

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** David C. Moe II, Redevelopment Manager *DCM*

**DATE:** December 9, 2005 (City Council Meeting of 12/21/05)

**SUBJECT:** Approving the Sale of Property Owned by the Moorpark Redevelopment Agency, located at 467 High Street, to the Moorpark Group, LLC.

**BACKGROUND**

The Moorpark Redevelopment Agency ("Agency") and the Moorpark Group, LLC ("Developer"), formally known as the DalyOwensGroup, have been working to finalize the purchase of Agency owned property at 467 High Street ("Property").

On August 3, 2004, the Agency and Developer agreed on the terms and conditions on the sale of the Property. The Developer submitted a \$5,000 deposit to begin the process of drafting the Disposition and Development Agreement ("DDA"). However, due to the lack of Agency staffing, the DDA was not completed until August of 2005.

An appraisal established the fair market value of the Property's highest and best use in accordance with the Moorpark Redevelopment Plan to be \$477,800.

The Property is currently vacant and blighted. A dilapidated structure was located on the Property; however, the Agency has removed it.

**DISCUSSION**

The Developer is proposing to purchase the Property for \$477,800 and construct a 17,500 square foot building to be used for commercial purposes in accordance with the Moorpark Redevelopment Plan and Downtown Specific Plan. A copy of the Developer's site plan and elevation of the proposed development can be found in Attachment I.

Under the proposed DDA, the Developer will have 14 months to obtain the necessary permits for the project and 14 months to complete the construction. The Agency will retain the right to approve all tenants occupying the building for the first five years of the project (after completion of construction).

California Community Redevelopment Law ("CCRL") Section 33433 requires that the City Council approve, by resolution and after a public hearing, any Agency sale or lease of property which was acquired with tax increment funds. Therefore, since the Agency did acquire the Property with tax increment funds, the City Council will need to make three required findings. The City Council will need to find that:

1. The sale of property will assist in the elimination of blight in the Moorpark Redevelopment Project.
2. The sale of property is consistent with the goals and objectives in the 2005-2009 Implementation Plan for the Moorpark Redevelopment Project pursuant to Section 33490 of the CCRL.
3. The property is being sold to the Moorpark Group, LLC at the fair market value at the highest and best use in accordance with the Moorpark Redevelopment Plan.

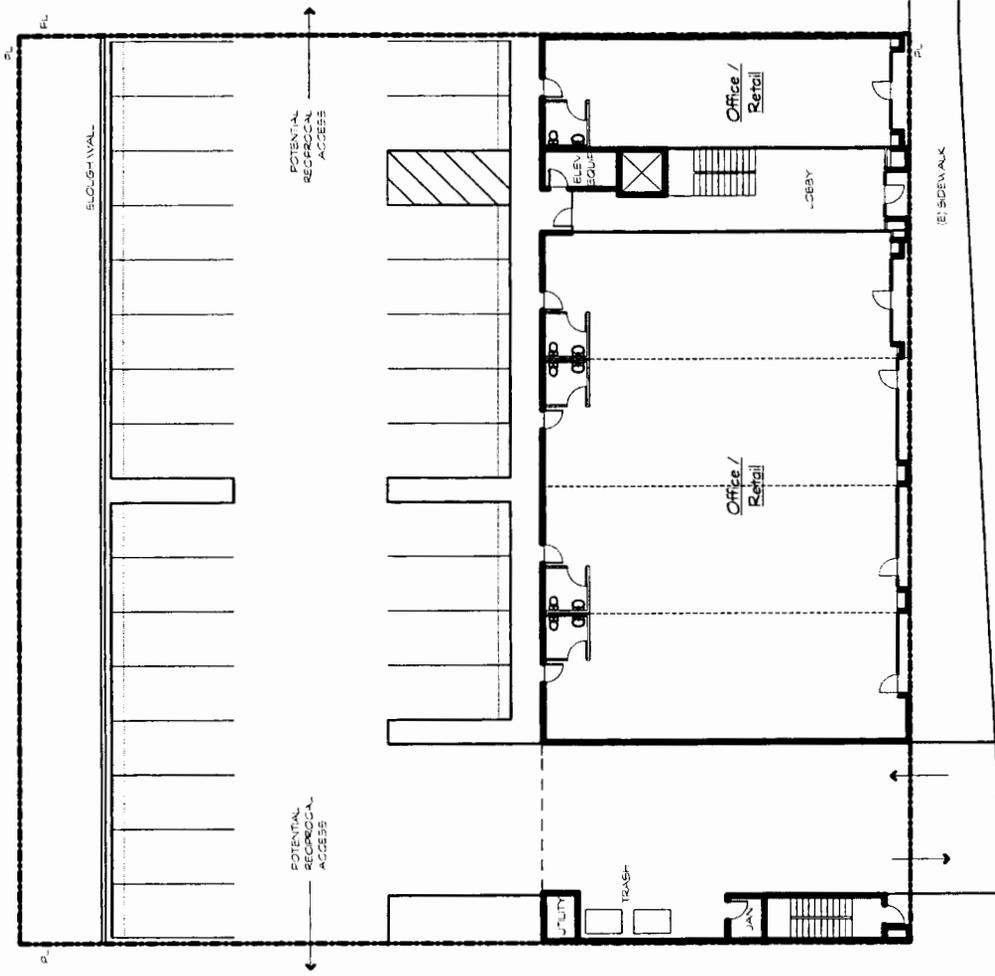
The Section 33433 Report (Attachment II) summarizes all of the Agency's cost associated with the acquisition, holding and sale of the Property; states that the Property is being sold for the fair market value; and describes how the sale of the Property will assist with the elimination of blight and is consistent with the Five Year Implementation Plan.

**STAFF RECOMMENDATION**

- 1) Open public hearing, take public testimony, and close the public hearing; and
- 2) Approve Resolution No. 2005 - \_\_\_\_\_ approving sale of Property between the Agency and the Moorpark Group, LLC.

Attachment I Site Plan and Elevation  
Attachment II Section 33433 Summary Report  
Attachment III Resolution

# ATTACHMENT I



000003

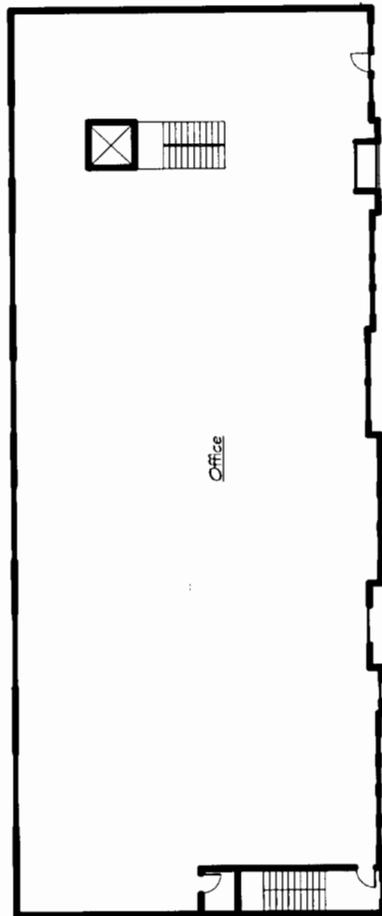
Site Plan / First Floor  
Scale: 1" = 30'-0"

**High Street** date 12/5/05  
467 High Street sheet A-01  
Moorpark, CA 93021

**DI CECCO ARCHITECTURE**

51 58 GOLDMAN AVENUE SUITE F  
MOORPARK, CA. 93021 (805) 552-0088

000004



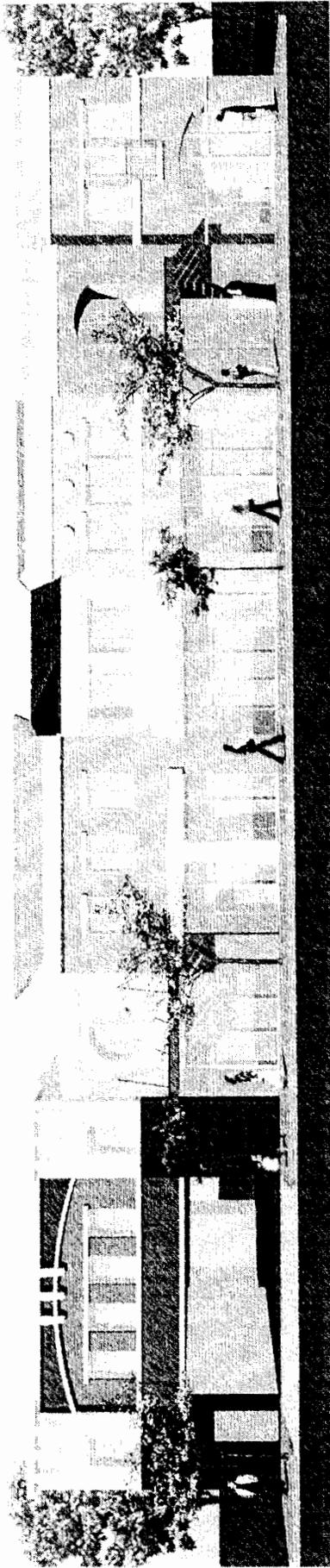
Second Floor  
Scale: 1" = 30'-0"

High Street  
467 High Street  
Moorpark, CA 93021

date 12/5/05  
sheet A-02

DI CECCO ARCHITECTURE

5158 GOLDMAN AVENUE SUITE F  
MOORPARK, CA. 93021 (805) 552-0088



000005

Rendering

DI CECCO ARCHITECTURE

High Street

51 58 GOLDMAN AVENUE SUITE F  
MOORPARK, CA. 93021 (805) 552-0088

467 High Street  
Moorpark, CA 93021

date 12/5/05

sheet

A-03

## ATTACHMENT II

### REPORT OF THE MOORPARK REDEVELOPMENT AGENCY ON THE SALE OF REAL PROPERTY PURSUANT TO A PROPOSED DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND MOORPARK GROUP LLC.

This report has been prepared pursuant to Section 33433 of the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) which requires a redevelopment agency, prior to selling any real property acquired in whole or in part, directly or indirectly, with tax increment monies, to prepare a report which includes a copy of the proposed sale and a summary which describes and specifies: (1) the cost of the agreement to the agency; (2) the estimated value of the interest to be conveyed or leased, determined at the highest and best uses permitted under the redevelopment plan; (3) the estimated value of the interest to be conveyed determined at the use and with the conditions, covenants, and development costs required by the sale, the purchase price and, if there is a difference between the fair market value determined at its highest and best use consistent with the redevelopment plan and the purchase price, an explanation of the reasons for the difference; and (4) an explanation of why the sale of the property will assist in the elimination of blight, with reference to all supporting facts and materials relied upon in making this explanation.

#### I. PROPOSED SALE OF REAL PROPERTY

A copy of the proposed Disposition and Development Agreement (the "DDA") between The Redevelopment Agency of the City of Moorpark (the "Agency") and Moorpark Group LLC (the "Developer") is attached as Exhibit A. The proposed DDA provides for the sale of certain real property owned by the Agency located within the boundaries of the Moorpark Redevelopment Project Area in the City of Moorpark described in Exhibit B (the "Site"). Under the terms of the DDA, the Developer shall construct, or cause to be constructed, on the Site, a commercial building.

