

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David A. Bobardt, Community Development Director
Prepared By: Joseph R. Vacca, Principal Planner



DATE: June 17, 2010 (CC Meeting of 7/7/2010)

SUBJECT: Consider Residential Planned Development No. 2009-02, a Request to Construct 133 Detached Single-Family Homes and a Private Recreational Facility; Tentative Tract Map No. 5860, a Request to Subdivide the 21.8 Acre Property into 133 Residential Lots with Private Streets; Amendment No. 2 (erroneously advertised as Amendment No. 1) to Specific Plan No. 2, Moorpark Highlands, to Change Planning Area No. 7 from a School Site to a Residential Planned Development Site; Zoning Ordinance Amendment No. 2009-01, a Request to Amend Chapter 17.74 of the Moorpark Municipal Code to Create Zoning Development Standards for Planning Area No. 7; and Development Agreement No. 2009-01, Located at the Southeast Corner of Elk Run Loop and Ridgecrest Drive, on the Application of Pardee Homes (APN 513-0-070-155)

BACKGROUND/DISCUSSION

On September 15, 1999, a General Plan Amendment, Specific Plan, Zone Change, and Development Agreement were approved by the City Council for Specific Plan Area No. 2, Moorpark Highlands, and the Final Environmental Impact Report for the project was certified by City Council. Vesting Tentative Tract Map No. 5045, which included the entire Specific Plan area, was approved on August 2, 2000. A total of 552 home sites and condominiums were ultimately recorded in Planning Area Nos. 1-5 and 8-9. Planning Area No. 6 was approved for a park, and Planning Area No. 7, an approximately 22-acre parcel, was approved to be developed with a school.

In April 2004, Moorpark Unified School District (MUSD) and Pardee Homes entered into a School Facilities Agreement, which set forth the general terms for acquisition of the school site in Planning Area No. 7. On September 21, 2005, Community Facilities District (CFD) 2004-01 was established by the City authorizing the issuance and sale of

\$38,030,000.00 in Bonds to fund certain fees and public facilities including the purchase of the school site.

In August 2007, MUSD and Pardee Homes entered into a Purchase and Sale Agreement for the school site. In October 2008, MUSD indicated in a letter to the City its desire to terminate the Purchase and Sale Agreement. On April 1, 2009, the City Council approved a Memorandum of Understanding with Pardee Homes, allowing processing of an application proposing residential development of the vacant school site. On September 18, 2009, Pardee Homes submitted an application to Amend Specific Plan No. 2 to change the land use of Planning Area No. 7 from a school site to a residential development site including the subdivision of the property and construction of 133 single family detached houses. On June 15, 2010, the Planning Commission adopted Resolution No. 2010-555, recommending approval of the project to the City Council.

A full analysis of this project is provided in the attached June 15, 2010, Planning Commission agenda report. Public comments at the Planning Commission hearing were primarily focused on the change of designated use of the project site as a school site, with seven speakers expressing opposition, and one speaker expressing support for the change. Some speakers suggested that the site could still be sold for use as a charter school site or a private school site. The current Development Agreement for the Moorpark Highlands states that the existing school site must be used by MUSD for a public school. Therefore, in order to use the 21.8 acre property for an Institutional use other than an MUSD managed public school, such as a private school, approval of applications for General Plan Amendment, Specific Plan Amendment, Zoning Ordinance Amendment, new Development Agreement, and Planned Development Permit would be required. A copy of the April 1, 2009 City Council staff report and MOU between the City and Pardee Homes is attached for additional information on the use of the site for a school.

Concerns were also mentioned that the project would not be gated. Given the limited size of the project site, gates would be impractical without a significant reduction in the number of homes. One speaker suggested that the affordable housing component of the project should be built elsewhere in the city, and another speaker expressed the opinion that Waverly Place should not have any more affordable units. Details on the affordable housing requirements are included in the Development Agreement. The requirement for providing 10 homes affordable to low-income households, 7 on-site and 3 in Waverly Place, is consistent with affordable housing requirements for the original development. The affordable homes would be indistinguishable in appearance from the market-rate homes in the project. The new development will have its own Homeowners Association, (HOA) which will include the affordable housing units within this tract. The three affordable units within Waverly Place will be members of the existing Waverly Place HOA. Pardee anticipates including the PA No. 7 neighborhood's HOA within the Master HOA that currently manages the entire Moorpark Highlands master planned community, however, this annexation is subject to approval of a majority vote of the existing residents for the annexation to be approved.

The Planning Commission recommended, (3-1 vote), that the City Council approve the project as recommended by staff, with the omission of Special Condition No. 15 that required a 6.5-foot high block wall along the project's southern property line adjacent to Mammoth Highlands Park. Staff recommended and continues to support this wall to minimize potential conflicts between the park uses and the 18 homes adjacent to the park, and to provide a uniform appearance of the development from the park. The Planning Commission noted that the wall will block natural views from the backyards of 18 homes, and believed that the 7-8 foot separation in grade (home sites higher than the park) was sufficient to minimize potential conflicts. Jim Bizzelle of Pardee Homes told staff after the meeting that the wall is desirable for marketing the properties and for the privacy of future residents and is now asking that the condition be included. Views will still be available from the second story windows of the homes. Special Condition No. 15 is included in the attached resolution for City Council's consideration. Staff has not received any correspondence either in favor or opposition of the project.

It should be noted that this project was erroneously advertised as Amendment No. 1 to Specific Plan No. 2 instead of Amendment No. 2 to Specific Plan No. 2 for both the Planning Commission and City Council hearings. In addition, the Planning Commission action erroneously referenced Amendment No. 1 to Specific Plan No. 2 instead of Amendment No. 2 to Specific Plan No. 2. This was a case numbering error which does not affect the project description of the project that was advertised or considered by the Planning Commission and is now presented for consideration by the City Council.

STAFF RECOMMENDATION

1. Open the public hearing, take public testimony and close the public hearing.
2. Adopt Resolution No. 2010-____, approving Amendment No. 2 (erroneously advertised as Amendment No. 1) to Specific Plan No. 2, Moorpark Highlands.
3. Introduce Ordinance No. _____, approving Zoning Ordinance Amendment No. 2009-01 for first reading, waive full reading, and schedule second reading and adoption for July 21, 2010.
4. Introduce Ordinance No. _____, approving Development Agreement No. 2009-01 for first reading, waive full reading, and schedule second reading and adoption for July 21, 2010.
5. Adopt Resolution No. 2010-____ approving Residential Planned Development Permit No. 2009-02 and Tentative Tract Map No. 5860, subject to Conditions of Approval.

ATTACHMENTS:

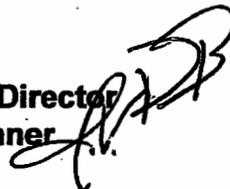
1. June 15, 2010, Planning Commission Agenda Report (Without Attachments)

2. April 1, 2009 CC Staff Report and Memorandum of Understanding between City and Pardee Homes
3. Location Map
4. Aerial Photograph
5. Project Exhibits (Under Separate Cover)
 - A. Tentative Tract Map No. 5860
 - B. RPD Master Plot Site Plan (11" x 17")
 - C. Design Guidelines
 - D. Colors and Materials
 - E. Addendum No. 1 to the Moorpark Highlands Specific Plan No. 2 Final EIR (previously provided)
6. Draft Resolution approving Amendment No. 2 to Moorpark Highlands Specific Plan No. 2
7. Draft Ordinance approving Zoning Ordinance Amendment No. 2009-01
8. Draft Ordinance approving Development Agreement No. 2009-01
9. Draft Resolution approving RPD 2009-01 and TTM 5860 with Conditions of Approval

**MOORPARK PLANNING COMMISSION
AGENDA REPORT**

TO: Honorable Planning Commission

FROM: David A. Bobardt, Community Development Director
Prepared by Joseph R. Vacca, Principal Planner



DATE: May 25, 2010 (Special PC Meeting of 06/15/2010)

SUBJECT: Consider Residential Planned Development No. 2009-02, a Request to Construct 133 Detached Single-Family Homes and a Private Recreational Facility; Tentative Tract Map No. 5860, a Request to Subdivide the 21.8 Acre Property Into 133 Residential Lots with Private Streets; Amendment No. 1 to Specific Plan No. 2, Moorpark Highlands, to Change Planning Area No. 7 From a School Site to a Residential Planned Development Site; Zoning Ordinance Amendment No. 2009-01, a Request to Amend Chapter 17.74 of the Moorpark Municipal Code to Create Zoning Development Standards for Planning Area No. 7; and Development Agreement No. 2009-01, Located at the Southeast Corner of Elk Run Loop and Ridgecrest Drive, on the Application of Pardee Homes. (APN 513-0-070-155)

BACKGROUND

On September 15, 1999, a General Plan Amendment, Specific Plan, Zone Change, and Development Agreement were approved by the City Council for Specific Plan Area No. 2, Moorpark Highlands and the Final Environmental Impact Report for the project was certified by City Council. Vesting Tentative Tract Map No. 5045, which included the entire Specific Plan area, was approved on August 2, 2000. A total of 552 home sites and condominiums were ultimately recorded in Planning Area Nos. 1-5 and 8-9. Planning Area No. 6 was approved for a park, and Planning Area No. 7, an approximately 22-acre parcel, was approved to be developed with a school.

In April 2004, Moorpark Unified School District (MUSD) and Pardee Homes entered into a School Facilities Agreement which set forth the general terms for acquisition of the school site. On September 21, 2005, Community Facilities District (CFD) 2004-01 was established by the City to fund certain fees and public facilities including the purchase of the school site. In August 2007, MUSD and Pardee Homes entered into a Purchase and Sale Agreement for the school site. In October 2008, MUSD indicated in a letter to the City

its desire to terminate the Purchase and Sale Agreement. On April 1, 2009, the City Council approved a Memorandum of Understanding with Pardee Homes allowing them to submit an application for residential development of this property. On September 18, 2009, Pardee Homes submitted an application to Amend Specific Plan No. 2 to change the land use of Planning Area No. 7 from a school site to a residential development site including the subdivision of the property and construction of 133 single family detached houses.

DISCUSSION

Project Setting

Existing Site Conditions:

The proposed project is located on 21.8 acres at the southeast corner of Elk Run Loop and Ridgecrest Drive. The street frontage along Elk Run Loop is 720 linear feet and the frontage of Ridgecrest Drive is approximately 1,440 linear feet. The site is relatively flat and somewhat rectangular in overall shape with manufactured slopes on the northern and eastern perimeters of the property. The property has been rough graded and is currently a vacant dirt lot void of any shrubs or trees, with minimal grasses and weeds present over portions of the property. The site has been used by Pardee Homes for storage of surplus construction soils that have been removed for foundation work on new homes.

The site is west of the existing Shenandoah residential neighborhood of Planning Area 4, and south of Planning Areas 8 and 9, which are owned by Toll Brothers, who are currently marketing their model homes for sale of new units. To the west of the project site is a 200-foot wide right of way reservation, for the State Route 23 (SR-23) alternate route, which was dedicated to the City for roadway purposes on final map Tract 5045, consistent with the development of the Moorpark Highlands master planned community. Finally, to the south of the project site is the 7-acre Mammoth Highlands public park which was also constructed as part of the Moorpark Highlands master planned development project.

Previous Applications:

In 1995, Morrison-Fountainwood-Agoura submitted applications for the development of Specific Plan Area No. 2. These applications included the request for approval of the Specific Plan, as well as, a General Plan Amendment, Zone Change, and a Development Agreement. The Specific Plan and accompanying applications were approved on September 15, 1999. The Specific Plan identified the project areas and established overall development patterns for 570 residential units in neighborhoods of varying densities, a public school site, a public park site, numerous areas of public and private open space, and an area set aside as a habitat preserve for the coastal sage scrub community. Vesting Tentative Tract Map No. 5045, which included the entire Specific Plan area, was approved on August 2, 2000. In April of 2001, Pardee Homes purchased the property from Morrison-Fountainwood-Agoura.

In December of 2003, the Community Development Director approved a Permit Adjustment for the Tentative Tract 5045, making minor adjustments to the street pattern and slightly reducing the number of residential units within the Specific Plan area to 552. In January of 2004, the City Council approved a Modification to Tentative Tract 5045, allowing the installation of gates to the entries to the individual neighborhoods within the Tract, and allowing the private maintenance of neighborhood streets within the Tract.

On July 7, 2004, the City Council approved Residential Planned Development Permits for Planning Areas 1-4. On April 6, 2005, the City Council approved Residential Planned Development Permit No. 2004-01 application for Planning Area 5 for 102 multi-family homes. Also on April 6, 2005, the City Council approved Residential Planned Development Permit Nos. 2004-02 and 2004-03 applications for Planning Areas 8 and 9 for 132 single-family homes, and a zoning code amendment to the Development Standards for Specific Plan No. 2. On October 5, 2005, the City Council approved Final Tract Map Nos. 5045-1, 5045-2, and 5045-3. On March 1, 2006, the City Council approved Final Tract Map Nos. 5045-4 and 5045-5. Final Tract Map Nos. 5045-6 and 5045-7 (school site) were approved by City Council on August 2, 2006.

GENERAL PLAN/ZONING			
Direction	General Plan	Zoning	Land Use
Site	Specific Plan 2	Specific Plan 2	Vacant
North	Specific Plan 2	Specific Plan 2	Planning Area 8 with 37 units approved on 28.0 acres and Planning Area 9 with 95 units approved on 39.7 acres
South	Specific Plan 2	Specific Plan 2	7.0 acre Public Park
East	Specific Plan 2	Specific Plan 2	200' Right of Way for State Route 23 Bypass
West	Specific Plan 2	Specific Plan 2	Planning Area 4 with 78 units constructed on 24.4 acres

General Plan and Zoning Consistency:

The Specific Plan, as adopted, is consistent with the adopted General Plan of the City of Moorpark. Specific Plan Amendment No. 1 proposes to change the Specific Plan Zoning Designation for Planning Area 7 from Institutional to Residential Planned Development-Single Family. The current project as designed provides for 552 residential units within the Specific Plan area. The proposed amendment changes the physical land use for Planning Area 7 from a 22-acre school site to a 22-acre residential planned development area. This increases the unit count within the Specific Plan area to a total of 685 residential units, and

the average residential density within the Specific Plan Area to 1.53 du/ac. Specific Plan Amendment No. 1 is consistent with Land Use Element Goals 1, 3, 5, 12, 14, 15 and 16 of the General Plan. The proposed project adds 133 additional units to Planning Area No. 7, which results in a proposed residential density of 6.1 du/ac, consistent with densities of existing neighborhoods of Planning Areas 1-4. With this application, the total dwelling units for the entire Specific Plan area will be 685, which is less than the 712 dwelling units permitted by the General Plan.

The Specific Plan also adopted development standards, incorporated as a chapter of the Zoning Ordinance, which identified specific requirements for the development of the various Planning Areas within the Specific Plan. The Zoning Ordinance Amendment proposes to add zoning development standards to chapter 17.74 of the Municipal Code. The proposed changes are discussed further in the analysis section of the report.

Project Summary

Tentative Tract No. 5860:

Parcel No.	Size (in acres)	Size (in sq. ft.)	Subtotal (in acres)
Lots 1 through 133 - Residential	0.08 min	3,500 minimum	Residential 12.6
Lot 134 - Recreation	0.50	21,599	Recreation 0.5
Lot A - Private Street	0.48	21,260	
Lot B - Private Street	0.28	12,502	
Lot C - Private Street	0.74	32,187	
Lot D - Private Street	0.69	30,046	
Lot E - Private Street	0.56	24,651	
Lot F - Private Street	0.92	40,288	
Lot G - Private Street	0.53	23,118	
Lot H - Private Street	0.76	33,161	
Lot I - Private Street	0.26	11,354	
Lot J - Private Street	0.69	30,148	Private Streets 5.9
Lot K – Open Space	0.36	15,530	
Lot L – Open Space	2.19	95,664	
Lot M – Open Space	0.02	941	
Lot N – Open Space	0.07	3,241	
Lot O – Open Space (Secondary access)	0.10	4,570	Open Space 2.8
			Total Acres 21.8

Residential Planned Development Permit No. 2009 - 02:

Parcel No.	House Plan Type	Single Family Detached House Size (sq. ft.)	Lot Size (sq. ft.)
1	3D	2,306	4,540
2	2A	2,247	4,041
3	4B	2,365	7,204
4	3D-R	2,306	6,755
5	4C	2,365	4,549
6	4A	2,365	3,612
7	2D	2,247	3,605
8	3B	2,306	3,758
9	4A	2,365	3,796
10	2C	2,247	3,831
11	3D	2,306	3,987
12	4B	2,365	4,236
13	2A	2,247	4,213
14	*1xC	1,425	4,119
15	4B	2,365	4,024
16	2D	2,247	4,230
17	3B-R	2,306	4,256
18	3D	2,306	5,170
19	2C-R	2,247	3,553
20	4A-R	2,365	3,553
21	2D-R	2,247	3,572
22	4B-R	2,365	3,525
23	2A-R	2,247	3,525
24	3B-R	2,306	3,525
25	2C-R	2,247	3,525
26	4A-R	2,365	3,525
27	2D-R	2,247	3,841
28	4C-R	2,365	5,157
29	3A-R	2,306	3,964
30	4B	2,365	3,525
31	2C	2,247	3,525
32	4A	2,365	3,525
33	2C	2,247	3,525
34	3D	2,306	3,525
35	4C	2,365	3,525
36	2A	2,247	3,525
37	4B	2,365	3,525
38	2D	2,247	3,525
39	4A	2,365	3,525

Parcel No.	House Plan Type	Single Family Detached House Size (sq. ft.)	Lot Size (sq. ft.)
40	2C	2,247	3,525
41	3B	2,306	3,525
42	2D	2,247	3,525
43	4C	2,365	3,525
44	3D-R	2,306	6,015
45	4A-R	2,365	4,537
46	2D	2,247	4,460
47	4C	2,365	4,065
48	3A	2,306	4,008
49	4B	2,365	3,913
50	2C	2,247	3,817
51	3B	2,306	3,670
52	4A	2,365	3,624
53	2D	2,247	3,576
54	3B	2,306	3,555
55	4C	2,365	3,599
56	2A	2,247	4,069
57	4B-R	2,365	6,663
58	3D	2,306	3,875
59	2C	2,247	3,890
60	4B-R	2,365	3,877
61	3A	2,306	4,185
62	2D	2,247	6,096
63	4A-R	2,365	7,935
64	3B	2,306	5,546
65	2A	2,247	4,406
66	*1xD-R	1,425	4,412
67	4C-R	2,365	4,674
68	4B	2,365	4,325
69	*1xC-R	1,425	3,760
70	3D-R	2,306	3,760
71	2A-R	2,247	3,760
72	4B-R	2,365	3,760
73	3A-R	2,306	3,760
74	2C-R	2,247	3,760
75	3B-R	2,306	3,760
76	2D-R	2,247	4,000
77	4C-R	2,365	5,011

Parcel No.	House Plan Type	Single Family Detached House Size (sq. ft.)	Lot Size (sq. ft.)
78	3D	2,306	4,769
79	2A	2,247	3,750
80	*1xD	1,425	3,750
81	2D	2,247	3,750
82	3A	2,306	3,750
83	2C	2,247	3,750
84	4A	2,365	3,525
85	2D	2,247	3,525
86	3A	2,306	3,525
87	4C-R	2,365	4,432
88	3D-R	2,306	4,257
89	4A	2,365	3,525
90	2C-R	2,247	3,525
91	4B	2,365	4,724
92	3A-R	2,306	4,435
93	2D-R	2,247	3,595
94	4C-R	2,365	4,155
95	*1XA-R	1,425	4,319
96	2D-R	2,247	4,655
97	4A-R	2,365	6,075
98	2D-R	2,247	4,644
99	*1xC	1,425	3,700
100	2A	2,247	3,763
101	3B	2,306	3,763
102	4C	2,365	3,763
103	2D	2,247	3,763
104	4B	2,365	3,763
105	2A	2,247	3,785
106	4C	2,365	4,123
107	3B	2,306	3,948
108	4A	2,365	3,526
109	2C	2,247	3,563
110	*1XA	1,425	3,525
111	4C	2,365	3,525
112	2A	2,247	3,525
113	4B	2,365	5,001
114	4C-R	2,365	4,638
115	3B-R	2,306	3,525
116	2D-R	2,247	3,525

Parcel No.	House Plan Type	Single Family Detached House Size (sq. ft.)	Lot Size (sq. ft.)
117	3A-R	2,306	3,525
118	4C-R	2,365	3,525
119	2A-R	2,247	3,525
120	4B-R	2,365	3,520
121	2C-R	2,247	5,161
122	4A	2,365	6,435
123	2D	2,247	4,980
124	3A	2,306	4,466
125	2C	2,247	3,947
126	4B	2,365	3,684
127	3A	2,306	3,604
128	2C	2,247	4,367
129	4A-R	2,365	5,429
130	2C	2,247	4,385
131	4B	2,365	4,458
132	3D	2,306	4,458
133	4C	2,365	5,709
* indicates affordable housing unit proposed			

Proposed Project

Architecture:

Architectural styles offered in Planning Area No. 7 are consistent and compatible with the existing homes, and also incorporate architectural elements shown in the original Specific Plan. There are 4 primary architectural styles with 3 color palettes proposed for each style.

The proposed styles are as follows:

- 1) *Early California*; 2) *Craftsman*; 3) *French*; and 4) *Italian*

The architect has indicated that the Early California Style demonstrates elements from the Spanish Colonial revival period in housing from the 1920's, while Italian elevations display Mediterranean influences which were added to homes as builders looked for more architectural features to draw from in later years. The Craftsman elevations match the Bungalow guidelines from the Specific Plan, as all Craftsman elevations are by definition from the Bungalow style, with additional detailing. The French elevations are harmonious and compatible with the other styles and add richness with clipped gable roofs, soft three-point arches, stone veneer and eyebrow roof overhangs on selected windows.

