0 units per acre (RPD-2.0u) and Open Space – 500 acre minimum (OS-500ac) on 28.69 acres located north of Championship Drive and west of Walnut Canyon Road (Site 1), and from Rural Exclusive – 5 acre minimum lot size (RE-5ac), Open Space – 500 acre minimum (OS-500ac), and Institutional (I) to Residential Planned Development – 1.73 units per acre (RPD-1.73u), Open Space – 500 acre minimum (OS-500ac) and Institutional (I) on 43.04 acres north of Championship Drive and east of Grimes Canyon Road (Site 2) , both on the application of Toll Brothers, Inc.; and

WHEREAS, at duly noticed public hearings on July 19, 2006, August 2, 2006, September 20, 2006, and November 15, 2006, the City Council considered the agenda reports for the projects affected by Zone Change No. 2003-03 and any supplements thereto and written public comments; opened the public hearings and took and considered public testimony both for and against the proposals, closed the public hearings and reached decisions on this matter; and

WHEREAS, the City Council has read, reviewed, considered and adopted a Mitigated Negative Declaration prepared for the projects referenced above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Zone Change No. 2003-03 is consistent with the General Plan as amended by General Plan Amendment No. 2003-04.

SECTION 2. The Zoning Map described and referenced in Chapter 17.12 of Title 17, Zoning, of the Municipal Code of the City of Moorpark is hereby amended for Sites 1 and 2 as shown in Exhibits "A" and "B" attached hereto.

SECTION 3. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 4. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 5. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 15th day of November, 2006.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk

Attachments:

Exhibit A: Zone Change Map for Site 1: 28.69 Acres West of Walnut Canyon Road
Exhibit B: Zone Change Map for Site 2: 43.04 Acres East of Grimes Canyon Road

EXHIBIT – A
ZONE CHANGE NO. 2003-03
SITE 1: 28.69 ACRES WEST OF WALNUT CANYON ROAD

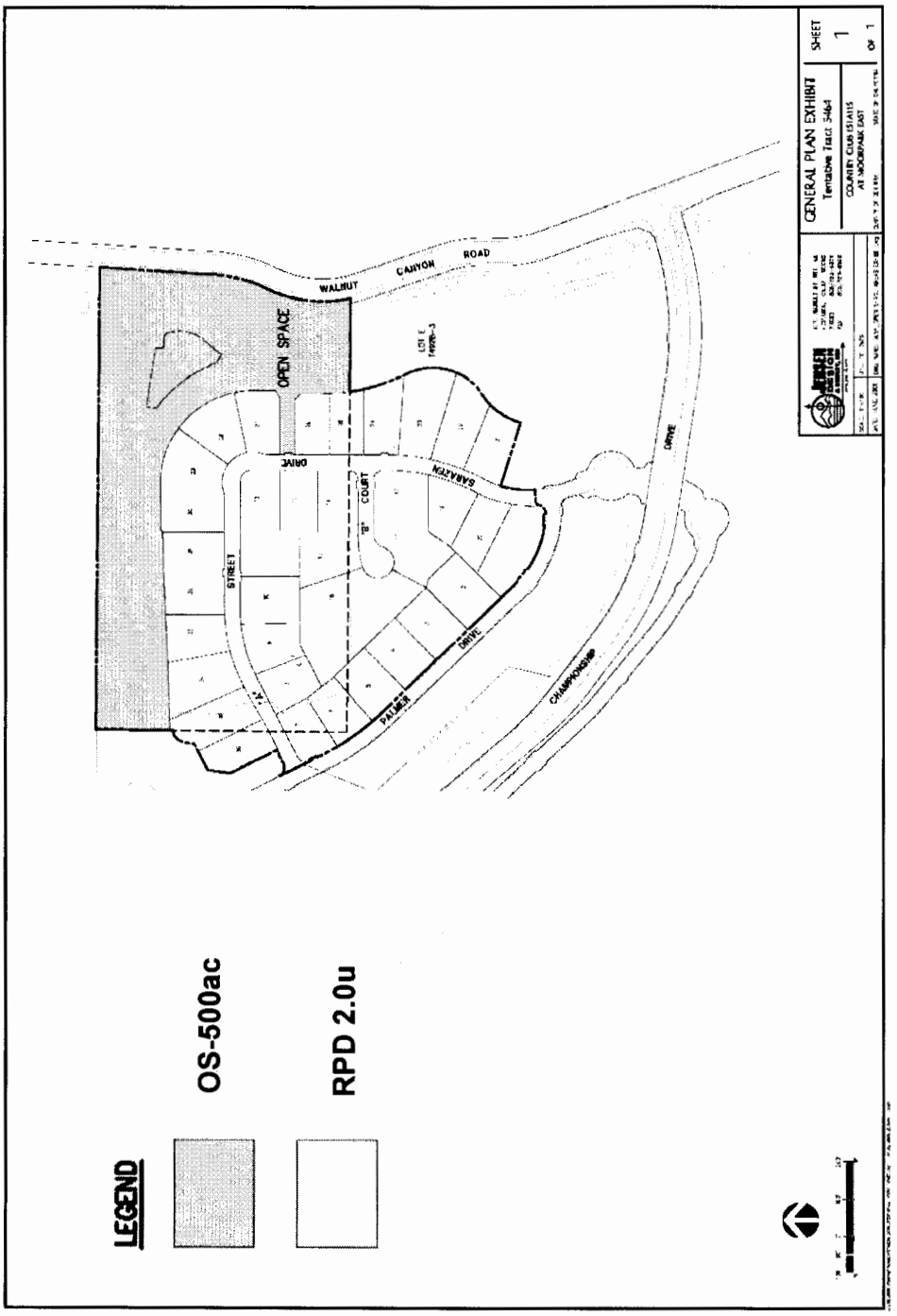
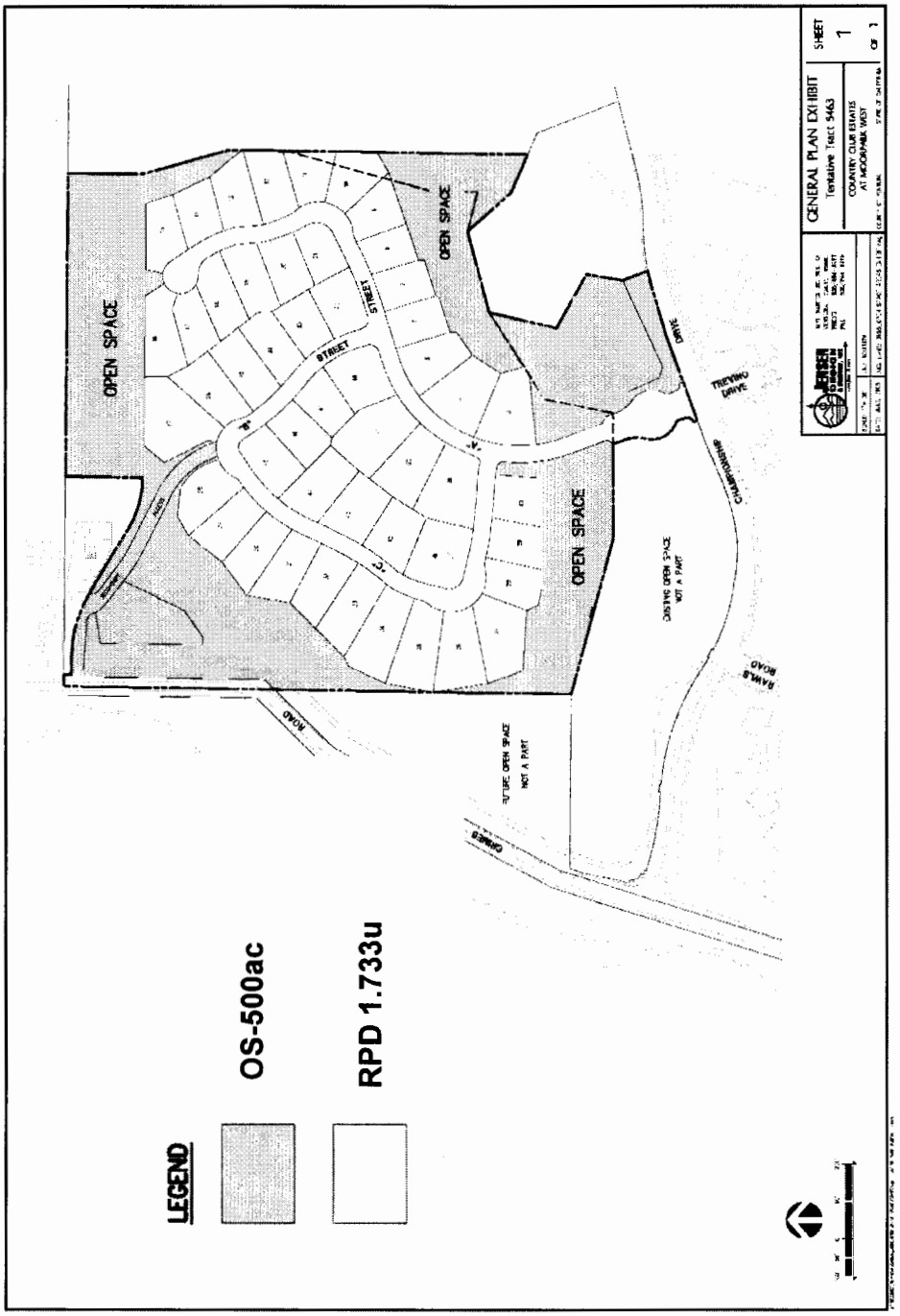


EXHIBIT – A
ZONE CHANGE NO. 2003-03
SITE 2: 43.04 ACRES EAST OF GRIMES CANYON ROAD



ORDINANCE NO. ___

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOORPARK AND TOLL LAND XX LIMITED PARTNERSHIP FOR 28.69 ACRES NORTH OF CHAMPIONSHIP DRIVE AND WEST OF WALNUT CANYON ROAD.

WHEREAS, Section 65864, Article 2.5, Chapter 4, Division 1, Title 7 of the State Planning and Zoning Law provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, the owners of the land with an application for Residential Planned Development Permit No. 1994-01; Modification No. 6, General Plan Amendment 2003-04, Zone Change 2003-03, Tentative Map No. 5464 have applied to the City of Moorpark to seek a Development Agreement with the City pursuant to Chapter 15.40 of the Moorpark Municipal Code; and

WHEREAS, the Planning Commission of the City of Moorpark on June 27, 2006, adopted Resolution No. PC 2006-503 recommending to the City Council approval of Development Agreement No. 2004-02, proposed in conjunction with the project initiated by Toll Brothers, Inc., consisting of Residential Planned Development Permit No. 1994-01; Modification No. 6, General Plan Amendment 2003-04, Zone Change 2003-03, Tentative Map No. 5464; and

WHEREAS, the City Council on November 15, 2006, adopted the Mitigated Negative Declaration for the Toll Brothers, Inc. project consisting of Residential Planned Development Permit No. 1994-01; Modification No. 6, General Plan Amendment 2003-04, Zone Change 2003-03, Tentative Map No. 5464, and Development Agreement No. 2004-02, as having been completed in accordance with the California Environmental Quality Act, (CEQA), the CEQA Guidelines and the City's CEQA procedures; and

WHEREAS, duly noticed public hearings were conducted by the City Council on July 19,, 2006, August 2, 2006, September 20, 2006, and November 15, 2006 to consider the Development Agreement and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to the Development Agreement and has given careful consideration to the content of the Development Agreement, and has reached a decision on the matter.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Moorpark does hereby find as follows:

A. The Development Agreement is consistent with the General Plan as amended by General Plan Amendment No. 2003-04.

B. The Development Agreement and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Mitigated Negative Declaration.

C. The Development Agreement is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby adopts Development Agreement No. 2004-02 (attached hereto) between the City of Moorpark, a municipal corporation, and Toll Land XX Limited Partnership, and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 3. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said Agreement.

SECTION 4. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark

Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 15th day of November, 2006.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

Attachment:
EXHIBIT A - Development Agreement No. 2004-02

Recording Requested By
And When Recorded Return to:

CITY CLERK
CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021
EXEMPT FROM RECORDER'S FEES
Pursuant to Government Code
§ 6103

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
~~CANYON CREST RANCH PARTNERS-MOORPARK, LLC~~
~~(BIRDSALL)~~
TOLL LAND XX LIMITED PARTNERSHIP

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE §65868.5

EXHIBIT A

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on _____, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and ~~Canyon Crest Ranch Partners Moorpark, LLC, a California limited liability company~~Toll Land XX Limited Partnership, the owner of real property within the City of Moorpark generally referred to as Vesting Tentative Tract Map 54~~37~~64 (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Agreement, City and Developer agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

   1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.