#### II. FINANCIAL SUMMARY

##### A. Cost of the DDA to the Agency

The Agency has incurred or will incur the following costs relating to the DDA:

1. Land Acquisition Costs. The Sites, purchased by the Agency, cost a total of \$451,439 and the improvements were demolished at a cost of \$18,805.
2. Land Disposition Costs. The Agency will sell the Site to the Developer pursuant to the DDA. The Developer and Agency will each pay for their costs

associated with the escrow, including payment of the premium for a CLTA title insurance policy. Should Developer desire an ALTA title insurance policy, the Developer shall pay the premium of the ALTA policy.

3. Administration and Staff Costs. The Agency will incur administrative costs associated with the DDA, excluding legal costs, for the negotiation and preparation of the DDA and other related documents, and ongoing staff costs related to the monitoring of the obligations of the parties under the DDA during construction. Following construction, the Agency will incur additional administrative and staff costs relating to the ongoing monitoring during the term of the use covenants provided for under the DDA.
4. Legal Cost. The Agency has incurred or will incur \$1,006 of legal expenses associated with this DDA.
5. Abandoned Well Search. The County of Ventura requested the Agency to conduct an abandoned well search on the property. The Agency retained Water Resource Engineering Associates to conduct an Abandoned Well Search on the property and file a report with the County of Ventura at a cost of \$2,013.
6. Appraisal Cost. The Agency incurred \$400 expense to have the property appraised.

B. Estimated Value of the Sites at Highest and Best Use

Based upon an independent appraisal prepared by Stuart Lane Company, (the "Appraisal") the estimated fair market value of the Site determined at the highest and best use permitted under the Moorpark Redevelopment Plan is commercial use with the total land valued at \$477,800.

C. Estimated Value of the Site with the Conditions, Covenants, and Development Costs Required by the DDA

The DDA does not require special use, conditions, covenants or development costs that change the value of

the Site from the estimated value at its highest and best use.

D. Purchase Price

The Developer's purchase price for the Site is \$477,800.00, which is the appraised fair market value based on the Appraisal conducted by the Stuart Lane Company.

**III. EXPLANATION OF WHY THE SALE OF THE SITE WILL ASSIST IN ELIMINATING BLIGHT AND IS CONSISTENT WITH THE IMPLEMENTATION PLAN**

The goals and objectives of the Moorpark Redevelopment Project, as stated in the Agency's Five Year Implementation Plan, include, in part, the revitalization of the downtown area. The development of the Site pursuant to the DDA is consistent with and will further the redevelopment goals and objectives.

The sale of the Site will assist in the elimination of blight because the Site consisted of a blighted structure which was demolished. The Site is currently vacant and underutilized. The sale of the Site pursuant to the terms of the DDA will make development of the Site possible and will require the Developer to use and develop the Site in accordance with the Moorpark Redevelopment Plan.

In addition to eliminating blight of the Site, the development will assist in stimulating other new investment in the Project Area.

Attachments: Exhibit A Disposition and Development Agreement  
Exhibit B Legal Description of Site

# EXHIBIT A

## OFFICIAL BUSINESS

Document entitled to free  
Recording per Government  
Code Sections 6103 and 27383

Recording Requested by,  
and When Recorded Mail to:  
REDEVELOPMENT AGENCY of the  
CITY OF MOORPARK  
799 Moorpark Avenue  
Moorpark, California 93021  
Attn: Steven Kueny  
Executive Director

---

SPACE ABOVE THIS LINE  
FOR RECORDER'S USE

**DISPOSITION AND DEVELOPMENT AGREEMENT**  
**By and Between the**  
**REDEVELOPMENT AGENCY of the CITY OF MOORPARK**  
**and**  
**MOORPARK GROUP LLC**

**DATED September \_\_, 2005**

---

**A MOORPARK REDEVELOPMENT PROJECT**

000009

## ATTACHMENTS

- Attachment No. 1 Site Map
- Attachment No. 2 Site Legal Description
- Attachment No. 3 Grant Deed
- Attachment No. 4 Schedule of Performance
- Attachment No. 5 Scope of Development
- Attachment No. 6 Release of Construction Covenants

## DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** (this "Agreement") is entered into as of \_\_\_\_\_, 2005, by and between the **REDEVELOPMENT AGENCY of the CITY OF MOORPARK**, a public body, corporate and politic (the "Agency"), and **MOORPARK GROUP LLC** (the "Developer").

### RECITALS

The following recitals are a substantive part of this Agreement:

- A. In furtherance of the objectives of the California Community Redevelopment Law, the Agency desires to redevelop a certain parcel of land, approximately 1/2 acre in size, located at 467 East High Street (APN 512-0-081-110) in the City of Moorpark (the "Site"). The Site is vacant.
- B. The Site is currently owned by the Redevelopment Agency of the City of Moorpark and has a zoning designation of "Old-Town Commercially ~~Zoned~~" as provided by the Moorpark Downtown Specific Plan.
- C. The Agency and the Developer desire by this Agreement for the Agency to agree to convey the Site to the Developer, and for the Developer to agree to construct a new, approximately 17,570 square foot, commercial building on the Site including supporting parking and other on-site or off-site improvements (collectively, the "Improvements") consistent with the adopted Redevelopment Plan, City General Plan, zoning and development standards.
- D. The Agency's disposition of the Site to the Developer, and the Developer's acquisition of the Site and construction of the Improvements pursuant to the terms of this Agreement, are in the vital and best interest of the Moorpark Redevelopment Agency, the City, and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the redevelopment of the Project has been undertaken.

**NOW, THEREFORE**, the Agency and the Developer hereby agree as follows:

### 100. DEFINITIONS

"**Actual Knowledge**" is defined in Section 208.1 hereof.

"**Agency**" means the Redevelopment Agency of the City of Moorpark, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law of the State of California, and any assignee of or successor to its rights, powers and responsibilities.

"**Agency's Conditions Precedent**" means the conditions precedent to the Closing to the benefit of the Agency, as set forth in Section 205.1 hereof.

"**Agreement**" means this Disposition and Development Agreement between the Agency and the Developer.

**“City”** means the City of Moorpark, a California municipal corporation.

**“Closing”** means the close of Escrow for the conveyance of the Site from the Agency to the Developer, as set forth in Section 202 hereof.

**“Closing Date”** means the date of the Closing, as set forth in Section 202.4 hereof

**“Condition of Title”** is defined in Section 203 hereof.

**“Date of Agreement”** means the date set forth in the first paragraph hereof.

**“Default”** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

**“Design Development Drawings”** means those plans and drawings to be submitted to the City for its approval, pursuant to Section 302 hereof.

**“Developer”** means MOORPARK GROUP LLC, a California General Partnership.

**“Developer’s Conditions Precedent”** means the conditions precedent to the Closing to the benefit of the Developer, as set forth in Section 205.2.

**“Environmental Consultant”** means the environmental consultant to be employed by the Developer pursuant to Section 208.2 hereof.

**“Environmental Laws”** means any federal, state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. § 1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.(42 U.S.C. §6903), (viii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq., or (ix) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

**“Escrow”** is defined in Section 202 hereof.

**“Escrow Agent”** is defined in Section 202 hereof.

**“Exceptions”** is defined in Section 203 hereof.

**“Governmental Requirements”** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, the county, the

City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Site.

**“Grant Deed”** means the grant deed for the conveyance of the Site from the Agency to the Developer, in the form of Attachment No. 3 hereto which is incorporated herein.

**“Hazardous Materials”** means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State of California, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a “hazardous waste,” “extremely hazardous waste,” or “restricted hazardous waste” under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a “hazardous substance” under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as “hazardous” or “extremely hazardous” pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. § 1317), (x) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903) or (xi) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq.

**“Improvements”** means the improvements to be constructed by the Developer either on or off the Site. The improvements include but are not limited to the construction of a multiple story, commercial building constructed with material acceptable to the City, of approximately 17,570 square feet and supporting parking and landscape improvements all more particularly described herein and in the Scope of Development.

**“Lender”** is defined in Section 311.2 hereof.

**“Notice”** shall mean a notice in the form prescribed by Section 601 hereof.

**“Outside Date”** shall mean the last date the Closing shall occur, as set forth in Section 202.4 hereof.

**“Project”** shall mean the Site as improved including construction of improvements consisting of a three story, commercial building constructed with material acceptable to the City, of approximately 17,570 square feet and supporting parking and landscape improvements all more particularly described herein and in the Scope of Development.

**“Purchase Price”** means the price to be paid by the Developer to the Agency in consideration for the conveyance of fee title to the Site.

**“RAP”** means the remedial action plan for the remediation of the Site, as defined in Section 208.3 hereof.

**“Release of Construction Covenants”** means the document which evidences the Developer’s satisfactory completion of the Improvements, as set forth in Section 310 hereof, in the form of Attachment No. 6 hereto which is incorporated herein.

**“Remedial Work”** is defined in Section 208.3 hereof.

**“Remediation Cost”** is defined in Section 208.3 hereof

**“Report”** means the preliminary title report, as described in Section 203 hereof

**“Schedule of Performance”** means the Schedule of Performance attached hereto as Attachment No. 4 and incorporated herein, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished. The Schedule of Performance is: (a) subject to revision from time to time as mutually agreed upon in writing between the Developer and the Agency’s Executive Director, and the Agency’s Executive Director is authorized to make such revisions as he or she deems reasonably necessary; and (b) subject to the provisions of Section 602.

**“Scope of Development”** means the Scope of Development attached hereto as Attachment No. 5 and incorporated herein, which describes the scope, amount and quality of development of the Improvements to be constructed by the Developer pursuant to the terms and conditions of this Agreement.

**“Site”** is defined in Recital Paragraph A.

**“Site Legal Description”** means the description of the Site which is attached hereto as Attachment No. 2 and incorporated herein.

**“Site Map”** means the map of the Site which is attached hereto as Attachment No. 1 and incorporated herein.

**“Studies”** are defined in Section 207 hereof.

**“Threshold Amount”** is defined in Section 208.3 hereof.

**“Title Company”** is defined in Section 203 hereof.

**“Title Policy”** is defined in Section 204 hereof.

**“Trust Deed”** is defined in Section 311.2 hereof.

**“Use Restriction Period”** is defined in Section 301 hereof.

## **200. CONVEYANCE OF THE SITE**

**201. Purchase and Sale of Site.** The Agency has fee title to the entire Site as defined in Site Legal Description in Section 100 hereof. Subject to all of the terms and conditions of this Agreement, Agency shall sell the Site to Developer, and Developer shall purchase the Site from Agency, for the all-inclusive cash purchase price of Four

Hundred Seventy Thousand Two Hundred Forty-Four Dollars (\$470,244) (the "Purchase Price"), payable in legal tender of the United States of America, unless provisions to the contrary are provided herein. Payment of the Purchase Price represents the agreed upon reuse value of the Site, at the use and with the covenants and conditions and development costs authorized by this Agreement. Developer agrees that it shall not purchase the Site for speculation in undeveloped land.

**202. Escrow.** Within thirty (30) days after the full execution of this Agreement, the parties shall open escrow ("Escrow") with Land America, Lawyers Title, or another escrow company mutually satisfactory to both parties (the "Escrow Agent").