- Plan One represents the affordable units, which will have a unique design, with a total of seven affordable units proposed within Tract 5860. Plan One is approximately 34 feet wide by 34 feet deep. The proposal includes construction of two, three bedroom, two story, units totaling 1,108 sq. ft. for a family of less than four and construction of five, two story, four bedroom units of 1,425 sq. ft. for a

family of four or greater. The design of Plan One accommodates the additional 317 sq. ft. of living space to be provided over the garage resulting in the total 1,425 sq. ft. on the four bedroom house with the three bedroom homes having smaller second floors. The plan is designed in a manner that would allow construction of the approximate 317 sq. ft. addition to the smaller unit at a later time. The seven affordable units will have the same on-site amenities as the other units within the tract including front yard landscaping and street trees, and the interior amenities will be consistent with Development Agreement Section 6.9 and subject to the Affordable Housing Agreement with the City. The seven affordable units represent 5% of the total 133 units of Tract 5860.

- Plan two is approximately 37 feet wide by 44 feet deep, as a 2,247 sq. ft., two story, three bedroom house with an optional fourth bedroom which would require conversion of a loft. There are 46 plan two units proposed, representing 35% of the total 133 units of Tract 5860.
- Plan three is also approximately 37 feet wide by 44 feet deep, as a 2,306 sq. ft., two story, three bedroom house with an optional fourth bedroom or optional retreat room which would require conversion of a loft. There are 32 plan three units proposed, representing 24% of the total 133 units of Tract 5860.
- Plan three is also approximately 37 feet wide by 45 feet deep, as a 2,365 sq. ft., two story, three bedroom house with an optional fourth bedroom which would require conversion of a loft. There are 48 plan four units proposed, representing 36% of the total 133 units of Tract 5860.

Elevations and a streetscape illustrative and colors and materials for the proposed homes may be seen in the graphics provided in Attachments 4 – Design Guidelines and 5 - Colors and Materials. The proposed colors and materials are warm, earth tones, compatible with the colors and materials used on existing homes within the Moorpark Highlands. The applicant plans to construct the homes using green building techniques under a Pardee Home branding known as “Living Smart”. Pardee has indicated that the Living Smart construction methods meet or exceed local, state and national standards for green home building. Pardee may offer more than 30 included and optional green features, materials and systems that boost energy efficiency, save water, improve indoor air quality and encourage material conservation and the use of recycled or sustainable resources in new homes. Please refer to the analysis section of the report.

Setbacks:

The application includes a zoning ordinance amendment to create zoning standards as part of the proposed change in the land use of the site from a School site to a Residential Planned Development Single Family land use. The setback criteria proposed for the development of Planning Area No. 7 is discussed further in the analysis section of the staff report.

The proposed setbacks are consistent with current code requirements for residential development within the Moorpark Highlands and are sufficient to achieve appropriate land use relationships to adjacent uses. Since the public park is constructed south of the proposed development staff is recommending a special condition requiring disclosures to notify potential residents along the eastern perimeter of the project of the SR-23 alternate route and potential residents of southern perimeter of the project of the existing night lighting at the park. Also, a disclosure will be to and briefly discuss staff concerns/issues, referring to the Analysis section for details.

Circulation:

Primary access to Tract 5860 is provided off Ridgecrest Drive at the northern frontage of the tract. Interior access is provided over several interior private streets which meet street design requirements of the original Specific Plan. The proposed network of interior streets for Tract 5860 provides for the safe and efficient movement of residents and goods in and out of the proposed residential development areas through one primary entry/exit point on Ridgecrest Drive, and a secondary access road at the southwestern corner of the site. This secondary access is required by the Ventura County Fire District as a permanently accessible emergency access point into the development and as a secondary exit out. The secondary access is proposed via an easement over private lot "O" planned at the southwestern corner of Planning Area No. 7. This access easement is 43 feet wide with a 32 foot wide private street section, with 3 foot wide parkways on both sides and a 5 foot wide pedestrian sidewalk on the northern side of the access. This secondary access is discussed in more detail in the analysis section of the report.

The applicant has proposed use of a modified knuckle design for the project. The City of Moorpark has typically used knuckle design standards adopted by County of Ventura. The purpose of the increased curb length in the geometry of the county standard knuckle is to provide increased residential lot frontage. However, the applicant has indicated that since the proposed product is located on 3,500 square foot lots the site planning does not receive the benefit of larger lot frontage from the County standard knuckle. Therefore, a modified knuckle design is proposed at all of the "L - shaped" intersection locations within the proposed residential development. This modified knuckle uses a non-concentric outside curb radius that increases the pavement area of the knuckle. The inside curb radius of the modified knuckle is 25 feet, which is the same that the County standard specifies for intersections, as shown in Ventura county Road Standard Plate B-5. The proposal to use a modified knuckle is discussed in more detail in the analysis section of the report.

An additional easement is located along the eastern portion of the site, to become an extension of the Mammoth Highlands park, having a multi-use trail and enhanced landscaping. The area is 25 feet in width, and it is to be granted to the City to provide multi use trail connections, with additional landscaping, in order to provide access from the Moorpark Highlands trail network to the Mammoth Highlands public park. This area will be included in the Landscape Maintenance Assessment District for the project. This trail link

also ties into the Class II Bike Path along the northern side of the site. Trail connectivity is discussed in more detail in the analysis section of the report. Proposed easements may be seen in full detail on the Tentative Map 5860 for Planning Area 7, which is shown in PC Attachment 3A.

Traffic:

According to a traffic study prepared to analyze trip generation, the proposed residential development of Planning Area No. 7 will generate approximately 1,273 daily trips. However, based on the results of this traffic analysis, it is anticipated that all study intersections and roadway/freeway segments will operate at or above acceptable levels of service, and no traffic mitigation measures are proposed at this time. Anticipated LOS levels are acceptable (LOS C or better) for all study intersections and roadway segments that serve the project. All interior project roads have been designed in accordance with General Plan roadway standards, as well as roadway standards listed in the Specific Plan.

Parking:

Primary parking for each residence will be in two-car garages, with a minimum of 20 feet by 20 feet of interior clear space, which meets the City standard for two parking spaces. Additionally, each unit's driveway has been designed to be a minimum of 20 feet deep from the back of the proposed sidewalk. Finally, limited on-street parking is available, with the potential to provide approximately one on-street space for each residential unit.

Landscaping:

The site has been previously disturbed, with much of the vegetation on-site being non-native. The on-site vegetation located on the lots proposed for construction will be removed to complete the finished grading for the proposed project. The landscaping on the site following construction would be typical of residential subdivisions and will be reviewed for compliance with the current Water Efficient Landscape ordinance. A special condition of approval is recommended requiring the developer to install front yard landscaping for each residential property.

The developer has indicated that the front yards for each plan type will have a different character and design providing a custom aesthetic to the street scene. The individual units will be differentiated from one another by design features such as hedges, decorative driveways, and entry walkways. In addition, each plan type comes with a drought tolerant plant palette, water smart irrigation controller, and drip irrigation showcasing water conservation practices. There will also be very limited amounts of turf used throughout the project further demonstrating a commitment to xeriscape design. Finally, the developer anticipates including dry creek beds in the landscaping design for each unit in order to capture on-site drainage thereby reducing erosion and run-off. The landscaping is discussed in more detail in the analysis section of the report.

Site Improvements and National Pollution Discharge Elimination Standards Requirements (NPDES):

The Public Works Director/City Engineer has conditioned the project to provide for all necessary on-site and off-site storm drain improvements including the imposition of National Pollution Discharge Elimination System (NPDES) requirements. "Passive" Best Management Practices Drainage Facilities are required to be provided so that surface flows are intercepted and treated on the surface over biofilters (grassy swales), infiltration areas and other similar solutions.

Air Quality:

According to the 2000 Ventura County Air Quality Assessment Guidelines, the proposed project will produce NOx, in excess of allowable pound threshold, providing a conclusion that there will be an impact on regional air quality. As is required with all development projects, staff incorporates a standard condition requiring a contribution to the Moorpark Traffic Systems Management Fund to off-set air pollutants, consistent with the 2000 Ventura County Air Quality Assessment Guidelines. Therefore, the Developer shall pay to City an air quality mitigation fee, in satisfaction of the Transportation Demand Management Fund (TSM Fee) for each residential unit and institutional use prior to the issuance of a building permit for each residential unit or institutional use. The TSM fee shall be the dollar amount in effect at the time of issuance of the building permit, but not less than One Thousand Seven Hundred and Nine Dollars (\$1,709.00) for each residential unit and Twenty-Eight Cents (\$0.28) per gross square foot of institutional building space. This requirement is also included in Development Agreement 2009-01, to be satisfied by the Developer.

ANALYSIS

Issues

Staff analysis of the proposed project has identified the following areas for Planning Commission consideration in their recommendation to the City Council:

- **Architecture**

As stated, there are four primary architectural styles with a minimum of three colors and material palettes for each style. The architecture is of good quality and is compatible in design with the existing neighborhoods within the Moorpark Highlands master planned community. In order to ensure adequate variety and to minimize redundancy which is often reflected in tract development, staff has included a special condition of approval to require architectural variety. The special condition requires that for house floor plans 2, 3 and 4, there must not be less than 20% nor more than 40% of any one of the floor plans used throughout the plotting. Also a condition is recommend requiring at least three architectural styles, (i.e. Early California, Craftsman, French and Italian) be provided per floor plan with no less than 20% nor more than 40% of any one architectural style used per floor plan, and side by side houses of the same floor plan must use different architectural styles. Also,

final colors and materials must be reviewed and approved to include a minimum of three color schemes per architectural style, consistent with proposed design guidelines and no adjacent units, (side by side) will be allowed to use the same colors and materials palette. Since the lots are more compact and front yard setbacks are reduced, a condition is recommended to require, painted and decorative sectional roll up garage doors, including garage window glazing, consistent with the garage door styles approved for Waverly Place, compatible with the architectural style of each home including the affordable residences. This will soften the streetscape and help reduce a garage dominant appearance as viewed from the neighborhood the streets. Finally, a condition is required that the applicant use durable materials for trim on the ground floor levels of the homes, such as wood window trim, or ¼" minimum cementous stucco coat over foam.

- Setbacks

Zoning Ordinance Amendment No. 2009-01, proposes to establish new residential development standards including setback criteria to ensure the new single family detached residential units are compatible in size, massing and scale with existing Moorpark Highlands neighborhoods. The new zoning development standards have been created by staff as Section 17.74.040.1.E of the Municipal Code. The proposed development standards are provided in Attachment 8 to this report. The proposed setbacks are as follows:

Front setback: Minimum landscaped setback of ten (10) feet and architectural facade projections of up to sixteen (16) inches are allowed for non-livable spaces; with a minimum driveway depth of twenty (20) feet, as measured from front property line across area leading to enclosed parking within a garage; .any two (2) adjacent lots may have the same front setback; however the third consecutive lot should vary the front setback by one (1) or more feet, as appropriate to the street and lot configuration, and to provide for variety in the streetscape.

Side setback: Minimum for a single-family dwelling unit on an interior lot shall be five (5) feet. Minimum for a single-family dwelling unit adjacent to a street is ten (10) feet. Minimum for a single story enclosed patio, patio cover or detached accessory structure shall be five (5) feet.

Rear setback: Minimum for a single-family dwelling unit is fifteen (15) feet, and second story floors, and/or architectural projections, may cantilever a maximum of eighteen (18) inches into the minimum required fifteen (15) foot setback. For single story enclosed patios or open patio covers, or for detached accessory structures the minimum required rear setback is five (5) feet.

Mechanical equipment: Must be located in the rear yard with a minimum five foot setback from any side or rear property line and must be screened with a decorative masonry wall or landscaping.

The development standards for Planning Area No. 7 would be included in Chapter 17.74 of the Moorpark Municipal code with other development standards for the Moorpark Highlands Specific Plan area. Therefore, there are no proposed special conditions recommended but, staff will accept comments and recommendations from the public and

planning commission for consideration during the public hearing before the Planning Commission on the project. The proposed zoning development regulations are comparable to those adopted for the existing neighborhoods of Planning Areas Nos. 1-4.

Due to the proximity of the properties along the southern perimeter of the project to the public park, staff recommends that a decorative wall be installed along the south property line, to be a minimum of 6.5' tall due to park location. A greater wall height is not necessary as the yards would be several feet above the adjacent park, with a slope separating the two uses. Also, a special condition of approval states that, the applicant shall prepare a disclosure to be included in the CC&Rs to notify any potential resident of any property within Tract 5860 adjacent to the public park, to disclose that the park is publicly open and accessible until 10:00PM and includes sport court lighting available until 10:00PM. Also, the applicant has proposed a sound wall along the right of way SR-23 alternate route and staff has incorporated this applicant proposed measure as special condition of approval. Also a special condition is recommended that the security pool fencing of the recreation lot be decorative.

- Secondary Access

As presented earlier in the report, a secondary access for the project was required by the Ventura County Fire District as a permanently accessible access point both into and out of the development. The secondary access is proposed via an easement over a proposed private open space lot "O" planned at the southwestern corner of Planning Area No. 7. This access easements is 43 feet wide with a 32 foot wide curb to curb private street section, with 3 foot wide landscaped parkways on both sides of the access and a 5 foot wide pedestrian sidewalk on the northern side of the access. Special conditions of approval are recommended requiring radius returns must be provided on both ends of the proposed second access with residential driveway apron being prohibited; and, the grade on the second access must not exceed a six percent change in elevation within any ten foot section. Furthermore, a special condition is recommended to require that the paving within the street section of the access be decorative and the landscaping along this access way be enhanced with specimen trees and shrub species.

- Modified Knuckle

The City of Moorpark uses knuckle design standards that were originally adopted by the County of Ventura. The purpose of the increased curb length in the geometry of the current county standard knuckle is to provide increased residential lot frontage. However, the proposed product is located on 3,500 square foot lots which do not receive the benefit of larger lot frontage from the county standard knuckle. Therefore, the proposed lot layout uses a modified knuckle design at the "L" intersection locations within the proposed residential development. This modified knuckle uses a non-concentric outside curb radius that increases the pavement area of the knuckle. The inside curb radius of the modified knuckle is 25 feet, which is the same as the county standard specifies for intersections, as shown in Ventura county Road Standard Plate B-5.

The modified knuckle design provides adequate width and curb radii to meet emergency vehicle requirements. To improve the function of the modified design, a special condition of approval is recommended stating that the inside curb cut through the radius, and an extra 15 feet into and out of the curb return, will be painted red to prohibit parking around curves. By eliminating the parking on the inside curb return, the pavement available to drivers is further increased. Utilizing this modified knuckle will not affect the safety of "L" intersections on-site. Since the project area is within a Specific Plan area, the Community Development Director and Public Works Director/City Engineer have recommended that a modified street design be approved as part of the Specific Plan Amendment No. 1 with the design being unique to development of Planning Area No. 7 of Specific Plan No. 2. Therefore, aside from the special condition for no parking, the modified knuckle design is incorporated into the text of the proposed Amendment No. 1 to Specific Plan No. 2 and if adopted as proposed, no special condition of approval would be required as the modified knuckle would be considered as an approved City street standard for development of Planning Area No. 7.

- Trail Connectivity

The Memorandum Of Understanding between Pardee Homes and the City called for a dedication of land on the eastern perimeter of the project site to provide an access trail from the park site to a point near the terminus of Ridgecrest Drive and the SR-23 bypass at the City boundary with Happy Camp Canyon Regional Park. Also, the original Specific Plan shows a Natural Trail along the eastern portion of Planning Area No. 7. This Natural Trail was intended to be used to accommodate bikes, pedestrians, and equestrian uses, and to provide access to the park in Planning Area No. 6, to the south. A Class I Bike Trail is also shown along the northern side of Planning Area No. 7 in the original Specific Plan. A special condition of approval is recommended that improvement plan provides for the replacement of the existing Class I Bike Path on the northern side of the planning area with an 8-foot Class II Bike Path on the northern and southern sides of the street and along the western frontage of the project site on Elk Run Loop. In addition, the Natural Trail on the east side of Planning Area No. 7 has also been replaced with a 25-foot-wide easement to accommodate a minimum 12 foot wide Multi-Use trail, and landscaping. These trails provide access on the northern and eastern sides of Planning Area No. 7, and tie into the park area in Planning Area No. 6, to the south. The Multi-Use Trail to the east will accommodate pedestrian, bicycle, and equestrian mobility from its northern junction with the Class II Bike Path, all the way along the access easement shown along the eastern side of Planning Area No. 7, and down to the eastern edge of Planning Area No. 6 to the south where it becomes a Natural Trail.

A special condition of approval is recommended outlining the size and construction elements of the multi use trail along the eastern perimeter of the project, including appropriate landscaping and a requirement that the multi use trail plan must comply with Federal, State and Local accessibility codes and ordinances. Also, a special condition of approval is recommended that the CC&Rs include a disclosure to any potential resident of any property adjacent to the multi use trail easements indicating that the multi-use trail is

publicly accessible.

- Landscaping/Hardscape

Due to the smaller lot sizes proposed, it is important to accentuate the hardscape and driveways within the front yards, so that there is not a dominant feature of grey concrete along the street-scape. Therefore, a special condition of approval is recommended requiring decorative hardscape features and driveways be provided to the satisfaction of the Community Development Director, including but not limited to the use of decorative pavers, colored and stamped concrete. A special condition of approval is also recommended requiring the developer to install front yard landscaping for each residential property and to require HOA maintenance of front yards.

Since Planning Area No. 7 is located within an existing landscape maintenance assessment district, and there are several landscape areas that will be visible from public rights of way, staff recommends a special condition of approval that the visible landscape areas be included within the existing Moorpark Highlands Landscaping Maintenance District. At a minimum this will include the frontage along Elk Run Loop on the western perimeter of the project, the frontage and slopes adjacent to Ridgecrest Drive, along the northern perimeter of the project and the 25 foot wide easement for the multi-use trail and landscaping along the eastern project boundary. Also, staff recognizes that the existing Elk Run Loop right of way is of sufficient width to accommodate installation of a raised median from the intersection with Ridgecrest Drive, south to terminate before access to the gated entrance of Grottoes Way, across from the driveway access to the public park. Therefore, staff has recommended a special condition to require installation of a raised median within Elk Run Loop as outlined above. In order to preserve on street parking in proximity to the Mammoth Highlands park, no median will be constructed within Elk Run Loop, to the south of the driveway entrance to the public park and the gated entrance to Planning Area Nos. 3 & 4 at Grottoes Way.

- Specific Plan Amendment

The Moorpark Highlands Specific Plan Amendment No. 1 proposes to amend Moorpark Highlands Specific Plan No. 2 (original Specific Plan). The amendment changes the Specific Plan Zoning Designation for Planning Area No. 7 from Institutional to Residential Planned Development-Single Family. The current project as designed provides for 552 residential units within the Specific Plan area. The physical land use for Planning Area No. 7 has been converted from an approximate 22-acre school site to an approximate 22-acre residential area with 133 newly proposed residential units. This increases the unit count within the Specific Plan area to 685 residential units. A recreation center is also proposed within Planning Area No. 7 to serve residents within this planning area. Please refer to Attachment 7 – Draft Amendment No. 1 to Specific Plan No. 2.

- **Development Agreement**

The Development Agreement outlines the required fees and fee indexing structure and timing of developer payments of fees. The agreement also provides for city cooperation in expediting permit processing, provide median improvements to Elk Run Loop, extend Ridgecrest Drive for the length of the project frontage, and provide for a total of 10 units affordable for lower income households: 3 within the Waverly Place development (Planning Area No. 5), and 7 within Planning Area No. 7. In addition, the Development Agreement requires the Developer agrees to provide a plan for City review and approval for improvements that would be completed immediately, should ongoing construction of residential units be suspended at any time and for any reason after the first residential unit is occupied.

Findings

The following findings are offered for the Residential Planned Development Permit:

1. The proposed project site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping is consistent with the provisions of the City's General Plan, Specific Plan No. 2 and Zoning Ordinance, with amendments proposed by Amendment No. 1 to Specific Plan No. 2, in that the proposed project will provide for the orderly development of land identified in the City's General Plan, Specific Plan No. 2 and Zoning Ordinance as appropriate for residential development within Planning Area No. 7, to be compatible with the developed residential neighborhoods within the Moorpark Highlands, and;
2. The site design of the proposed project would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area, in that the use proposed is similar to uses existing or proposed to the north, south, east and west, and access to adjacent uses is not hindered by this project; and
3. The proposed project is compatible with existing and permitted uses in the surrounding area, in that the surrounding existing and future development includes a variety of single-family detached homes and open space throughout the Moorpark Highlands master planned community of similar densities.

The following findings are offered pursuant to the requirements of the Subdivision Map Act:

- A. The proposed map would be consistent with the City of Moorpark General Plan and Zoning Ordinance if the Specific Plan No. 2 is amended to change the school site to Residential Planned Development with approval of Zoning Ordinance Amendment No. 2009-01 to allow for a Residential Planned Development at a density up to one (1) unit per 6.1 acres.
- B. The design and improvements of the proposed subdivision are consistent with the City of Moorpark General Plan if the Specific Plan is amended to change the school site to Residential Planned Development to allow for a density up to one (1) unit per 6.1 acres.
- C. The site is physically suitable for the type of development proposed in that the site can be engineered to allow for all required utilities to be brought to the site, adequate ingress and egress can be obtained, and the site can be provided with public and emergency services.
- D. The site is physically suitable for the proposed density of development of one (1) unit per 6.1 acres, in that all City Development standards would be met by the proposed project while preserving 2.8 acres of the project site as landscaped open space.
- E. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, in that all potential impacts would be mitigated through project design, conditions, or implementation of approved mitigation measures as adopted with the original final Environmental Impact Report (SCH# 96041030) for the project, as presented in the Addendum to the Final EIR for Specific Plan No. 2.
- F. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, in that adequate sanitation is both feasible and required as a condition of this development.
- G. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large, for access through, or use of the property within the proposed subdivision, in that access easements are provided into Tract 5860 and use of the public streets developed with Tract 5045 to the north and west of the site have been identified and incorporated in the design of this project.
- H. There will be no discharge of waste from the proposed subdivision into an existing community sewer system in violation of existing water quality control requirements under Water Code Section 13000 et seq.
- I. The proposed subdivision does not contain or front upon any public waterway, river, stream, coastline, shoreline, lake, or reservoir, in that it is located on a hilly site at elevations between 785 and 850 feet, away from any public waterways.