   1.2. Prior to approval of this Agreement, but after the approval of the Mitigated Negative Declaration (MND), Mitigation Measures, and Mitigation Monitoring and Reporting Program ("the MMRP") for the Project Approvals as defined in subsection 1.3 of this Agreement, the City Council of City ("the City Council") approved General Plan Amendment No. 20043-034 ("GPA 20043-034"), for approximately ~~42.4~~28.69 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached hereto and incorporated herein, and changed the zoning of the Property pursuant to Zone Change No. 20043-023 ("ZC 20043-023").

   1.3. GPA 20043-034, ZC 20043-023, Vesting Tentative Tract Map 54~~37~~64 (Tract 54~~37~~64) and Residential Planned Development Permit No. ~~2001~~994-05~~1~~ Modification No. 6 (RPD ~~2001~~994-05~~1~~ Mod. No. 6) [collectively "the Project Approvals"; individually "a Project Approval"] provide for the development of the Property and the construction of certain off-site improvements in connection therewith ("the Project").

   1.4. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.

1.5. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. Developer anticipates developing the Property over a minimum of three (3) years. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and conditions imposed upon the development of the Property pursuant to the Project Approvals and this Agreement and to provide the public benefits and improvements specified in this Agreement.

1.6. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City, as amended by GPA 20043-034.

1.7. On ~~April 25, 2006~~_____, the Planning Commission of City commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing recommended approval of the Agreement.

1.8. On ~~May 17, 2006~~_____, the City Council commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on ~~June 7, 2006~~_____, approved the Agreement by Ordinance No. ~~336~~ ____("the Enabling Ordinance").

2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may also be referred to hereinafter as "the site" or "the Project".

3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement.

3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property except any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

3.2. Release Upon Transfer. Upon the sale or transfer of any of Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or transferred subsequent to the operative date of the sale or transfer, provided that the

Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivered to City a written assumption agreement, duly executed by the purchaser or transferee and notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.

3.3. In the event of a partial assignment or transfer, the assumption agreement referenced in subsection 3.2 shall include provisions acceptable to the City to ensure that the phased construction of affordable housing units contemplated by Section 6.9 is achieved, regardless of the identity or number of developers of the Project.

4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.

4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by the Project Approvals and this Agreement.

4.2. Development Standards. All design and development standards, including but not limited to density or intensity of use and maximum height and size of buildings, that shall be applicable to the Property are set forth in the Project Approvals and this Agreement.

4.3. Building Standards. All construction on the Property shall adhere to the Uniform Building Code, including the Fire Resistive Design Manual, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, the Uniform Code for Building Conservation and the Uniform Administrative Code in effect at the time the plan check or permit is approved and to any federal or state building requirements that are then in effect (collectively "the Building Codes").

4.4. Reservations and Dedications. All reservations and dedications of land for public purposes that are applicable to the Property are set forth in the Project Approvals and this Agreement.

5. Vesting of Development Rights.

5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure

of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment.

In furtherance of the Parties intent, as set forth in this subsection, no future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property provided the Property is developed in accordance with the Project Approvals and this Agreement. Nothing in this subsection shall be construed to limit City's right to insure that Developer timely provides all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement.

5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.

5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do not include building permits.

Subsequent Approvals shall be governed by the Project Approvals and by the applicable provisions of the Moorpark General Plan, the Moorpark Municipal Code and other City ordinances, resolutions, rules, regulations, policies, standards and requirements as most recently adopted or approved by the City Council or through the initiative or referendum process and in effect at the time that the application for the Subsequent Approval is deemed complete by City (collectively "City Laws"), except City Laws that:

(a) change any permitted or conditionally permitted uses of the Property from what is allowed by the Project Approvals;

(b) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the number of proposed buildings or other improvements from what is allowed by the Project Approvals.

(c) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required by the Project Approvals to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;

(d) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations;

(e) control residential rents;

(f) prohibit or regulate development on slopes with grades greater than 20 percent, including without limitation Moorpark Municipal Code Chapter 17.38 or any successor thereto, within the Property; or

(g) modify the land use from what is permitted by the City's General Plan Land Use Element at the operative date of this Agreement or that prohibits or restricts the establishment or expansion of urban services including but not limited to community sewer systems to the Project.

5.4. Term of Subsequent Approvals. The term of any tentative map for the Property, or any portion thereof, shall expire ten (10) years after its approval or conditional approval or upon the expiration or earlier termination of this Agreement, whichever occurs first, notwithstanding the provisions of Government Code Section 66452.6(a) or the fact that the final map may be filed in phases. Developer hereby waives any right that it may have under the Subdivision Map Act, Government Code Section 66410 et seq., or any successor thereto, to apply for an extension of the time at which the tentative map expires pursuant to this subsection. No portion of the Property for which a final map or parcel map has been recorded shall be reverted to acreage at the initiative of City during the term of this Agreement.

The term of any Subsequent Approval, except a tentative map or subdivision improvement or other agreements relating to the Project, shall be one year; provided that the term may be extended by the decision

maker for two (2) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's ~~Department of~~ Community Development Department prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval.

It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, any Developer shall have the right, at its election, to apply for a new permit to replace a permit that has expired or is about to expire.

5.5. Modification o~~f~~ Approvals. Throughout the term of this Agreement, Developer shall have the right, at its election and without risk to or waiver of any right that is vested in it pursuant to this section, to apply to City for modifications to Project Approvals and Subsequent Approvals. The approval or conditional approval of any such modification shall not require an amendment to this Agreement, provided that, in addition to any other findings that may be required in order to approve or conditionally approve the modification, a finding is made that the modification is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.

5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from Developer if all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. Consistent with subsection 5.1 of this Agreement, in no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.

5.7. 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.

6. Developer Agreements.

6.1. Developer shall comply with (i) this Agreement, (ii) the Project Approvals, (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and (iv) the MMRP of the MND and any subsequent or supplemental environmental actions.

6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.

6.3. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Development Fee shall be Nine-Thousand ~~Two~~Five-Hundred ~~Ninety-One~~ Dollars ($9,500~~291~~.00) per residential unit and Forty-~~One~~Twoe-Thousand ~~Eight~~Seven-Hundred ~~Twelve Fifty~~ Dollars ($42,750~~1,812~~.00) per gross acre of institutional land on which the use is located. The fee shall be adjusted annually commencing on July 1, 2008~~one (1) year after the operative date of this Agreement by any increase in the Consumer Price Index (CPI) until all fees have been paid~~ the larger increase of a) or b) as follows:~~.~~

a) The Consumer Price Index (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 /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month ~~which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase)~~ of October over the prior October.

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced ~~Index~~ Indices for any annual indexing, the Development Fee shall remain at its then

current amount until such time as the next subsequent annual indexing which results in an increase.

6.4. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Citywide Traffic Fee shall be Six-Thousand ~~Five~~Six-Hundred ~~Thirty-One~~ Dollars ($6,600~~531~~.00) per residential unit, and Twenty-Nine-Thousand, ~~Three~~Seven-Hundred ~~Ninety-One~~ Dollars ($29,700~~391~~.00) per acre of institutional land on which the institutional use is located. Commencing on January 1, 2008, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

6.5. As a condition of issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a community services fee as described herein (Community Services Fee). The Community Services Fee may be expended by City in its sole and unfettered discretion. The amount of the Community Services Fee shall be Two-Thousand, ~~Three~~Four-Hundred ~~Forty-Nine~~ Dollars ($2,400~~349~~.00) per residential unit, and ~~Seven~~Ten-Thousand ~~Four~~Eight-Hundred ~~Thirty-Six~~ Dollars ($10,800~~7,436~~.00) per gross acre of institutional land on which the institutional use is located. The fee shall be adjusted annually ~~C~~commencing on January 1, 2008~~, and annually thereafter, the Community Services Fee shall be adjusted~~ by the larger increase of a) or b) as follows:~~any increase in the Consumer Price Index (CPI) until all Community Services Fees have been paid.~~

a) The Consumer Price Index (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 /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.~~August over the prior month of August.~~

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in ~~the CPI~~ both of the referenced Indices for any annual indexing, the Community Services Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

6.6. As a condition of the issuance of a ~~building~~ grading permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a Public Facilities fee as described herein (the "Public Facilities Fee"). The Public Facilities Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Public Facilities Fee shall be ~~Ten~~Twelve-Thousand Dollars ($12~~0~~,000.00) per residential unit and Fifty-Four-Thousand Dollars ($54,000) per gross acre of institutional land on which the institutional land is located, and shall be fully paid for the entire project or institutional use prior to the issuance of the grading permit. The fee shall be adjusted annually commencing January 1, 2008 by the larger increase of a) or b) as follows: ~~one (1) year after the operative date of this Agreement by any increase in the Consumer Price Index (CPI) until all fees have been paid.~~

a) The Consumer Price Index (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/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month ~~which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).~~ of October over the prior October.

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Index~~ices~~ for any annual indexing, the Public Facilities Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

6.7. Prior to the issuance of the building permit for each of the first twenty-nine (29) residential dwelling units within the Property, Developer shall pay a fee in lieu of the dedication of parkland and related improvements (Park Fee). On the operative date of this Agreement, the amount of the Park Fee shall be ~~Fifteen~~Twenty-Four-Thousand ~~Three Hundred Forty-Eight~~ Dollars ($24,000~~15,348~~.00) for each residential dwelling unit and Fifty Cents ($0.50) per square foot of each building used for institutional

purposes within the Property. The fee shall be adjusted annually commencing January 1, 2008 by the larger increase of a) or b) as follows:~~one (1) year after the operative date of this Agreement by any increase in the median price of single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index).~~

a) The Consumer Price Index (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/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in ~~the Housing~~both of the referenced Index~~ices~~ for any annual indexing, the Park Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

~~In the event the Housing Index referred to above in this subsection is discontinued or revised, such successor index with which it is replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if the Housing Index had not been discontinued or revised.~~

Developer agrees that the above-described payments shall be deemed to satisfy the parkland dedication requirement set forth at California Government Code Section 66477 et seq. for the Property.

6.8. Provided that prior to recordation of the first final map for Tract 54~~37~~64 or March 31, 2008, whichever is later, Ventura County Waterworks District No. 1 or any successor entity confirms that it has sufficient recycled water to serve the public and community owned landscaped areas within Tract 54~~37~~64, then Developer shall construct appropriately sized water lines, pumping facilities, and storage facilities for recycled water consistent with the requirements of the City, Waterworks District No. 1 and Calleguas Water District. Said lines shall be installed prior to the final cap being placed on all streets. Developer shall provide service including payment of any connection and meter charges and shall use recycled water for medians and parkways for all public streets, and any other public and commonly owned landscaping and recreation areas. The amount of recycled water needed and areas to be irrigated by recycled water shall

be determined by City at its sole discretion. The recycled water line(s) shall be installed for each City approved phase of development and the recycled water shall be in use prior to the first occupancy approval for each City approved phase of development if such recycled water is available within one-half mile of the Property. Developer shall install dual water meters and services for all locations determined necessary by City at its sole discretion to insure that both potable and recycled water are available where restroom and drinking fountains are planned.

6.9. ~~Developer shall pay a Thirty Thousand Dollar ($30,000.00) Affordable Housing Fee to fulfill a portion of the Affordable Housing requirement. The Fee shall be adjusted annually commencing one (1) year after the operative date of this Agreement by any increase in the median price of single family detached for sale housing in Ventura County as most recently published by Data Quick (Housing Index). In the event there is a decrease in the Housing Index 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. The Affordable Housing Fee shall be paid prior to the occupancy of the 15th residential unit in Tract 5437.~~

~~In the event the Housing Index referred to above in this subsection is discontinued or revised, such successor index with which it is replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if the Housing Index had not been discontinued or revised.~~

Developer agrees to provide a total of twelve (12) affordable housing units; four (4) units for Tract 5464 (two (2) low and two (2) very low) and eight (8) units per the Development Agreement for Tract 5463 (four (4) low and four (4) very low) as further described in the subsection 6.9.

To partially meet this obligation, the Developer agrees to transfer clear~~the~~ title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, three (3) low and two (2) very low units toward the total required by this Agreement and the Development Agreement for Tract 5463. Prior to the issuance of a grading permit for either Tract, Developer shall transfer the property to the City free and clear of any and all encumbrances and structures. Should grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) affordable units shall be applied to Tract.5463 Should the grading permit for Tract 5464 precede grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining (fifth (5th))

affordable unit may be applied toward the fulfillment of one (1) affordable housing unit for Tract 5463.

To meet its obligation for the remaining seven (7) affordable units, the Developer shall ~~also~~ provide ~~one~~ three (~~1~~3) four (4) bedroom and two (2) bath single family detached unit with a minimum of 1,200 square feet to be sold to ~~a~~ buyers who meets the criteria for low income (80 percent or less of median income); and ~~one~~ four (~~1~~4) four (4) bedroom and two (2) bath single family detached unit with a minimum of 1,200 square feet to be sold to ~~a~~ buyers who meets the criteria for very low income (50 percent or less of median income). All single family detached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18) feet measured from the back of sidewalk, meet minimum setback requirements of the City RPD zone, include concrete roof tiles, and other amenities typically found in moderate priced housing in the City (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The duplex type units in Tracts 3841, 3070-2, 3070-3, 3070-4, 4170, and 5133 are considered to be single family detached units for the purposes of this subsection 6.9.