**202.1 Costs of Escrow.** Agency and Developer shall pay their respective portions of the premium for the Title Policy as set forth in Section 204 hereof, the Agency shall pay for the documentary transfer taxes, if any, due with respect to the conveyance of the Site, and Developer and Agency each agree to pay one-half of all other usual fees, charges, and costs which arise from Escrow.

**202.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of Developer and Agency, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The parties hereto agree to do all acts reasonably necessary to close this Escrow in the shortest possible time. Insurance policies for fire or casualty are not to be transferred, and Agency will cancel coverage of the Site from its own policies after the Closing. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check from such account. However, if Escrow does not close within two (2) business days from deposit of the Purchase Price, the funds shall be deposited into an interest bearing account with such interest accruing to the benefit of the Developer.

If in the opinion of either party it is necessary or convenient in order to accomplish the Closing of this transaction, such party may require that the parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both the Agency's Conditions Precedent and the Developer's Conditions Precedent as set forth in Section 205 have been satisfied. Escrow Agent is instructed to release Agency's escrow closing and Developer's escrow closing statements to the respective parties.

**202.3 Authority of Escrow Agent.** Escrow Agent is authorized to and shall:

- a. Pay and charge Agency for the premium of the Title Policy and any amount necessary to place title in the condition necessary to satisfy Section 203 of this Agreement.

- b. Pay and charge Developer and Agency for their respective shares of any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.
- c. Pay and charge Developer for any endorsements to the Title Policy which is requested by the Developer.
- d. Disburse funds, and deliver and record the Grant Deed when both the Developer's Conditions Precedent and the Agency's Conditions Precedent have been fulfilled or waived by Developer and Agency.
- e. Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations under this Agreement.
- f. Within the discretion of Escrow Agent, direct Agency and Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar state act and regulation promulgated there under. Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by Escrow Agent, on the form to be supplied by Escrow Agent.
- g. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**202.4 Closing.** This transaction shall close ("Closing") within thirty (30) days of the parties' satisfaction of all of Agency's and Developer's Conditions Precedent to Closing as set forth in Section 205 hereof, but in no event later than October 30, 2006 (the "Outside Date").

The Closing shall occur at a location within Ventura County at a time and place reasonably agreed on by the parties. The "Closing" shall mean the time and day the Grant Deed is filed for recording with the Ventura County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

**202.5 Termination.** If (except for deposit of money by Developer, which shall be made by Developer before the Closing) Escrow is not in condition to close by the Outside Date, then either party which has fully performed under this Agreement may, in writing, demand the return of money or property and terminate this Agreement. If either party makes a written demand for return of documents or properties, this Agreement shall not terminate until five (5) days after Escrow Agent has delivered copies of such demand to all other parties at the respective addresses shown in this Agreement. If any objections are raised within said five (5) day period, Escrow Agent is authorized to hold all papers and documents until instructed by a court of competent jurisdiction or by mutual written instructions of the parties. Developer, however, shall have the sole option to withdraw any money deposited by it for the acquisition of the Site less Developer's share of costs of Escrow. Termination of this Agreement shall be without prejudice as to whatever legal rights either party may have against the other arising from this Agreement. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

**202.6 Closing Procedure.** Escrow Agent shall close Escrow for the Site as follows:

- a. Record the Grant Deed with instructions for the Recorder of Ventura County, California to deliver the Grant Deed to Developer;
- b. Instruct the Title Company to deliver the Title Policy to Developer;
- c. File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements; and
- d. Deliver the FIRPTA Certificate, if any, to Developer;
- e. Forward to both Developer and Agency a separate accounting of all funds received and disbursed for each party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

**203. Review of Title.** The Agency shall cause Land America, Lawyers Title Company, or another title company mutually agreeable to both parties (the "Title Company"), to deliver to Developer a standard preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report, within thirty (30) days from the date of this Agreement. The Developer shall have the right to reasonably approve or disapprove the Exceptions.

Developer shall have thirty (30) days from the date of its receipt of the Report to give written notice to Agency and Escrow Holder of Developer's approval or disapproval of any of such Exceptions. Developer's failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report. If Developer notifies Agency of its disapproval of any Exceptions in the Report, Agency shall have the right, but not the obligation to notify Developer within ten (10) business days after receiving written notice of Developer's disapproval that such Exception(s) will be removed on or before the Closing. If Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, Developer shall have ten (10) business days after the expiration of such ten (10) business day period to either give the Agency written notice that Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Agency written notice that the Developer elects to terminate this Agreement. The Exceptions approved by Developer as provided herein shall hereinafter be referred to as the "Condition of Title." Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after Developer has approved the Condition of Title for the Site (which are not created by Developer). Agency shall not voluntarily create any new exceptions to title following the date of this Agreement.

**204. Title Insurance.** Concurrently with recordation of the Grant Deed conveying title to the Site, there shall be issued to Developer an CLTA policy of title insurance (the "Title Policy"), by the Title Company insuring that the title to the Site is vested in Developer in the condition required by Section 203 of this Agreement. The Title Company shall provide the Agency with a copy of the Title Policy. The Title Policy shall be for the amount of the Purchase Price. The Agency agrees to remove on or before the

Closing any deeds of trust or other monetary liens against the Site. The Agency shall pay that portion of the premium for the Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price. Any additional costs, including the cost of an ALTA policy or any endorsements requested by the Developer, shall be borne by the Developer.

**205. Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

**205.1 Agency's Conditions of Closing.** Agency's obligation to proceed with the Closing of the sale of the Site is subject to the fulfillment or waiver by Agency of each and all of the conditions precedent (a) through (h), inclusive, described below ("Agency's Conditions Precedent"), which are solely for the benefit of Agency, and which shall be fulfilled or waived by the time periods provided for herein:

- a. No Default. Prior to the Close of Escrow, Developer is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Developer contained herein shall be true and correct in all material respects.
- b. Deposit. Prior to the Close of Escrow, Developer will provide a Good Faith Deposit of Five Thousand Dollars (\$5,000).
- c. Execution of Documents. The Developer shall have executed the Grant Deed and executed any other documents required hereunder and delivered such documents into Escrow.
- d. Payment of Closing Costs. Prior to the Close of Escrow, Developer has paid all required costs of Closing into Escrow in accordance with Section 202 hereof.
- e. Design Approvals and Building Permits. The Developer shall have obtained approval by the Agency of the Design Development Drawings and building permits from the City as set forth in Section 302 hereof.
- f. Land Use Approvals. The Developer shall have received all land use approvals and permits required pursuant to Section 303 hereof.
- g. Insurance. The Developer shall have provided proof of insurance as required by Section 306 hereof.
- h. Financing. The Agency shall have approved financing of the Improvements as provided in Section 311.1 hereof.

**205.2 Developer's Conditions of Closing.** Developer's obligation to proceed with the purchase of the Site is subject to the fulfillment or waiver by Developer of each and all of the conditions precedent (a) through (h), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of Developer, and which shall be fulfilled or waived by the time periods provided for herein:

- a. No Default. Prior to the Close of Escrow, Agency is not in default in any of its obligations under the terms of this Agreement and all representations and warranties of Agency contained herein shall be true and correct in all material respects.
- b. Execution of Documents. The Agency shall have executed the Grant Deed and any other documents required hereunder, and delivered such documents into Escrow.

- c. **Payment of Closing Costs.** Prior to the Close of Escrow, Agency shall have paid all required costs of Closing into Escrow in accordance with Section 202 hereof.
- d. **Review and Approval of Title.** Developer shall have reviewed and approved the condition of title of the Site, as provided in Section 203 hereof.
- e. **Title Policy.** The Title Company shall, upon payment of Title Company's regularly scheduled premium, have agreed to the Title Policy for the Site upon the Close of Escrow, in accordance with Section 204 hereof.
- f. **Environmental.** The Developer shall have approved the environmental condition of the Site and shall not have elected to cancel Escrow and terminate this Agreement pursuant to Section 208 hereof, and the Remediation (if required pursuant to that Section) shall have been completed as provided therein.
- g. **Design Approvals.** The Developer shall have obtained approval of the Design Development Drawings and Building Permits as set forth in Section 302 hereof.
- h. **Land Use Approvals.** The Developer shall have received all land use approvals and permits required pursuant to Section 303 hereof.

**206. Representations and Warranties.**

**206.1 Agency Representations.** Agency represents and warrants to Developer as follows:

- a. **Authority.** Agency is a public body, corporate and politic, existing pursuant to the California Community Redevelopment Law (California Health and Safety Code Section 33000), which has been authorized to transact business pursuant to action of the City. Agency has full right, power and lawful authority to grant, sell and convey the Site as provided herein and the execution, performance and delivery of this Agreement by Agency has been fully authorized by all requisite actions on the part of Agency.
- b. **FIRPTA.** Agency is not a "foreign person" within the parameters FIRPTA or any similar state statute, or is exempt from the provisions of FIRPTA or any similar state statute, or that Agency has complied and will comply with all the requirements under FIRPTA or any similar state statute.
- c. **No Conflict.** To the best of Agency's knowledge, Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which Agency is a party or by which it is bound.
- d. **Lawsuits.** There are no claims, actions, suits or proceedings, nor any order, decree or judgment, in law or in equity in effect against or affecting the Site.
- e. **Violations of Law.** No outstanding notices of the violation of laws, ordinances, orders, requirements or regulations of any government agency related to the Site have been received by the Agency.

- f. **Leases and Contracts.** There are no leases, rental agreements or similar instruments creating a possessory interest in the Site and no agreements relating to the upkeep, repair, maintenance and operation of the Site which are in effect as of the execution date of this Agreement or will be in effect as of the Close of Escrow.
- g. **Special Assessments.** Agency shall pay all assessments due on the property up to closing of escrow.
- h. **Purchase Rights.** No person, firm, corporation or other entity (other than Developer by reason of this Agreement) has any right or option to acquire the Site or any portion thereof unless approved by agency.

Until the Closing, Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of Closing, immediately give written notice of such fact or condition to Developer. Such exception(s) to a representation shall not be deemed a breach by Agency hereunder, but shall constitute an exception which Developer shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Developer elects to close Escrow following disclosure of such information, Agency's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Developer elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

**206.2 Developer's Representations.** Developer represents and warrants to Agency as follows:

- a. **Authority.** Developer is a duly formed LLC organized within and in good standing under the laws of the State of California. The copies of the documents evidencing the organization of the Developer which have been delivered to the Agency are true and complete copies of the originals, as amended to the date of this Agreement. Developer has full right, power and lawful authority to purchase and accept the conveyance of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by Developer has been fully authorized by all requisite actions on the part of the Developer.
- b. **No Conflict.** To the best of Developer's knowledge, Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound.
- c. **No Developer Bankruptcy.** Developer is not the subject of a bankruptcy proceeding.