PROCESSING TIME LIMITS

Zoning Amendments and Changes and Development Agreements are legislative acts that are not subject to processing time limits under the Permit Streamlining Act (Government Code Title 7, Division 1, Chapter 4.5), the Subdivision Map Act (Government Code Title 7, Division 2), and the California Environmental Quality Act Statutes and Guidelines (Public Resources Code Division 13, and California Code of Regulations, Title 14, Chapter 3). The applicant has elected to process the Tentative Tract Map and Residential Planned Development concurrently with the Zoning Amendments and Changes and the Development Agreement.

ENVIRONMENTAL DETERMINATION

In accordance with the City's environmental review procedures adopted by resolution, the Community Development Director determines the level of review necessary for a project to comply with the California Environmental Quality Act (CEQA). Some projects may be exempt from review based upon a specific category listed in CEQA. Other projects may be exempt under a general rule that environmental review is not necessary where it can be determined that there would be no possibility of significant effect upon the environment. A project which does not qualify for an exemption requires the preparation of an Initial Study to assess the level of potential environmental impacts.

Based upon the results of an Initial Study, the Director may determine that a project will not have a significant effect upon the environment. In such a case, a Notice of Intent to Adopt a Negative Declaration or a Mitigated Negative Declaration is prepared. For many projects, a Negative Declaration or Mitigated Negative Declaration will prove to be sufficient environmental documentation. If the Director determines that a project has the potential for significant adverse impacts and adequate mitigation can not be readily identified, an Environmental Impact Report (EIR) is prepared.

An Environmental Impact Report (SCH No. 96041030) had been prepared and certified for the original project. No new information or impacts that require preparation of a new or subsequent EIR have been identified as a result of the proposed amendments to the project. An Addendum has been prepared under the supervision of the Community Development Director. Addendum to the Moorpark Highlands Specific Plan No. 2 final EIR consists of the application and all its exhibits along with the staff report, the Addendum and all appendices, including the adopted Mitigation Monitoring program of the final EIR. No further environmental documentation is required.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.
2. Adopt Resolution No. PC-2010-____ recommending to the City Council approval of Residential Planned Development No. 2009-02, Tentative Tract Map No. 5860, Amendment No. 1 to Specific Plan No. 2, Moorpark Highlands, Zoning Ordinance Amendment No. 2009-01 and Development Agreement No. 2009-01 subject to the special and standard Conditions of Approval for Residential Planned Development No. 2009-02 and Tentative Tract Map No. 5860.

ATTACHMENTS:

1. Location Map
2. Aerial Photograph
3. Project Exhibits
 - A. TTM 5860 – (11"x17" size and full size plans under separate cover)
 - B. RPD master plot site plan – (11"x17" size under separate cover)
4. Design Guidelines (under separate cover)
5. Colors and Materials (under separate cover)
6. Addendum No. 1 to the Moorpark Highlands Specific Plan No. 2 final EIR (under separate cover with CD *[note: previously distributed]*)
7. Draft Amendment No. 1 to Moorpark Highlands Specific Plan No. 2 (under separate cover)
8. Draft Zoning Ordinance Amendment No. 2009-01 – proposed development standards
9. Draft Development Agreement No. 2009-01
10. Draft PC Resolution No. ____ with Conditions of Approval

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: The Honorable City Council

FROM: Steven Kueny, City Manager 

DATE: March 25, 2009 (CC Meeting of 4/01/09)

SUBJECT: Consider Memorandum of Understanding (MOU) with Pardee Homes for Proposed Residential Development of Vacant School Site in Moorpark Highlands Specific Plan No. 2

BACKGROUND

On September 15, 1999, the City Council approved various actions including a General Plan Amendment, Zone Change and Development Agreement for a project generally referred to as Moorpark Highlands Specific Plan No. 2 upon the application of Morrison Homes. The approved project consisted of approximately 445 acres with 570 residential units (552 were subsequently approved), an approximate 7-acre park, and 22 acres reserved for a school site. The approved Moorpark Highlands project was subsequently acquired by Pardee Homes.

In April 2004, Moorpark Unified School District (MUSD) and Pardee Homes entered into a School Facilities Agreement which set forth the general terms for acquisition of the school site. On September 21, 2005, Community Facilities District (CFD) 2004-1 was established by the City and subsequently issued and sold \$38,030,000.00 in Bonds to fund certain fees and public facilities including the purchase of the school site by MUSD. MUSD and Pardee Homes jointly authorized an appraisal of the school site, and the resulting Appraisal Report concluded the market value of the school site to be \$15,850,000.00. (Please note that regardless of the actual market value of the school site, Pardee Homes had the legal ability to claim about \$33,000,000.00 from the CFD Project Improvement Fund. Other legitimate costs and fees could be substituted for a reduced cost of the school site.) In August 2007, MUSD and Pardee Homes entered into a Purchase and Sale Agreement for the school site. At some point in 2007-2008, MUSD indicated it was not planning to construct a school on the school site in the foreseeable future.

DISCUSSION

In October 2008, MUSD indicated in a letter to the City (attached) its desire to terminate the Purchase and Sale Agreement. Pardee Homes disputes MUSD's ability to terminate the Purchase and Sale Agreement.

Pardee Homes and a City Council Ad Hoc Committee (Mayor Pro Tem Van Dam and Councilmember Millhouse) have met several times on the school site issue. The attached Memorandum of Understanding (MOU) is the result of those meetings. The MOU sets forth the parameters under which Pardee Homes will submit and the City will process and consider a residential development for the school site. The proposed development would be generally consistent with the current Specific Plan No. 2 and Development Agreement but requires amendments to the General Plan, Specific Plan, Zoning and Development Agreement to effectuate the proposed development. The maximum 225 residential units would exceed the current 712 maximum number of units by 65 units (552 currently approved, plus 225 proposed, less 712).

The MOU provisions are summarized as follows:

- A maximum of 225 additional units with at least 70 detached units.
- Five percent (5%) of approved additional units (with a minimum of 12) shall be provided to qualified low income buyers in a similar manner as provided for in the current Development Agreement and Affordable Housing Agreement. All such units would be provided for from the attached units.
- All of the additional units, except those required to be sold to qualified low income buyers, would be included in CFD 2004-1.
- Pardee Homes shall pay all applicable development fees and expand/improve the Mammoth Highlands Park by about .44 acres to allow connection to Ridgecrest Street and facilitate connection to Happy Camp Canyon Park and trails.
- Processing of the necessary amendments and related Residential Development Permit and Tentative Tract Map is expected to take six to nine (6-9) months. During this time, any legal action by Pardee Homes concerning the school site is suspended. Pardee Homes shall also continue to maintain the school site.
- Pardee Homes shall receive a total maximum \$27,000,000.00 reimbursement from CFD 2004-1. To date Pardee Homes has received \$16,943,673.41 from the Project Improvement Fund leaving a balance they can draw from of \$10,056,362.59. Pardee Homes shall be entitled to receive an additional \$4,000,000.00 from the Project Improvement Fund upon execution of the MOU.

When other costs related to the Bonds are factored in, there could be early redemption (and savings to the property owners) of about \$8,000,000.00. Please note there are administrative and legal costs as well as a three percent (3%) penalty associated with such early redemption.

- At the present time, 527 units (the 25 affordable units are exempt) are paying for \$38,030,000.00 CFD 2004-1 Bonds. With the proposal as contained in the MOU, another 213 units (the 12 affordable units would be exempt) would be included in CFD 2004-1 with an estimated \$8,000,000.00 reduction in the amount of the Bonds. This would result in about 43% overall average reduction in the CFD special taxes for the current 527 units. A summary of the Potential Bond Reduction is attached.
- If the project proceeds to approval, the changes to CFD 2004-1 could become effective prior to the end of the 5-year period in which Pardee Homes agreed to pay the CFD special taxes. In addition, it is intended that any buyers who prepaid the CFD special taxes would receive benefit of such reduction.

In summary, if the proposed MOU is approved and a residential project is approved for the school site, the following benefits would be realized:

- 1) The City and MUSD can avoid a costly legal battle with Pardee Homes;
- 2) It would add a project complementary to the existing built and planned residential communities of Moorpark Highlands;
- 3) It would spread future LMD assessments among 181 additional units (school site is currently assessed at 44 single-family equivalent units) for an approximate 20 percent (20%) decrease;
- 4) Decrease the CFD special taxes by about 43%; and
- 5) Provide for residential development of the school site much sooner (as early as 2011 depending on market conditions) than a school would be expected to be built.

STAFF RECOMMENDATION

Approve the Memorandum of Understanding (MOU) subject to final language approval of the City Manager and City Attorney and authorize Mayor to sign.

Attachments:

- 1) Proposed MOU
- 2) October 9, 2008, MUSD Letter
- 3) Summary of Potential Bond Reduction

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into effective April 1, 2009 ("Effective Date"), by and among the City of Moorpark, a municipal corporation ("City"), and Pardee Homes, a California corporation ("Developer"). This MOU is made and entered into with respect to the following recitals, and in consideration of the terms, covenants and conditions set forth below:

1.0 RECITALS

1.1. As described below, Developer is the owner of certain real property shown on Exhibit "A" to this MOU and hereinafter referred to as the "Property" or the "School Site".

1.2. On September 15, 1999, the Moorpark City Council certified the Moorpark Highlands Specific Plan No. 2 Final Environmental Impact Report ("the "EIR"), approved a Mitigation Monitoring Program, approved General Plan Amendment No. 95-2 ("GPA 95-2"), approved Moorpark Highlands Specific Plan No. 2 ("SP 95-2"), and approved Zone Change No. 95-4 ("ZC 95-4") for approximately 445 acres within the City (the "SP 95-2 Property"), and adopted Ordinance No. 263 approving a Development Agreement for the SP 95-2 Property (the "DA").

1.3. The Property is included within the SP 95-2 Property and is designated in SP 95-2 as a school site. As of this date, the Property has not been purchased or otherwise transferred to Moorpark Unified School District ("MUSD").

1.4. MUSD and Developer entered into a School Facilities Agreement dated April 27, 2004 ("School Facilities Agreement"), which includes general terms for acquisition of the School Site by MUSD. MUSD and Developer subsequently entered into a Purchase and Sale Agreement with respect to the School Site dated August 21, 2007 (the "Purchase Agreement").

1.5. Consistent with the definitions of the School Facilities Agreement, MUSD and Developer jointly authorized an appraisal of the School Site and subsequently received an Appraisal Report which concluded the market value of the School Site to be \$15,850,000.00.

1.6. On September 21, 2005, CFD 2004-1 was established by the Moorpark City Council pursuant to applicable provisions of state law. In conjunction with the formation of CFD 2004-1, the City, MUSD and Developer entered into a Joint Community Facilities Agreement dated September 13, 2005 (the "JCFA") authorizing the financing of the acquisition of the School Site and School Fees relating to the SP 95-2 Property ("School Facilities") through CFD 2004-1 and the City and Developer entered into a Funding and Acquisition Agreement dated September 7, 2005 (the "Funding Agreement") providing for the financing of certain City fees ("City Fees") and City facilities ("City Facilities"), in addition to the School Facilities, through CFD 2004-1. Subsequently, in 2006, CFD 2004-1 issued and sold \$38,030,000.00 in bonds (the "Bonds") to fund the City Fees, City Facilities and School Facilities, including purchase

of the School Site by MUSD. Pursuant to a Fiscal Agent Agreement by and between the City and The Bank of New York Trust Company, N.A., (the "Fiscal Agent") dated as of July 1, 2006 (the "Fiscal Agent Agreement") a portion of the proceeds of the Bonds were deposited in a "Project Improvement Fund" established and maintained by the Fiscal Agent. As of December 31, 2008, \$16,943,073.41 has been disbursed to Developer from the Project Improvement Fund pursuant to the Funding Agreement and Fiscal Agent Agreement.

1.7. In October 2008, MUSD indicated in a letter to the City its desire to terminate the Purchase and Sale Agreement with the Developer. Developer disputes MUSD's ability to terminate the Purchase Agreement.

1.8. This MOU is intended to outline the parties' agreements and mutual understandings with respect to the processing of Developer's development plans for the Property through the City and with respect to certain items relating to CFD 2004-1. This MOU shall also serve as the City's general plan pre-screening process.

NOW, THEREFORE, the parties agree to the following terms, covenants and conditions:

2.0 PARTIES TO THE MOU

2.1. **City.** The City of Moorpark is a general law city, duly incorporated under the laws of the State of California.

2.2. **Developer.** Pardee Homes is a corporation duly organized and existing under the laws of the State of California and is authorized to conduct business in the State of California. The signatories to this MOU represent that the signatories are authorized to execute this MOU on behalf of Developer.

2.3. **No Third Party Beneficiaries.** There are no other parties to this MOU, express or implied, direct or indirect. The City and Developer acknowledge that it is not their intent to create any third party beneficiaries to this MOU.

2.4. **Assignment.** This MOU shall not be assignable in whole or in part by Developer unless the assignee executes an assignment and assumption agreement, in a form reasonably acceptable to the City, assuming all of Developer's rights and obligations hereunder. The City may terminate this MOU for any assignment in violation of this paragraph and Developer shall not be relieved of any of its obligations hereunder for any such assignment.

3.0 THE PROPERTY

3.1. Developer is the owner of certain real property located in the County of Ventura, California, which is referred to as the SP-2 Property. The Property consists of approximately 22 acres (and is a portion of the "SP-2 Property"). One of the purposes of this MOU is to outline the process for developing the Property.

4.0 DEVELOPER AND CITY OBLIGATIONS

4.1. Deposit. No later than close of business on the business day following execution of this MOU by both parties (which execution shall occur no later than close of business on May 4, 2009), Developer shall deposit the amount of \$50,000.00 ("Deposit") into the Project Trust Account to be established by the City. Pursuant to this MOU, the City may disburse funds from the Project Trust Account to defray costs incurred by the City in the course of administering and processing the "Project Entitlements" (defined in Section 5.1 below) and environmental documents, consistent with the tasks identified in the "Project Schedule" (defined in Section 4.5 below). Developer shall maintain and continue to replenish said Deposit with the City during the term of this MOU in the manner specified in Section 4.2, below. Upon termination of this MOU, if any portion of the Deposit remains, the City shall return the Deposit balance to Developer without interest thereon. Developer agrees that the City may use the Deposit to pay the City any amounts due the City pursuant to the terms of this MOU.

4.2. City Costs. Developer shall pay City for one hundred percent (100%) of any City costs related to administering, preparing, reviewing and processing the environmental documents and the Project Entitlements described in this MOU. City will send Developer a cost estimate and invoice for the additional costs anticipated for the next sixty (60) days, when eighty percent (80%) of the total Deposit, referenced in Section 4.1, above, has been expended. Developer shall then make a supplemental Deposit, based on the City's sixty (60) day cost estimate, within thirty (30) days of receipt of invoice. In no case shall the amount on deposit with the City to pay for City costs be less than \$20,000.00 to allow for payment of City costs in the event of termination of this MOU by Developer.

Consistent with the City's adopted Schedule of Land Development Preliminary Processing Fee Deposits, Developer shall pay cost plus fifteen percent (15%) for contract consultants, City Attorney and City Engineer staff work.

The City may redact the City Attorney's invoices in order to protect the disclosure of information protected by the attorney-client and/or attorney work product privileges.

4.3. Application Fees. Payment of City costs, as described in Section 4.2, above, satisfies the Developer's requirement to pay, and will incorporate and satisfy deposits for, the City's application fees associated with the processing of the environmental documents and Project Entitlements described in this MOU. Developer acknowledges that it is not exempt from any City processing costs.

4.4. Suspend Processing. The City shall have the right to suspend processing of the Project Entitlements and environmental documents in the event that Developer fails to maintain the Deposit as specified in this MOU.

4.5. Project Schedule. City agrees to process the Project Entitlements (and environmental documents) pursuant to the "Project Schedule," attached as Exhibit "B".

Both Developer and City acknowledge that time is of the essence in connection with the attached Project Schedule. Therefore, the Developer and City will diligently process the Project Entitlements and associated environmental documents, so that the processing/environmental review is completed in accordance with the attached Project Schedule. Developer may decide to stop or otherwise withdraw processing the Project Entitlements and environmental documents if Developer determines that the Project Schedule is not being met, that the proposed mitigation measures and conditions of approval associated with the Project Entitlements would render the proposed project economically infeasible, or that the proposed Development Agreement amendment would render the proposed project economically infeasible. If City is notified to stop processing the Project Entitlements and environmental documents, this MOU shall be terminated and the application for the Project Entitlements shall be considered withdrawn, subject to payment of "close-down" costs identified in Section 4.6, below.

The City agrees to take final action with respect to certification of the environmental documents and approval of the Project Entitlements in accordance with the Project Schedule, with the exception that for every one day that Developer is late in submitting payment of the Deposit to the City, or a check payment is not honored by the bank due to insufficient funds, the time period may be extended by two days. A payment will be considered late if a check for the full amount of an invoice is not submitted to the City within 30 calendar days following Developer's receipt of invoice, pursuant to payment and notification terms specified in this MOU. Receipt of invoice by mail initiates the 30-day time period for payment of each invoice. This "late payment" provision does not apply to the amount of any invoices contested or questioned by Developer, but not resolved by City staff or City Council, consistent with Section 4.2, above.

4.6. Developer Processing. Developer will respond promptly to any inquiries from City staff or its consultants concerning draft planning documents or tasks to be performed. Should this MOU be terminated as provided herein, Developer will remain liable for payment of sums previously committed or "close-down" costs, which cannot be reasonably avoided. Payment of such costs not covered by the Project Trust Account will be due and payable within 30 days of the date of written notice of termination. Developer's termination of this MOU shall be deemed a withdrawal of all applications for Project Entitlements.

4.7. State Agency or Federal Studies, Permits or Approvals. City and Developer agree to mutually cooperate in the preparation and processing, at the sole cost of the Developer, County of Ventura, state agency or federal studies, permits or approvals necessary to facilitate the timely implementation of the Project Entitlements.

4.8. Conflict of Interest. The Developer agrees not to hire or retain, for a period of one year after City Council final action on the Project Entitlements, any current City employee as of May 1, 2009, consultant retained by the City that worked on the Project Entitlements, or any employee of such consultant.

4.9. Amended Development Agreement. The parties agree that Developer may submit an application to amend the DA to include, but not be limited to, the following:

A. That any residential units approved for the Property shall pay the then applicable fees contained in Sections 6.4, 6.5, 6.6, 6.14, and 6.21 as well as the then applicable fee for the Los Angeles Avenue Area of Contribution (LA AOC);

B. That five percent (5%) of the number of residential units approved on the Property with a minimum of 12 (fractions shall be rounded up to the next highest whole number) shall be provided to qualified low income buyers. The residential units to be provided to qualified low income buyers shall be provided within the attached residential units proposed for the Property. In addition, up to three (3) of the qualified low income units may be provided in the residential project known as Waverly Place in SP-2 (RPD 2004-01 and Tract Map 5045). Implementation of this provision shall be consistent with the DA and existing Affordable Housing Agreement for SP-2;

C. Effective October 1, 2011, the \$150,000.00 payment contained in Section 5.30 and \$350,000.00 payment contained in Section 6.9 of the DA shall be increased in the same manner as the CPI Increase provided for in Section 6.6 of the DA; and

D. The Quimby requirement for all units above 570 in SP-2 shall be subject to credit for the land and improvement costs of the expansion of the park site described in Section 4.11.C below.

4.10. Community Facilities District 2004-1.

A. Developer agrees that if the Project Entitlements for a residential project consisting of no less than 225 units (of which a minimum of seventy (70) shall be single family detached units) are finally approved by City for the Property, (i) Pardee shall terminate the Purchase and Sale Agreement, (ii) Pardee shall limit its total reimbursement from the proceeds of Bonds of CFD 2004-01 to \$27,000,000.00, (iii) any funds in the Project Improvement Fund in excess of the amount required to fund such total reimbursement, less any CFD 2004-1 consultant costs associated with the redemption of Bonds and adding residential units approved in the Project Entitlements to CFD 2004-01, shall be applied to redeem a portion of the Bonds, consistent with applicable provisions of State and Federal laws and regulations. As a result of such redemption, the Special Taxes for Facilities shall be decreased in accordance with the Rate and Method (defined below). For purposes of this MOU, the Project Entitlements shall be deemed to be "finally approved" when all related resolutions and ordinances have been adopted by the City Council and all applicable periods for a legal challenge of, or referendum on, the Project Entitlements have passed without the filing of a legal challenge or referendum petition. Developer may terminate this MOU, if a legal challenge of, or referendum on the Project Entitlements, is filed.

B. To the extent permitted by applicable law, City agrees to initiate action and Developer agrees to cooperate in such action to include any residential units (except those designated to be sold to low income buyers pursuant to Section 4.9.B. of this Agreement) approved for development on the Property in CFD 2004-01 for purposes of levying the Special Tax for Facilities and the Special Tax for Services described in the Rate and Method of Apportionment attached as Exhibit "B" to City Council Resolution No. 2004-2383 (the "Rate and Method"). If such residential units are made subject to such special taxes, City agrees that funds in the Project Improvement Fund may be disbursed to fund City Fees applicable to such residential units in accordance with the Funding Agreement, upon Developer's submittal of a Payment Request, and Developer may receive a total reimbursement from the Project Improvement Fund in an amount of \$27,000,000.00 consistent with 4.10.A.(ii), above.

C. City agrees to continue to process and pay from the Project Improvement Fund all Payment Requests submitted by Developer pursuant to, and in accordance with, the Funding Agreement prior to and following execution of this MOU in an amount not to exceed \$4,000,000.00 (in addition to the \$16,943,673.00 previously paid); provided, however, prior to the earlier of termination of this MOU or the date the Project Entitlements are finally approved, City and CFD 2004-1 shall not be required to pay Payment Requests submitted for acquisition of the School Site.