Subject to City's sole discretion, this obligation, in whole or part, may be met by providing attached for sale units in lieu of single family detached units at the ratio of one and one-half (1½) attached for sale unit for each single family detached unit. In the event such substitution results in any fraction of a unit, then the requirement shall be rounded up to the next higher whole number (e.g. the requirement of 3 single family detached units are met by 4½ attached for sale units, then 5 attached for sale units are required). Each of the substituted units shall be at the income level of the units for which they are being substituted and shall contain at least 1,200 square feet, three bedrooms and attached or assigned parking for two parking spaces. The approval of such substituted units may require refurbishment or replacement of carpeting, flooring, cabinets, windows, appliances and other items to bring the units up to standards as determined by the Community Development Director at his or her sole discretion. Should the Developer acquire the attached units within two (2) years from the operative date of this Agreement, and offer them for sale to the City as provided for in subsection 6.9, the attached for sale units in lieu of single family detached units shall be at a ratio of one and one-quarter (1 ¼) attached for sale unit for each single family detached unit.

The attached for sale units shall be a minimum of three bedrooms and a minimum of 1200 square feet.

Prior to acquiring any housing unit to meet the obligations of this subsection 6.9, Developer must first receive the written approval of City Manager or his/her authorized representative that the unit meets the

requirements of this Development Agreement and any applicable Affordable Housing Agreement for Tract 5437~~64~~. Developer agrees that lack of a written response from City as specified in subsection 7.7 of this Agreement is deemed a rejection of the Developer's request.

Developer may construct rather than purchase the housing units required of it pursuant to this subsection 6.9 so long as Developer meets all requirements of this Agreement and the proposed project and property on which the units are proposed to be constructed conform to the City's General Plan, Zoning Codes, and the Moorpark Municipal Code. Nothing in this Agreement requires City to consider a General Plan Land Use Amendment, Zone Change, or any other land use entitlement to allow or permit said proposed construction.

Developer further agrees that it has the obligation to provide the required number of housing units as specified above regardless of the cost to acquire or construct said housing units. Developer further agrees that City has no obligation to use eminent domain proceedings to acquire any of the required housing units and that this subsection 6.9 is specifically exempt from the requirements of subsection 7.2 of this Agreement.

Prior to recordation of the Final Map for this Project, the City Council in its sole and unfettered discretion shall approve an Affordable Housing Implementation and Resale Restriction Plan (Plan) that provides policies and guidelines to ensure that all of the required affordable housing units are provided consistent with this Agreement and applicable State laws and remains affordable for the longest feasible time. The Plan shall include but not be limited to the following items: Initial Purchase Price, market value, buyer eligibility, affordability and resale covenants and restrictions, equity share and second trust deed provisions, respective role of City and Developer, the responsibility of providing the affordable units by each developer in the event of successors and/or assigns to this Agreement, the final number of single family detached and single family attached units that shall be provided to meet Developer's affordable housing obligation, quality of and responsibility for selection of amenities and applicability of home warranties in the event Developer constructs housing units or purchases newly constructed units from other developers/builders to meet all or a portion of its obligation and any other items determined necessary by the City. 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. Developer shall pay the City's direct costs for preparation and review of the Affordable Housing Implementation and Resale Restriction Plan and the Affordable Housing Agreement up to a maximum of Ten-Thousand Dollars ($10,000.00).

The ~~one~~ three (~~1~~3) low income units and ~~one~~ four (~~1~~4) very low income units shall be provided by Developer and occupied by qualified buyers (or at City's sole discretion sold to City) prior to occupancy of the ~~15~~18th residential unit in Tract ~~5437~~5464 and the 25th residential unit in Tract No. 5463, or the 39th unit of the combined Tracts, whichever first occurs.

All units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income and very low income persons (in the quantity as specified in this Agreement) to satisfy a portion of the City's RHNA obligation and if within the Moorpark Redevelopment Agency project area to satisfy a portion of the Agency's affordable housing goals. 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. All subsequent approvals required of City under this subsection 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and any Affordable Housing Agreement required by this Agreement or the conditions of approval for Vesting Tentative Tract Map No. ~~5437~~5464 and/or RPD No. ~~200~~1994-~~5~~1 Mod. No. 6, then the Affordable Housing Agreement shall prevail.

All affordable housing units provided under this subsection 6.9 that received a final inspection prior to January 1, 2007, must conform to the Uniform Building Code in effect as of July 1, 1983. Developer shall pay at its sole cost and expense for a city selected contractor to perform a home inspection and/or occupancy inspection by the City Building Official, and Developer at its sole cost and expense shall make any needed corrections to conform to inspection reports and current building codes. At Developer's sole cost and expense, the roof shall be inspected by a city selected contractor and if necessary as determined by City at its sole discretion repaired or replaced by a city selected licensed roofing contractor and certified to have no less than a 20-year life. Developer at its sole cost and expense shall purchase a standard home warranty policy for a three-year period commencing on the date the unit is first sold to a qualified low or very low income household and shall include but not be limited to coverage of heating and air conditioning systems, automatic garage door opener, and all built-in appliances and include a deductible/service call amount of no more than One Hundred Dollars ($100.00) per service request. For these units, City may approve a composition shingle roof in lieu of a concrete tile roof if all other provisions of this subsection 6.9 are met. In no event shall a wood shake or shingle roof be approved.

For housing units constructed by Developer to meet its obligation under this subsection 6.9 or acquired by Developer that were not previously occupied (i.e. built after the Operative Date of this Agreement and either not previously occupied or occupied by a bona fide buyer for less than

twelve months), Developer agrees to provide the same home warranties associated with other units in the same project as the constructed or purchased unit, or the maximum time required by State law, whichever is longer, 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 low income and very low income 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 other units in the project and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of units shall be provided to buyer(s) of the required units including but not limited to color and style choices for carpeting and other floor coverings. Flooring selections shall be made within 10 days of Developer's request for selection.

In the event the monthly HOA fees exceed $100.00, 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 unit.

The Affordable Sales Price for the low-income buyers shall not exceed affordable housing cost, as defined in Sec. 50052.5(b) (2) of California Health and Safety Code. As provided in Section 50052.5(h) of the California Health and Safety Code, a household~~family~~ of five is considered appropriate for a four bedroom unit, so pricing is based on a household of five (5) no matter what size household actually purchases the unit. The monthly "affordable housing cost" would be 30% times 70% of $85,900, the current median income for a household of five (5) in Ventura County, divided by twelve (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 would be $171,000 under current market conditions, based upon the following assumptions:

Low Income Buyer

Item	Detail	Amount
Affordable Sales Price		$171,000
Down Payment	5% of Affordable Sales Price	$8,550
Loan Amount	Affordable Sales Price less down payment	$162,450
Interest Rate	6.25%	

Property Tax	1.25% of Initial Purchase Price	$178/mo.
HOA		$100/mo.
Fire Insurance		$20/mo.
Maintenance		$20/mo.
Utilities		$209/mo.

The assumptions associated with the above purchase price figures for low income households include a 5% down payment, based on Affordable Sales Price of $171,000, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of $100 per month, fire insurance of $20 per month, maintenance costs of $20 per month, and utilities of $209 per month.

The Affordable Sales Price for the very low-income buyers shall not exceed affordable housing cost, as defined in Section 50052.5(b)(2) of California Health and Safety Code. As provided in Section 50052.5(h) of the California Health and Safety Code, a family of five is considered appropriate for a four bedroom unit, so pricing is based on a household of five (5), no matter what size household actually purchases the unit. The monthly "affordable housing cost" would be 30% times 50% of $85,900, the current median income for a household of five (5) in Ventura County, divided by twelve (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 very low income household of 5 would be $107,000 under current market conditions, based upon the following assumptions:

Very Low Income Buyer

Item	**Detail**	**Amount**
Affordable Sales Price		$107,000
Down Payment	3% of Affordable Sales Price	$5,350
Loan Amount	Affordable Sales Price less down payment	$101,650
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	$111/mo.
HOA		$100/mo.
Fire Insurance		$20/mo.
Maintenance		$20/mo.

Utilities		$209/mo.

The assumptions associated with the above purchase price figures for very low income households include a 5% down payment, based on Affordable Sales Price of $107,000, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of $100 per month, fire insurance of $20 per month, maintenance costs of $20 per month, and utilities of $209 per month.

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 both low income and very low 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. The Affordable Housing Implementation and Resale Restriction Plan shall address this potential change.

In the event the City, at its sole discretion purchases one or more of the units from Developer in lieu of a qualified buyer, the Affordable Sales Price shall be based on a household size of four (~~5~~4) persons, and consistent with all requirements of this subsection 6.9. 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 very 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 housing unit.

Developer shall pay closing costs for each unit, not to exceed six thousand three hundred dollars ($6,300.00). Beginning ~~March~~ July 1, 2008, and on ~~March~~ July 1st for each of fifteen subsequent years, the maximum $6,300.00 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/Riverside/Orange County 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

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. The 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.

6.10. Developer agrees that the Mitigation Measures included in the City Council approved MND and MMRP, or subsequent environmental clearance document approved by the Council, set forth the mitigation requirements for air quality impacts. Developer agrees to pay to City an air quality mitigation fee, as described herein (Air Quality Fee), in satisfaction of the Transportation Demand Management Fund mitigation requirement for the Project. The Air Quality Fee may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.

At the time the Fee is due, City may at its sole discretion require Developer to purchase equipment, vehicles, or other items, contract and pay for services, or make improvements for which Developer shall receive equivalent credit against Air Quality Fee payments or refund of previous payments.

The Air Quality Fee shall be One-Thousand ~~Seven~~Eight-Hundred ~~Nine~~ Dollars ($1,~~709~~800.00) per residential unit to be paid prior to the issuance of each building permit for the first residential unit in Tract ~~5437~~5464. Commencing on January 1, 200~~7~~8, and annually thereafter the Air Quality Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all 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 /Riverside/Orange County 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 fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

For institutional uses, the Air Quality Fee shall be calculated by the ~~Director of~~ Community Development Director consistent with the then applicable Ventura County Air Quality Management District URBEMIS Model prior to the first occupancy approval for each institutional use.

6.11. Developer hereby waives any right that it may have under California Government Code Section 65915 et. seq., or any successor thereto, or any other provision of Federal, State, or City laws or regulations for application or use of any density bonus that would increase the number of dwelling units approved to be constructed on the Property.

6.12. Developer agrees to cast affirmative ballots for the formation of one or more assessment districts and levying of assessments, for the maintenance of parkway and median landscaping, street lighting, including but not limited to all water and electricity costs, and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action. Prior to recordation of the first final map for the Property, if required by City at its sole discretion, Developer shall also form one or more property owner associations to assume ownership and maintenance of open space land, trails, storm water detention and/or debris basins and related drainage facilities, landscaping, and other amenities, and to comply with the National Pollutant Discharge Elimination System (NPDES) requirements of the Project. The obligation of said property owner associations shall be more specifically defined in the conditions of approval of Tract ~~5437~~5464 and RPD ~~200~~199~~4~~-05~~1~~ Mod. No. 6.

6.13. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Library Facilities Fees, Police Facilities Fees, Fire Facilities Fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.

6.14. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee for each residential lot and institutional use prior to the issuance of a building permit for each lot or use. The AOC fee shall be the dollar amount in effect at the time of issuance of the building permit for each residential lot and institutional use.

6.15. The street improvements for all streets scheduled for dedication to the City shall be designed and constructed by Developer to provide for a 50-year life as determined by the City Engineer.

6.16. Developer agrees that any fees and payments pursuant to this Agreement 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. Developer further agrees that the fees it has agreed to pay pursuant to subsections 6.3, 6.5, 6.6, ~~and~~ 6.9, 6.23 and 6.24 of this Agreement are not public improvement fees collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto and that for purposes of Government Code Section 65865(e) and statutes amendatory or supplementary thereto.

6.17. Developer agrees to comply with Section 15.40.150 of the Moorpark Municipal Code and any provision amendatory or supplementary thereto for annual review of this Agreement and further agrees that the annual review shall include evaluation of its compliance with the approved MND and MMRP.

6.18. Developer agrees to provide City with cash deposits as City may require at its sole discretion to pay all City and related costs for the proceedings and related services for possible formation of a District as referenced in subsection 7.6 of this Agreement, which may be required to be paid prior to formation of a District, or in the event a District is not formed, after the commencement of proceedings related thereto. Said costs may include but are not limited to attorney fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out of pocket and professional service costs.

Developer further agrees that City may at its sole discretion select the bond counsel, underwriter, financial advisor and any other professional service provider City deems necessary to process the possible formation of a District.