Until thirty (30) days prior to the Closing, Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section

206.2 not to be true as of Closing, immediately give written notice of such fact or condition to Agency. Such exception(s) to a representation shall not be deemed a breach by Developer hereunder, but shall constitute an exception which Agency shall have a right to approve or disapprove if such exception would have an effect on the value and/or operation of the Site. If Agency elects to close Escrow following disclosure of such information, Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, Agency elects to not close Escrow, then this Agreement and the Escrow shall automatically terminate, and neither party shall have any further rights, obligations or liabilities hereunder. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

**207. Studies and Reports.** Prior to the Closing, representatives of Developer shall have the right of access to all portions of the Site owned by the Agency for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement, including the investigation of the environmental condition of the Site pursuant to Section 208 hereof. Any preliminary work undertaken on the Site by Developer prior to the Closing shall be done at the sole expense of the Developer, and the Developer's execution of a right of entry agreement to be provided by the Agency. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

#### **208. Condition of the Site**

**208.1 Disclosure.** Prior to the execution of this Agreement, Agency has determined there is no visible evidence to indicate the presence of Hazardous Materials on the Site. The Agency hereby represents and warrants that it has no Actual Knowledge, and has not received any notice or communication from any government agency having jurisdiction over the Site, notifying Agency of, the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof. "Actual knowledge," as used herein, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the Agency employees and agents who have participated in the preparation of this Agreement.

**208.2 Investigation of Site.** The Developer shall have the right, at its sole cost and expense, to engage its own environmental consultant (the "Environmental Consultant") to make such investigations as Developer deems necessary. The Agency shall promptly be provided a copy of all reports and test results provided by the Environmental Consultant.

Within thirty (30) days prior to escrow closing, the Developer shall reasonably approve or disapprove, in its sole and absolute discretion, the environmental condition of the Site within the time set forth in the Schedule of Performance. The Developer's approval of the environmental condition of the Site shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer, based upon the above environmental reports, reasonably disapproves the environmental condition of the Site, then the Developer may terminate this Agreement by written Notice to the Agency.

**208.3 Remediation of Site.** If the Developer does not elect to terminate this Agreement pursuant to Section 208.2, based upon Developer's investigation of the

environmental condition of the Site, the following provisions shall apply to the remediation of any Hazardous Materials in, on or under the Site that are discovered in connection with Developer's environmental investigation. If Developer, based upon the above environmental reports, reasonably estimates that the cost of remediating the Site in accordance with all Governmental Requirements (the "Remediation Cost") is Forty Thousand Dollars (\$40,000) or less (the "Threshold Amount"), then Developer shall be required to fund the Remediation Cost, not to exceed the Threshold Amount, and Agency shall cause the Remediation of the Site to be performed with reasonable diligence, and in accordance with all Governmental Requirements prior to the Close of Escrow.

If Developer, based upon the above environmental reports, reasonably estimates that the projected Remediation Cost exceeds the Threshold Amount, then Agency at its option, either may terminate this Agreement or agree in writing to pay the excess of the actually incurred Remediation Cost over the Threshold Amount. In such event, Developer shall be required to fund the portion of the Remediation Cost up to the Threshold Amount, and Agency shall be required to fund the portion of the Remediation Cost which exceeds the Threshold Amount.

If the Remediation of the Site is to be performed, Developer shall deliver to Agency a proposed remedial action plan ("RAP"), which RAP shall be approved by the City of Moorpark or any other agency asserting jurisdiction over the remedial work to be performed pursuant to the RAP (the "Remedial Work"). The Remedial Work shall be performed by the Agency in accordance with applicable Governmental Requirements and Environmental Laws prior to the Close of Escrow. Completion of the Remediation Work and the issuance of closure letters without any requirement of further remedial work by all governmental agencies which have asserted jurisdiction over the remediation of the Site shall each be an Agency's Condition Precedent to the Closing.

**208.4 No Further Warranties As To Site.** Except as otherwise provided herein, the physical condition, possession or title of the Site is and shall be delivered from Agency to Developer in an "as-is" condition, with no warranty expressed or implied by Agency, including without limitation, the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder.

**208.5 Developer Precautions After Closing.** Upon the Closing, the Developer shall take all necessary precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Site. Such precautions shall include compliance with all Governmental Requirements with respect to Hazardous Materials. In addition, the Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**208.6 Required Disclosures After Closing.** After the Closing, the Developer shall notify the Agency, and provide to the Agency a copy or copies, of all environmental permits, disclosures, applications, entitlements or inquiries relating to the Site, including notices of violation, notices to comply, citations, inquiries, clean-up or

abatement orders, cease and desist orders, reports filed pursuant to self-reporting requirements and reports filed or applications made pursuant to any Governmental Requirement relating to Hazardous Materials and underground tanks. The Developer shall report to the Agency, as soon as possible after each incident, any unusual or potentially important incidents with respect to the environmental condition of the Site.

In the event of a release of any Hazardous Materials into the environment after the Closing, the Developer shall, as soon as possible after the release, furnish to the Agency a copy of any and all reports relating thereto and copies of all correspondence with governmental agencies relating to the release. Upon request, the Developer shall furnish to the Agency a copy or copies of any and all other environmental entitlements or inquiries relating to or affecting the Site including, but not limited to, all permit applications, permits and reports including, without limitation, those reports and other matters which may be characterized as confidential.

**208.7 Developer Indemnity.** Upon the Closing, Developer agrees to indemnify, defend and hold Agency harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon (i) the presence, release, use, generation, discharge, storage or disposal of any Hazardous Materials on, under, in or about, or the transportation of any such Hazardous Materials to or from, the Site after the Closing, or (ii) the violation, or alleged violation, of any statute, ordinance, order, rule, regulation, permit, judgment or license relating to the use, generation, release, discharge, storage, disposal or transportation of Hazardous Materials on, under, in or about, to or from, the Site after the Closing. This indemnity shall include, without limitation, any damage, liability, fine, penalty, cost or expense arising from or out of any claim, action, suit or proceeding for personal injury (including sickness, disease or death), tangible or intangible property damage, compensation for lost wages, business income, profits or other economic loss, damage to the natural resource or the environment, nuisance, contamination, leak, spill, release or other adverse effect on the environment.

### **300. DEVELOPMENT OF THE SITE**

**301. Scope of Development.** The Developer shall develop the Improvements in three phases (clearing and grubbing, site preparation, and construction of improvements) in accordance with the Scope of Development and the plans, drawings and documents submitted by the Developer and approved by the Agency and City as set forth herein. The Improvements shall generally consist of the construction of a multiple story, commercial building constructed with material acceptable to the City, of approximately 17,570 square feet and supporting parking and landscape improvements associated setbacks, parking and landscaping and other onsite and offsite improvements as required by the development approval process in accordance with the Schedule of Performance included as Attachment 4 to this Agreement. The premises shall be leased to and occupied by appropriate commercial, retail or building tenants for a period of five (5) years from the issuance of a Certificate of Occupancy for the Project ("Use Restriction Period").

## **302. Design Review.**

**302.1 Developer Submissions.** Before commencement of construction of the Improvements or other works of improvement upon the Site, and at or prior to the times set forth herein, the Developer shall submit to the City any plans and drawings (collectively, the "Design Development Drawings") which may be required by the City with respect to any entitlements and permits which are required to be obtained to approve and develop the Improvements, and such plans for the Improvements as required by the City in order for the Developer to obtain building and grading permits for the Improvements. Within thirty (30) days after the City's disapproval or approval of such plans, the Developer shall revise the portions of such plans identified by the City as requiring revisions and resubmit the revised plans to the City. In the event that Developer objects to any of the proposed revisions, Developer and the City shall meet and discuss the revisions. Developer shall complete premises within fourteen months from start of construction, subject to the provisions of Section 602.

**302.2 City Review and Approval.** The City shall have all rights to review and approve or disapprove all Design Development Drawings and other required submittals in accordance with the City Municipal Code, and nothing set forth in this Agreement shall be construed as the City's approval of any or all of the Design Development Drawings.

**302.3 Revisions.** Any and all change orders or revisions required by the City and its inspectors which are required under the Municipal Code and all other applicable Uniform Codes (e.g. Building, Plumbing, Fire, Electrical, etc.) and under other applicable laws and regulations shall be included by the Developer in its Design Development Drawings and other required submittals and shall be completed during the construction of the Improvements.

**302.4 Defects in Plans.** The Agency and the City shall not be responsible either to the Developer or to third parties in any way for any defects in the Design Development Drawings, nor for any structural or other defects in any work done according to the approved Design Development Drawings, nor for any delays reasonably caused by the review and approval processes established by this Section 302.

**303. Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Site, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City or any other governmental agency affected by such construction or work, except for those which are the responsibility of the Agency as set forth herein. The Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

- a. Commercial Planned Development Permit.
- b. All permits and fees required by the City, County of Ventura, and other governmental agencies with jurisdiction over the Improvements.

- c. Pay for any environmental studies and documents required pursuant to the California Environmental Quality Act.

However, the execution of this Agreement does not constitute the granting of or a commitment to obtain any required land use permits, entitlements or approvals required by the Agency or the City. At the request of Developer, the City will allow Developer's building plans and specifications for the Improvements to be processed concurrently with its processing of Developer's application for the Commercial Planned Development Permit, provided that Developer acknowledges that such plans and specifications may be subject to later revision by the Developer based upon the City's review and approval of the Commercial Planned Development Permit. The Developer understands that any revisions to the plans are at the Developer's cost as well as any additional cost for City plan check.

**304. Schedule of Performance.** Subject to the provisions of Section 602, the Developer shall submit all Design Development Drawings, commence and complete all construction of the Improvements, and satisfy all other obligations and conditions of this Agreement within the times established therefore in the Schedule of Performance which is attached hereto as Attachment No. 4 and incorporated herein.

**305. Cost of Construction.** Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Improvements, demolition of existing improvements, site preparation and grading shall be borne solely by the Developer.

**306. Insurance Requirements.** The Developer shall take out and maintain or shall cause its contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 310 of this Agreement, a comprehensive general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit policy, and a comprehensive automobile liability policy in the amount of One Million Dollars (\$1,000,000), combined single limit, or such other policy limits as the Agency may approve at its discretion, including contractual liability, as shall protect the Developer, City and Agency from claims for such damages. Such policy or policies shall be written on an occurrence form. The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that Developer and any contractor with whom it has contracted for the performance of work on the Site or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law. The Developer shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form approved by the Agency setting forth the general provisions of the insurance coverage. ***This countersigned certificate shall name the City and the Agency and their respective officers, agents, and employees as additionally insured parties under the policy, and the certificate shall be accompanied by a duly executed endorsement evidencing such additional insured status.*** The certificate and endorsement by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify City and the Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Developer shall be primary insurance and not be contributing with any insurance maintained by the Agency

or City, and the policy shall contain such an endorsement. The insurance policy or the endorsement shall contain a waiver of subrogation for the benefit of the City and the Agency. The required insurance shall be obtained and the required certificate shall be furnished by the Developer at the time set forth therefore in the Schedule of Performance.

**307. Developer's Indemnity.** The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency and the City, and their representatives, volunteers, officers, employees and agents, harmless from, all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation hereof and for any damages to property or injuries to persons, including accidental death (including attorneys fees and costs) which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury occasioned by the sole negligence of the Agency or its designated agents or employees.

**308. Rights of Access.** Prior to the issuance of a Release of Construction Covenants (as specified in Section 310 of this Agreement), for purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Site, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. The Agency (or its representatives) shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 308.

**309. Compliance With Laws.** The Developer shall carry out the design and construction of the Improvements in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Moorpark Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq., Government Code Section 4450, et seq., Government Code Section 11135, et seq., and the Unruh Civil Rights Act, Civil Code Section 51, et seq.