D. City agrees to amend the Fiscal Agent Agreement, within thirty (30) days following the effective date of an amended DA executed by both parties, to provide for the deposit in the Special Tax Fund of all earnings on the investment of funds in the Project Improvement Fund and all earnings in the investment of funds in the Reserve Fund in excess of the Reserve Requirement after the effective date of the amended DA to be used to pay debt service on the Bonds.

4.11 Miscellaneous.

A. During the term of this MOU, Developer shall pay and keep current all taxes and assessments on all its properties within the SP 95-2 Property.

B. Consistent with Project Schedule, Developer shall submit a completed application for residential projects on the Property consisting of no less than 160 and no more than 225 attached and detached residential units. The attached residential units shall be generally consistent with the residential project known as Waverly Place in SP-2 (RPD 2004-01 and Tract Map 5045).

C. Developer acknowledges that any approved residential project on the Property shall be conditioned to include an expansion of the park site in SP-2 of approximately 0.44 acres (approximately 40 feet wide by 475 feet long exclusive of any slope easements) to serve primarily as an access trail from the park site to a point near the terminus of Ridgecrest Drive and the SR-23 Alternate at the City boundary with Happy Camp Canyon Regional Park (the "Park Site Expansion"). Developer further acknowledges it shall be conditioned to construct landscaping, concrete walkway,

grading and bollard-type lighting in the Park Site Expansion consistent with City approved plans and specifications.

D. Developer agrees to suspend any legal action against City pertaining to the School Site and CFD 2004-1 during the term of this MOU. City agrees that the limitations period for bringing any such legal action against City shall be tolled during the term of this MOU. Developer also agrees to suspend any legal action against MUSD pertaining to the School Site and during the term of this MOU, provided Developer and MUSD enter into an agreement tolling all applicable limitations period for such actions for the same term.

E. Developer further agrees that no additional public improvements shall be eligible for reimbursement from CFD 2004-01 resulting from residential development of the Property.

F. City agrees that any additional public improvements off-site of SP-95-2 conditioned as part of the Project Entitlements shall be funded by the LA AOC or other non-Developer funds as determined by City at its sole discretion. Fees paid by Developer to City pursuant to Project Entitlements, the DA, and for any of the current 552 residential units in SP 95-2 are considered non-Developer funds.

5.0 PROJECT ENTITLEMENTS

5.1. Entitlements. The project applications for entitlements, permits and approvals shall be processed concurrently, shall be referred to collectively as "Project Entitlements" and shall include the following:

A. Amendments to the General Plan Land Use Element, SP-2 Specific Plan and related Zoning, and the DA.

B. Residential Planned Development Permit and Tentative Tract Map.

5.2. Environmental Processing/Review. The Project Entitlements described in this MOU will require further environmental documentation pursuant to the requirements of CEQA (Pub.Res.Code §§21000 et seq.) and the state CEQA Guidelines (14 Cal.Code Regs §§15000 et seq.). The City will: (a) undertake the preparation, consideration and possible certification of all required environmental documents in the manner required by law; (b) follow all legally prescribed proceedings for the processing of the Project Entitlements, including public notices and hearings; and (c) exercise its independent judgment relative to all Project Entitlements and environmental documents.

5.3. No Obligation to Certify/Approve. City agrees to take final action with respect to certification of the environmental documents and approval of the Project Entitlements in accordance with the Project Schedule. Developer understands and agrees that in no event or circumstance shall this MOU be deemed to require City approval/certification of the environmental document or approval of the Project Entitlements described in this MOU. City retains the full discretion authorized by law in

reviewing and considering any and all entitlements sought by Developer for the Property. Any denial or rejection of any entitlement by the City for the development of the Property shall not constitute a default of the MOU. Further, Developer shall also not seek a refund of monies paid to the City for project processing if the environmental document is not approved/certified, or if the Project Entitlements are not approved by the required decision maker, whether Community Development Director, Planning Commission, and/or City Council.

5.4. Planning Consultant. Subject to Developer's payment obligations described above, both Developer and the City agree that a planning consultant, subject to advance consultation with Developer, may be retained to provide planning and processing services for the Project Entitlements. The City will execute a professional services agreement with the designated planning consultant for the planning and processing services required for the Project Entitlements described in this MOU.

5.5. Developer Participation. City agrees to allow Developer, through its representatives and consultants, to participate in meetings and discussions with City staff and retained consultants regarding the preparation of the Project Entitlement documents, and the environmental documentation associated with the Project Entitlements, including preparation of draft documents for City staff review and consideration, and the review and revision of draft environmental documents prepared by the City's consultants. The City retains its full discretion to independently meet with the City's consultants, and to independently review all project and environmental documentation.

Developer shall receive from the City copies of all completed environmental documents prepared by the environmental consultant for the Project Entitlements described in this MOU. City staff and Developer will work cooperatively regarding the preparation of draft and final environmental documents and Project Entitlements, including the opportunity of Developer to review and comment on draft reports prior to distribution. The City retains its full discretion on the final drafts of all documents released to the public.

5.6. Senior Management. If requested by Developer, City agrees to schedule and participate in a meeting or conference call between Developer and Planning Director at least once every two (2) weeks to review project progress and Project Schedule, and to resolve outstanding issues, if any.

6.0 TERM OF AGREEMENT

6.1. Effective Date. This MOU shall become operative on the Effective Date identified above and, unless earlier terminated pursuant to the terms of this MOU, shall continue in effect until action on the Project Entitlements and environmental documents are finally approved and all actions required by Section 4.10.A. have been taken, except that the indemnification provision of Sections 7.7 and 7.12 shall survive termination or expiration of this MOU for any claims or causes of action arising during the term of this

MOU. The term of this MOU may be extended by the further written agreement of the parties.

7.0 OTHER PROVISIONS

7.1. Integrated Agreement. This MOU constitutes the final agreement between the parties and supersedes all prior oral or written negotiations, discussions, communications, promises, covenants, understandings or representations between the City, and Developer, and Developer's predecessors in interest, regarding the subject of this MOU other than the DA, Funding Agreement, JCFA and any other written agreements between the parties related to the SP 95-2 Property. Notwithstanding the foregoing, the parties acknowledge that the provisions of any other valid mutual written agreements shall remain in full force and effect.

7.2. Construction/Interpretation. The parties to this MOU acknowledge that they have been represented by counsel in respect of the negotiation and drafting of this MOU, and that no terms, covenant or condition of this MOU shall be construed or interpreted by reference to the extent to which either party participated in the drafting of the MOU, or any part thereof.

7.3. No Waiver of Any Default. The parties to this MOU do not waive any default by a party to the MOU by virtue of failing to take prompt action with respect to such default.

7.4. Attorneys' Fees. In any action or proceeding arising under this MOU, or to enforce the provisions of this MOU, each party shall bear its own attorneys' fees and costs.

7.5. Interpretation and Governing Law. This MOU and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California.

7.6. Force Majeure. Developer agrees that the City shall not be deemed to be in default where failure or delay in performance of any of the City's obligations under this MOU to process the Project Entitlements is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the City's control, government regulations (including those federal and state agencies with environmental permitting authority), or court actions (such as restraining orders or injunctions). If any such events shall occur, the terms of this MOU and the time for performance by the City of its obligations hereunder shall be extended by the period of time that such events prevented such performance provided that the term of this MOU shall not be extended under any circumstances for more than three (3) months.

7.7. Hold Harmless. Developer shall hold harmless, indemnify and defend the City and its officers, employees, servants, agents and independent contractors who serve in the role of City Manager, Assistant City Manager, Deputy City Manager, Assistant to City Manager/City Clerk, Director of Community Development, City

Engineer or City Attorney ("Indemnitees") from any claim, demand, damage, liability, loss, cost or expense, for any damage whatsoever, including but not limited to death or injury to any person and injury to any property, resulting from misconduct, negligent acts, errors or omissions of Developer or any of its officers, employees or agents in the performance of this MOU asserted by a third party ("Third Party Litigation"), except such damage as is caused by the sole negligence of the City. Developer also agrees to hold harmless, indemnify and defend Indemnitees from any Third Party Litigation (as contemplated in Section 7.12), including, but not limited to, litigation challenging any of the Project Entitlements, environmental document approval/certification for the Project Entitlements and the processing and approvals thereof.

7.8. Notices. Any notice called for in this MOU shall be by hand-delivery, overnight courier service, or registered or certified mail as follows:

To City and CFD 2004-1:	City of Moorpark 799 Moorpark Avenue Moorpark, CA 93021 Attn: Steven Kueny, City Manager
With a Copy to:	Burke, Williams & Sorensen 444 South Flower Street, Suite 2400 Los Angeles, CA 90071 Attn: Joseph M. Montes, Esq.
To Developer:	Pardee Homes John Osgood Senior Vice President 10880 Wilshire Boulevard, Suite 1900 Los Angeles, CA 90024 Attn: General Counsel
With a copy to:	Hewitt & O'Neil LLP 19900 MacArthur Blvd., Suite 1050 Irvine, CA 92612 Attn: John Yeager, Esq.

Any such notices sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after the same is so addressed and mailed with postage pre-paid. Notices delivered by overnight service shall be deemed to have been given twenty-four (24) hours after delivery of the same, charges pre-paid to the U.S. Postal Service or private courier. Any notice or other document sent by any other manner shall be effective only upon actual receipt thereof.

7.9. Further Actions and Instruments. Each party shall cooperate with and provide reasonable assistance to the others to the extent contemplated hereunder in the performance of all obligations under this MOU and the satisfaction of the conditions of this MOU. Upon the request of any party at any time, the other parties shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this MOU to carry out the intent and to fulfill the provisions of this MOU or to evidence or consummate the transactions contemplated by this MOU.

7.10. Amendments in Writing/Cooperation. This MOU may be amended or modified, but only in writing, duly executed by all parties to this MOU. The parties shall cooperate in good faith with respect to any amendment or modification proposed in order to clarify the intent and application of this MOU, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

7.11. Time of Essence. Time is of the essence in the performance of the provisions of this MOU.

7.12. Third Party Litigation. In the event of the occurrence of Third Party Litigation, the term of this MOU shall be extended for the period of the pendency of the Third Party Litigation or until such time as either the City or Developer (irrespective of who is named in the Third Party Litigation) decide it is no longer in its best interest to defend against the Third Party Litigation at which time written notice shall be provided terminating this MOU.

7.13. Venue. This MOU is made, entered into, and executed in Ventura County, California, and any action filed in any court or for arbitration for the interpretation, enforcement or other action of the terms, conditions or covenants referred to herein shall be filed in the applicable court in Ventura County, California, and Developer agrees to not seek transfer of venue.

7.14. Exclusive Remedy. The parties hereto understand and agree that other than actions to recover fees owed pursuant to Sections 4.1, 4.2, 7.7, and/or 7.12 of this MOU, that the exclusive remedy for breach of the MOU by any party shall be termination of this MOU by the non-breaching party.

7.15. MOU Executed in Counterparts. So that each of the parties may have an executed original of this MOU, this MOU may be executed in counterparts, all of which shall constitute a single MOU.

7.16. Exhibits. All exhibits attached to this MOU and referred to herein are incorporated by this reference and made a part of this MOU. The exhibits identified above are as follows:

- Exhibit A The Property
- Exhibit B Project Schedule

7.17 Recordation. This MOU may be recorded with the Ventura County Recorder's Office by the City.

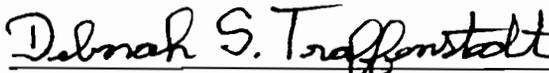
[Signature Page Follows]

IN WITNESS WHEREOF, the parties to this MOU have executed the MOU on the day and year first set forth above.

CITY OF MOORPARK:


Janice S. Parvin, Mayor

ATTEST:


Deborah S. Traffenstedt, City Clerk



DEVELOPER:

PARDEE HOMES, a California corporation

By: 
Name: John Osgood
Title: Senior Vice President

EXHIBIT A
[PROPERTY DESCRIPTION]

Lot 1 of Tract 5045-7 as recorded in M.R. Book 157, Page 4 in the Office of the County Recorder, Ventura County, California.

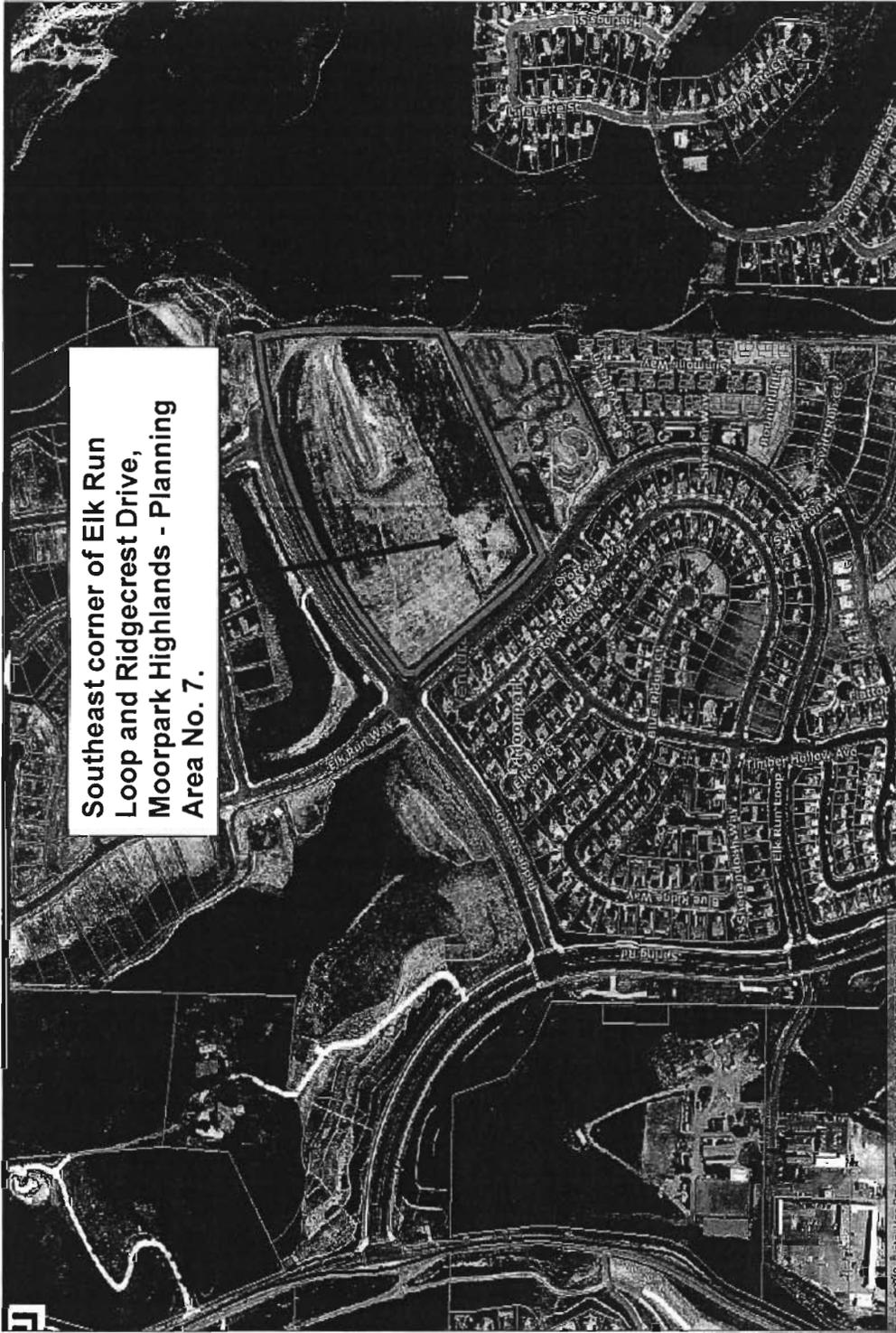
EXHIBIT B
PROJECT SCHEDULE

Pardee Homes

GPA, SPA, TTM Project Estimated Time Line to Approval

Approval of Pardee Processing Agreement	April 1 2009
Submittal of Applications and Plans	May 4*
Review of Applications and Plans for Completeness	May 4- 22
Letter of Incompleteness	May 22
Revision to Plans by Applicant	May 25 – June 12
Submittal of Revised Plans	June 12
Review and Acceptance of Revised Plans	June 15 – 26
SUMMER RECESS JULY/AUGUST	
Preparation of Draft Development Agreement	June 29 – July 10
Review of Draft Development Agreement by City Manager	July 13 – 24
Negotiation of Draft Development Agreement by Ad Hoc Committee and Recommendation to Council	August 5 and 19
Preparation of Council Report on Draft Development Agreement	August 20 – August 21
City Council Hearing on Ad Hoc Committee Recommendation	September 2
Preparation of Planning Commission Agenda Report	September 3 - 18
Advertisement of Public Hearing for Planning Commission	September 11
Planning Commission Public Hearing on Applications	September 22
Preparation of City Council Agenda Report	September 26 - October 9
Advertisement of Public Hearing for City Council	October 9
City Council Public Hearing on Applications	October 21
Second Reading of DA Ordinance	November 4

* Developer may submit applications and plans as much as thirty (30) days after this date without extending the date for the second reading of the DA Ordinance



Aerial Map

Residential Planned Development Permit No. 2009-02; Tentative Tract Map No. 5860; Amendment No. 1 to Specific Plan No. 2, Zoning Ordinance Amendment No. 2009-01; and, Development Agreement No. 2009-02

CC ATTACHMENT 4

Project Exhibits

(Under Separate Cover)

- A. Tentative Tract Map No. 5860**
- B. RPD Master Plot Site Plan (11" x 17")**
- C. Design guidelines**
- D. Colors and Materials**
- E. Addendum No. 1 to the Moorpark Highlands Specific Plan No. 2 Final EIR (Previously Distributed)**

CC ATTACHMENT 5

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING AMENDMENT NO. 2 TO MOORPARK HIGHLANDS SPECIFIC PLAN NO. 2, TO CHANGE PLANNING AREA NO. 7 FROM A SCHOOL SITE TO A RESIDENTIAL PLANNED DEVELOPMENT

WHEREAS, at its meeting of June 15, 2010, the Planning Commission conducted a duly-noticed public hearing on Amendment No. 2 to Moorpark Highlands Specific Plan No. 2, changing Planning Area No. 7 from a School Site to a Residential Planned Development, received public testimony on the proposed amendment, and after receiving oral and written public testimony, closed the public hearing and reached a decision recommending approval of the amendment; and

WHEREAS, at its meeting of July 7, 2010, the City Council conducted a duly-noticed public hearing on Amendment No. 2 to Moorpark Highlands Specific Plan No. 2, changing Planning Area No. 7 from a School Site to a Residential Planned Development, received public testimony on the proposed amendment, and after receiving oral and written public testimony, closed the public hearing and reached a decision; and

WHEREAS, the City Council, prior to making its decision on this project, has considered the Final EIR (SCH No. 96041030) prepared and certified for the Moorpark Highlands Specific Plan No. 2 project and Addendum No. 1 to this Final EIR, prepared for Amendment No. 2 to Moorpark Highlands Specific Plan No. 2 pursuant to the California Environmental Quality Act (CEQA) in accordance with Sections 15162 and 15164 of the California Code of Regulations (CEQA Guidelines). No new information or impacts that require preparation of a new or subsequent EIR have been identified as a result of the proposed amendments to the project.

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

SECTION 1. The City Council finds Amendment No. 2 to Moorpark Highlands Specific Plan No. 2 consistent with the City of Moorpark General Plan as amended.

SECTION 2. The City Council approves Amendment No. 2 to Moorpark Highlands Specific Plan No. 2, as shown in attached Exhibit A.

SECTION 3. If any section, subsection, sentence, clause, phrase, part or portion of this Resolution is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Resolution. The City Council declares that it would have adopted this Resolution and each section, subsection, sentence, clause, phrase, part or

portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 4. This Resolution shall become effective upon the effective date of Ordinance No. ____ approving Zoning Ordinance Amendment No. 2009-01.

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

PASSED AND ADOPTED this 7th day of July, 2010.

Janice A. Parvin, Mayor

Maureen Benson, Assistant City Clerk

Exhibit A: Amendment No. 2 to Moorpark Highlands Specific Plan No. 2

EXHIBIT A

**Amendment No. 2 to
Moorpark Highlands
Specific Plan No. 2**

July 7, 2010



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I. Introduction and Summary

A. Location

The Moorpark Highlands Specific Plan No. 2 is a master-planned community located in the City of Moorpark, California. Moorpark is located in Ventura County, in close proximity to California State Route 118 and State Route 23 (See Exhibit 1, Regional Location Map and Exhibit 2, Local Vicinity Map). The proposed project consists of an amendment to the Moorpark Highlands Specific Plan No.2, which was adopted in September of 1999 per Moorpark City Council Resolution.

B. Amended Sections

The Moorpark Highlands Specific Plan Amendment #1 (SPA#1) amends the following sections of the Moorpark Highlands Specific Plan No. 2 (original Specific Plan):

Development Plan-Land Use. SPA#1 changes the Specific Plan Zoning Designation for Planning Area 7 from Institutional to Residential Planned Development-Single Family. The current project as designed provides for 552 residential units within the Specific Plan area. The physical land use for Planning Area 7 has been converted from a 22-acre school site to a 22-acre residential area with 133 newly proposed residential units. (See Exhibit 3, Project Site and Amendment Area). This increases the unit count within the Specific Plan area to 685 residential units, and the average residential density within the Specific Plan Area of 1.53 du/ac. The amended land use plan associated with this land use change is reflected in Exhibit 4, Amended Land Use Plan and Table 1, Amended Statistical Summary. A recreation center is also proposed within Planning Area 7 to serve residents within this planning area.

Transportation/Circulation. The Circulation plan for the proposed development within Planning Area 7 consists of several circulation features that were not included within the Moorpark highlands Specific Plan No.2. These features include modified knuckles within local project streets, an emergency access easement at the southwest corner of the project site, and an emergency access easement at the northeast corner of the site. A 25-foot multi-use trail easement is also proposed along the eastern side of Planning Area 7.