6.19. Developer agrees that any election to acquire property by eminent domain shall be at City's sole discretion, and only after compliance with all legally required procedures including but not limited to a hearing on a proposed resolution of necessity.

6.20. On the operative date of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND.

6.21. In the event any of the "referenced Index" or "CPI" referred to in any portion of Section 6 above, are discontinued or revised, such successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the "CPI" and "referenced Index" had not been discontinued or revised.

6.22. The Developer is obligated to improve both sides of Walnut Canyon Road to its ultimate right-of-way: on the east side from the northern City limits to a point south of Tract No. 5437 (Canyon Crest Ranch Partners-Moorpark) to the point where Tract No. 5045 (Pardee Homes) improvements end; and on the west side from the northern City limits to Championship Drive. The required improvements shall include undergrounding of all utilities including all electrical lines of 65 kv or less on both sides of the road. The developer shall pay all City costs for acquisition of the properties needed for construction of these improvements including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. Such improvement shall be completed within ninety (90) days of obtaining the real property needed for said improvement or receipt of all permits required for the improvement. Such improvements must start prior to issuance of a building permit for the first dwelling unit, and be completed within twelve (12) months to the satisfaction of the City Engineer and Caltrans.

6.23. Pursuant to approved MND and MMRP, prior to recordation of the first Final Tract Map for the Property, initiation of rough grading or issuance of any subsequent permits, the applicant, shall purchase and dedicate fee title for thirty-five (35) acres of open space in lieu of providing on-site open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. Prior to purchase and dedication, the City Council shall approve the location of the proposed open space land. At City's sole discretion in lieu of the purchase of the thirty-five (35) acres of open space, Developer shall pay one million three hundred twenty thousand dollars ($1,320,000.00) to City to be used in its sole and unfettered discretion for open space preservation purposes. Three hundred thirty thousand dollars ($330,000.00) shall be paid to the City no later than one year from the operative date of this Agreement or upon the recordation of the Final Map, whichever occurs first. Subsequent annual payments of three hundred thirty thousand dollars ($330,000.00), shall be made for three years from the annual anniversary of the first payment. The fee shall be adjusted annually commencing January 1, 2007 by the larger increase of a), b), or c as follows: .

a) 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/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in

October, then the month of June is used to calculate the increase).

b) The annual adjustment shall be determined by any increase in the median price of single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index) for the previous twelve (12) month period.

c) The annual percentage amount paid to the City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) quarters divided by four (4).

In the event there is a decrease in both of the referenced Indices 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.

6.24. Prior to the occupancy of the 36th unit of Tract 5464 the developer shall pay City the cost installing of a minimum two (two) inch rubberized asphalt overlay of Championship Drive from Grimes Canyon Road to Walnut Canyon Road. Cost of said rubberized overlay shall include the cost of the overlay, any remedial work and the estimated work to perform the overlay and shall be subject to the approval of the City Engineer. The cash payment shall be in an amount equivalent to the work described above, plus fifteen percent (15%). If Tract 5463 has made the payment for this purpose then the obligation is considered to be satisfied.

6.25. Concurrent with the recordation of the Final Map a Conservation Easement, granted pursuant to California Civil Code Section 815 et seq. to preserve the natural, scenic and open space character of the property in an undeveloped condition; said easements shall run with the property and be binding upon grantors and their successors and assigns; and all development rights are dedicated to the city of Moorpark for those portions of the site zoned Open Space. The conservation easement is granted and conveyed to the city of Moorpark for permanent conservation, landscape and open space easements over all lots zoned Open Space, and no agriculture, extraction of subsurface mineral resources, excavation, drilling, pumping, mining, or similar activity shall be allowed in any portion of the conservation landscape and open space easements or on any property zoned Open Space. Said Conservation Easement shall be recorded on the Final Map or by separate instrument as determined by the City Manager.

6.26. Developer shall provide an easement to the City for a City Welcome Sign on the Project site at a location satisfactory to the Community

Development Director. The easement shall provide for the location and maintenance of the sign. Developer agrees to pay Twenty-Five Thousand Dollars ($25,000.00) to the City for the construction and erection of the sign. The funds may be expended by City in its sole and unfettered discretion. The fee shall be paid prior to occupancy of the first residential unit. Developer agrees that design of the sign, including the lighting, shall be at the City's sole discretion. The maintenance of the sign shall be through the landscape maintenance district.

6.27. All major construction traffic, heavy equipment, and commercial vehicles shall enter and exit the Project from Walnut Canyon Road.

7. City Agreements.

7.1. City shall commit reasonable time and resources of City staff to work with Developer on the expedited and parallel processing of applications for Subsequent Approvals for the Project area and shall use overtime and independent contractors whenever possible. Developer shall assume any risk related to, and shall pay the additional costs incurred by City for, the expedited and parallel processing.

7.2. If requested in writing by Developer and limited to City's legal authority, City at its sole discretion shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer including any land which is outside City's legal boundaries. The process shall generally follow Government Code Section 66462.5 et seq. and shall include the obligation of Developer to enter into an agreement with City, guaranteed by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs.

7.3. The City Manager is authorized to sign an early grading agreement on behalf of City to allow rough grading of the Project prior to City Council approval of a final subdivision map. Said early grading agreement shall be consistent with the conditions of approval for Tract ~~5437~~5464 and RPD ~~2001~~1994-~~05~~-01 Mod. No. 6 and contingent on City Engineer and ~~Director of~~ Community Development Director acceptance of a Performance Bond in a form and amount satisfactory to them to guarantee implementation of the erosion control plan and completion of the rough grading and construction of on-site and off-site improvements. In the case of failure to comply with the terms and conditions of the early grading agreement, the City Council may by resolution declare the surety forfeited.

7.4. City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the same property so long as said entitlements are deemed complete.

7.5. City agrees that the Park Fee required under subsection 6.7. of this Agreement meets Developer's obligation for park land dedication provisions of state law and City codes.

7.6. City agrees that upon receipt of a landowners' petition by Developer and Developer's payment of a fee, as prescribed in California Government Code Section 53318, as well as payment for costs described in subsection 6.18 of this Agreement, City shall commence proceedings to form a Mello-Roos Community Facilities District ("District") and to incur bonded indebtedness to finance all or portions of the public facilities, infrastructure and services that are required by the Project and that may be provided pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); provided, however, the City Council, in its sole and unfettered discretion, may abandon establishment of the District upon the conclusion of the public hearing required by California Government Code Section 53321 and/or deem it unnecessary to incur bonded indebtedness at the conclusion of the hearing required by California Government Code Section 53345.

The purpose of any such District may also include fees for funding public facilities, infrastructure and services that are required by the Project to the extent permitted by the Act as determined by bond counsel for the District's bond indebtedness financing. City may select and retain bond counsel, engineers, underwriters, financial advisors and any other professional service providers it deems necessary at its sole discretion to conduct proceedings and related services for possible formation of a District. City further agrees that, to the extent permitted by the Act as determined by bond counsel, Developer may be reimbursed for costs advanced by Developer for formation and related proceedings.

In the event that a District is formed, the special tax levied against any residential lot or residence thereon shall afford the buyer the option to prepay the special tax in full prior to the close of escrow on the initial sale of the developed lot by the builder of the residence.

7.7. The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Property required herein for the duration such units are required to be maintained as affordable consistent with the provisions of subsection 6.9 of this Agreement and the Purchase and Sale Agreement.

City agrees that upon receipt of Developer's written request to acquire a housing unit to meet its obligation under subsection 6.9 of this

Agreement, the City Manager, or his/her authorized representative, shall respond within thirty (30) calendar days accepting or rejecting the housing unit. Failure to respond within the specified time shall be deemed as rejection of said unit.

City further agrees Developer may construct rather than purchase the housing units required by subsection 6.9 of the Agreement so long as Developer meets all requirements of this Agreement and the proposed project. The property on which the units are proposed to be constructed must be consistent with the City's General Plan, Zoning Codes, and the Moorpark Municipal Code.

7.8. City shall facilitate the reimbursement to Developer of any costs incurred by Developer that may be subject to partial reimbursement from other developers as a condition of approval of a tract map development permit or development agreement with one or more other developers.

7.9. Upon the completion of the improvements to Walnut Canyon Road per subsection 6.22 of this Agreement, or when developer of Tract 5437 (Canyon Crest Ranch Partners-Moorpark) has paid to the City their share of the Walnut Canyon Road improvements, whichever occurs last, City shall pay Developer $210,000.00.

7.10. City agrees that any payments by Developer to meet its obligations per section 6.23 of this Agreement also satisfies subsection 3.1.1-5 of the Mitigation Monitoring Program adopted for the Project and the City further agrees to use said payment for open space preservation purposes within the City, City's Area of Interest or property contiguous thereto.

8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City.

9. Demonstration of Good Faith Compliance. In order to ascertain compliance by Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of Developer hereunder or render this Agreement invalid or void. At the same time as the referenced annual review, City shall also review Developer's compliance with the MMRP.

10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, shall be excused during any period of "Excusable Delay", as

hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.

11. Default Provisions.

11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:

(a) practices, or attempts to practice, any fraud or deceit upon City; or willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Developer may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Developer; or

(b) fails to make any payments required under this Agreement; or

(c) materially breaches any of the provisions of the Agreement.

11.2. Default by City. City shall be deemed in breach of this Agreement if it materially breaches any of the provisions of the Agreement.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed given on the date that it is personally delivered or on the date that it is deposited in the United States mail, in accordance with Section 20 hereof.

11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided pursuant to subsection 11.3 herein.

The remedies for breach of the Agreement by City shall be injunctive relief and/or specific performance.

The remedies for breach of the Agreement by Developer shall be injunctive relief and/or specific performance. In addition, if the breach is of subsections 6.9, 6.10, 6.12, 6.13, 6.14, 6.16, 6.17, and 6.18 of this Agreement, City shall have the right to withhold the issuance of building permits to Developer throughout the Project from the date that the notice of violation was given pursuant to subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

Nothing in this subsection shall be deemed to preclude City from prosecuting a criminal action against any Developer who violates any City ordinance or state statute.

12. Mortgage Protection. At the same time that City gives notice to Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of its name and mailing address to City and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

Each Financier that has given prior notice to City pursuant to this section shall have the right, at its option and insofar as the rights of City are concerned, to cure any such breach within fifteen (15) days after the receipt of the notice from City. If such breach cannot be cured within such time period, the Financier shall have such additional period as may be reasonably required to cure the same, provided that the Financier gives notice to City of its intention to cure and commences the cure within fifteen (15) days after receipt of the notice from City and thereafter diligently prosecutes the same to completion. City shall not commence legal action against Developer by reason of Developer's breach without allowing the Financier to cure the same as specified herein.

Notwithstanding any cure by Financier, this Agreement shall be binding and effective against the Financier and every owner of the Property, or part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

13. Estoppel Certificate. At any time and from time to time, Developer may deliver written notice to City and City may deliver written notice to Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.

14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within ten (10) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed. The Developer shall not seek judicial review of any staff decision without first having exhausted its remedies pursuant to this section.

15. Amendment or Termination by Mutual Consent. In accordance with the provisions of Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect, this Agreement may be amended or terminated, in whole or in part, by mutual consent of City and the affected Developer.

    15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.

16. Indemnification. Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, Developer's performance pursuant to this Agreement.

    Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or

proceeding to attack, review, set aside, void or annul this Agreement, or any provision thereof, or any Project Approval or Subsequent Approval or modifications thereto, or any other subsequent entitlements for the project and including any related environmental approval.

17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.

18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.

19. Term. This Agreement shall remain in full force and effect for a term of twenty (20) years commencing on its operative date or until the close of escrow on the initial sale of the last Affordable Housing Unit required by subsection 6.9, whichever occurs last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

Expiration of the term or earlier termination of this Agreement shall not automatically affect any Project Approval or Subsequent Approval that has been granted or any right or obligation arising independently from such Project Approval or Subsequent Approval.

Upon expiration of the term or earlier termination of this Agreement, the Parties shall execute any document reasonably requested by any Party to remove this Agreement from the public records as to the Property, and every portion thereof, to the extent permitted by applicable laws.

~~Developer and City agree that nineteen (19) years and six (6) months after the operative date of this Agreement the City, at its sole discretion, may require Developer to pay all fees required by subsections 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.10 and 6.14 of this Agreement for all remaining lots of Tract 5437, whether or not they have been created as part of a Final Map. This is intended to insure that City has received or is guaranteed to receive the fee payments required by the subsections referenced above for twenty-one (21) lots.~~

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "B" attached hereto and incorporated herein.

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contain the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are

hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.

22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

24. 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.

25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.

26. 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 within the period required by Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect.

27. 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.

28. 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 Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail. Should any provision of the Implementation Plan be found to be in conflict with any provision of this Agreement, the provisions of the Implementation Plan shall prevail.

29. 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.

30. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.

31. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.

32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, and City of Moorpark have executed this Development Agreement on the date first above written.