**309.1 Taxes and Assessments.** Commencing on the Close of escrow and continuing throughout Developer's ownership of the Site, the Developer shall pay prior to delinquency all ad valorem real estate taxes and assessments on the Site, subject to the Developer's right to contest in good faith any such taxes. The Developer shall remove or have removed any levy or attachment made on the Site or any part thereof, or assure the satisfaction thereof within a reasonable time. The Developer shall not apply for or receive any exemption from the payment of property taxes or assessments on any interest in or to the Site or the Improvements.

**309.2 Liens and Stop Notices.** The Developer shall not allow to be placed on the Site or any part thereof any lien or stop notice which are caused by any

acts or omissions of Developer or anyone directly or indirectly employed by or contracted with the Developer. If such a claim of a lien or stop notice is given or recorded affecting the Improvements the Developer shall within thirty (30) days of such recording or service or within thirty (30) days of the Agency's demand whichever last occurs:

- a. pay and discharge the same; or
- b. affect the release thereof by recording and delivering to the Agency a surety bond in sufficient form and amount, or otherwise; or
- c. provide the Agency with other assurance which the Agency deems, in its sole discretion, to be satisfactory for the payment of such lien or bonded stop notice and for the full and continuous protection of Agency from the effect of such lien or bonded stop notice.

**310. Release of Construction Covenants.** Promptly after completion of the Improvements in conformity with this Agreement, the Agency shall furnish the Developer with a release of project Bonds and a "Release of Construction Covenants," substantially in the form of Attachment No. 6 hereto which is incorporated herein by reference. The Agency shall not unreasonably withhold such Release of Construction Covenants. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements and the Release of Construction Covenants shall so state. Any party then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the Site shall not (because of such ownership, purchase, lease or acquisition) incur any obligation or liability under this Agreement except for those continuing covenants as set forth in Section 405 of this Agreement.

If the Agency refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the Agency shall, within thirty (30) days of written request therefore, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code.

### **311. Financing of the Improvements.**

**311.1 Approval of Financing.** As required herein and as an Agency Condition Precedent to the Closing, Developer shall submit to Agency evidence that Developer has obtained sufficient equity capital or has obtained firm and binding commitments for construction and permanent financing necessary to undertake the development of the Site and the construction of the Improvements in accordance with this Agreement. Agency shall approve or disapprove such evidence of financing commitments within fifteen (15) business days of receipt of a complete submission. Approval shall not be unreasonably withheld or conditioned. If Agency shall disapprove

any such evidence of financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Agency new evidence of financing. Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 311.1 for the approval or disapproval of the evidence of financing as initially submitted to Agency. Developer shall close the approved financing concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of a legally binding, firm and enforceable loan commitment(s) obtained by Developer from unrelated financial institutions for the mortgage loan or loans for financing to fund the purchase, construction, completion, operation and maintenance of the Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) a certification from the chief financial officer or chief executive officer of Developer that Developer has sufficient funds for such purchase, construction, completion, operation and maintenance of the Improvements, and that such funds have been committed to such purchase, construction, completion, operation and maintenance of the Improvements, and/or other documentation satisfactory to the Agency as evidence of other sources of capital sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Site, and construction and completion of the Improvements, less financing authorized by those loans set forth in subparagraph (a) above.

**311.2 No Encumbrances Except Mortgages, Deeds of Trust, or Sale and Lease-Back for Development.** Mortgages, deeds of trust and sales and leases-back are to be permitted before completion of the construction of the Improvements with the Agency's prior written approval, which shall not be unreasonably withheld or delayed, but only for the purpose of securing loans of funds to be used for financing the acquisition of the Site, construction of the Improvements (including architecture, engineering, legal, and related direct costs as well as indirect costs) on or in connection with the Site, permanent financing, and any other purposes necessary and appropriate in connection with development under this Agreement. The Developer shall notify the Agency in advance of any mortgage, deed of trust or sale and lease-back financing, if the Developer proposes to enter into the same before completion of the construction of the Improvements. The words "mortgage" and "trust deed" as used hereinafter shall include sale and lease-back. The Developer shall not enter into any such conveyance for financing without the prior written approval of the Agency, which approval Agency agrees to give if any such conveyance for financing is given to a responsible financial lending institution or person or entity ("Lender"). The Developer may enter into a conveyance for financing after the completion of the Improvements without the approval of the Agency.

**311.3 Holder Not Obligated to Construct Improvements.** The holder of any mortgage or deed of trust authorized by this Agreement shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or any portion thereof, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement be construed so to obligate such holder. Nothing in this Agreement shall be deemed to construe, permit or authorize any such

holder to devote the Site to any uses or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Agreement.

**311.4 Notice of Default to Mortgagee or Deed of Trust Holders; Right to Cure.** With respect to any mortgage or deed of trust granted by Developer as provided herein, whenever the Agency may deliver any notice or demand to Developer with respect to any breach or default by the Developer in completion of construction of the Improvements, the Agency shall at the same time deliver to each holder of record of any mortgage or deed of trust authorized by this Agreement a copy of such notice or demand. Each such holder shall (insofar as the rights granted by the Agency are concerned) have the right, at its option, within thirty (30) days after the receipt of the notice, to cure or remedy or commence to cure or remedy and thereafter to pursue with due diligence the cure or remedy of any such default and to add the cost thereof to the mortgage debt and the lien of its mortgage. Nothing contained in this Agreement shall be deemed to permit or authorize such holder to undertake or continue the construction or completion of the Improvements, or any portion thereof (beyond the extent necessary to conserve or protect the improvements or construction already made) without first having expressly assumed the Developer's obligations to the Agency by written agreement reasonably satisfactory to the Agency. The holder, in that event, must agree to complete, in the manner provided in this Agreement, the Improvements to which the lien or title of such holder relates. Any such holder properly completing such improvement shall be entitled, upon compliance with the requirements of Section 310 of this Agreement, to a Release of Construction Covenants. It is understood that a holder shall be deemed to have satisfied the thirty (30) day time limit set forth above for commencing to cure or remedy a Developer default which requires title and/or possession of the Site (or portion thereof) if and to the extent any such holder has within such thirty (30) day period commenced proceedings to obtain title and/or possession and thereafter the holder diligently pursues such proceedings to completion and cures or remedies the default.

**311.5 Failure of Holder to Complete Improvements.** In any case where, thirty (30) days after the holder of any mortgage or deed of trust creating a lien or encumbrance upon the Site or any part thereof receives a notice from Agency of a default by the Developer in completion of construction of any of the Improvements under this Agreement, and such holder has not exercised the option to construct as set forth in Section 311, or if it has exercised the option but has defaulted hereunder and failed to timely cure such default, the Agency may purchase the mortgage or deed of trust by payment to the holder of the amount of the unpaid mortgage or deed of trust debt, including principal and interest and all other sums secured by the mortgage or deed of trust. If the ownership of the Site or any part thereof has vested in the holder, the Agency, if it so desires, shall be entitled to a conveyance from the holder to the Agency upon payment to the holder of an amount equal to the sum of the following:

- a. The unpaid mortgage or deed of trust debt at the time title became vested in the holder (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings);
- b. All expenses with respect to foreclosure including reasonable attorneys' fees;

- c. The net expense, if any (exclusive of general overhead), incurred by the holder as a direct result of the subsequent management of the Site or part thereof;
- d. The costs of any improvements made by such holder;
- e. An amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage or deed of trust debt and such debt had continued in existence to the date of payment by the Agency; and
- f. Any customary prepayment charges imposed by the lender pursuant to its loan documents and agreed to by the Developer.

**311.6 Right of the Agency to Cure Mortgage or Deed of Trust Default.** In the event of a mortgage or deed of trust default or breach by the Developer prior to the completion of the construction of any of the Improvements or any part thereof, Developer shall immediately deliver to Agency a copy of any mortgage holder's notice of default. If the holder of any mortgage or deed of trust has not exercised its option to construct, the Agency shall have the right but no obligation to cure the default. In such event, the Agency shall be entitled to reimbursement from the Developer of all proper costs and expenses incurred by the Agency in curing such default. The Agency shall also be entitled to a lien upon the Site to the extent of such costs and disbursements. Any such lien shall be junior and subordinate to the mortgages or deeds of trust pursuant to this Section 311.

## **400. COVENANTS AND RESTRICTIONS**

**401.** Intentionally deleted

**402. Use and Operation Covenants.** Subject to the provisions of Section 600, during the Use Restriction Period, the Developer hereby covenants and agrees that the Improvements shall be used and operated as described in Section 301 or for such other use as then permitted in the C-OT Old Town Commercial zone under the City's zoning ordinance with the prior approval of the Agency, which approval shall not be unreasonably withheld or delayed.

**403. Maintenance Covenants.** The Developer shall maintain the Site and all improvements thereon, including all landscaping, in compliance with all applicable provisions of the City of Moorpark Municipal Code and all conditions of approval of the Project. If a default under this Section is not fully cured by Developer as provided in Section 501, Agency shall have the right to enter the Site at all reasonable times, complete the maintenance or repair, and invoice Developer for the direct costs and expenses of said work plus fifteen percent (15%) of said costs and expenses for administration. Developer shall pay the invoice in full within fifteen (15) days after receipt thereof.

**404. Nondiscrimination Covenants.** The Developer covenants by and for itself and any successors in interest that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use,

occupancy, tenure or enjoyment of the Site, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the Site. The foregoing covenants shall run with the land.

The Developer shall refrain from restricting the rental, sale or lease of the Site on the basis of race, color, religion, sex, marital status, ancestry or national origin of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin, or ancestry in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person, or group of persons on account of race, color, creed, religion, sex, marital status, national origin, or ancestry, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the premises."

**405. Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** The Agency is deemed the beneficiary of the terms and provisions of this Agreement and of the covenants running with the land, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement and the

covenants running with the land have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Site or in the Project. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect until the issuance of the Release of Construction Covenants for the completion of the Improvements, except for the following:

- a. The environmental covenants set forth in Sections 208.5, 208.6 and 208.7 shall remain in effect in perpetuity.
- b. Intentionally deleted.
- c. The covenants pertaining to the use and operation of the Site set forth in Section 402 shall remain in effect for the Use Restriction Period five (5) years from the date a Certificate of Occupancy is granted for the Improvements).
- d. The covenants pertaining to maintenance of the Site and all improvements thereon, as set forth in Section 403, shall remain in effect during the Use Restriction Period.
- e. The covenants against discrimination, as set forth in Section 404, shall remain in effect in perpetuity.

## **500. DEFAULTS AND REMEDIES**

**501. Default Remedies.** Subject to the extensions of time set forth in Section 602 of this Agreement, failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** In addition to any other rights or remedies, including those set forth in Sections 503 and 504, respectively, and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Ventura, State of California, or if federal jurisdiction exists, in the District of the United States District Court for the Central District of California.

**503. Termination by the Developer.** In the event that the Developer is not in Default under this Agreement and the Agency does not tender title to the Site pursuant

to the Grant Deed in the manner and condition and by the date provided in this Agreement; or one or more of the Developer's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Developer; or in the event of any default of the Agency prior to the Closing which is not cured within the time set forth in Section 501 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, then this Agreement may, at the option of the Developer, be terminated by written notice thereof to the Agency. From the date of the written notice of termination of this Agreement by the Developer to the Agency and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that the parties may pursue any other remedies they may have hereunder.