Development Regulations and Design Guidance. Minor modifications have been made to the development regulations and design guidelines for Planning Area 7.



These proposed modifications to previously adopted development regulations and design guidelines are further discussed below in Section V.

Sections addressed in this document are sections of the Moorpark Highlands Specific Plan No. 2 that require amending based on the proposed elimination of the school site and addition of residential units within Planning Area 7. In addition, the necessary exhibits have been also been updated to reflect these changes. Only addressed sections and amended exhibits are detailed below.

C. Authority and Scope

Cities are authorized by the California Government Code to adopt Specific Plans under Title 7, Division 1, Chapter 3, Article 8 Sections 65450 through 65457. Specific Plans may be adopted as policies by resolutions or by ordinance. The City of Moorpark will adopt the Moorpark Highlands Specific Plan No.2 Amendment #1 by resolution, superceding the original Specific Plan designations for the subject residential area, as well as the other amendments discussed above. State Law requires public hearings by both the Planning Commission and City Council. The City Council must adopt the Specific Plan for it to take effect.

The amended Specific Plan is a regulatory plan constituting the development concept and zoning for the subject property. Development plans or agreements, tract or parcel maps, precise development plans, or any action requiring ministerial or discretionary approval on this property must be consistent with the amended Specific Plan as approved by the City Council.

D. CEQA Compliance

SPA #1 has been prepared in compliance with the requirements of the California Environmental Quality Act (CEQA). A program-level EIR was prepared for the Moorpark Highlands Specific Plan No. 2. Since SPA #1 amends only a portion of the original Specific Plan, it has been determined that CEQA documentation is necessary. An addendum to the program-level EIR has been prepared which evaluates potential environmental impacts associated with SPA #1. It is not anticipated that conversion of the school site to a residential development will result in significant environmental impacts, and thus, no mitigation measures are required. The addendum to the program-level EIR has been prepared under separate cover.



E. SPA #1 Spirit and Intent

Section 3 of the original Specific Plan lists goals and policies that are to be accomplished throughout the implementation of the Moorpark Highlands Specific Plan No. 2. It is the full intent of SPA #1 to maintain these goals and policies, and ensure that quality development is realized within Planning Area 7 and the original Specific Plan area as a whole.

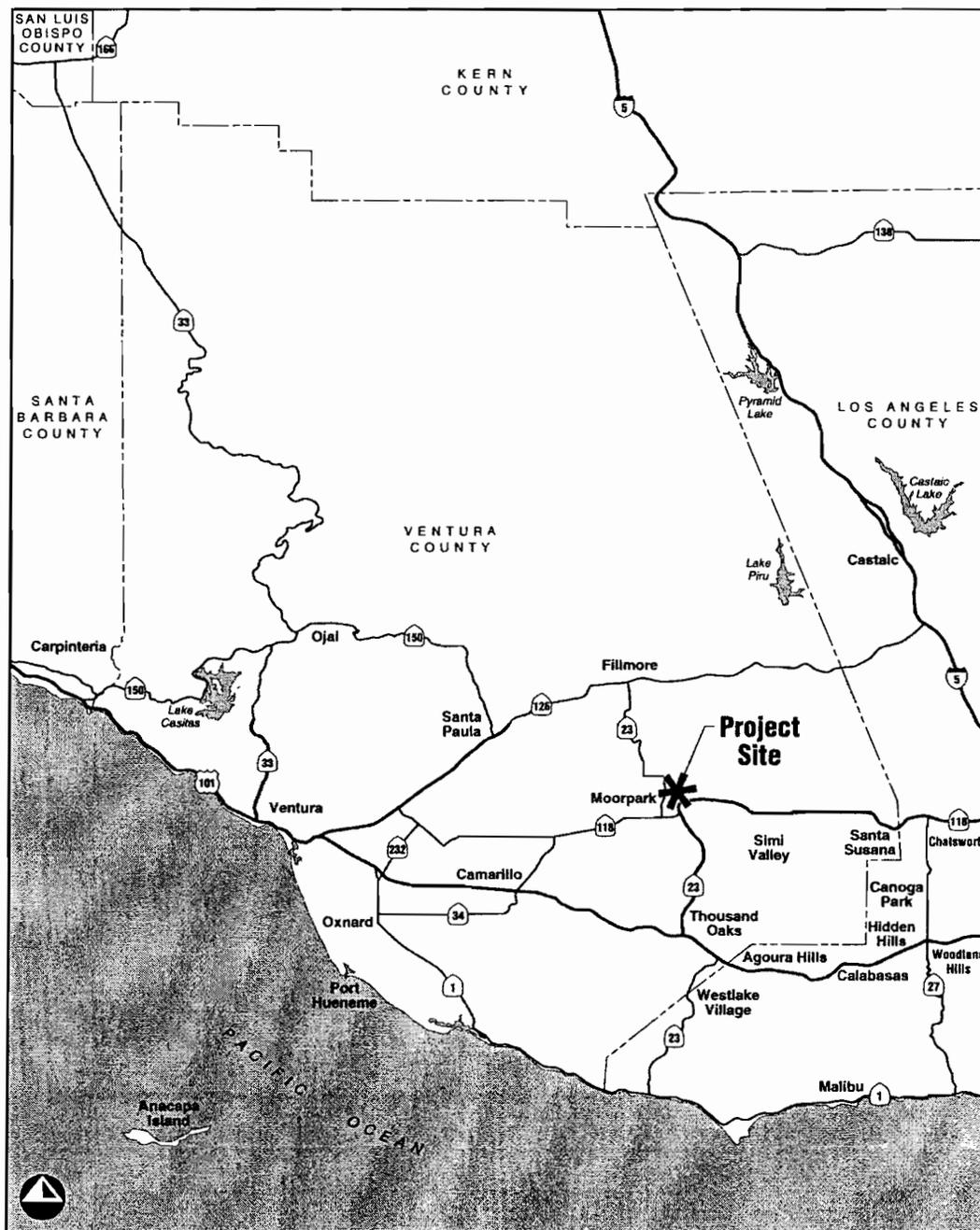


Exhibit 1- Regional Location Map

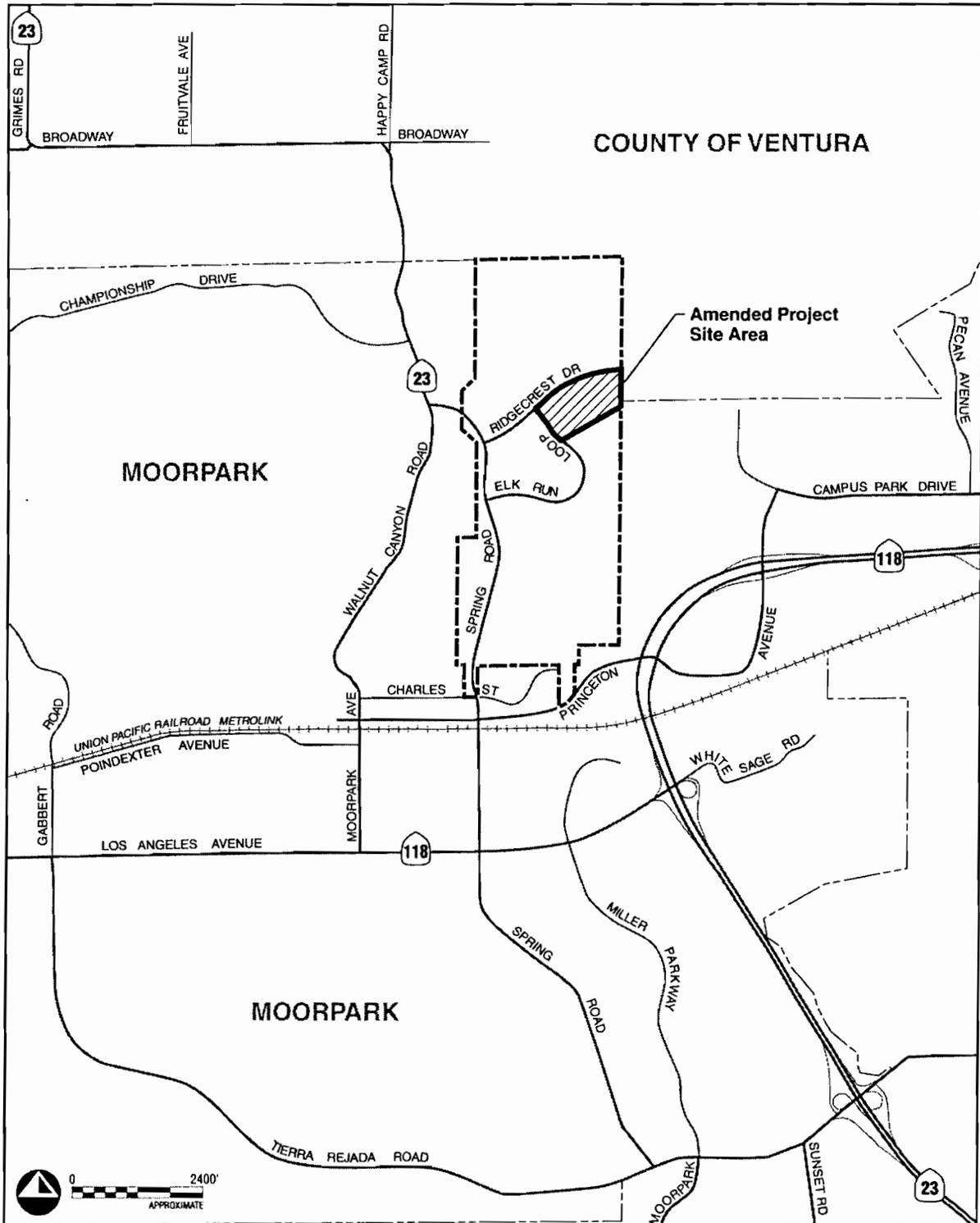


Exhibit 2- Local Vicinity Map

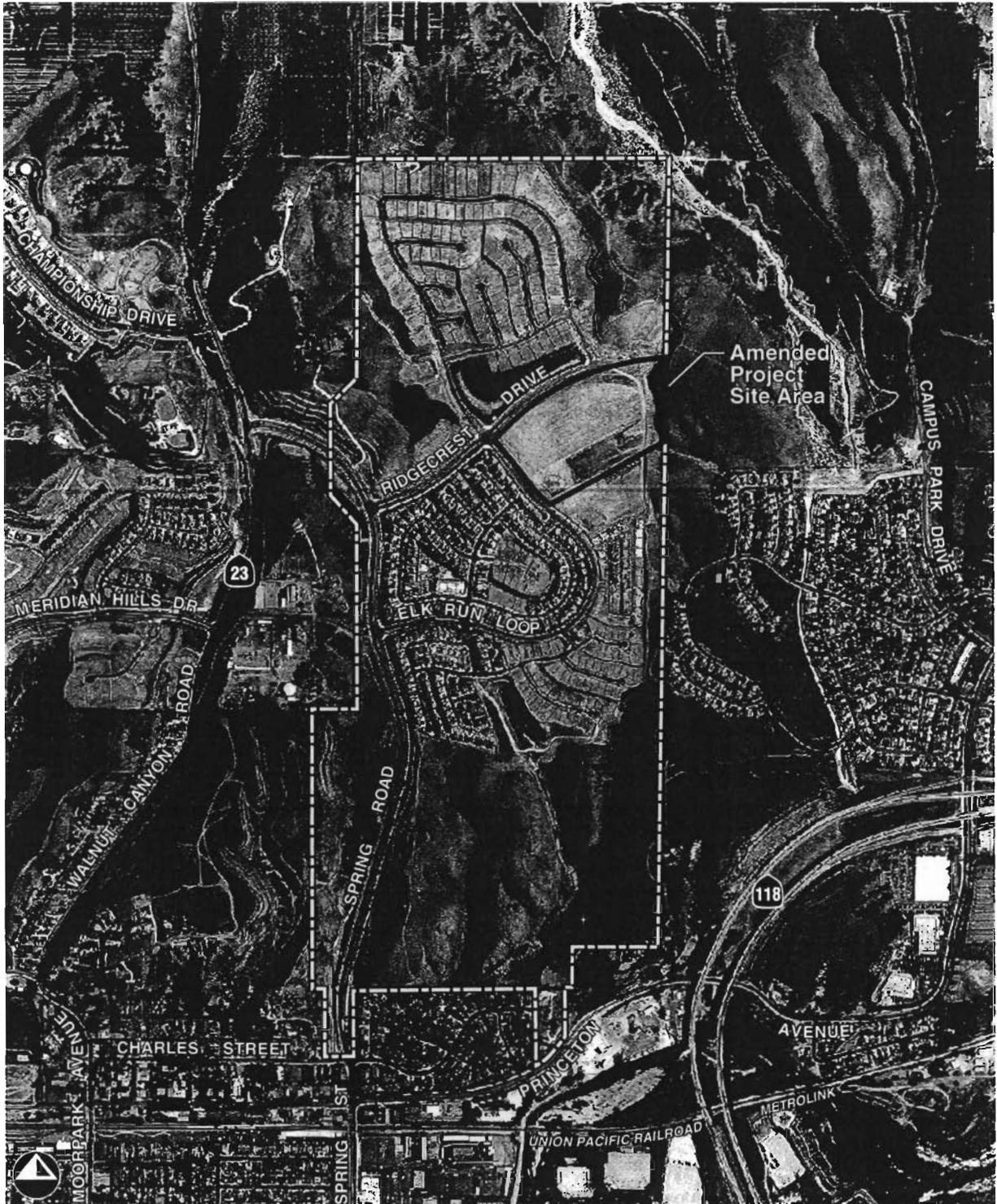


Exhibit 3- Amended Project Area



II. Development Plan Amendments

The Moorpark Highlands Specific Plan No. 2 Specific Plan Amendment #1 (SPA #1) modifies land uses within the 445-acre Moorpark Highlands Specific Plan No. 2 (original Specific Plan). The original Specific Plan contains 17 Planning Areas, each having their own residential, park, school, or open space land uses. Planning Areas 1-4, 8, and 9 are currently slated for single family residential development and have a Specific Plan zoning designation of Residential Planned Development–Single Family (RPD-SF). According to the original Specific Plan, each planning area is to be developed with a maximum number of units, to achieve a maximum unit density for each particular planning area, not to exceed a maximum of 570 single-family units or a 1.28 unit/acre density for the entire Specific Plan Area.

A. Planning Area 7

Land Use

Because the proposed amendment is taking place in Planning Area 7, this will be the primary area of discussion. Planning Area 7 is located in northeastern portion the Specific Plan area, at the southeast corner of Ridgecrest Drive and Elk Run Loop, and is currently designated as a 22-acre school site. The potential school site which was originally proposed for Planning Area 7 has been removed at the request of the Moorpark Unified School District. In October 2008, the Moorpark Unified School District indicated that it no longer wished to purchase the school site from the developer (Pardee Homes).

SPA #1 changes Planning Area 7 from a 22-acre school site to a 22-acre single-family residential site, with 133 proposed units and an overall planning area density of 6.0 du/ac, which is consistent with the surrounding approved maximum densities in Planning Areas 1-4. The proposed increase in residential units brings the overall residential unit count within the Specific Plan to 685, which is 27 units less than the 712 unit maximum, as permitted in Section 5.2 of the Moorpark General Plan. At 685 units, residential density within the Specific Plan Area is now 1.54 du/ac, which is less than the overall project density of 1.60 du/ac that would be generated by the 712 unit limit. Therefore, overall number of units and residential unit density are less than the unit and density maximums permitted in the General Plan. Residential units in Planning Area 7 are to be constructed and sold in several phases, consistent with Section 10.2.1 of the original Moorpark Highlands Specific Plan. The project site is already graded with utilities stubbed to the site. Adjacent roads are also complete.



A total of 10 units (7.5%) of the 133 units are proposed as affordable units. A total of seven 4-bedroom units will be available for purchase by low income households within Planning Area 7. The remaining three affordable units will be 3-bedroom units constructed in Planning Area 5. Final affordable unit locations will be determined prior to RPD processing.

An approximate 1/2-acre recreation center is proposed in the heart of Planning Area 7 and is included as private open space within Planning Area 7. The recreation center is to provide amenities such as a community pool and picnic facilities to serve the residents of the proposed residential development.

Revised Land Use Designations and Open Space acreages may be viewed in Table 1, Amended Statistical Summary, and Exhibit 4, Amended Land Use Plan, below.



**Table 1
Amended Statistical Summary**

Planning Area	Land Use Designation	Density (du/ac)	Max Gross Density (du/ac)	DUs ¹	% of Total	Area (AC)	% of Total Area
Residential							
1	RPD-SF	2.5-6.0	6.0	96	13.7%	16	3.6%
2	RPD-SF	2.5-6.0	4.2	77	11.0%	18.3	4.1%
3	RPD-SF	2.5-6.0	3.8	84	12.0%	22.0	4.9%
4	RPD-SF	2.5-6.0	3.4	83	11.8%	24.4	5.5%
5	RPD-SF	8.0-15.5	12.0	102	14.5%	8.5	1.9%
7	RPD-SF	6.0-7.0	7.0 ¹	133	18.9%	22.0 ¹	4.9%
8	RPD-SF	1.3-2.5	1.3	37	5.2 %	28.0	6.3%
9	RPD-SF	1.3-2.5	2.3	91	12.9%	39.7	8.9%
Subtotal Residential				703¹	100%	178.9	40.1%
Open Space							
6	P (Park)					7.0	1.6%
10	POS (Public Open Space)					6.3	1.4%
11	POS (Public Open Space)					28.4	6.4%
12	NOS (Natural Open Space)					16.0	3.6%
13	NOS (Natural Open Space)					78.0	17.5%
14	POS (Public Open Space)					12.8	2.9%
15	POS (Public Open Space)					10.2	2.3%
16	POS (Public Open Space)					3.3	0.7%
17	POS (Public Open Space)					14.0	3.1%
Subtotal Open Space						176.0	39.5%
Right of Way							
N/A	R/W for 118 & 23					49.7	11.2%
N/A	R/W for Roads					40.4	9.1%
Subtotal Right of Way						90.1	20.3%
Total Project						445	100%

1. This table was created from the original Specific Plan which was drafted prior to actual lotting and subdivision of the lands within the Specific Plan Area. The total number of DUs in this table do not match what has actually been built to date. A total of 552 residential units have been constructed, and with the 133 additional units in Planning Area 7, total constructed units will equal 685, which does not match the 703 shown above, and is under the 712 units allowed by Section 5.2 of the General Plan.



Moorpark Highlands Specific Plan Amendment #1
Administrative Draft

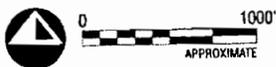
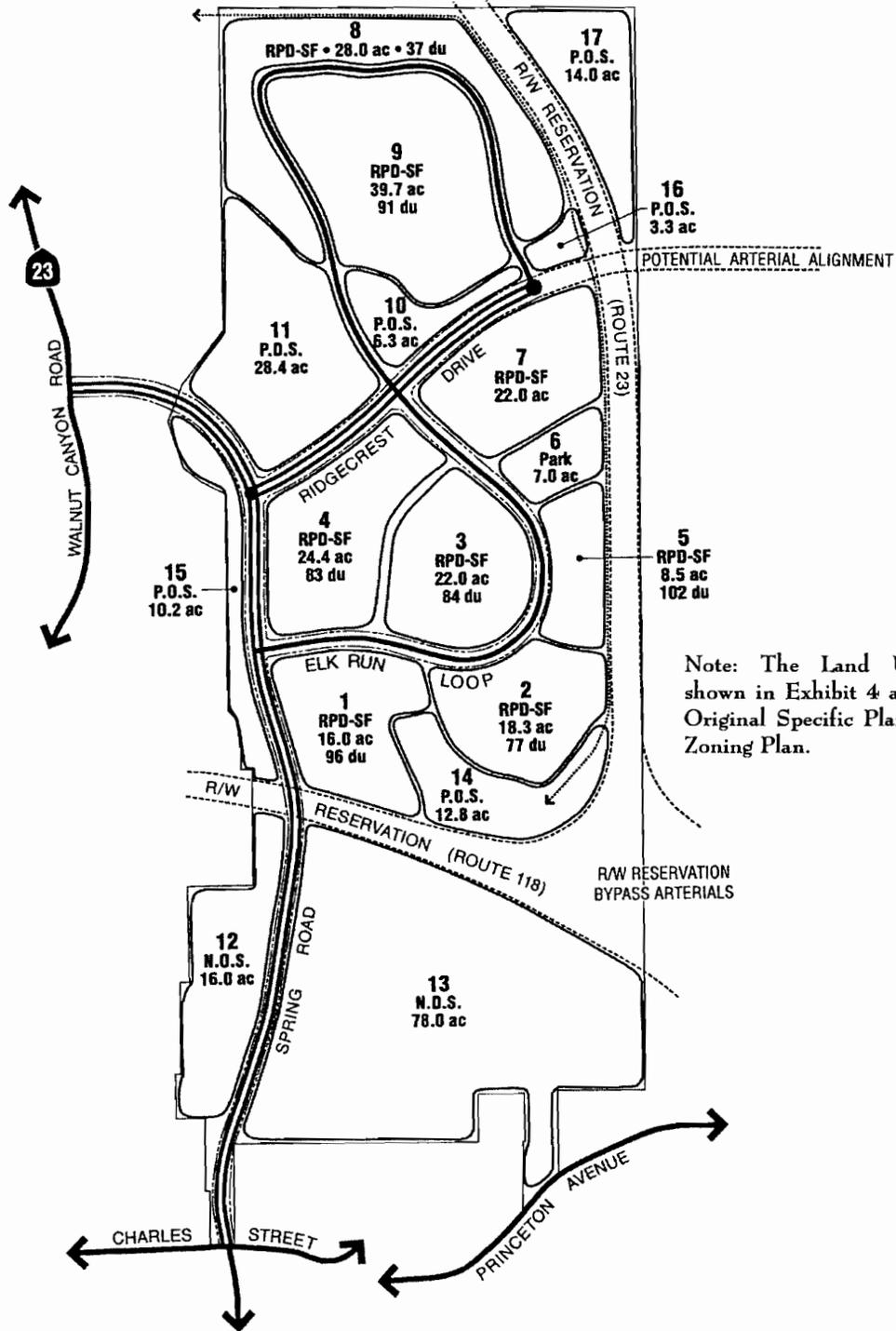


Exhibit 4-Amended Land Use Plan



III. Transportation/Circulation Amendments

A. Access

Primary access to SPA #1 will be provided by Ridgecrest Drive to the north. Interior access will be provided by several interior private streets which meet street design requirements shown in Exhibit 11D of the original Specific Plan. Specific Plan Exhibit 10, Circulation Plan, has been updated to show all proposed interior residential streets within Planning Area 7 and is shown in Exhibit 5, below. Technical interior street plans can be seen on the Tentative Tract Map for Planning Area 7, which is being submitted along with the Specific Plan and RPD items.