CITY OF MOORPARK

_____
Patrick Hunter
Mayor

OWNER/DEVELOPER

~~**Canyon Crest Ranch Partners-Moorpark, LLC**~~
~~**A California limited liability company**~~
Toll Land XX Limited Partnership

By: _____
~~A. DeeWayne Jones, Managing Partner~~

ALL SIGNATURES MUST BE NOTARIZED

00129

EXHIBIT A

LEGAL DESCRIPTION

EXHIBIT "B"

ADDRESSES OF PARTIES

To City:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attn: City Manager

To Developer:

Toll Land XX Limited Partnership

~~Canyon Crest Ranch Partners-Moorpark, LLC.~~
~~c/o A. DeeWayne Jones~~
~~722 E. Main Street~~
~~Santa Paula, CA 93060~~

~~Canyon Crest Ranch Partners-Moorpark, LLC.~~
~~c/o Bridsall Group, LLC~~
~~2300 Alessandro Drive~~
~~Ventura, CA 93001~~
~~Attn: Scott Birdsall~~

000121

RESOLUTION NO. 2006-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING MODIFICATION NO. 6 TO RESIDENTIAL PLANNED DEVELOPMENT PERMIT NO. 1994-01 AND TENTATIVE MAP NO. 5464 TO ALLOW AN EXPANSION OF THE COUNTRY CLUB ESTATES PROJECT ON 28.69 ACRES FOR THIRTY-SIX (36) SINGLE-FAMILY HOMES, LOCATED ON THE NORTH SIDE OF CHAMPIONSHIP DRIVE, WEST OF WALNUT CANYON ROAD, ON THE APPLICATION OF TOLL BROTHERS, INC.

WHEREAS, on June 28, 2005, the Planning Commission adopted Resolution No. PC-2005-483, recommending approval to the City Council of Modification No. 6 to Residential Planned Development Permit No. 1994-01 and Tentative Map No. 5464, to allow an expansion of the Country Club Estates project on 28.69 acres for thirty-six (36) single-family homes, located on the north side of Championship Drive, west of Walnut Canyon Road, on the application of Toll Brothers, Inc.; and

WHEREAS, at duly noticed public hearings on July 19, 2006, August 2, 2006, , September 20, 2006, and November 15, 2006, the City Council considered the agenda report for Modification No. 6 to Residential Planned Development Permit No. 1994-01 and Tentative Map No. 5464 and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal, closed the public hearing and reached a decision on this matter; and

WHEREAS, the City Council has read, reviewed considered, and adopted the proposed Mitigated Negative Declaration prepared for the project referenced above.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. SUBDIVISION MAP ACT FINDINGS: Based on the information set forth in the staff report(s) and accompanying maps and studies the City Council has determined that the Tentative Map No. 5464, with imposition of the attached Special and Standard Conditions of Approval, meets the requirements of California Government Code Sections 66473.5, 66474, 66474.6, and 66478.1 et seq., in that:

A. The proposed map would be consistent with the City of Moorpark General Plan and Zoning Ordinance, if amended by General Plan Amendment No. 2003-04 and Zone Change No. 2003-03, to allow for a density up to 2.0 units per acre.

B. The design and improvements of the proposed subdivision would be consistent with the City of Moorpark General Plan, if amended by General Plan Amendment No. 2003-04 and Zone Change No. 2003-03, to allow for a density up to 2.0 units per acre.

CC ATTACHMENT 6

C. The site is physically suitable for the type of development proposed in that the site can be engineered to allow for all required utilities to be brought to the site, adequate ingress and egress can be obtained, and the site can be provided with public and emergency services.

D. The site is physically suitable for the proposed density of development, in that the design provides for large graded pads for the proposed houses.

E. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, in that all potential impacts would be mitigated through project design or conditions.

F. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, in that adequate sanitation is both feasible and required as a condition of this development.

G. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large, for access through, or use of the property within the proposed subdivision, in that these easements have been identified and incorporated in the design of this project.

H. There will be no discharge of waste from the proposed subdivision into an existing community sewer system in violation of existing water quality control requirements under Water Code Section 13000 et seq.

I. The proposed subdivision does not contain or front upon any public waterway, river, stream, coastline, shoreline, lake, or reservoir.

SECTION 2. MODIFICATION TO RESIDENTIAL PLANNED DEVELOPMENT PERMIT FINDINGS: Based upon the information set forth in the staff report(s), accompanying studies, and oral and written public testimony, the Planning Commission makes the following findings in accordance with City of Moorpark, Municipal Code Section 17.44.100:

A. The project does not involve a substantial or fundamental change in approved Residential Planned Development Permit No. 1994-01 in that the proposed site design, including structure, location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping, is consistent with the site design approved in Residential Planned Development Permit No. 1994-01 and the project will use the same Design Guidelines;

B. The project would not have an adverse impact on surrounding properties in that the proposed use is consistent with the existing residential neighborhood, a setback has been provided from agricultural uses to the north, and adequate provision of public access, sanitary services, and emergency services have been ensured in the processing of this request and the use proposed is similar to adjacent uses, and access to or utility of those adjacent uses are not hindered by this project; and

C. The project would not change any of the environmental findings contained in the Environmental Impact Report prepared for Residential Planned Development Permit No. 1994-01 in that a Mitigated Negative Declaration has been prepared for the modification, demonstrating that the modification, with the incorporation of mitigation, will not result in any significant environmental effects.

SECTION 3. CITY COUNCIL APPROVAL: The City Council approves:

A. Tentative Map No. 5464 subject to the special and standard Conditions of Approval included in Exhibit A, attached hereto and incorporated herein by reference; and

B. Modification No. 6 to Residential Planned Development Permit No. 1994-01, subject to the special and standard Conditions of Approval included in Exhibit A, attached hereto and incorporated herein by reference.

SECTION 4. The effective date of Tentative Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01 shall be concurrent with the effective date of the Ordinance for Zone Change No. 2003-03 and the Ordinance for Development Agreement No. 2004-02, whichever occurs last.

SECTION 5. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 15th day of November, 2006.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk

Exhibit A – Special and Standard Conditions of Approval for Modification No. 6 to Residential Planned Development Permit No. 1994-01 and Tentative Map No. 5464

EXHIBIT A

SPECIAL AND STANDARD CONDITIONS OF APPROVAL FOR MODIFICATION NO. 6 TO RESIDENTIAL PLANNED DEVELOPMENT PERMIT NO.1994-01 AND TENTATIVE TRACT MAP NO. 5464

SPECIAL CONDITIONS OF APPROVAL FOR TENTATIVE TRACT MAP NO. 5464

1. This subdivision shall expire three (3) years from the date of its approval. The Community Development Director may, at his/her discretion, grant up to two (2) additional one-year extensions for map recordation, if there have been no changes in the adjacent areas and if the applicant can document that he/she has diligently worked towards Map recordation during the initial period of time. The request for extension of this Map shall be made in writing, at least thirty (30) days prior to the expiration date of the map and shall be accompanied by applicable entitlement processing deposits.
2. Up to a maximum of thirty-six (36) dwelling units may be developed under this entitlement.
3. Within thirty (30) calendar days of submittal of the first plan check of the Final Map, the applicant shall provide a copy of the Covenants, Conditions, and Restrictions to the Community Development Director and City Attorney for review and approval to ensure consistency with the Moorpark Municipal Code, Tentative Tract Map No. 5464 and Modification No. 6 to Residential Planned Development Permit No. 1994-01 as conditioned. Submittal shall include a $5,000.00 deposit to be used for the City Attorney's cost of review.
4. Concurrent with map recordation, the applicant shall provide, as part of the street improvement plans, a public service easement within the private streets, subject to approval of the Community Development Director and City Engineer.
5. Prior to the issuance of the first building permit, the Developer shall provide the City with a written request for the City to adopt a resolution authorizing enforcement of applicable provisions of the California Vehicle Code and Moorpark Municipal Code.
6. The Developer shall comply with all mitigation measures of the Mitigated Negative Declaration. Said mitigation measures are hereby adopted by reference and made Conditions of Approval.
7. A Traffic Systems Management fee shall be paid, on a per home basis, consistent with such fee paid for Tract No. 4928, or in effect at the time of building permit issuance, whichever is higher, unless modified by separate agreement.
8. The Developer shall improve both sides of Walnut Canyon Road to its ultimate right-of-way from Championship Drive to northern City limits, including

undergrounding of all utilities including all electrical lines of 66 kv or less on both sides of the road. Transition paving shall be provided north of the City Limits on both sides of the street. The developer shall pay all City costs for acquisition of the properties needed for construction of these improvements including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. Such improvement shall be completed within ninety (90) days of obtaining the real property needed for said improvement or receipt of all permits required for the improvement. Such improvements must start prior to issuance of a building permit for the first dwelling unit. The improvement costs shall be reduced by the amount required by the Conditions of Approval or Tract 5437 (Birdsall).

9. Sidewalks shall be provided on both sides of all private streets within the tract, subject to review and approval of the Community Development Director.

10. Prior to the submittal for first plan check of the improvement plans, the Developer shall ascertain the adequacy of the existing lift stations to handle the expected flows from the additional dwelling units. The expected flows shall be verified and accepted by Waterworks District 1. The Developer shall be required to make all necessary upgrades/improvements to the lift stations to handle the expected flows. As part of the submittal of improvement plans, hydraulic analyses, prepared by a registered civil engineer, shall be provided to Waterworks District 1 to determine the adequacy of the proposed and existing sewer lines.

11. Any existing septic systems shall be properly abandoned in accordance with law.

12. Water impoundment(s) shall be maintained in a manner which will not create mosquito breeding sources and in compliance with the grading ordinance and the requirements of the City Engineer.

13. The applicant shall comply with all provisions of Chapter 17.38 (Hillside Management) of the Moorpark Municipal Code (MMC) unless waived by the adoption of a development agreement.

14. Should the Fire Department abandon the helipad facility on the north side of RPD 1994-01 prior to occupancy of the 36th home of Tract 5464, the applicant shall file a Permit Adjustment for the reuse of this area as recreation or natural open space. This area is now subject to maintenance by the existing Homeowners Association's. Any increase in the cost of maintenance from the helipad to an alternative use shall require approval of the existing Homeowner Association Board prior to the issuance of a Zone Clearance.

15. The boundaries of areas along Championship Drive maintained by the Landscape Maintenance District and/or the Homeowners Association shall be consistent with those approved in Tract 4928. Said boundaries shall be subject to review and approval of the Community Development Director, City Engineer/Public Works Director, and Parks, Recreation, and Community

Services Director. All lots shall be made a part of the existing Landscape Maintenance District (LMD) for Championship Drive or establish a new LMD at City's discretion, to maintain the Multi-purpose trail, landscaping, detention basins, and City monument signs.

16. By December 31, 2006, the Developer shall provide final paving of Championship Drive from Grimes Canyon Road to Walnut Canyon Road pursuant to plans and specifications approved by the City Engineer at his/her sole discretion. Said specifications may include, but are not limited to, deflective testing, removal and replacement/repair of sub-base, base and existing asphalt, adjustment of utility covers and manholes, replacement of pavement markings, and City's cost of inspection and administration of said work.

17. A separate Homeowner's Association (HOA) shall be established for Tract 5463. Said HOA shall be independent of the "Country Club Estates at Moorpark Master Owners Association." ~~unless this project is annexed to the existing Moorpark Country Club Estates Homeowner's Association (HOA). If there is an annexation election the developer shall pay all reasonable costs associated with notification including, but not limited to any title reports needed to ascertain who the owns the first deed of trust.~~

18. The developer shall provide a landscape and fencing buffer plan between the development and the adjacent agricultural uses. The location, type, and installation of said fencing and landscaping shall be subject to review and approval of the Community Development Director.

19. Concurrent with map recordation, the developer shall provide an easement to the City for a City Welcome Sign on the Project site at a location satisfactory to the Community Development Director. Such sign shall be maintained in perpetuity by the Landscape Maintenance District. The easement shall provide for the location and maintenance of the sign. Developer agrees to pay $25,000 to the City for the construction and erection of the sign. The funds may be expended by City in its sole and unfettered discretion. The fee shall be paid prior to occupancy of the first residential unit. Developer agrees that design of the sign, including the lighting, shall be at the City's sole discretion.

20. Prior to map recordation, the Developer shall obtain approval of a Fuel Modification Maintenance Program from the Ventura County Fire Protection District.

21. A two-hundred foot (200') agricultural buffer easement shall be recorded on the final map. No buildings or structures shall be permitted within this easement. The easement shall be clearly disclosed to all buyers.

22. Prior to, or concurrent with Final Map Recordation, a "Back-Up" Assessment District shall be formed to fund future City costs, should they occur, for the maintenance of private slopes, parkway landscaping, median landscaping or drainage improvements previously maintained by a Private Responsible Party and then assumed by the City.