**504. Termination by the Agency.** In the event that the Agency is not in Default under this Agreement and prior to the issuance of the Release of Construction Covenants: the Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of this Agreement; or one or more of the Agency's Conditions Precedent to the Closing is not fulfilled on or before the time set forth in the Schedule of Performance and such failure is not caused by the Agency or City; or the Developer is otherwise in default of this Agreement and fails to cure such default within the time set forth in Section 501 hereof, then this Agreement and any rights of the Developer or any assignee or transferee with respect to or arising out of the Agreement or the Site, shall, at the option of the Agency, be terminated by the Agency by written notice thereof to the Developer. From the date of the written notice of termination of this Agreement by the Agency to the Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the parties, except that the parties may pursue any other remedies they may have hereunder.

**505. Termination Prior to Conveyance.** If, prior to the close of escrow on the Site, a default under this Agreement is not fully cured by the defaulting party as provided in Section 501 hereof, Claimant shall have the right thereafter, but not before, to terminate this Agreement by giving written notice thereof to the defaulting party. The termination shall be effective immediately upon receipt of the notice, and thereafter neither party shall have any further rights of obligation with respect to the Site. Upon the termination (i) all documents and all monies deposited by either party into escrow shall be returned to the party that made the deposit, and (ii) any escrow cancellation fee shall be paid by the defaulting party.

**506. Reentry and Revesting of Title in the Agency After the Closing and Prior to Completion of Construction.** The Agency has the right, at its election, to seek and obtain a judicial order on an expedited basis authorizing it to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Agency the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

- a. fail to start the construction of the Improvements and to complete Improvements within fourteen months as required by this Agreement and for a period of thirty (30)

days after written notice thereof from the Agency, subject to the provisions of Section 602; or

- b. abandon or substantially suspend construction of the Improvements required by this Agreement for a period of thirty (30) days after written notice thereof from the Agency subject to the provisions of Section 602; or
- c. contrary to the provisions of Section 603 transfer or suffer any involuntary transfer of the Site or any part thereof in violation of this Agreement.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

- 1. Any mortgage or deed of trust permitted by this Agreement; or
- 2. Any rights or interests provided in this Agreement for the protection of the holders of such mortgages or deeds of trust.

The Grant Deed shall contain appropriate reference and provision to give effect to the Agency's right as set forth in this Section 506, under specified circumstances prior to recordation of the Release of Construction Covenants, to reenter and take possession of the Site, with all Improvements thereon, and to terminate and revest in the Agency the estate conveyed to the Developer. Upon the revesting in the Agency of title to the Site as provided in this Section 506, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site or part thereof in the C-OT zone in the City's zoning ordinance. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- i. First, to reimburse the Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by the Agency or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in the Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred by the Agency with respect to the making or completion of the Improvements or any part thereof on the Site, or part thereof; and any

amounts otherwise owing the Agency, and in the event additional proceeds are thereafter available, then

ii. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the Improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by the Developer from the Site or the Improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 506 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the Site to the Developer for redevelopment purposes, particularly for development of an industrial facility, and not for speculation in undeveloped land.

**507. Acceptance of Service of Process.** In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the President of the Developer or in such other manner as may be provided by law.

**508. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**509. Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**510. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## **600. GENERAL PROVISIONS**

**601. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency: Moorpark Redevelopment Agency  
799 Moorpark Avenue  
Moorpark, California 93021  
Attention: Executive Director

To Developer: Moorpark Group LLC  
31304 Via Colinas, Suite 103  
Westlake Village, CA 91362  
Attention: Michael S. Owens or Vince Daly

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to causes beyond the control or without the fault of the party claiming an extension of time to perform, which may include: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency). Notwithstanding anything to the contrary in this Agreement, an extension of time 'for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if not' by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

**603. Transfers of Interest in Site or Agreement.**

**603.1 Prohibition.** The qualifications and identity of the Developer are of particular concern to the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer. For the period commencing upon the date of this Agreement and until the expiration of the Use Restriction Period), no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make

any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the Improvements thereon without prior written approval of the Agency, except as expressly set forth herein

**603.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Site or Improvements, or any part thereof, shall not be required in connection with any of the following:

(a) Any transfers to an entity or entities in which the Developer retains management and control of the transferee entity or entities.

(b) The conveyance or dedication of any portion of the Site to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements (as defined herein).

(c) Any requested assignment for financing purposes (subject to any approvals by the Agency that are necessary for any construction financing pursuant to Section 311 herein), including the grant of a deed of trust to secure the funds necessary for land acquisition, construction and permanent financing or re-financing of the Improvements.

(d) Subleases of the three story, commercial building constructed with material acceptable to the City, of approximately 17,570 square feet for approved C-OT uses.

In the event of an assignment by Developer under subparagraphs (a) through (c), inclusive, above not requiring the Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written notice to Agency of such assignment and satisfactory evidence that the assignee has assumed jointly with Developer the obligations of this Agreement.

**603.3 Agency Consideration of Requested Transfer.** The Agency agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 603.3, provided the Developer delivers written notice to the Agency requesting such approval. Such notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development (in the event that the Improvements have not been completed) and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603.3 and as reasonably determined by the Agency. The Agency shall evaluate each proposed transferee or assignee on the basis of its development (in the event that the Improvements have not been completed) and/or qualifications and experience in the operation of facilities similar to the Improvements, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the Use Restriction Period, which the Agency determines does not possess qualifications satisfactory for performing the obligations of Developer hereunder for the balance of the Use Restriction Period. An assignment and assumption agreement in form satisfactory to the Agency's legal counsel shall also be required for all proposed assignments for which Agency consent is required hereunder. Within thirty (30) days after the receipt of the Developer's written notice requesting Agency approval of an assignment or transfer pursuant to this Section 603.3, the Agency shall either approve

or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested. Developer shall pay all Agency out-of-pocket costs plus 15% for review of assumption agreement. Developer shall provide a deposit of \$2,500 upon submittal of request for transfer.

**603.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**603.5 Assignment by Agency.** The Agency may assign or transfer any of its rights or obligations under this Agreement with the approval of the Developer, which approval shall not be unreasonably withheld; provided, however, that the Agency may assign or transfer any of its interests hereunder to the City at any time without the consent of the Developer.

**604. Non-Liability of Officials and Employees of the Agency and the Developer.** No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the Agency (or the City) or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

**605. Relationship Between Agency and Developer.** It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements.

**606. Agency Approvals and Actions.** The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency Executive Director (or his duly authorized representative). The Agency Executive Director shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into amendments of this Agreement on behalf of the Agency so long as such actions do not materially or substantially change the uses or development permitted on the Site, or materially or substantially add to the costs incurred or to be incurred by the Agency as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantial interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in three (3) originals, each of which is deemed to be an original.

**608. Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes pages 1 through 32 and Attachment Nos. 1 through 6, which constitute the entire understanding and agreement of the parties, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

**609. Real Estate Brokerage Commission.** The Agency and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Site from the Agency. The parties agree to defend and hold harmless the other party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such party.

**610. Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

**611. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers is to sections in this Agreement, unless expressly stated otherwise.

**612. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

**613. No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**614. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**615. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to

whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**616. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**617. Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**618. Time of Essence.** Time is expressly made of the essence with respect to the performance by the Agency, the Developer of each and every obligation and condition of this Agreement.

**619. Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**620. Inspection of Books and Records.** Agency may request to inspect, during normal business hours, the information and records of Developer pertaining to the performance of this Agreement. Developer agrees that it will not unreasonably withhold approval of a request made pursuant to a warranted request.

**621. Conflicts of Interest.** No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

**622. Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before forty-five (45) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

**623. Date of Agreement.** The date of this Agreement shall be the date set forth in the first paragraph hereof.

**WITNESS WHEREOF**, the Agency and the Developer have signed this Agreement.

**AGENCY:**  
**REDEVELOPMENT AGENCY of the**  
**CITY OF MOORPARK,**  
a public body, corporate and politic

By: \_\_\_\_\_  
Patrick Hunter, Chair

ATTEST:

By: \_\_\_\_\_  
Deborah S. Traffenstedt, Agency Secretary

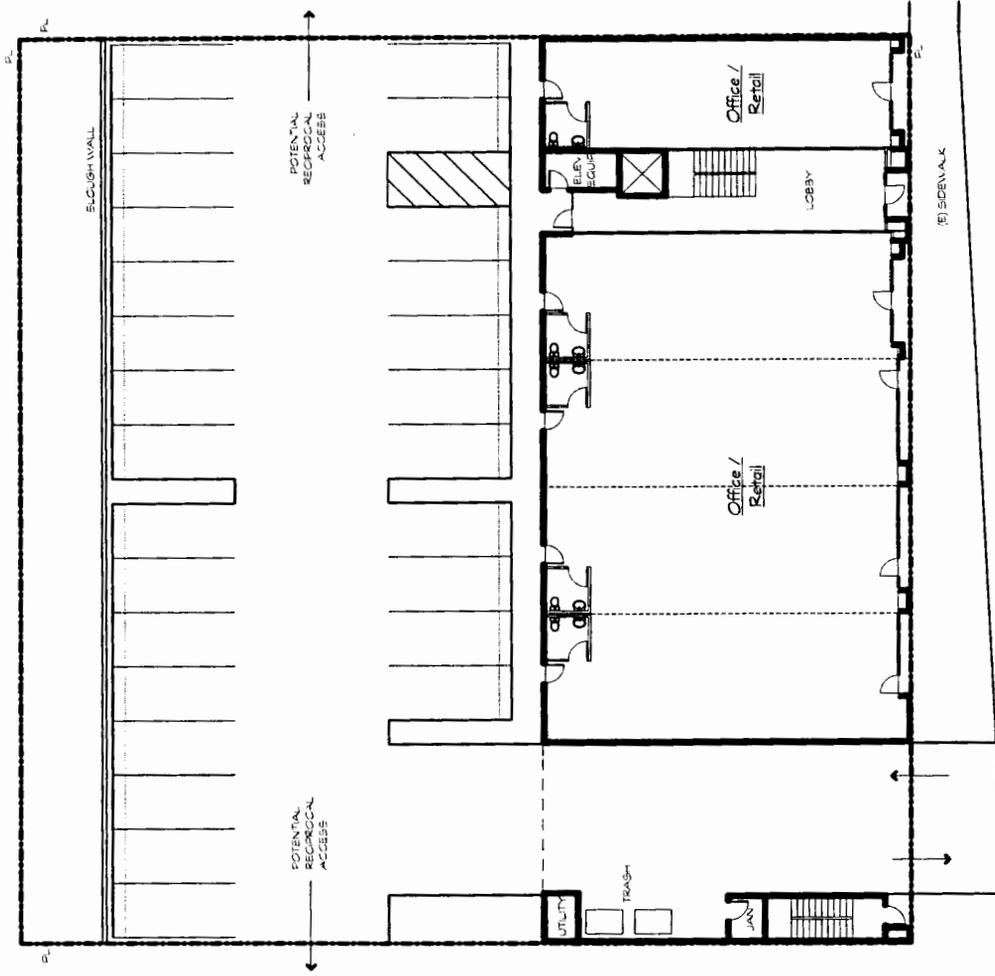
**DEVELOPER:**  
MOORPARK GROUP LLC

By M.S. Owens & Associates, Inc., a California corporation,  
General Partner and the Daly Family Companies, Inc., a California corporation