B. Easements

Emergency access easements are planned at the southwestern and northeastern corners of Planning Area 7. These emergency easements are 43 feet and 25 feet in width, respectively. An additional easement is located along the eastern portion of the site and is 25 feet in width. This easement is being granted to the City of Moorpark to provide access for all governmental agencies, and may even serve as an equestrian trail. Easements may be seen in full detail on the Tentative Map for Planning Area 7, which is a part of the submittal package.

C. Modified Knuckles

The City of Moorpark uses knuckle design standards that were originally adopted by the County of Ventura. The purpose of the increased curb length in the geometry of the current county standard knuckle is to provide increased residential lot frontage. However, the proposed product is located on 3,500 sf lots within SPA #1 and does not receive the benefit of larger lot frontage from the county standard knuckle. Therefore, SPA #1 proposes a modified knuckle design at several "L" intersection locations within the proposed residential development. This modified knuckle uses a non-concentric outside curb radius that increases the pavement area of the knuckle. The inside curb radius of the modified knuckle is 25 feet, which is the same as the county standard specifies for intersections, as shown in Ventura county Road Standard Plate B-5.

The modified knuckle design provides adequate width and curb radii to meet emergency vehicle requirements. To improve the function of the modified design, the inside curb cut through the radius, and an extra 15 feet into and out of the curb return, will be painted red to prohibit parking around curves. By eliminating



Moorpark Highlands Specific Plan Amendment #1
Administrative Draft

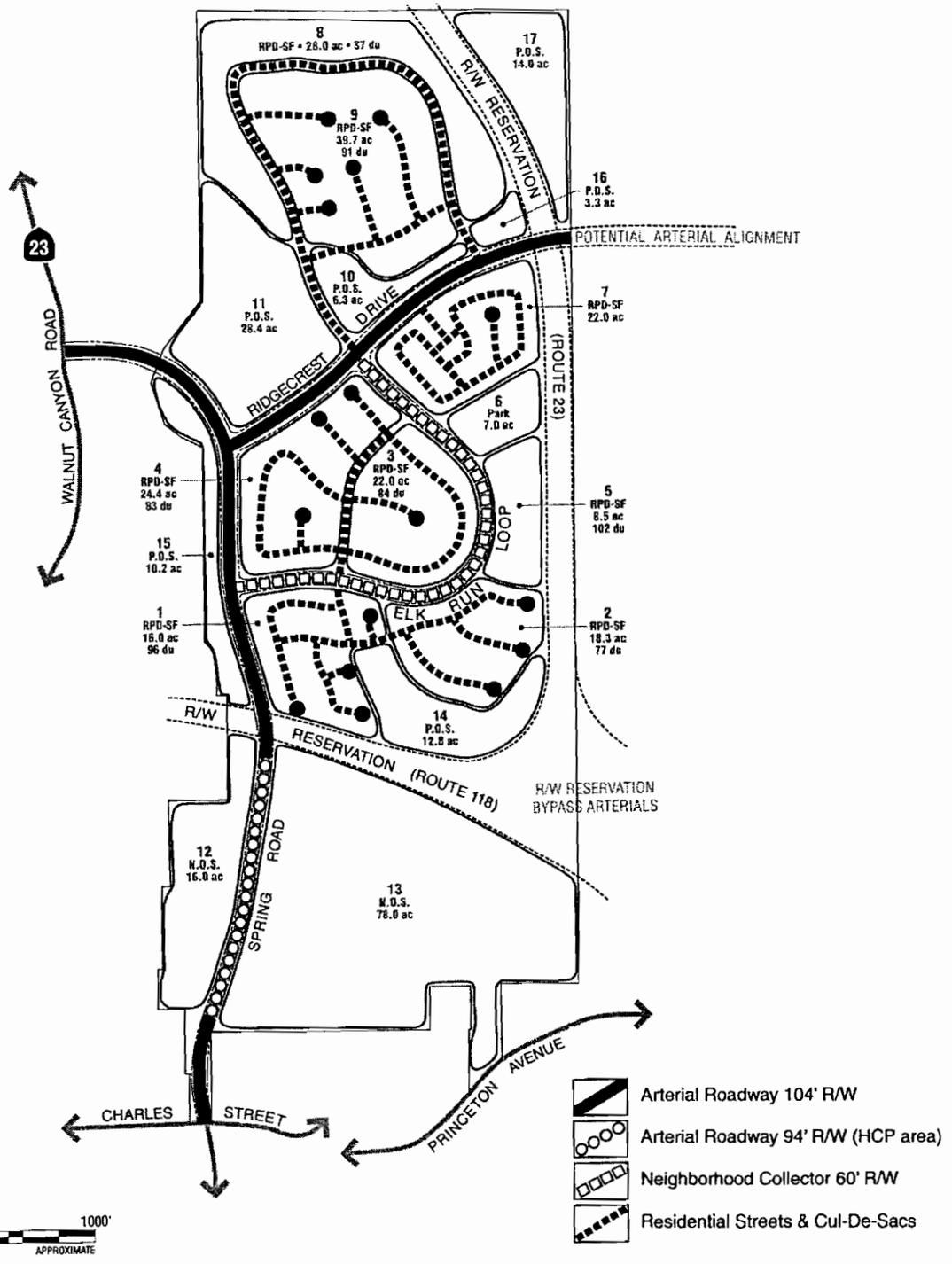


Exhibit 5-Amended Circulation Plan

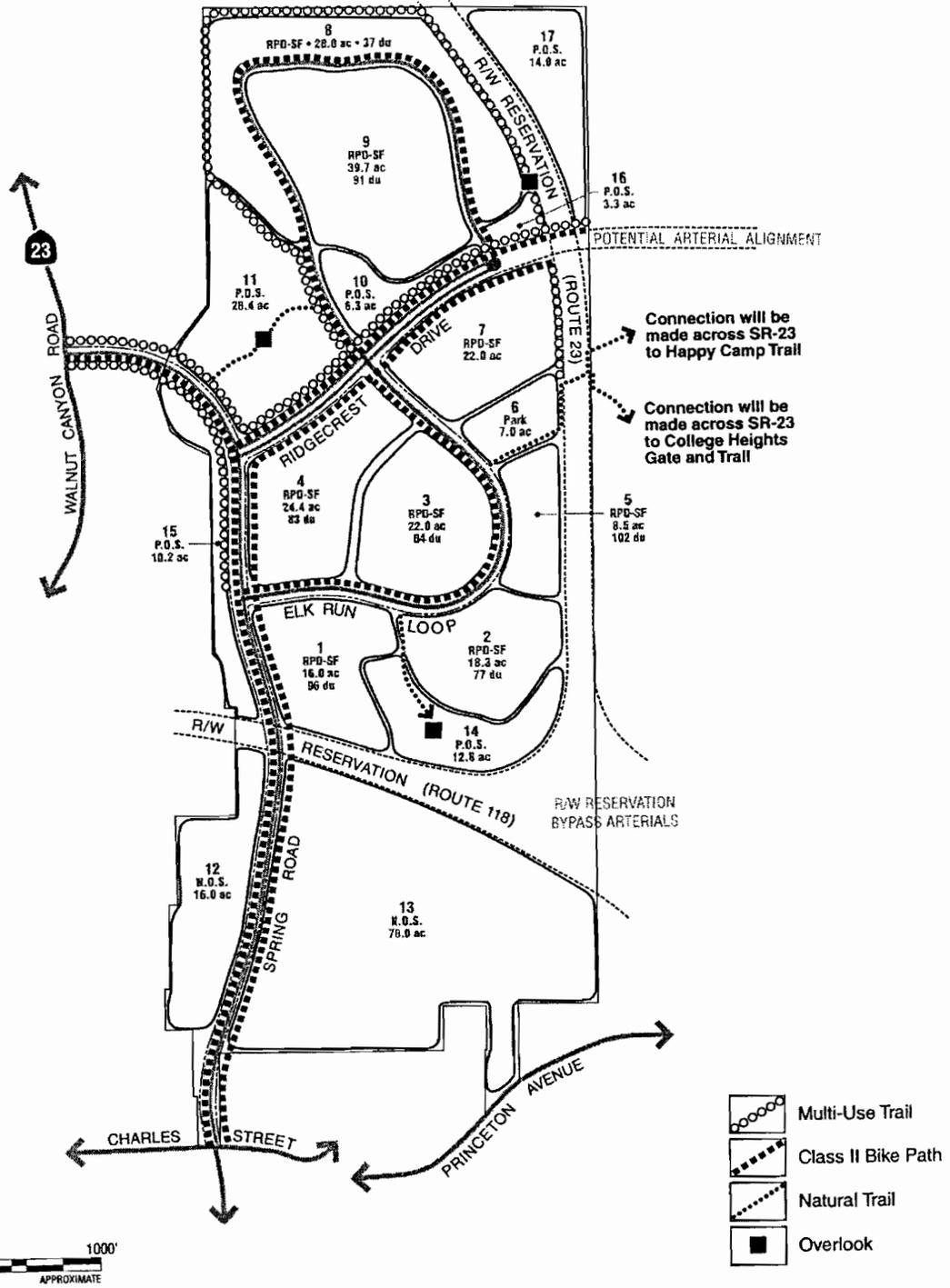


Exhibit 6-Amended Trails Plan



E. Trips Analysis

A Traffic Impact Analysis that analyzes potential transportation impacts associated with development of SPA #1 was prepared and submitted at the request of the City. The analysis identifies the study area, as well as volume of trips that the proposed project will generate on a daily basis, and illustrates how various intersections and roadway segments within the project's vicinity will be impacted. Software used to model intersection and roadway segment functionality is called Traffix 7.9. Once all project data has been entered, this software generates a traffic scenario as if the project has already been constructed.

It is anticipated that the proposed project will generate approximately 1,273 daily trips, which include approximately 99 additional a.m. peak hour trips and approximately 134 additional p.m. peak hour trips. Discussions on potential impacts these trips will have on various study intersections and roadway segments are provided below.

Roadway Intersections

To determine whether the trips generated by the project will result in a significant impact at a study intersection, the City of Moorpark and the County of Ventura use the following threshold of significance:

- A significant project impact occurs at a study intersection when the addition of project-generated trips causes the peak hour level of service of the study intersection to change from an acceptable level of service (LOS A, B, or C) to a deficient level of service (LOS D, E, or F).

If significant impacts are encountered, mitigation measures would be proposed to alleviate negative impacts associated with the build-out of the proposed single family homes. However, after running the Traffix 7.9 Traffic Model, it was determined that the project will have no negative impacts on study intersections, as shown in Table 2, below.



Table 2
2012 With Project AM and PM Peak Hour Intersection LOS

Study Intersection	Forecast Year 2012 Without Project Conditions		Forecast Year 2012 With Project Conditions			
	AM Peak Hour	PM Peak Hour	AM Peak Hour	Significant Impact?	PM Peak Hour	Significant Impact?
	Delay - LOS	Delay - LOS	Delay - LOS		Delay - LOS	
Walnut Canyon Rd/Spring Rd	16.7 - B	24.3 - C	16.9 - B	No	24.4 - C	No
Moorpark Ave/High St	13.6 - B	16.8 - B	13.6 - B	No	16.8 - B	No
Moorpark Ave (SR-23)/Los Angeles Ave (SR-118)	21.3 - C	25.4 - C	21.3 - C	No	25.4 - C	No
Spring Road/Ridgecrest Drive	9.3 - A	1.0 - A	13.8 - B	No	4.5 - A	No
Spring Road/Elk Run Loop	19.2 - B	16.2 - B	18.4 - B	No	15.0 - B	No
Spring Road/High St-Princeton Ave	25.7 - C	23.9 - C	25.8 - C	No	24.4 - C	No
Spring Rd/Los Angeles Ave (SR-118)	27.6 - C	25.3 - C	27.8 - C	No	25.5 - C	No
SR-118 Westbound Ramps/Princeton Ave	16.4 - B	19.8 - B	16.5 - B	No	20.1 - C	No
SR-118 Eastbound Ramps/Princeton Ave	12.3 - B	15.3 - B	12.0 - B	No	15.0 - B	No
SR-23 Southbound Ramps/Los Angeles Ave (SR-118)	14.9 - B	19.1 - B	15.0 - B	No	19.5 - B	No
SR-23 Northbound Ramps/Los Angeles Ave (SR-118)	4.4 - A	2.8 - A	4.3 - A	No	2.8 - A	No

Roadway/Freeway Segments

Daily roadway link volume-to-capacity (V/C) ratios were determined using the daily capacities contained in the County of Ventura Focused General Plan Update Circulation Element. The maximum roadway capacity for a given level of service is based on the daily traffic volume, number of lanes and roadway classification. Table 3 below shows the roadway classifications and capacities for roadways in the County of Ventura.



LOS	Class I			Class II	Class III
	2 Lanes	4 Lanes	6 Lanes	2 Lanes	2 Lanes
A	2,400	19,000	29,000	1,500	350
B	5,600	28,000	42,000	3,900	2,000
C	10,000	38,000	57,000	7,000	3,300
D	16,000	47	70,000	11,000	5,900
E	27,000	58,000	87,000	21,000	16,000

The primary thoroughfare that brings motorists to and from the Specific Plan area is SR- 118 (Los Angeles Avenue). Once motorists exit the freeway, local roadways will only function as well as the intersections that connect them. Since all study intersections will function at acceptable levels of service when SPA #1 is implemented, it can be anticipated that local roadways (such as Ridgecrest Drive or Elk Run Loop) will be able to handle increased traffic capacities generated by the project over a 24-hour basis, including peak times.

Los Angeles Avenue is the primary route to and from the Specific Plan Area; three segments of this street were modeled: Los Angeles Avenue west of Moorpark Avenue, Los Angeles Avenue from Spring Road to Miller Parkway, and Los Angeles Avenue from Miller Parkway to SR-23. After running the Traffix 7.9 Traffic Model, it was determined that daily roadway link V/C ratios will be at LOS levels C or above. Thus, the project will have no negative impacts on study roadway segments, as shown in Table 4, below.

Study Roadway Segment	LOS E Capacity	ADT	V/C - LOS
Los Angeles Ave (SR-118) west of Moorpark Ave (SR-23)	87,000	39,175	0.45 - B
Los Angeles Ave (SR-118) Spring Rd to Miller Parkway	87,000	46,566	0.54 - C
Los Angeles Ave (SR-118) from Miller Parkway to SR-118/SR-23	87,000	49,402	0.57 - C

Conclusion

SPA #1 will generate approximately 1,273 daily trips. However, based on the traffic analysis prepared for the project, it is anticipated that all study intersections and roadway/freeway segments will operate at or above acceptable levels of service, and no traffic mitigation measures are proposed at this time.



IV. Infrastructure and Public Utilities

A. Infrastructure

Infrastructure for Planning Area 7 in the original Specific Plan was comprised of storm drain, sanitary sewer, and domestic water infrastructure improvements. Existing storm water mains are located in Elk Run Loop at the northwest and southwest corners of the site. Storm water flows will be captured into catch basins that will be installed within residential interior streets, and then flow to the storm water pipes located in Elk Run Loop. Existing sanitary sewer mains are located at the intersection of Ridgecrest Drive and Elk Run Loop, and in Elk Run loop at the southwest corner of Planning Area 7. Sanitary Sewer lines installed within interior residential streets will tie into these existing mains to provide sanitary sewer service to proposed residences. Domestic water mains are located in Ridgecrest Drive and Elk Run Loop. Domestic water lines from the residential development will tie into these mains to provide domestic water service to the proposed residences.

B. Abandoned On-Site Wells

There are two water wells and one oil well that have been abandoned on-site.

C. Public Utilities

Public Utilities for Planning Area 7 are will be provided in accordance with Section 7.0 of the Moorpark Highlands Specific Plan No. 2, as listed below:

- Fire Protection- Ventura County Fire Protection (Station No. 42)
- Police Protection- Ventura County Sheriff's Department (Moorpark Station)
- Solid Waste Disposal- Waste Management, Inc. (solid waste transported to Simi Valley Landfill)
- Electricity- Southern California Edison
- Gas- Southern California Gas Company
- Telephone- AT&T
- Cable/Internet- Cable and internet services are to be provided to Planning Area 7, consistent with the City's franchise agreement.



V. Community Design Amendments

A. Design Guidelines Consistency Statement

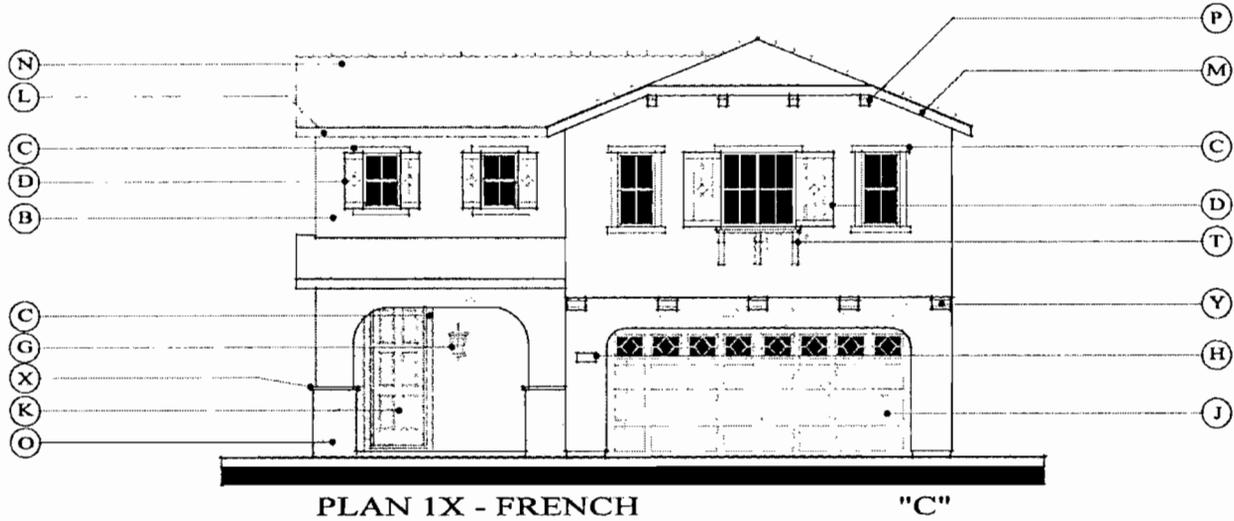
Architectural styles offered in Planning Area 7 are consistent and compatible not only with the existing homes, but also incorporate architectural elements shown in the Section 8.4 of the Design Guidelines and Exhibits 27, 28, and 29 of the original Specific Plan. It should be noted that these product types feature home styles that are found in mature cities throughout Southern California.

The Early California Style respects the Spanish Colonial revival period in housing from the 1920's, while Italian elevations display Mediterranean influences added to homes as builders looked for more elements to draw from in later years. The Craftsman elevations match the Bungalow guidelines from the Specific Plan, as all Craftsman elevations are by definition from the Bungalow style, with more detail. The French elevations are harmonious and add richness with clipped gable roofs, soft three-point arches, stone veneer and eyebrow roof overhanging on selected windows.

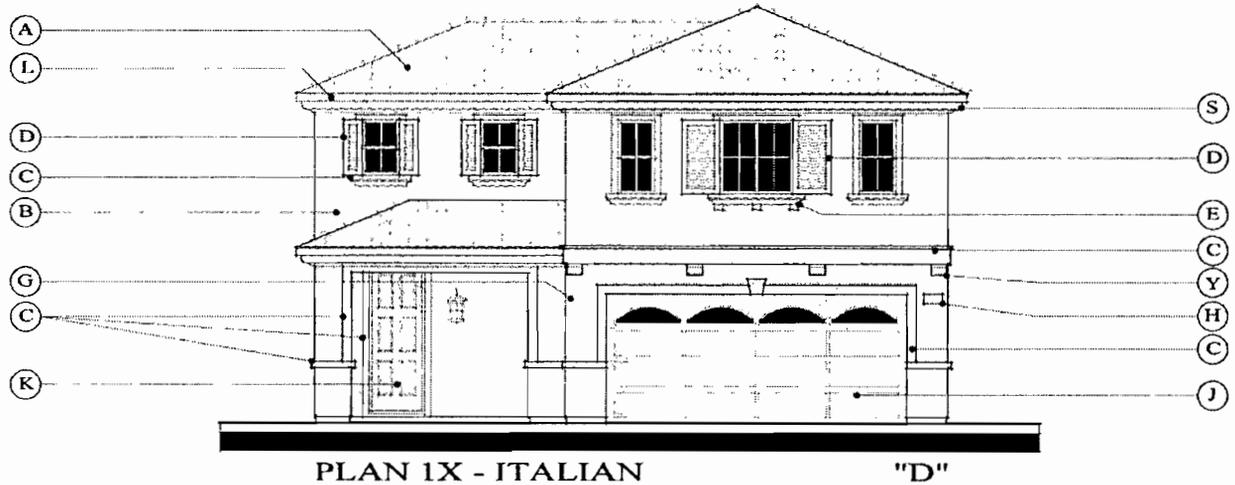
Elevations and a streetscape illustrative of the proposed residential products may be seen in the graphics provided below.