23. A minimum twelve foot (12') wide multipurpose trail shall be provided through the tract, prior to occupancy of the fifteenth (15th) dwelling unit. The precise location and design of the trail shall be subject to review and approval of the Community Development Director.

24. The sixty inch (60") Heritage Oak tree shall be preserved on site in a manner acceptable to the Community Development Director.

25. All major construction traffic, heavy equipment, and commercial vehicles shall enter and exit the site from Walnut Canyon Road.

26. The maintenance of any new streets, as well as a pro-rata share of the entryway and gates, shall be the responsibility of the Homeowners Association for Tract 5464.

SPECIAL CONDITIONS OF APPROVAL FOR MODIFICATION NO. 6 TO RESIDENTIAL PLANNED DEVELOPMENT PERMIT NO. 1994-01

1. This planned development permit shall expire two (2) years from the date of its approval unless the use has been inaugurated by issuance of a building permit for construction. The Community Development Director may, at his/her discretion, grant up to two (2) additional one-year extensions for use inauguration of the development permit, if there have been no changes in the adjacent areas and if the applicant can document that he/she has diligently worked towards use inauguration during the initial period of time. The request for extension of this planned development permit shall be made in writing, at least thirty (30) days prior to the expiration date of the permit and shall be accompanied by applicable entitlement processing deposits.

2. The Country Club Estates Architectural Guidelines as approved/recorded shall be adopted herein by reference.

3. Any minor changes proposed to the Architectural Guidelines shall be considered by the Community Development Director upon filing of a Permit Adjustment application and payment of the fee in effect at the time of application.

4. Any proposed substantive or wholesale change to Architectural Guidelines shall be considered by the City Council upon filing of a Modification application and payment of the fee in effect at the time of application.

5. All Conditions of Approval for RPD No. 1989-01 are incorporated by reference in this approval letter and shall continue to apply unless specifically modified by this permit.

6. Any gates to control vehicle access are to be located to allow a vehicle waiting for entrance to be completely off the intersecting roadway. A minimum clear open width of fifteen (15') feet in each direction shall be provided for separate entry/exit gates and a minimum twenty (20) for combined entry/exit gates. If gates are to be locked, a Knox system shall be installed. The method of gate

control, including operation during power failure, shall be subject to review by the Fire Prevention Division. Gate plan details shall be submitted to the Fire District for approval prior to installation. A final acceptance inspection by the Fire District is required prior to placing any gate into service.

7. A maximum of one gate is allowed on a secondary access unless an alternative is agreed upon by the Ventura County Fire Protection District. An auto exit loop is required to allow residents exit upon demand in the event of an emergency.

8. All manufactured slopes shall be landscaped and irrigated subject to review and approval of the Community Development Director. Additionally, natural slopes adjacent to Walnut Canyon Road may be required to be landscaped and irrigated. Orchard type trees and landscaping shall be prohibited.

STANDARD CONDITIONS OF APPROVAL FOR TENTATIVE TRACT MAP 5464 AND MODIFICATION NO. 6 TO RESIDENTIAL PLANNED DEVELOPMENT 1994-01

A. *The following conditions shall be required of all projects:*

GENERAL REQUIREMENTS

1. Within thirty (30) calendar days of approval of this entitlement, the applicant shall sign and return to the Planning Division an Affidavit of Agreement and Notice of Entitlement Permit Conditions of Approval, indicating that the applicant has read and agrees to meet all Conditions of Approval of this entitlement. The Affidavit of Agreement/Notice shall include a legal description of the subject property, and have the appropriate notary acknowledgement suitable for recordation.

2. The Final Map shall include the final Conditions of Approval by reference and a reference to the adopted City Council resolution in a format acceptable to the Community Development Director.

3. The Conditions of Approval of this entitlement and all provisions of the Subdivision Map Act, City of Moorpark Municipal Code and adopted City policies at the time of the entitlement approval, supersede all conflicting notations, specifications, dimensions, typical sections and the like which may be shown on said Map and/or plans.

4. Conditions of this entitlement shall not be interpreted as permitting or requiring any violation of law or any unlawful rules or regulations or orders of an authorized governmental agency.

5. All mitigation measures required as part of an approved Mitigation Monitoring and Reporting Program (MMRP) for this project are hereby adopted and included as requirements of this entitlement. Where conflict or duplication between the MMRP and the Conditions of Approval occurs the Community Development Director shall determine compliance.

6. If any archeological or historical finds are uncovered during grading or excavation operations, all grading or excavation shall cease in the immediate area and the

find shall be left untouched. The applicant shall assure the preservation of the site and immediately contact the Community Development Director informing the Director of the find. The applicant shall be required to obtain the services of a qualified paleontologist or archeologist, whichever is appropriate to recommend disposition of the site. The paleontologist or archeologist selected shall be approved by the Community Development Director. The applicant shall pay for all costs associated with the investigation and disposition of the find.

7. Paleontological Mitigation Plan: Prior to issuance of a Zoning Clearance for a grading permit, a paleontological mitigation plan outlining procedures for paleontological data recovery shall be prepared and submitted to the Community Development Director for review and approval. The development and implementation of this Plan shall include consultations with the Applicant's engineering geologist as well as a requirement that the curation of all specimens recovered under any scenario will be through the Los Angeles County Museum of Natural History (LACMNH). ~~unless a written directive is issued by the City of Moorpark w~~Within thirty (30) days of receipt of a report on the resources found, the City shall make its determination of ownership on all specimens. If there is no action by the City within thirty (30) days, the specimens all specimens will remain the property of LACMNH, and subject to their discretion. The monitoring and data recovery should include periodic inspections of excavations to recover exposed fossil materials. The cost of this data recovery shall be limited to the discovery of a reasonable sample of available material. The interpretation of reasonableness shall rest with the Community Development Director.

8. The applicant shall defend, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul any approval by the City or any of its agencies, departments, commissions, agents, officers, or employees concerning this entitlement approval, which claim, action or proceeding is brought within the time period provided therefore in Government Code Section 66499.37 or other sections of state law as applicable. The City will promptly notify the applicant of any such claim, action or proceeding, and, if the City should fail to do so or should fail to cooperate fully in the defense, the applicant shall not thereafter be responsible to defend, indemnify and hold harmless the City or its agents, officers and employees pursuant to this condition.

   a. The City may, within its unlimited discretion, participate in the defense of any such claim, action or proceeding if both of the following occur:

      i. The City bears its own attorney fees and costs;

      ii. The City defends the claim, action or proceeding in good faith.

   b. The applicant shall not be required to pay or perform any settlement of such claim, action or proceeding unless the settlement is approved by the applicant. The applicant's obligations under this condition shall apply regardless of whether a Final Map is ultimately recorded with respect to

the subdivision or a building permit is issued pursuant to the planned development permit.

8. If any of the conditions or limitations of this approval are held to be invalid, that holding shall not invalidate any of the remaining conditions or limitations set forth.

9. All facilities and uses, other than those specifically requested in the application and those accessory uses allowed by the Municipal Code, are prohibited unless otherwise permitted through application for Modification consistent with the requirements of the zone and any other adopted ordinances, specific plans, landscape guidelines, or design guidelines.

FEES

10. Entitlement Processing: Prior to the issuance of any Zoning Clearance, entitlement, building permit, grading permit, or advanced grading permit the applicant shall submit to the Community Development Department all outstanding entitlement case processing fees, including all applicable City legal service fees. This payment shall be made within sixty (60) calendar days of approval of this entitlement.

11. Condition Compliance: Prior to the issuance of any Zoning Clearance, building permit, grading permit, or advanced grading permit, the applicant shall submit to the Community Development Department the Condition Compliance review deposit.

12. Capital Improvements and Facilities, and Processing: Prior to the issuance of any Zoning Clearance, the applicant shall submit to the Community Development Department, capital improvement, development, and processing fees at the current rate in effect. Said fees include, but are not limited to public improvement plan checks and permits. Unless specifically exempted by City Council, the applicant is subject to all fees imposed by the City as of the issuance of the first permit for construction and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.

13. Parks: Prior to issuance of Zoning Clearance for a building permit, the applicant shall submit to the Community Development Department Park and Recreation Fees in accordance with the Moorpark Municipal Code and to the satisfaction of the Parks, Recreation and Parks, Recreation and Community Services Director.

14. Fire Protection Facilities: Prior to or concurrently with the issuance of a building permit, current Fire Protection Facilities Fees shall be paid to the Building and Safety Division. The fee shall be paid in accordance with City Council adopted Fire Protection Facilities Fee requirements in effect at the time of building permit application.

15. Library Facilities: Prior to or concurrently with the issuance of a building permit the Library Facilities Fee shall be paid to the Building and Safety Division. The fee shall be paid in accordance with City Council adopted Library Facilities Fee requirements in effect at the time of building permit application.

16. Police Facilities: Prior to or concurrently with the issuance of a building permit the Police Facilities Fee shall be paid to the Building and Safety Division. The fee shall be paid in accordance with City Council adopted Police Facilities Fee requirements in effect at the time of building permit application.

17. Traffic Systems Management: Prior to the issuance of a Zoning Clearance for each building permit, the applicant shall submit to the Community Development Department the established Moorpark Traffic Systems Management (TSM) Fee for the approved development consistent with adopted City policy for calculating such fee.

18. Intersection Improvements: Prior to issuance of the first Zoning Clearance for a building permit, the applicant shall submit to the Community Development Department a fair-share contribution for intersection improvements relating to the project. The level of fair-share participation will be to the satisfaction of the City Engineer based on the traffic report prepared for the project and the extent of the impact to these intersections.

19. Citywide Traffic: Prior to issuance of a Zoning Clearance for each building permit, the applicant shall submit to the Community Development Department the Citywide Traffic Fee. The fee shall be calculated per dwelling unit for residential projects, or by use for commercial and industrial projects, based upon the effective date of approval of the entitlement. Commencing on the first of the year of this approval, and annually thereafter, the fee shall be increased to reflect the change in the Caltrans Highway Bid Price (OR Engineering News Record Construction Index) for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

20. Area of Contribution: Prior to the issuance of a Zoning Clearance for each building permit, the applicant shall pay to the Community Development Department the Area of Contribution (AOC) Fee for the area in which the project is located. The fee shall be paid in accordance with City Council adopted AOC fee requirements in effect at the time of building permit application.

21. Street Lighting Energy Costs: Prior to recordation of Final Map, or issuance of a building permit, whichever occurs first the applicant shall pay to the Community Development Department all energy costs associated with public street lighting for a period of one year from the acceptance of the street improvements.

22. Schools: Prior to issuance of building permits for each building, the applicant shall provide written proof to the Community Development Department that all legally mandated school impact fees applicable at the time of issuance of a building permit have been paid to the Moorpark Unified School District.

23. Electronic Conversion: In accordance with City policy, the applicant shall submit to the Community Development Department, City Engineer and the Building and

Safety Division the City's electronic image conversion fee for entitlement/condition compliance documents; Final Map/ engineering improvement plans/permit documents; and building plans/permit documents, respectively.

24. Fish and Game: Within two (2) business days after the City Council/Planning Commission adoption of a resolution approving this project, the applicant shall submit to the City of Moorpark two separate checks for Negative Declaration or Environmental Impact Report, and Administrative Fee, both made payable to the County of Ventura, in compliance with Assembly Bill 3158 for the management and protection of Statewide Fish and Wildlife Trust Resources. Pursuant to Public Resources Code Section 21089, and Fish and Game Code Section 711.4, the project is not operative, vested or final until the filing fees are paid.

25. Crossing Guard: Prior to recordation of Final Map or prior to the issuance of a building permit, whichever occurs first, the applicant shall pay to the Community Development Department an amount to cover the costs associated with a crossing guard for five years at the then current rate, plus the pro-rata cost of direct supervision of the crossing guard location and staff's administrative costs (calculated at fifteen percent (15%) of the above costs).

26. Affordable Housing Agreement/Plan: Prior to the preparation of an Affordable Housing Agreement and/or an Affordable Housing Implementation and Resale Restriction Plan, the applicant shall pay to the City the City's cost to prepare the required Plan and Agreement.

27. Storm Drain Discharge Maintenance Fee: Prior to or concurrently with the issuance of a Zoning Clearance for building permit, the applicant shall pay to the Community Development Department citywide Storm Drain Discharge Maintenance Fee. The fee shall be paid in accordance with City Council adopted Storm Drain Discharge Maintenance Fee requirements in effect at the time of building permit application.

CABLE TELEVISION

28. Prior to commencement of project construction the applicant shall provide notice of its construction schedule to all persons holding a valid cable television franchise issued by the City of Moorpark (Cable Franchisees) sufficiently in advance of construction to allow the Cable Franchisees to coordinate installation of their equipment and infrastructure with that schedule. The City shall provide the applicant a list of Cable Franchisees upon request. During construction, the applicant shall allow the Cable Franchisees to install any equipment or infrastructure (including conduit, power supplies, and switching equipment) necessary to provide Franchisee's services to all parcels and lots in the Project.