BY: \_\_\_\_\_  
Michael S. Owens, President of M.S. Owens & Associates, Inc.  
General Partner

By: \_\_\_\_\_  
Vincent J. Daly, President of the Daly Family Companies, Inc.  
General Partner

# ATTACHMENT 1



000042

Site Plan / First Floor  
Scale: 1" = 30'-0"

High Street  
date 12/5/05

467 High Street  
Moorpark, CA 93021  
sheet A-01

DI CECCO ARCHITECTURE

5158 GOLDMAN AVENUE SUITE F  
MOORPARK, CA. 93021 (805) 552-0088

**ATTACHMENT NO. 2**

**SITE LEGAL DESCRIPTION**

**LEGAL DESCRIPTION**

THAT PORTION OF LOT U, TRACT L, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING ALSO A PORTION OF THAT CERTAIN PARCEL MARKED "JOHN BARRETT" ON MAP OF M.L. WICKS SUBDIVISION, RECORDED IN BOOK 5 PAGE 37 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF HIGH STREET, 80 FEET WIDE, DISTANT ALONG SAID CENTERLINE AND EASTERLY ALONG PROLONGATION THEREOF WEST 176 FEET FROM THE CENTERLINE OF SPRING STREET, 60 FEET WIDE, AS SAID STREETS ARE SHOWN ON SAID LAST MENTIONED MAP; THENCE CONTINUING ALONG THE CENTERLINE OF SAID HIGH STREET.

1ST: - WEST 150 FEET; THENCE,

2ND: - NORTH 185 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

3RD: - EAST 150 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842; THENCE,

4TH: - SOUTH 185 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING WITHIN SAID HIGH STREET.

**000043**

**ATTACHMENT NO.3**

**OFFICIAL BUSINESS**

Document entitled to free  
Recording per Government  
Code Sections 6103 and 27383

Recording Requested by,  
Mail Tax Statements to,  
and When Recorded Mail to:  
Moorpark Group LLC  
31304 Via Colinas, Suite 103  
Westlake Village, California 91362  
Attn: Michael S. Owens

---

SPACE ABOVE THIS LINE  
FOR RECORDER'S USE

Documentary Transfer Tax: \$ \_\_\_\_\_  
Based on full value of property conveyed

**GRANT DEED**

For valuable consideration, receipt of which is hereby acknowledged,

The **REDEVELOPMENT AGENCY of the CITY OF MOORPARK**, a public body, corporate and politic (the "Agency"), acting to carry out the Redevelopment Plan ("Redevelopment Plan") for the Moorpark Redevelopment Project (the "Project"), under the Community Redevelopment Law of California, as of \_\_\_\_\_, 200\_\_, hereby grants to **Moorpark Group LLC**, a Limited Liability Corporation ("Developer"), the real property hereinafter referred to as the "Site", described in Exhibit A attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record described there.

1. Agency excepts and reserves from the conveyance herein described all interest of the Agency in oil, gas, hydrocarbon substances and minerals of every kind and character lying more than five hundred (500) feet below the surface, together with the right to drill into, through, and to use and occupy all parts of the Site lying more than five hundred (500) feet below the surface thereof for any and all purposes incidental to the exploration for and production of oil, gas, hydrocarbon substances or minerals from said Site or other lands, but without, however, any right to use either the surface of the Site or any portion thereof within five hundred (500) feet of the surface for any purpose or purposes whatsoever, or to use the Site in such a manner as to create a disturbance to the use or enjoyment of the Site.

2. The Site is conveyed in accordance with and subject to the Redevelopment Plan which was approved and adopted by Ordinance No. 110 of the City Council of the City of Moorpark, and a Disposition and Development

Attachment No. 3-1

**000044**

Agreement entered into between Agency and Developer dated \_\_\_\_\_ (the "DDA"), a copy of which is on file with the Agency at its offices as a public record and which is incorporated herein by reference. The DDA generally requires the Developer to construct improvements on the Site including a multiple story, commercial building constructed with concrete, concrete block or other material acceptable to the City, of approximately 17,570 square feet and supporting parking and landscape improvements (the "Improvements"), and other requirements as set forth therein. All terms used herein shall have the same meaning as those used in the DDA.

3. The Developer covenants and agrees for itself, its successors, its assigns, and every successor in interest to the Site or any part thereof, that upon the date of this Grant Deed and during construction and thereafter, the Developer shall devote the Site to the uses specified in the Commercial Planned Development Permit No. \_\_\_\_ and the DDA for the periods of time specified therein. All uses conducted on the Site, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to the Commercial Planned Development Permit No. \_\_\_\_, the DDA and all applicable provisions of the Moorpark Municipal Code. The foregoing covenants shall run with the land.

4. Until ten (10) years from the date the final Certificate of Occupancy is issued for the Improvements on the Site:

(a) The Developer shall not make any sale, transfer, conveyance, subdivision, refinancing or assignment of the Site or any part thereof or any interest therein, without the prior written consent of the Agency except as permitted by Section 603 of the DDA.

(b) The Developer shall not place or suffer to be placed on the Site any lien or encumbrance other than mortgages, deeds of trust, or any other form of conveyance required for financing of the construction of the Improvements on the Site, and any other expenditures necessary and appropriate to develop the Site pursuant to the DDA, except as provided in Section 311 of the DDA.

(c) All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Developer and the permitted successors and assigns of the Developer. Whenever the term "Developer" is used in this Grant Deed, such term shall include any other permitted successors and assigns as herein provided.

5. The Developer herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the Developer himself or herself or any person claiming under or through him or her,

establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the land herein conveyed. The foregoing covenants shall run with the land.

6. The Agency has the right, at its election, to reenter and take possession of the Site, with all improvements thereon, and terminate and revest in the Agency the estate conveyed to the Developer if after the Closing and prior to the issuance of the Release of Construction Covenants, the Developer (or its successors in interest) shall:

- a. abandon or substantially suspend construction of the Improvements required by the DDA for a period of thirty (30) days after written notice thereof from the Agency subject to the provisions of Section 602; or
- b. contrary to the provisions of Section 603 of the DDA transfer or suffer any involuntary transfer of the Site or any part thereof in violation of the DDA.

Such right to reenter, terminate and revest shall be subject to and be limited by and shall not defeat, render invalid or limit:

1. Any mortgage or deed of trust permitted by the DDA; or
2. Any rights or interests provided in the DDA for the protection of the holders of such mortgages or deeds of trust.

Upon the revesting in the Agency of title to the Site as provided in this Section 506, the Agency shall, pursuant to its responsibilities under state law, use its reasonable efforts to resell the Site as soon and in such manner as the Agency shall find feasible and consistent with the objectives of such law, as it exists or may be amended, to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the Improvements, or such improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Site or part thereof in the C-OT zone as provided in the City's zoning ordinance. Upon such resale of the Site, the net proceeds thereof after repayment of any mortgage or deed of trust encumbering the Site which is permitted by this Agreement, shall be applied:

- i. First, to reimburse the Agency, on its own behalf or on behalf of the City, all costs and expenses incurred by the Agency, excluding City and Agency staff costs, but specifically, including, but not limited to, any expenditures by the Agency or the City in connection with the recapture, management and resale of the Site or part thereof (but less any income derived by the Agency from the Site or part thereof in connection with such management); all taxes, assessments and water or sewer charges with respect to the Site or part thereof which the

Developer has not paid (or, in the event that Site is exempt from taxation or assessment of such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges as would have been payable if the Site were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Site or part thereof at the time or revesting of title thereto in the Agency, or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the improvements or any part thereof on th. Site, or part thereof; and any amounts otherwise owing the Agency, and in the event additional proceeds are thereafter available, then

ii. Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the sum of (a) the costs incurred for the acquisition and development of the Site and for the improvements existing on the Site at the time of the reentry and possession, less (b) any gains or income withdrawn or made by the Developer from the Site or the improvements thereon.

Any balance remaining after such reimbursements shall be retained by the Agency as its property. The rights established in this Section 6 are not intended to be exclusive of any other right, power or remedy, but each and every such right, power, and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy authorized herein or now or hereafter existing at law or in equity. These rights are to be interpreted in light of the fact that the Agency will have conveyed the Site to the Developer for redevelopment purposes, particularly for development of a multiple story commercial building constructed with concrete, concrete block or other material acceptable to the City, of approximately 17,570 square feet and supporting parking and landscape improvements and appurtenant uses, and not for speculation in undeveloped land.

7. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted by paragraph 4 of this Grant Deed; provided, however, that any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

8. All covenants contained in this Grant Deed shall be covenants running with the land. All of Developer's obligations hereunder except as provided in Sections 2, 3, and 5 above shall terminate and shall become null and void ten (10) years from the date the final Certificate of Occupancy is issued for the Improvements on the Site. Every covenant contained in this Grant Deed against

discrimination contained in paragraph 5 of this Grant Deed shall remain in effect in perpetuity.

9. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

10. Both Agency, its successors and assigns, and Developer and the successors and assigns of Developer in and to all or any part of the fee title to the Site shall have the right with the mutual consent of the Agency to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site. However, Developer and Agency are obligated to give written notice to and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed. The covenants contained in this Grant Deed, without regard to technical classification, shall not benefit or be enforceable by any owner of any other real property, or any person or entity having any interest in any other such realty. Any amendment to the Moorpark Municipal Code which proposes to change the uses or development permitted on the Site, or otherwise proposes a change of any of the restrictions or controls that apply to the Site, shall require the written consent of the first mortgagee and the Developer or the successors and assigns of Developer in and to all or any part of the fee title to the Site, but any such amendment which proposes a change affecting the Site shall not require the consent of any tenant, lessee, easement holder, licensee, mortgagee (other than the first mortgagee), trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site.

**REDEVELOPMENT AGENCY of the  
CITY OF MOORPARK,  
a public body, corporate and politic:**

By: \_\_\_\_\_  
Patrick Hunter, Chair

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, Agency Secretary

**DEVELOPER:**

MOORPARK GROUP LLC, a Limited Liability Corporation

By M.S. Owens & Associates, Inc., a California corporation,  
General Partner and the Daly Family Companies, Inc., a California corporation

BY: \_\_\_\_\_  
Michael S. Owens, President of M.S. Owens & Associates, Inc.  
General Partner

By: \_\_\_\_\_  
Vincent J. Daly, President of the Daly Family Companies, Inc.  
General Partner

Attachment No. 3-6

**000049**

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF SITE**

LEGAL DESCRIPTION

THAT PORTION OF LOT U, TRACT L, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING ALSO A PORTION OF THAT CERTAIN PARCEL MARKED "JOHN BARRETT" ON MAP OF M.L. WICKS SUBDIVISION, RECORDED IN BOOK 5 PAGE 37 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF HIGH STREET, 80 FEET WIDE, DISTANT ALONG SAID CENTERLINE AND EASTERLY ALONG PROLONGATION THEREOF WEST 176 FEET FROM THE CENTERLINE OF SPRING STREET, 60 FEET WIDE, AS SAID STREETS ARE SHOWN ON SAID LAST MENTIONED MAP; THENCE CONTINUING ALONG THE CENTERLINE OF SAID HIGH STREET.