MATERIALS LEGEND	
(A) CONCRETE 'S' TILE ROOFING	(P) SHAPED WOOD OUTLOOKERS
(B) STUCCO FINISH	(Q) SHAPED WOOD KICKERS
(C) STUCCO O/ FOAM TRIM	(R) SHAPED RAFTER TAILS
(D) WOOD SHUTTERS	(S) FOAM TRIM AT EAVE
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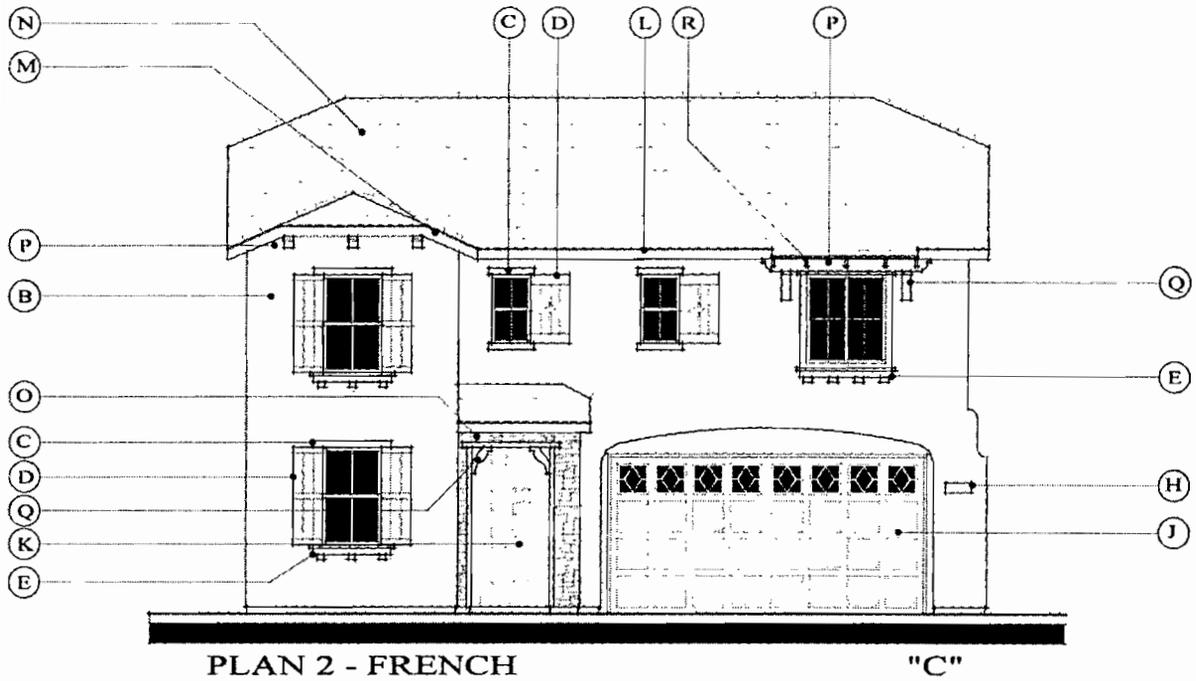


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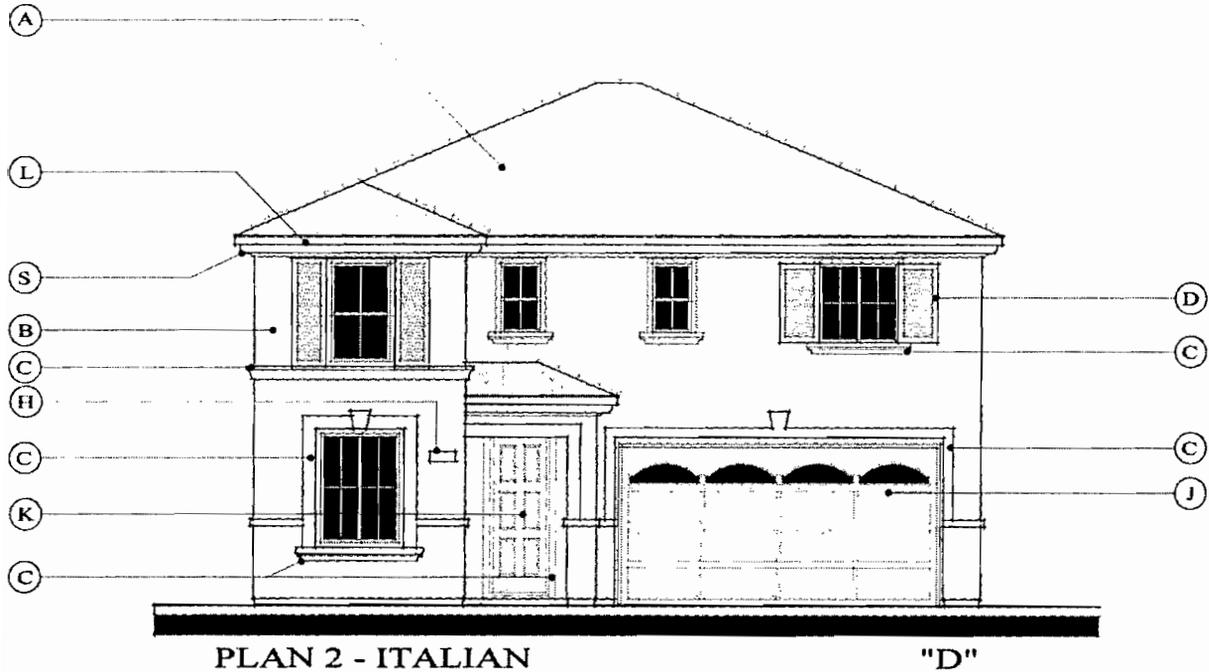
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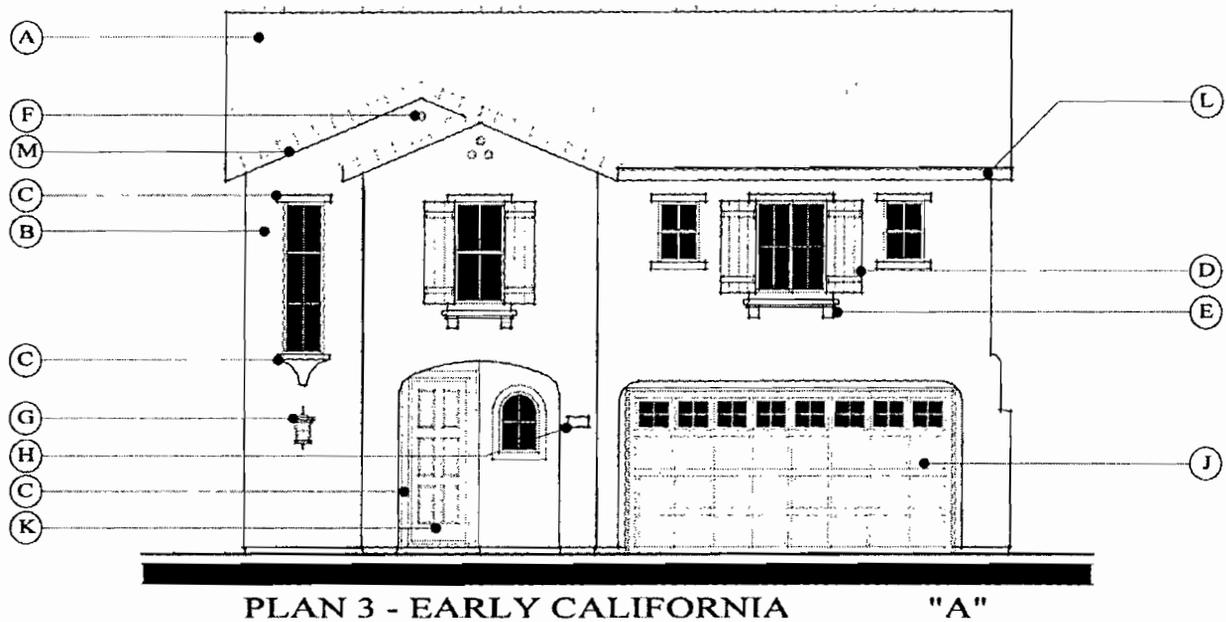
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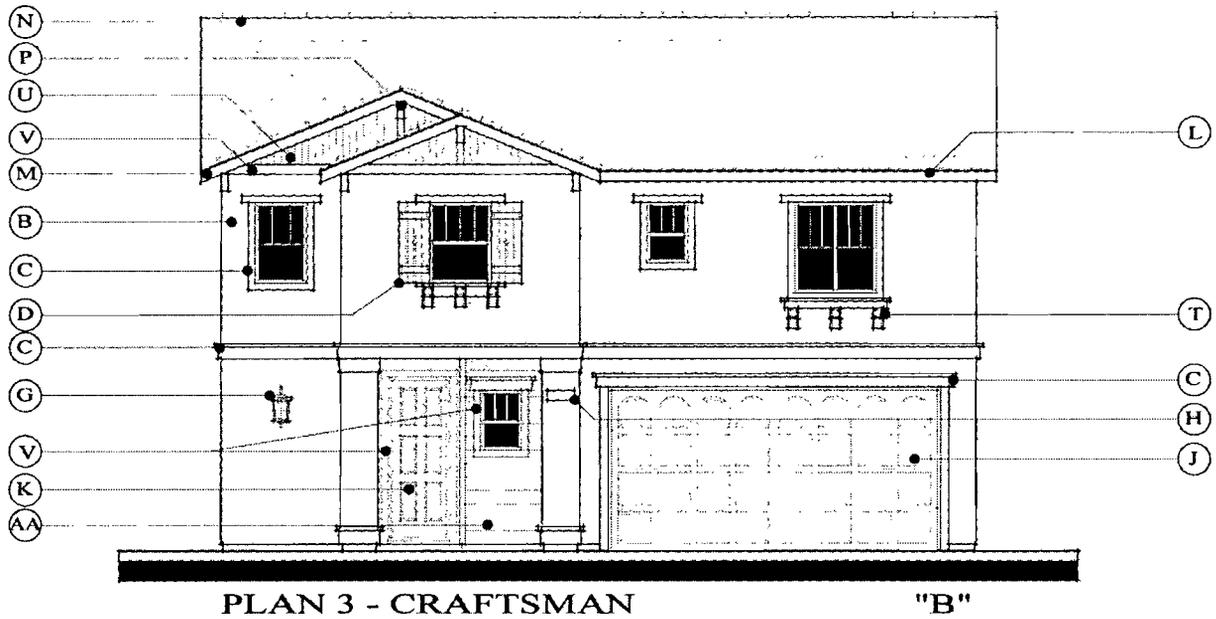
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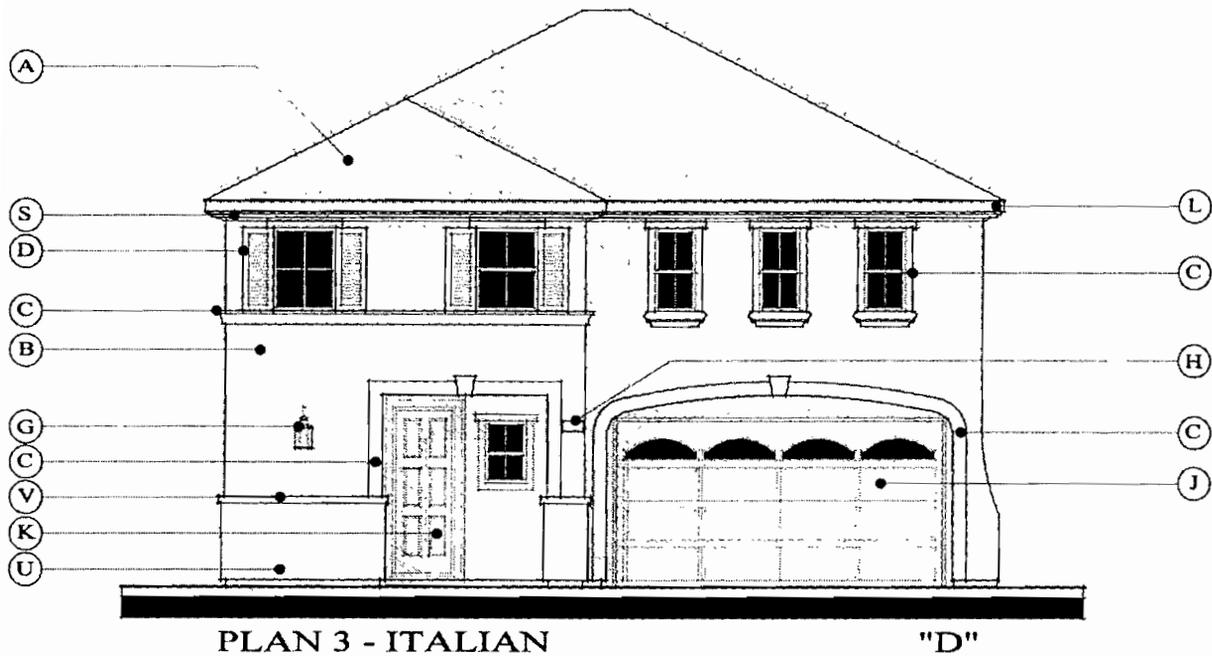
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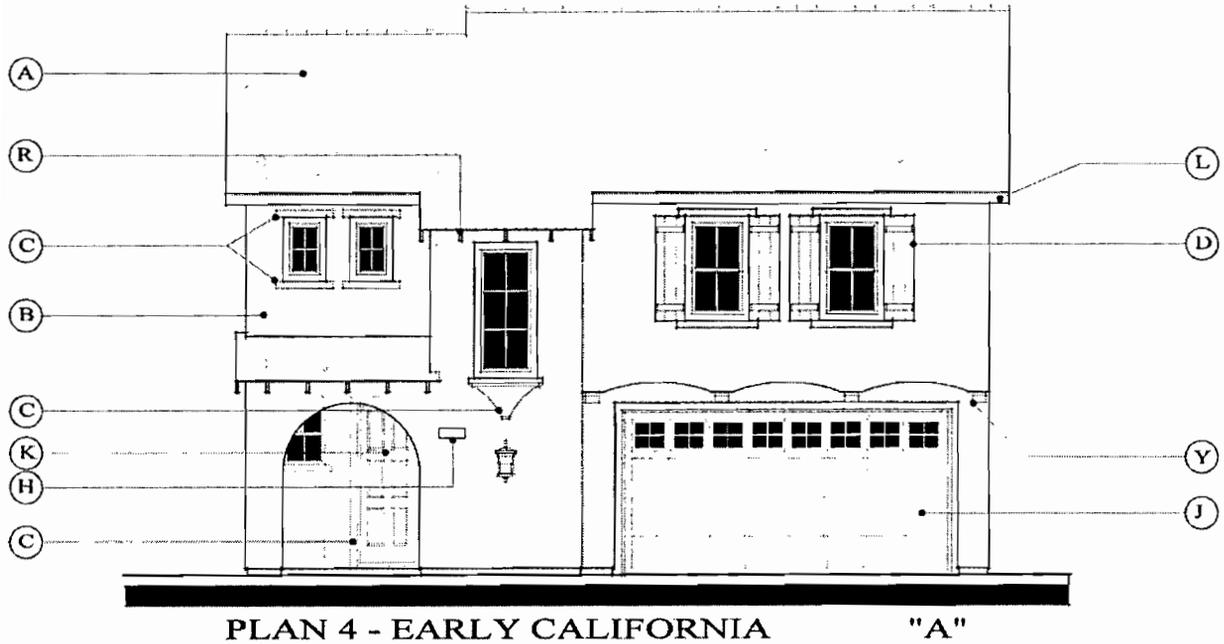
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(K) FIBERGLASS ENTRY DOOR	(Y) FOAM CORBEL
(L) WOOD FASCIA BOARD	(Z) WOOD CORBEL
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(N) CONCRETE FLAT TILE ROOFING	
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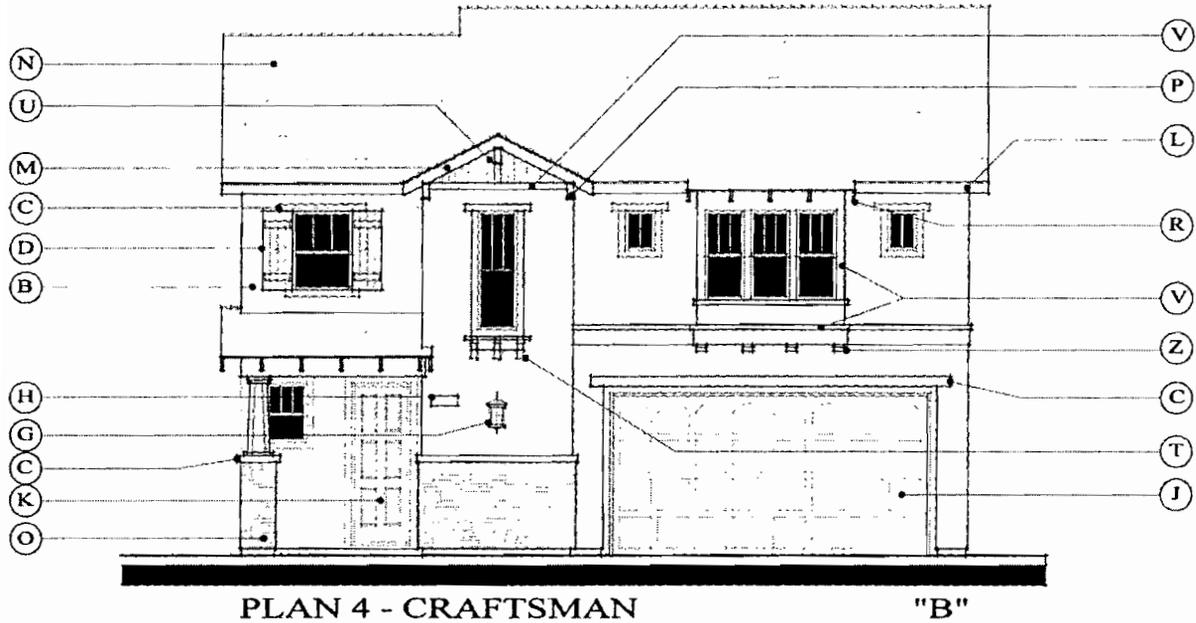
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(B) STUCCO FINISH	(Q) SHAPED WOOD KICKERS
(C) STUCCO O/ FOAM TRIM	(R) SHAPED RAFTER TAILS
(D) WOOD SHUTTERS	(S) FOAM TRIM AT EAVE
(E) STUCCO O/FOAM POTSHelf	(T) WOOD POTSHelf
(F) DECORATIVE GABLE END VENTS	(U) WOOD GABLE END TRIM
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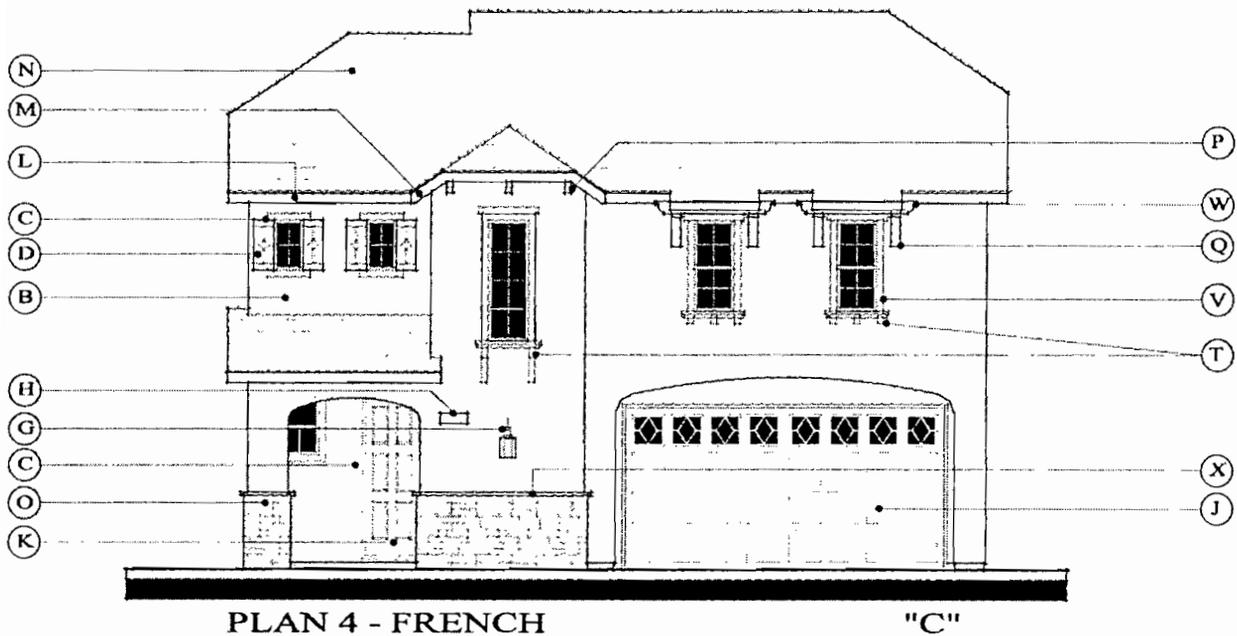
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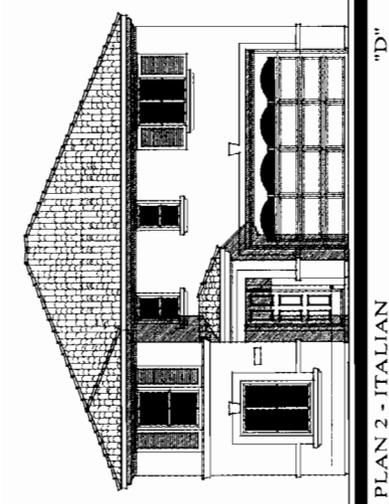