29. In the event the cable television services or their equivalent are provided to the project or individual lots under collective arrangement or any collective means other than a Cable Franchisee (including, but not limited to, programming

provided over a wireless or satellite system contained within the Project), the Home Owners Association (HOA) shall pay monthly to City an access fee of five percent (5%) of gross revenue generated by the provision of those services, or the highest franchise fee required from any City Cable Franchisee, whichever is greater. "Gross revenue" is as defined in Chapter 5.06 of the Moorpark Municipal Code and any successor amendment or supplementary provision thereto.

30. In the event cable television services or their equivalent are provided to the project by any means other than by a City Cable Franchise, the City's government channel shall be available to all units as part of any such service, on the same basis and cost as if the project was served by a City Cable Franchise.

AFFORDABLE HOUSING REQUIREMENTS

31. Prior to or concurrently with the first Final Map approval the applicant shall enter into an Affordable Housing Agreement. Consistent with the City's General Plan Housing Element, State law and Moorpark redevelopment Agency Implementation Plan, this subdivision is subject to execution of an Affordable Housing Agreement between the City of Moorpark and the applicant. The Affordable Housing Agreement shall set forth the procedure for meeting an affordable housing requirement of ten percent of the total number of approved dwelling units for properties outside of a Redevelopment Project Area and fifteen percent of the total number of approved dwelling units for projects which are in a Redevelopment Project Area. The Agreement may be part of a Development Agreement.

32. Prior to the preparation of an Affordable Housing Agreement or a Affordable Housing Implementation and Resale Restriction Plan the applicant shall agree to provide low income and very low income units as specified in the Special Conditions of Approval, included herein, to meet the requirements of California Health and Safety Code 33410 et seq.

33. Prior to the recordation of the first Final Map for this project the applicant and the City shall execute an Affordable Housing Agreement that incorporates a Council approved Affordable Housing Implementation and Resale Restriction Plan consistent with the Conditions of Approval of this subdivision. The initial sales price, location of the affordable units, buyer eligibility, and resale restrictions, respective role of the City and the applicant, and any other item determined necessary by the City shall be set forth in the Plan.

B. ***Please contact the* PLANNING DIVISION *for compliance with the following conditions:***

DEVELOPMENT REQUIREMENTS

34. The Building Plans shall be in substantial conformance to the plans approved under this entitlement and shall specifically reflect the following:

a. Final exterior building materials and paint colors shall be consistent with the approved plans under this permit. Any changes to the building materials and paint colors are subject to the review and approval of the Community Development Director.

35. Prior to issuance of a Zoning Clearance for final building permit (occupancy), the applicant shall install U.S. Postal Service approved mailboxes in accordance with the requirements of the local Postmaster.

36. Any expansion, alteration or change in architectural elements requires prior approval of the Community Development Director. Those changes in architectural elements that the Director determines would visible from abutting street(s) shall only be allowed, if, in the judgment of the Community Development Director such change is compatible with the surrounding area. Any approval granted by the Director shall be consistent with the approved Design Guidelines (if any) for the planned development and applicable Zoning Code requirements.

37. A minimum twenty (20') foot by twenty (20') foot clear and unobstructed parking area for two (2) vehicles shall be provided in a garage for each dwelling unit. Single garages shall measure a minimum of twelve (12') foot wide by twenty (20') foot deep clear and unobstructed area. Steel, aluminum clad or fiberglass roll-up garage doors shall be provided. Garage doors shall be a minimum of sixteen (16') feet wide by seven (7') feet high for double doors and nine (9') feet wide by seven (7') feet high for single doors. A minimum twenty (20') foot long concrete paved driveway shall be provided in front of the garage door outside of the street right-of-way.

38. All homes/units shall be constructed employing energy saving devices. These devices shall include, but not be limited to ultra low flush toilets (to not exceed 1.6 gallons), low water use shower controllers, natural gas fueled stoves, pilotless ovens and ranges, electric ovens, night set back features for thermostats connected to the main space-heating source, kitchen ventilation systems with automatic dampers,

39. When required by Title 15 of the Moorpark Municipal Code, rain gutters and downspout shall be provided on all sides of the structure for all structures where there is a directional roof flow. Water shall be conveyed to an appropriate drainage system, consistent with NPDES requirements, as determined by the City Engineer.

OPERATIONAL REQUIREMENTS

40. The applicant agrees not to protest the formation of an underground Utility Assessment District.

LANDSCAPING, LIGHTING AND MAINTENANCE REQUIREMENTS

41. Prior to the issuance of a Zoning Clearance for building permits the applicant shall submit to the Community Development Director for review and approval,

with the required deposit, three full sets of Landscaping and Irrigation Plans prepared by a licensed landscape architect and drawn on a plan that reflects final grading configuration, in conformance with the City of Moorpark Landscape Standards and Guidelines, policies and NPDES requirements; including, but not limited to, all specifications and details and a maintenance plan. Perimeter and common area fences and walls shall be shown on the Landscape and Irrigation Plans, including connection, at the applicant's expense, of property line walls with existing fences and or walls on any adjacent residential, commercial or industrial properties. The plan shall maintain proper vehicle sight distances subject to the review of the City Engineer, and encompass all required planting areas consistent with these Conditions of Approval. Review by the City's Landscape Architect Consultant and City Engineer, and approval by the Community Development Director prior to issuance of a Zoning Clearance for building permit, is required.

42. Prior to or concurrently with the submittal of the Landscaping and Irrigation Plans the specific design and location of the neighborhood identification monument sign shall be submitted for review and approval by the Community Development Director. The sign shall be installed concurrent with perimeter project wall installation.

43. Unless otherwise stipulated in the Special Conditions of Approval, the applicant shall be responsible for the maintenance of any and all parkway landscaping constructed as a requirement of the project, whether said parkway landscaping is within the street right-of-way or outside of the street right-of-way. Any parkway landscaping outside of the street right-of-way shall be within a landscape easement, until passed on to an appropriate entity.

44. All required landscape easements shall be clearly shown on the Final Map or on other recorded documents if there is no Final Map.

45. When available and allowed by law, use of reclaimed water shall be required for landscape areas subject to the approval of the Community Development Director, the City Engineer and Ventura County Waterworks District No. 1.

46. Landscaped areas shall be designed with efficient irrigation to reduce runoff and promote surface filtration and minimize the use of fertilizers and pesticides, which can contribute to urban runoff pollution. Parking and associated drive areas with five (5) or more spaces shall be designed to minimize degradation of storm water quality. Best Management Practice landscaped areas for infiltration and biological remediation or approved equals, shall be installed to intercept and effectively prohibit pollutants from discharging to the storm drain system. The design shall be submitted to the Community Development Director and City Engineer for review and approval prior to the issuance of a building permit.

47. All landscaping shall be maintained in a healthy and thriving condition, free of weeds, litter and debris.

48. Prior to the issuance of Zoning Clearance for occupancy, all required fences/walls for each lot shall be in place, unless an alternative installation is approved by the Community Development Director.

C. *Please contact the* ENGINEERING DEPARTMENT *for compliance with the following conditions:*

GENERAL

49. Grading, drainage and improvement plans and supporting reports and calculations shall be prepared in conformance with the "Land Development Manual" and "Road Standards" as promulgated by Ventura County; "Hydrology Manual" and "Design Manual" as promulgated by Ventura County Watershed Protection District; "Standard Specifications for Public Works Construction" as published by BNI (except for signs, traffic signals and appurtenances thereto; for signs, traffic signals and appurtenances thereto, the provisions of Chapter 56 for signs and Chapter 86 for traffic signals, and appurtenances thereto, of the "Standard Specifications," most recent edition, including revisions and errata thereto, as published by the State of California Department of Transportation); "Engineering Policies and Standards" of the City of Moorpark, "Policy of Geometric Design of Highways and Streets," most recent edition, as published by the American Association of State Highway and Transportation Officials. In the case of conflict between the standards, specifications and design manuals listed above, the criteria that provide the higher level of quality and safety shall prevail. Any standard specification or design criteria that conflicts with a Standard or Special Condition of Approval of this project shall be modified to conform with the Standard or Special Condition to the satisfaction of the City Engineer.

50. Prior to improvement plan approval the applicant shall obtain the written approval for the location of fire hydrants by the Ventura County Fire Prevention Division. (Water improvement plans shall be submitted to Ventura County Waterworks District No. 1 for approval.)

51. Prior to any work being conducted within any State, County, or City right of way, the applicant shall obtain all necessary encroachment permits from the appropriate agencies and provide copies of these approved permits and the plans associated with the permits to the City Engineer.

52. Reactive organic compounds, Nitrogen oxides (ozone/smog precursor), and particulate matter (aerosols/dust) generated during construction operations shall be minimized in accordance with the City of Moorpark standards and the standards of the Ventura County Air Pollution Control District (APCD). When an air pollution Health Advisory with an Air Quality Index of 151 or greater (Unhealthy or Very Unhealthy) has been issued for the Simi Valley/Moorpark Area, construction equipment operations (including but not limited to grading, excavating, earthmoving, trenching, material hauling, and roadway construction) and related activities shall cease in order to minimize associated air pollutant emissions.

53. The applicant shall comply with Chapters 9.28, 10.04, 15.26, 17.53 of the Moorpark Municipal Code standard requirements for construction noise reduction.

54. The applicant shall utilize all prudent and reasonable measures (including installation of a 6-foot high chain link fence, or equivalent barrier around the construction sites or provision of a licensed security guard during non-construction hours, or other means acceptable to the Chief of Police) to prevent unauthorized persons from entering the work site at any time and to protect the public from accidents and injury.

55. The applicant shall post in a conspicuous location the construction hour limitation and make each construction trade aware of the construction hour limitations.

GRADING

56. Prior to the issuance of a grading permit (should an early grading agreement be approved for this project) or prior to Final Map the applicant shall post sufficient surety, in a form acceptable to the City Engineer, guaranteeing completion of all onsite and offsite improvements required by these Conditions of Approval or the Municipal Code including, but not limited to grading, street improvements, storm drain improvements, temporary and permanent Best Management Practice (BMP) for the control of non-point water discharges, landscaping, fencing, and bridges. Grading and improvements shall be designed, bonded and constructed as a single project.

57. Prior to the issuance of a grading permit (should an early grading agreement be approved for this project) or prior to Final Map, whichever occurs first, the applicant shall provide written proof to the City Engineer that any and all wells that may exist or have existed within the project have been properly sealed or have been destroyed or abandoned, or will be sealed or destroyed in conjunction with the grading operation, per Ventura County Ordinance No. 2372 or Ordinance No. 3991 and per Division of Oil and Gas requirements.

FINAL MAP

58. Prior to Final Map approval, the applicant shall obtain City Engineer approval of all required public improvement and grading plans. The applicant shall enter into an agreement with the City of Moorpark to complete grading, public improvements and subdivision monumentation and post sufficient surety guaranteeing the construction and maintenance of grading' all public improvements, and private street and storm drain improvements; construction and post construction NPDES Best Management Practice; and subdivision monumentation in a form and in an amount acceptable to the City Engineer. Said plans shall be prepared by a California Registered Civil Engineer. Said sureties shall meet the City's requirements for sureties and shall remain in place for one year following final acceptance of the improvements by the City or until such time

that the City Council shall approve their redemption, whichever is the longer. Bonds may be reduced in accordance with the Subdivision Map Act.

59. Prior to Final Map approval the applicant shall post sufficient surety in a form and in an amount acceptable to the City Engineer guaranteeing the payment of laborers and materialsmen in an amount no less than fifty percent (50%) of the faithful performance surety.

PUBLIC AND PRIVATE STREETS

60. Prior to construction of any public improvement the applicant shall submit to the City Engineer, for review and approval, street improvement plans prepared by a California Registered Civil Engineer, enter into an agreement with the City of Moorpark to complete public improvements and post sufficient surety guaranteeing the construction of all improvements. Unless specifically noted in these Standard Conditions or Special Conditions of Approval.

61. Prior to issuance of the first building permit all existing and proposed electric utilities that are less than 67Kv shall be under-grounded as approved by the City Engineer.

DRAINAGE AND HYDROLOGY

62. For a 10-year frequency storm, local, residential and private streets shall be designed to have one dry travel lane available on interior residential streets. Collector streets shall be designed to have a minimum of one dry travel lane in each direction.