1ST: - WEST 150 FEET; THENCE,

2ND: - NORTH 185 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

3RD: - EAST 150 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

4TH: - SOUTH 185 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING WITHIN SAID HIGH STREET.

**Exhibit A**

STATE OF CALIFORNIA )

) ss.

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,

(Print Name of Notary Public)

personally appeared \_\_\_\_\_

personally known to me

-or

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are

subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

STATE OF CALIFORNIA

)

) ss.

COUNTY OF \_\_\_\_\_

)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,

(Print Name of Notary Public)

personally appeared \_\_\_\_\_

personally known to me

-or

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are

subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

**ATTACHMENT NO. 4**  
**SCHEDULE OF PERFORMANCE**

<p><b>1. Submission of Disposition and Development Agreement.</b> Developer shall submit to the Agency a copy of the Disposition and Development Agreement duly executed by the Developer.</p>	<p>On or before December 13, 2005</p>
<p><b>2. Agency Approval of Disposition and Development Agreement.</b> Agency shall approve or disapprove the Disposition and Development Agreement.</p>	<p>Within 60 days after Developer submits an executed Disposition and Development Agreement.</p>
<p><b>3. Submission of Required Development Application.</b> Developer shall submit the Design Development Application to the City.</p>	<p>Within 90 days of Agency approval of DDA.</p>
<p><b>4. City and Developer Response.</b> City shall respond to all submissions and Developer shall respond to all requests for additional information and/or revision to plans.</p>	<p>City will respond to any submission within 30 days. Developer shall respond to any request within 30 days and make all mutually agreeable required changes to allow the City to determine the plans complete.</p>
<p><b>5. Approved Design Development Application.</b> Developer shall respond to requests from City to obtain a complete Design Development Application.</p>	<p>Within 90 days of submittal of Design Development Application.</p>
<p><b>6. City Council Hearing on Development Application.</b> The City Council will consider the proposed Development Application.</p>	<p>Within 60 days of a determination by City Community Development Department of a complete application.</p>
<p><b>7. Submission of Grading and Building Construction Drawings for the approved Development Application.</b> Developer shall submit to the City complete Grading and Building Construction Drawings for the Development Application.</p>	<p>Within 150 days after City Council approval of the proposed Design Development Application.</p>
<p><b>8. Plan Check of Grading and Building Construction Drawings.</b> The City shall review the Grading and Building Construction Drawings for the improvements.</p>	<p>Within 30 days after submittal.</p>
<p><b>9. Revisions of Grading and Building Construction Drawings.</b> Developer shall</p>	<p>Within 30 days after receipt of City Comments and any additional</p>

prepare revised Drawings for the Grading and Building Construction Improvements, as necessary, and resubmit them to the City for review.	comments made by outside agencies, county fire dept. etc.
<b>10. Final Review of Completed Grading and Building Construction Drawings.</b> The City shall approve or request revisions of the Grading and Building Construction Drawings, and the Developer shall be ready to obtain grading and building permits.	Within 10 days after submittal by Developer.
<b>11. Opening of Escrow for Site.</b> The Agency shall open escrow with Escrow Agent.	Within 30 days after execution of Agreement.
<b>12. Conditions Precedent to Closing.</b> Developer and Agency shall satisfy (or waive) all of their respective Conditions Precedent to Closing.	Not later than 30 days prior to scheduled date of escrow.
<b>13. Close of Escrow.</b> Agency shall convey Site to the Developer.	As soon as possible after the satisfaction of all Conditions Precedent to the Closing has occurred (within 30 days thereafter), not later than February 28, 2007.
<b>14. Commencement of Construction of Improvements.</b> Developer shall commence grading of the Site and construction of the improvements.	Within 60 days following the Closing.
<b>15. Completion of Construction of Improvements.</b> Developer shall complete construction of the improvements.	Within 14 months following commencement of construction of the improvements.

**NOTE: All days are calendar days in this Schedule of Performance. This Schedule of Performance may be extended or accelerated by mutual consent of the parties to the Agreement.**

**ATTACHMENT NO. 5**  
**SCOPE OF DEVELOPMENT**

Developer shall construct a two story commercial building to be used for retail and office on the Site, and associated setbacks, parking and landscaping and other required onsite and offsite improvements.

All development shall be in accordance with approved City of Moorpark Commercial Planned Development Permit No. \_\_\_\_\_ and all permits and fees required by the City, County of Ventura and other governmental agencies with jurisdiction over the improvements.

**ATTACHMENT NO.6**

**OFFICIAL BUSINESS**

Document entitled to free  
Recording per Government  
Code Sections 6103 and 27383

Recording Requested by,  
Mail Tax Statements to,  
and When Recorded Mail to:  
Moorpark Group LLC  
31304 Via Colinas, Ste 103  
Westlake Village, California 91362  
Attn: Michael S. Owensl

---

SPACE ABOVE THIS LINE  
FOR RECORDER'S USE

**RELEASE OF CONSTRUCTION COVENANTS**

THIS RELEASE OF CONSTRUCTION COVENANTS (the "Release") is made as of \_\_\_\_\_ 200\_\_ by the REDEVELOPMENT AGENCY of the CITY OF MOORPARK, a public body corporate and politic (the "Agency"), in favor of Moorpark Group LLC, a LIMITED LIABILITY CORPORATION (the "Developer"), as of the date set forth below.

**RECITALS**

A. The Agency and the Developer have entered into that certain Disposition and Development Agreement (the "DDA") dated \_\_\_\_\_, 200\_\_, concerning the redevelopment of certain real property situated in the City of Moorpark, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

B. As referenced in Section 310 of the DDA, the Agency is required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the Improvements (as defined in Section 100 of the DDA), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Ventura County. This Release is conclusive determination of satisfactory completion of the construction and development required by the DDA.

C. The Agency has conclusively determined that such construction and development has been satisfactorily completed.

NOW, THEREFORE, the Agency hereby certifies as follows:

1. The Improvements to be constructed by the Developer have been fully and satisfactorily completed in conformance with the DDA. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the DDA shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the DDA.

IN WITNESS WHEREOF, the Agency has executed this Release as of the date set forth above.

**REDEVELOPMENT AGENCY of the  
CITY OF MOORPARK,  
a public body, corporate and politic:**

By: \_\_\_\_\_

Patrick Hunter, Chair

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, Agency Secretary

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

THAT PORTION OF LOT U, TRACT L, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING ALSO A PORTION OF THAT CERTAIN PARCEL MARKED "JOHN BARRETT" ON MAP OF M.L. WICKS SUBDIVISION, RECORDED IN BOOK 5 PAGE 37 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF HIGH STREET, 80 FEET WIDE, DISTANT ALONG SAID CENTERLINE AND EASTERLY ALONG PROLONGATION THEREOF WEST 176 FEET FROM THE CENTERLINE OF SPRING STREET, 60 FEET WIDE, AS SAID STREETS ARE SHOWN ON SAID LAST MENTIONED MAP; THENCE CONTINUING ALONG THE CENTERLINE OF SAID HIGH STREET.

1ST: - WEST 150 FEET; THENCE,

2ND: - NORTH 185 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

3RD: - EAST 150 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842; THENCE,

4TH: - SOUTH 185 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING WITHIN SAID HIGH STREET.

STATE OF CALIFORNIA )

) ss.

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(Print Name of Notary Public)

personally appeared \_\_\_\_\_

personally known to me

-or

proved to me on the basis of satisfactory evidence to be the person(s)  
whose name(s) is/are

subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by  
his/her/their signature(s) on the instrument the person(s), or the entity upon  
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature Of Notary

**(replace with standard agency attest form)**

**EXHIBIT B**

**SITE LEGAL DESCRIPTION**

LEGAL DESCRIPTION

THAT PORTION OF LOT U, TRACT L, RANCHO SIMI, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5 PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING ALSO A PORTION OF THAT CERTAIN PARCEL MARKED "JOHN BARRETT" ON MAP OF M.L. WICKS SUBDIVISION, RECORDED IN BOOK 5 PAGE 37 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF HIGH STREET, 80 FEET WIDE, DISTANT ALONG SAID CENTERLINE AND EASTERLY ALONG PROLONGATION THEREOF WEST 176 FEET FROM THE CENTERLINE OF SPRING STREET, 60 FEET WIDE, AS SAID STREETS ARE SHOWN ON SAID LAST MENTIONED MAP; THENCE CONTINUING ALONG THE CENTERLINE OF SAID HIGH STREET.

1ST: - WEST 150 FEET; THENCE,

2ND: - NORTH 185 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

3RD: - EAST 150 FEET TO A 2" X 2" REDWOOD STAKE MARKED "LS 1842"; THENCE,

4TH: - SOUTH 185 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING WITHIN SAID HIGH STREET.

000000

## ATTACHMENT III

RESOLUTION NO. 2005-\_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING THE SALE OF PROPERTY OWNED BY THE MOORPARK REDEVELOPMENT AGENCY TO THE MOORPARK GROUP, LLC

WHEREAS, the City Council of the City of Moorpark, adopted the Redevelopment Plan for the Moorpark Redevelopment Project on July 5, 1989, by Ordinance No. 110, in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000 *et seq.*); and

WHEREAS, the Moorpark Redevelopment Agency ("Agency") purchased the property at 467 High Street ("Property") with tax increment funds; and

WHEREAS, California Community Redevelopment Law ("CCRL") Section 33433 requires that the City Council approve, by resolution and after a public hearing, any Agency sale or lease of property which was acquired with tax increment funds; and

WHEREAS, notice was published in the Ventura Star once a week for two weeks prior to the public hearing; and

WHEREAS, on December 21, 2005, the City Council conducted a public hearing to take public comment on the proposed sale of Agency owned property; and

WHEREAS, the proposed sale will assist with the elimination of blight in the Moorpark Redevelopment Project Area; and

WHEREAS, the proposed sale is consistent with the adopted 2005-2009 Implementation Plan for the Moorpark Redevelopment Project pursuant to Section 33490 of the CCRL; and

WHEREAS, the Property has been appraised and the fair market value, at its highest and best use in accordance with the Moorpark Redevelopment Plan, has been established; and

WHEREAS, on December 21, 2005, the City Council reviewed the proposed sale and determined that it is consistent with Section 33433 of the CCRL.

000001

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

SECTION 1. The proposed sale of Agency owned property to the Moorpark Group, LLC is consistent with Section 33433 of the CCRL and the following findings are made:

1. The sale of property will assist in the elimination of blight in the Moorpark Redevelopment Project.
2. The sale of property is consistent with the goals and objectives in the 2005-2009 Implementation Plan for the Moorpark Redevelopment Project pursuant to Section 33490 of the CCRL.
3. The property is being sold to the Moorpark Group, LLC at the fair market value at the highest and best use in accordance with the Moorpark Redevelopment Plan.

SECTION 2. 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 \_\_\_\_\_ day of December, 2005.

\_\_\_\_\_  
Patrick Hunter, Mayor

ATTEST:

\_\_\_\_\_  
Deborah S. Traffenstedt, City Clerk

000002