ITEM 11. C.

ORDINANCE NO. 347

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 6th day of December, 2006.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk

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

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 Toll Land XX Limited Partnership, the owner of real property within the City of Moorpark generally referred to as Vesting Tentative Tract Map 5464 (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. 2003-04 ("GPA 2003-04"), for approximately 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. 2003-03 ("ZC 2003-03").

1.3. GPA 2003-04, ZC 2003-03, Vesting Tentative Tract Map 5464 (Tract 5464) and Residential Planned Development Permit No. 1994-01 Modification No. 6 (RPD 1994-01 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 2003-04.

1.7. On June 28, 2005, 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 July 19, 2006, the City Council commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on November 15, 2006, approved first reading of the ordinance and on December 6, 2006 adopted the Agreement by Ordinance No. 347 ("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

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 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 of 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 Five-Hundred Dollars ($9,500.00) per residential unit and Forty-Two-Thousand Seven-Hundred Fifty Dollars ($42,750.00) per gross acre of institutional land on which the use is located. The fee

shall be adjusted annually commencing on July 1, 2008by 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 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 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 Six-Hundred Dollars ($6,600.00) per residential unit, and Twenty-Nine-Thousand, Seven-Hundred Dollars ($29,700.00) 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, Four-Hundred Dollars ($2,400.00) per residential unit, and Ten-Thousand Eight-Hundred

Dollars ($10,800.00) per gross acre of institutional land on which the institutional use is located. The fee shall be adjusted annually commencing on January 1, 2008 by 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 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.

6.6. In the event there is a decrease in 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. As a condition of the issuance of a 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 Twelve-Thousand Dollars ($12,000.00) 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:

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 both of the referenced Indices 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 Twenty-Four-Thousand Dollars ($24,000.00) 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:

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 both of the referenced Indices 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.

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 5464 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 5464, 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 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 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 provide three (3) four (4) bedroom and two (2) bath single family detached units with a minimum of 1,200 square feet to be sold to buyers who meets the criteria for low income (80 percent or less of median income); and four (4) four (4) bedroom and two (2) bath single family detached units with a minimum of 1,200 square feet to be

sold to 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 5464. 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 three (3) low income units and four (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 18th residential unit in Tract 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. 5464 and/or RPD No. 1994-1 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 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 (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 July 1, 2008, and on 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 Eight-Hundred Dollars ($1,800.00) per residential unit to be paid prior to the issuance of each building permit for the first residential unit in Tract 5464. Commencing on January 1, 2008, 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 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 5464 and RPD 1994-01 Mod. No. 6.

owner associations shall be more specifically defined in the conditions of approval of Tract 5464 and RPD 1994-01 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, 6.9, 6.23 and 6.26 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

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 66 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.

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 shall be granted for all portions of the Property zoned Open Space, 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 shall be dedicated to the city of Moorpark. The Conservation Easement shall be granted and conveyed to the city of Moorpark for permanent preservation of the natural, scenic and open space character of 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 said conservation easements. The 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.

6.28. Developer agrees, within six (6) months of the operative date of this Agreement, the control and maintenance of both entry monuments at the intersection of Grimes Canyon Road and Championship Drive, and both entry monuments at the intersection of Walnut Canyon Road and Championship Drive, shall be transferred to the master Homeowner's Association for Country Club Estates (Tract 4928). Such transfer shall be either in the form of an easement, in fee simple, or other form acceptable to City. Notification shall be provided by Developer to the Community Development Director upon completion of the transfer.

6.29. Developer agrees to provide agricultural buffer fencing along the joint property line between the existing Moorpark Country Club Estates (Tract 4928) and the adjacent agricultural uses immediately to the north. Developer also agrees to provide agricultural buffer fencing along the joint property line between Tract 5463 and Tract 5464 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. If any fencing is located on the adjacent agricultural property, said property owner shall agree, in writing, to maintain the fencing in a good state of repair so long as there is agricultural use of said property. Said fencing shall be installed prior to the issuance of the first building permit. The developer shall pay for and obtain any necessary permits from the County of Ventura prior to initiation of any work. Copies of such permits shall be provided to the Community Development Director prior to the commencement of work.

7. <u>City Agreements</u>.

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 5464 and RPD 1994-01 Mod. No. 6 and contingent on City Engineer and 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 including, in the case of failure to pay a fee required hereunder, to compel such payment. 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.

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

CITY OF MOORPARK

_____
Patrick Hunter
Mayor

OWNER/DEVELOPER

Toll Land XX Limited Partnership

By: _____

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A

LEGAL DESCRIPTION

Tentative Tract 5464

Being a portion of Lots 41-47, inclusive, and portions of Lot 122, Lot E and Lot L, Tract 4928-3, in the city of Moorpark, County of Ventura, State of California, as shown on the map filed in Book 151, Page 7 of Miscellaneous Records (Maps) in the office of the County Recorder of the County of Ventura, State of California and that portion of the North one-half of Lot 33, lying west of the so-called "Walnut Canyon Road", of the Vallette Tract, being a subdivision of Lot 2 in Block "L" of Rancho Simi, city of Moorpark, County of Ventura, State of California, as shown on the map filed in Book 3, Page 41 of Miscellaneous Records (Maps) in the office of the County Recorder of the County of Ventura, State of California

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
Toll Brothers Inc.
Attn: Mark E. Forter, Regional Counsel
725 Town & Country Road, Suite 500
Orange, California 92868