63. Drainage and improvement plans shall be designed so that after-development, drainage to adjacent parcels would not be increased above pre-development drainage quantities for any stormwater model between and including the 10-year and 100-year storms, nor will surface runoff be concentrated by this project. Acceptance of storm drain waters by the project and discharge of storm drain waters from the project shall be in type, kind and nature of predevelopment flows unless the affected upstream and/or downstream owners provide permanent easement to accept such changed storm drainage water flow. All drainage measures necessary to mitigate stormwater flows shall be provided to the satisfaction of the City Engineer. The applicant shall make any on-site and downstream improvements, required by the City, to support the proposed development.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

64. The applicant shall submit to the City Engineer a Stormwater Pollution Control Plan (SWPCP) and a Stormwater Pollution Prevention Plan (SWPPP) in accordance with requirements of the Ventura Countywide Stormwater Quality Management Program, Technical Guidance Manual for Stormwater Quality Control Measures, NPDES Permit No. CAS004002. The Plans shall identify potential pollutant sources that may affect the quality of discharges to stormwater

and shall include the design and placement of recommended Best Management Practice (BMP) to effectively prohibit the entry of pollutants from the construction site into the storm drain system streets and water courses. The Plans shall be implemented as part of the grading, improvements and development of the project.

65. Prior to the issuance of any construction/grading permit and/or the commencement of any clearing, grading or excavation, the applicant shall submit a Notice of Intent (NOI) to the California State Water Resources Control Board, Stormwater Permit Unit in accordance with the NPDES Construction General Permit (No. CASQ00002): Waste Discharge Requirements for Discharges of Stormwater Runoff Associated with Construction Activities). The applicant shall also provide a copy of the Notice of Intent (NOI) to the City Engineer as proof of permit application. The improvement plans and grading plans shall contain the WDID number for the project.

66. Prior to the starting of grading or any ground disturbance the applicant shall identify a qualified superintendent for NPDES compliance. The NPDES superintendent shall be present, on the project site Monday through Friday and on all other days when the probability of rain is 40% or higher and prior to the start of and during all grading or clearing operations until the release of grading bonds. The NPDES superintendent shall have full authority to rent equipment and purchase materials to the extent needed to effectuate Best Management Practice. The NPDES superintendent shall provide proof of attendance and satisfactory completion of courses satisfactory to the City Engineer totaling no less than eight (8) hours directed specifically to NPDES compliance and effective use of Best Management Practice. In addition, an NPDES superintendent shall be designated to assume NPDES compliance during the construction of streets, storm drainage systems, all utilities, buildings and final landscaping of the site.

MAINTENANCE

67. Unless otherwise stipulated in the Special Conditions of Approval, any median landscaping constructed by the project shall be maintained by the City. An Assessment District shall be formed to fund the City maintenance costs for any such median landscaping.

68. Unless otherwise stipulated in the Special Conditions of Approval, where not maintained by a Landscape Maintenance District, parkway landscaping shall be maintained by a Home Owners' Association, a Property Owners' Association or by the property owner [collectively herein "Private Responsible Party"]. In such case, any required landscape easements, shall be conveyed to the Private Responsible Party.

69. Unless otherwise stipulated in the Special Conditions of Approval, all required on-site drainage improvements and/or stormwater quality [NPDES] features or facilities shall be maintained by the Private Responsible Party.

70. When, and if stipulated in the Special Conditions of Approval, that certain identified parkway landscaping and/or drainage improvements are to be maintained by the City, an Assessment District shall be formed to fund City costs for such maintenance. In such event, any required landscaping and/or drainage improvements shall be conveyed to the City in easements for such purposes.

71. Any Final Map identifying any landscape easement or drainage easement granted to a Private Responsible Party shall also be irrevocably offered for dedication to the City and shown on said Final Map. The City reserves the right to assume the maintenance of parkway landscaping, median landscaping or drainage improvements being maintained by a Private Responsible Party, should it be determined by the City, at its sole discretion, that the maintenance being provided by the Private Responsible Party is inadequate.

72. If required by a Special Condition of Approval, an Assessment District [herein "Back-Up District"] shall be formed to fund future City costs, should they occur, for the maintenance of parkway landscaping, median landscaping or drainage improvements previously maintained by a Private Responsible Party and then assumed by the City. If a Back-Up District is formed, it shall be the intent of the City to approve the required assessment each year, but to only levy that portion of the assessment necessary to recover any past City costs or any anticipated City costs for the following fiscal year. In the event the City is never required to assume the maintenance of any such improvements maintained by a Private Responsible Party, the amount of the annual assessment actually levied upon the affected properties would be minor amount, possibly zero. The City shall administer the annual renewal of the Back-Up District and any costs related to such administration shall be charged to the Fund established for such district revenues and expenses.

73. When it has been determined that it is necessary to form an Assessment District (including a Back-Up District), the applicant shall be required to undertake and complete the following:

    a. At least one-hundred-twenty (120) days prior to the planned recordation of any Final Map or the issuance of any zoning clearance for building permit, which ever comes first:

        i. submit the final draft plans for any irrigation, landscaping or Drainage Improvements [herein "Maintained Areas"] to be maintained by the Assessment District (including a required Back-Up District), along with any required plan checking fees;

        ii. submit a check in the amount of $5,000 as an advance to cover the cost of Assessment Engineering for the formation of the Assessment District [Note: Developer shall be required to pay for all final actual assessment engineering costs related to the Assessment District formation along with City administrative costs.];

b. At least sixty (60) days prior to the planned recordation of any Final Map or the issuance of any zoning clearance for building permit, which ever comes first, submit to the City the completed, "City approved" plans for the Maintained Areas (landscaping, irrigation and NPDES Drainage Improvements);

c. Prior to the planned recordation of any Final Map or the issuance of any zoning clearance for building permit, which ever comes first, submit to the City a signed Petition and Waiver requesting formation of the Assessment District [Note: The Petition and Waiver shall have attached to it as Exhibit 'A' the City approved final draft Engineer's Report prepared by the Assessment Engineer retained by the City.]

D. *Please contact the* BUILDING DIVISION *for compliance with the following conditions:*

74. Prior to the issuance of a Building Permit, the applicant shall provide written proof that an "Unconditional Will Serve Letter" for water and sewer service has been obtained from the Ventura County Waterworks District No. 1.

E. *Please contact the* VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT *for compliance with the following conditions:*

75. Facilities shall be operated in accordance with the Rules and Regulations of the Ventura County Air Pollution Control District, with emphasis on Rule 51, Nuisance. Rule 51 states: "A person shall not discharge from any source whatsoever such quantities of air contaminants or other material which cause injury, detriment, nuisance or annoyance to any considerable number of persons or to the public or which endangers the comfort, repose, health or safety of any such persons or the public or which cause or have a natural tendency to cause injury or damage to business or property."

F. *Please contact the* VENTURA COUNTY FIRE PROTECTION DISTRICT *for compliance with the following conditions:*

GENERAL

76. Prior to combustible construction, an all weather access road/driveway and the first lift of the access road pavement shall be installed. Once combustible construction starts a minimum twenty (20') foot clear width access road/driveway shall remain free of obstruction during any construction activities within the development. All access roads/driveways shall have a minimum vertical clearance of thirteen feet-six inches (13'-6") and a minimum outside turning radius of forty (40') feet.

77. Approved turnaround areas for fire apparatus shall be provided when dead-end Fire District access roads/driveways exceed 150-feet. Turnaround areas shall not exceed a five percent cross slope in any direction and shall be located within one-hundred-fifty (150') feet of the end of the access road/driveway.

78. The access road/driveway shall be extended to within one-hundred-fifty (150') feet of all portions of the exterior wall of the first story of any building and shall be in accordance with Fire District access standards. Where the access roadway cannot be provided, approved fire protection system or systems shall be installed as required and acceptable to the Fire District.

79. When only one (1) access point is provided, the maximum length shall not exceed eight-hundred (800') feet.

80. Public and private roads shall be named if serving more than four (4) parcels or as required by the Fire District.

81. Structures greater than 5,000 square feet and/or five (5) miles from a fire station shall be provided with an automatic fire sprinkler system in accordance with current Ventura County Fire Protection District Ordinance.

FINAL MAP

82. Prior to recordation of the Final Map(s) proposed street name(s) shall be submitted to the Community Development Director and the Fire District's Mapping Unit for review and approval. Approved street names shall be shown on the Final Map(s). Street name signs shall be installed in conjunction with the road improvements. The type of sign shall be in accordance with Plate F-4 of the Ventura County Road Standards.

83. At least fourteen (14) days prior to recordation of any maps, including parcel map waivers, the applicant shall submit two (2) copies of the map to the Fire Prevention Division for approval.

84. Within seven (7) days of the recordation of the Final Map(s) an electronic version of the map shall be provided to the Fire District.

85. Prior to Final Map or prior to the issuance of a building permit, whichever comes first, the applicant shall provide to the Fire District, written verification from the water purveyor that the water purveyor can provide the required fire flow as determined by the Fire District.

DEVELOPMENT REQUIREMENTS

86. Prior to the issuance of a certificate of occupancy by the Building Division the applicant shall submit a plan to the Fire District for review and approval indicating the method by which this project will be addressed.

87. Minimum six (6") inch high address numbers shall be installed prior to occupancy, shall be contrasting color to the background, and shall be readily visible at night Brass or gold plated number shall not be used. Where structures are set back more that one-hundred-fifty (150') feet from the street, larger numbers will be required so that they are distinguishable from the street. In the event a structure(s) is(are) not visible from the street, the address numbers(s) shall be posted adjacent to the driveway entrance on an elevated post.

88. Prior to combustible construction, fire hydrants shall be installed to the minimum standards of the City of Moorpark and the Fire District, and shall be in service.

89. Prior to occupancy of any structure, blue reflective hydrant location markers shall be placed on the access roads in accordance with Fire District standards. If the final asphalt cap is not in place at time of occupancy, hydrant location markers shall still be installed and shall be replaced when the final asphalt cap is completed.

90. Prior to issuance of a building permit the applicant shall submit a phasing plan and two (2) site plans (for the review and approval of the location of fire lanes) to the Fire District.

91. Prior to occupancy the fire lanes shall be posted "NO PARKING FIRE LANE TOW-AWAY" in accordance with California Vehicle Code and the Fire District.

92. Prior to or concurrently with the issuance of a building permit the applicant shall submit plans to the Fire District showing the location of the existing hydrants within three-hundred (300') feet of the proposed project and showing the location, type and number of proposed hydrants, and the size of the outlets. Fire hydrant(s) shall be provided in accordance with current adopted edition of the Uniform Fire Code, Appendix 111-B and adopted amendments. On-site fire hydrants may be required as determined by the Fire District. Fire hydrants, if required, shall be installed and in service prior to combustible construction and shall conform to the minimum standard of the Ventura County Waterworks Manual and the Fire District.

93. Prior to installation of any fire protection system; including, but not limited to sprinklers, dry chemical, hood systems, the applicant shall submit plans, along with the required fee for plan check, to the Fire District for review and approval. Fire sprinkler systems with one-hundred or more heads shall be supervised by a fire alarm system in accordance with Fire District requirements.

94. Prior to installation of the fire alarm system (if required), the applicant shall submit plans, along with the required fee for plan check, to the Fire District for review and approval. The fire alarm system shall be installed in all buildings in accordance with California Building and Fire Code.

95. Prior to the issuance of a certificate of occupancy by the Building Division the applicant shall obtain all applicable Uniform Fire Code (UFC) permits.

96. Prior to the issuance of a building permit the applicant shall obtain a copy of Ventura County Fire District Form No. 126 "Requirements for Construction."

97. Prior to framing the applicant shall clear for a distance of one hundred feet all grass or brush exposing any structure(s) to fire hazards.

G. *Please contact the* VENTURA COUNTY WATERWORKS DISTRICT NO. 1 *for compliance with the following conditions:*

98. The applicant shall comply with the applicable provisions of Ventura County Waterworks District No. 1 standard procedures for obtaining domestic water and sewer services for applicant's projects within the District.

99. Prior to issuance of a building permit, provide Ventura County Waterworks District:

    a. Water and sewer improvement plans in the format required.

    b. Hydraulic analysis by a registered Civil Engineer to determine the adequacy of the proposed and existing water and sewer lines.

    c. Copy of approval of fire hydrant locations by Ventura County Fire Protection District.

    d. Copy of District Release and Receipt from Calleguas Municipal Water District.

    e. Cost estimates for water and sewer improvements.

    f. Plan check, construction inspection, capital improvement charge, sewer connection fee and water meter charge.

    g. Signed Contract to install all improvements and a Surety Bond.

100. At the time water service connection is made, cross connection control devices shall be installed on the water system in a manner approved by the Ventura County Waterworks District No. 1.

H. *Please contact the* VENTURA COUNTY WATERSHED PROTECTION DISTRICT *for compliance with the following conditions:*

101. Direct storm drain connections to Ventura County Flood Control District facilities are subject to Ventura County Watershed Protection District permit requirements.

I. *Please contact the* POLICE DEPARTMENT *for compliance with the following condition:*

102. Prior to initiation of the building plan check process for the project, the applicant shall submit plans in sufficient detail to the Police Department for review and approval of defensible space concepts to reduce demands on police services. To the degree feasible and to the satisfaction of the Community Development Director and the Police Chief, public safety planning recommendations shall be incorporated into the project plans. The applicant shall prepare a list of project features and design components that demonstrate responsiveness to defensible space design concepts.

- END -