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(E) STUCCO O/FOAM POTSHIELF	(T) WOOD POTSHIELF
(F) DECORATIVE GABLE END VENTS	(U) WOOD GABLE END TRIM
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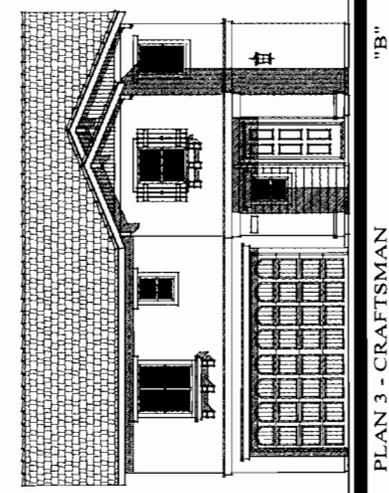


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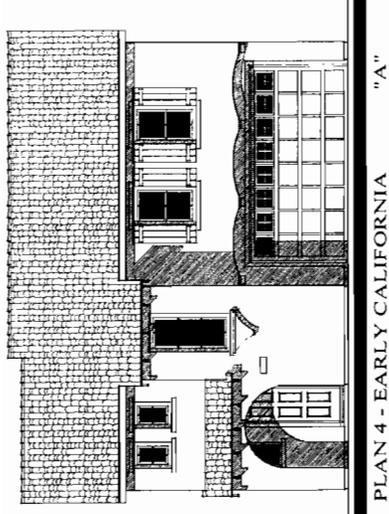
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(C) STUCCO O/ FOAM TRIM	(R) SHAPED RAFTER TAILS
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(O) STONE VENEER FINISH	



PLAN 2 - ITALIAN "D"



PLAN 3 - CRAFTSMAN "B"



PLAN 4 - EARLY CALIFORNIA "A"

FRONT ELEVATIONS
STREETSCENE

MOORPARK
SCHOOL SITE

Pardee Homes
10880 WILSHIRE BLVD., SUITE 1000
LOS ANGELES, CA 90024
(310) 470-5025

09.16.09
BASSENAN
W&J
Architects and Land Planners
1000 Wilshire Blvd., Suite 1000
Los Angeles, CA 90024
Telephone: 310-470-5025
023.094096

PLANS 2,
3 & 4

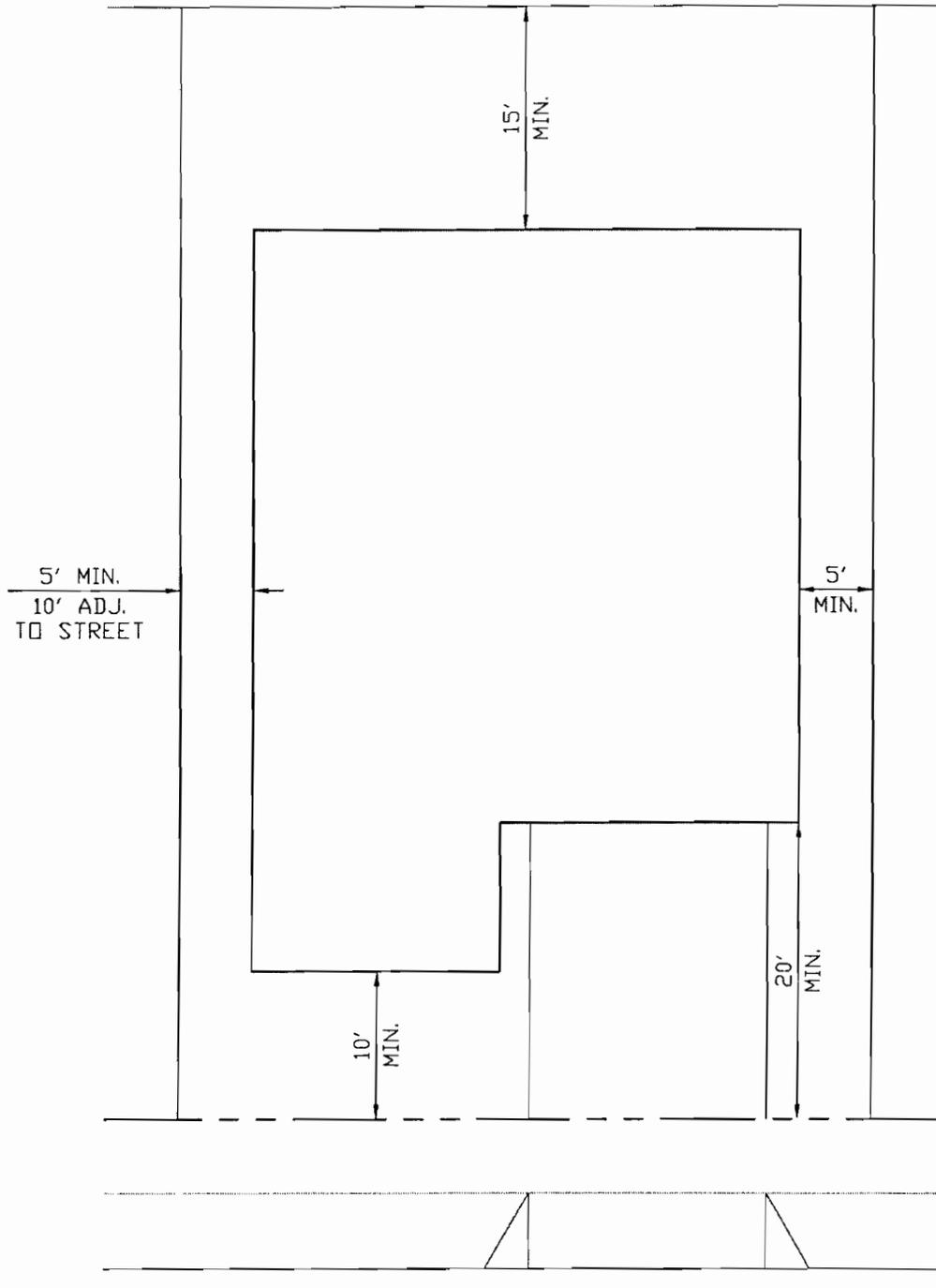


B. Amended Development Regulations

The lotting plan for Planning Area 7 requires several amendments to Development Regulations that were established in the original Specific Plan. The density of 6 du/ac gives Planning Area 7 a strong similarity to Planning Areas 1-4, and makes it comparable to the Development Regulations that are listed for (SP2-RPD-SF) 6 du/ac zoning district(s). As such, the Development Regulations for this type of residential development (listed on page 118 of the Specific Plan) will be amended. Only necessary amendments to certain sections of the Development regulations are required and shown below. Sections that are not amended below are to be left as is.

2. Setbacks from property line.
 - a. Front setback minimum is ten (10) feet from architecture or twenty (20) feet from garage door where a 20-foot driveway is provided. A facade projection of up to sixteen (16) inches is allowed for non-livable spaces. The front setbacks for the proposed single-family dwelling units shall be varied so as to provide visual diversity.
 - c. Side Setback minimum for a single-family dwelling unit or patio cover on an interior lot, other than for exceptions listed below, shall be five (5) feet, with up to a two (2) foot encroachment into the 5-foot setbacks for chimneys and fireplaces. Second story decks or balconies are prohibited.
 - e. Rear yard setback minimum for a single-family dwelling unit is fifteen (15) feet. Second floors, and/or architectural projections, may project up to eighteen (18) inches into the minimum 15-foot setback. Single story accessory structures and/or single story rear patio covers may protrude into the minimum rear setback area, so long as the distance from the edge of the accessory structure and/or patio cover is five (5) feet from the rear and side property lines.
5. Parking shall comply with Chapter 17.32 of the City of Moorpark Municipal Code.

An illustration of proposed setbacks and development standards for Planning Area 7 may be seen in Exhibit 7, Typical Product Site Plan.



Minimum Lot Size: 3,500 Square Feet

Exhibit 7-Typical Product Site Plan



VI. General Plan Consistency

This Section of SPA #1 demonstrates the ways in which the proposed project implements the City of Moorpark General Plan. The Moorpark General Plan was adopted on May 13, 1992; however, it has been amended since that time. It is necessary to ensure that SPA #1 is consistent with amended versions of the current Moorpark General Plan. The original Specific Plan analyzed goals that were implemented by the Moorpark Highlands Specific Plan No. 2. Below is an analysis that identifies the General Plan Goals that are implemented by SPA #1 from the Land Use, Housing, Circulation, Safety, Noise, and Open Space, Conservation and Recreation Elements. For clarification purposes, only applicable goals from each element are included and analyzed in this section.

A. Land Use Element

The Moorpark General Plan Land Use Element was adopted in May 1992 and amended in 1998, 1999, 2002, and 2005. The purpose of the Land Use element is to ensure that development within the City of Moorpark is done in a strategic and orderly fashion. Land Use Goals that SPA #1 implements are listed below.

- Goal 1: Attain a balanced City growth Pattern which includes a full mix of land uses.
- Goal 3: Provide a variety of housing types and opportunities for all economic segments of the community.
- Goal 5: Develop new residential housing that is compatible with the character of existing individual neighborhoods and minimizes land use incompatibility.
- Goal 12: Ensure that a full range of public utilities and services are provided to meet the needs of the community.
- Goal 14: Establish land uses and development intensities which are compatible with scenic and natural resources and which encourage environmental preservation.
- Goal 15: Maintain a high quality environment that contributes to and enhances the quality of life and protects public health, safety and welfare.
- Goal 16: Enhance and maintain the suburban/rural identity of the community.



Goal 17: Enhance the physical and visual image of the community.

Land Use Goal Consistency Analysis

SPA #1 will directly meet all Land Use Element Goals listed above. The proposed project adds 133 additional units to the original Specific Plan Area, which results in a proposed residential density of 6.0 du/ac, consistent with Planning Areas 1-4. Total dwelling units for the entire Specific Plan area will be 685, which is less than the 712 dwelling units permitted by the General Plan.

Proposed product types for Planning Area 7 consist of options for 3-bedroom and 4-bedroom units. A total of 10 units (7.5%) of the 133 units are proposed as affordable units. A total of seven 4-bedroom units will be available for purchase by low income households within Planning Area 7. The remaining three affordable units will be 3-bedroom units constructed in Planning Area 5. Final affordable unit locations will be determined prior to RPD processing. Minor amendments to development regulations include several changes to setbacks. However, it is not anticipated that these changes will drastically affect the theme and feel of Planning Area 7, or the Specific Plan area as a whole. With the exception of the school site that has been removed, all public utilities and facilities that were originally planned for Planning Area 7 still remain to serve Planning Area 7. SPA #1 will tie into existing storm water, domestic water, and sanitary sewer mains so that these services will be available to the project area. Fire, Police, electric, gas, telephone, cable/internet, and solid waste services will be supplied to the project area by the same service providers that would have served the school site.

At this time, Planning Area 7 has been mass-graded. All 22 acres consist of a barren dirt lot. Residential development with aesthetic landscaping will serve to visually enhance the area. SPA #1 proposes quality architecture to ensure a visually appealing experience in the residential area. Proposed units are compatible with existing surrounding Moorpark Highlands development through utilization of similar product types with similar architectural features.

SPA #1 is a suburban development located in a rural area near natural open space, parks, surrounding golf courses, and recreational trails. An approximate 1/2-acre recreation center is proposed which will provide amenities such as a pool, picnic areas, and open space for future residents in Planning Area 7. An equestrian trail and a multi-use trail are also proposed in the development. The proposed residential development is consistent with listed goals from the Land Use Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.



B. Housing Element

The Moorpark Housing Element was adopted in December 2001. The purpose of the Housing Element is to provide regulatory guidance on how to manage residential growth and preservation of residential resources, provide affordable housing to residents and balance housing and employment opportunities. Residential goals implemented by SPA #1 are discussed below.

- Goal 1: Assure the quality, safety, and habitability of existing housing and the continued high quality of residential neighborhoods.
- Goal 2: Provide residential sites through land use, zoning, and specific plan designations to provide a range of housing opportunities.
- Goal 3: Expand and protect housing opportunities for lower income households and special needs groups.
- Goal 5: Ensure fair and equal housing opportunity for all persons regardless of race, religion, sex, marital status, family type, ancestry, national origin, color, or other protected status.

Housing Goal Consistency Analysis

SPA #1 will directly meet all Housing Element Goals listed above. SPA #1 serves to convert an unused former school site to a residential site, in order to provide housing opportunities. Proposed development to be constructed is of equal quality to the existing Moorpark Highlands Development. The new neighborhood will be family-oriented, is not located within any hazardous areas, and will be served by all necessary public utilities and services. A total of 10 units (7.5%) of the 133 units are proposed as affordable units. A total of seven 4-bedroom units will be available for purchase by low income households within Planning Area 7. The remaining three affordable units will be 3-bedroom units constructed in Planning Area 5. Final affordable unit locations will be determined prior to RPD processing. Residents of all creeds, races, cultures, and backgrounds will be given the opportunity to purchase homes and live in the residential development provided by SPA #1. The proposed development is consistent with listed goals from the Housing Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.



C. Circulation Element

The Moorpark General Plan Circulation Element provides policy guidance for the development and maintenance of the City's circulation system to ensure access and mobility of people and goods throughout the City. Circulation goals implemented by SPA #1 are discussed below.

- Goal 1: Provide a transportation system that supports the land use plan in the General Plan and provides for the safe and efficient movement of people, goods, and services within, into, out of, and through the City of Moorpark.
- Goal 2: Provide a circulation system which supports existing, approved, and planned land uses throughout the City while maintaining a desired level of service on streets and at all intersections.
- Goal 3: Adopt and maintain a set of roadway standards and transportation system design criteria which supports and maintains the desired character of the City of Moorpark.
- Goal 5: Provide a citywide system of safe, efficient and attractive bicycle and pedestrian routes for commuter, school, and recreational use.
- Goal 6: Provide equestrian trails for recreational use.

Circulation Goal Consistency Analysis

SPA #1 directly meets all Circulation Element Goals listed above. The interior street network proposed for SPA #1 will provide for the safe and efficient movement of residents and goods in and out of the proposed residential development area through one primary entry/exit point on Ridge Crest Drive, and two secondary emergency exit roads at the southwestern and northeastern corners of the site. Anticipated LOS levels are acceptable (LOS C or better) for all study intersections and roadway segments that serve the project. All interior project roads have been designed in accordance with General Plan roadway standards, as well as roadway standards listed in the Specific Plan. SPA #1 incorporates a multi-use trail along the east side of the site. This trail ties into the Class II Bike Path along the northern side of the site and the Natural Trail in Planning Area 6 to the south. A 25-foot easement has been dedicated to the City of Moorpark that may serve as an equestrian trail along the east side of the project site.



The proposed development is consistent with listed goals from the Circulation Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.

D. Noise Element

The Moorpark Noise Element was approved in March 1998. The purpose of the Moorpark General Plan noise element is to establish a comprehensive program for including noise attenuation measures in the planning process. It ensures that, from a noise standpoint, planned land uses are compatible and do not result in undesired noise sources. It also establishes noise thresholds to ensure that in the event that planned land uses do generate noise, times of operation and noise levels are established. Noise Element Goals implemented through SPA #1 are discussed below.

Goal 1: Protect health, safety, and general welfare of the public from adverse noise impacts.

Noise Element Goal Analysis

SPA #1 directly meets the Noise Element Goal listed above. An Acoustical Assessment (submitted under separate cover) prepared for SPA#1 found that the construction of SPA#1 will result in a temporary increase in noise levels. Thus, the Acoustical Assessment proposes Applicant-proposed measures which will reduce construction noise impacts to a less than significant level. In addition, all construction activity will be done in accordance with all applicable noise standards established in the General Plan Noise Element and City of Moorpark Municipal Code Chapter 17.53.

In order to mitigate any future noise impacts generated by eventual construction of the planned SR-23 alignment, the Acoustical Assessment includes an Applicant Proposed Mitigation Measure which requires the construction of a 9-foot sound wall in along the southbound right-of-way edge of the future SR-23 bypass alignment. The wall will be constructed using some or one or all of the following materials: masonry block, stucco veneer over wood framing (or foam core) glass, Plexiglass, or Lexan. With implementation of this mitigation measure, SPA#1 operational noise impacts will be reduced to a less than significant level.

Thus, the proposed development is consistent with listed goal from the Noise Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.



E. Open Space, Conservation and Recreation Element

The Moorpark General Plan Open Space, Conservation and Recreation Element (OSCAR Element) was adopted in August 1986. The purpose of this element is to maintain the overall quality of life for Moorpark residents through rational management of natural resources and open space lands. OSCAR Goals implemented by SPA #1 are discussed below.

- Goal 1: Preserve and enhance the unique aesthetic and visual qualities of Moorpark as a City with scenic topographic features and elements that promote the quality of life that Moorpark Residents pursue.
- Goal 2: Acquire, provide and maintain public parkland for both passive and active use that is equally accessible to the community on a neighborhood, community, and regional basis.
- Goal 3: Ensure the health, safety, and general welfare of the public through designating land uses that will minimize the risk of danger to the public.
- Goal 4: Preserve and maintain the physical and biological environment from future growth-related degradation. In those areas where degradation is inevitable, ensure the restoration of affected areas.

OSCAR Element Goal Analysis

SPA #1 will directly meet all OSCAR Element Goals listed above. The project consists of 133 single-family lots on a site that was mass-graded for a proposed middle school. Original biological impacts were assessed prior to site grading in the Program-Level EIR that was done for the original Specific Plan. To the fullest extent feasible, view sheds will be preserved during and after construction of the proposed residences. It is not anticipated that the product chosen for SPA #1 will result in degradation of view sheds from the residential areas. An approximate ½-acre recreation center is proposed within SPA #1 that will provide recreational uses such as a picnic areas and a public pool. A potential equestrian trail easement is also proposed along the eastern side of the project site. The proposed recreation center and trails within the development will not jeopardize the welfare of residents in the area. All planting will be done in accordance with the site-specific Landscape Plan, and any needed restoration will be performed in accordance with applicable mitigation measures listed in the original Specific Plan EIR.



The proposed development is consistent with listed goals from the OSCAR Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.

F. Safety Element

The City of Moorpark Safety Element was approved on March 21, 2001. The purpose of the Safety Element is to address safety issues arising from both naturally occurring and human-caused conditions, and presents goals and policies focused on reducing potential risk of death, injuries, property damage, and economic and social dislocation resulting from hazards. Goals that are implemented by SPA #1 are discussed below.

- Goal 1: Minimize the potential damage to structures and loss of life that could result from earthquakes.

- Goal 3: Protect public and private properties from geologic hazards associated with steep slopes, unstable hillsides, and subsidence.

Safety Element Goal Analysis

SPA #1 will directly meet all Safety Element Goals listed above. SPA #1 proposes 133 residential units with a recreation center, interior streets, and several easements. All construction will be done in accordance with all applicable provisions of the City of Moorpark Building Code. Geologic hazards were previously analyzed in the original Specific Plan EIR and it is not anticipated that SPA #1 will result in potential geologic hazards. The proposed development is consistent with the listed goals from the Safety Element of the General Plan, as well as the spirit and intent of the Moorpark Highlands Specific Plan No. 2.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ZONING ORDINANCE AMENDMENT NO. 2009-01, A REQUEST TO AMEND CHAPTER 17.74 SPECIFIC PLAN NO. 2/SPECIFIC PLAN 95-2, MOORPARK HIGHLANDS SPECIFIC PLAN OF THE MOORPARK MUNICIPAL CODE, BY ADDING SUBSECTION 17.74.040.1.E. SINGLE-FAMILY RESIDENTIAL SITE DEVELOPMENT STANDARDS FOR PLANNING AREA NO. 7

WHEREAS, the Planning Commission held a duly noticed public hearing on June 15, 2010, to consider Zoning Ordinance Amendment No. 2009-01, a request to amend Chapter 17.74 of the Moorpark Municipal Code, adding site development standards for Planning Area No. 7 of Moorpark Highlands Specific Plan No. 2, and adopted Resolution No. PC-2010-555 recommending approval of this Zoning Ordinance Amendment to the City Council; and

WHEREAS, at a duly noticed public hearing held on July 7, 2010, the City Council considered the agenda report and any supplements thereto and any written public comments; opened the public hearing, took and considered public testimony, closed the public hearing, and reached a decision on this matter.

WHEREAS, the City Council, prior to making its decision on this project, has considered the Final EIR (SCH No. 96041030) prepared and certified for the Moorpark Highlands Specific Plan No. 2 project and Addendum No. 1 to this Final EIR, prepared for Amendment No. 2 to Moorpark Highlands Specific Plan No. 2 pursuant to the California Environmental Quality Act (CEQA) in accordance with Sections 15162 and 15164 of the California Code of Regulations (CEQA Guidelines). No new information or impacts that require preparation of a new or subsequent EIR have been identified as a result of the proposed amendments to the project.

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

SECTION 1. The City Council finds Zoning Ordinance Amendment No. 2009-01 to be consistent with the Moorpark General Plan and Moorpark Highlands Specific Plan No. 2, as amended.

SECTION 2. Section 17.74.040.1.E. is hereby added to the Moorpark Municipal Code as shown in Exhibit A, attached hereto and incorporated herein.

SECTION 3. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of

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

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

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

PASSED AND ADOPTED this ____ day of July, 2010.

Janice Parvin, Mayor

ATTEST:

Maureen Benson, Assistant City Clerk

Attachment: Exhibit A: Zoning Ordinance Amendment No. 2009-01

EXHIBIT A

Zoning Ordinance Amendment No. 2009-01

Section 17.74.040.1.E. Specific Plan No. 2 Residential Planned Development Single-Family (SP2-RPD-SF) 6.1 du/ac Zone. Planning Area (P.A.) 7.

1. Minimum lot area: three thousand five hundred (3,500) square feet.
2. Building Setbacks.
 - a. Front setback: Minimum landscaped setback of ten (10) feet and architectural facade projections of up to sixteen (16) inches are allowed for non-livable spaces; with a minimum driveway depth of twenty (20) feet, as measured from front property line across area leading to enclosed parking within a garage; any two (2) adjacent lots may have the same front setback; however the third consecutive lot should vary the front setback by one (1) or more feet, as appropriate to the street and lot configuration, and to provide for variety in the streetscape.
 - b. Side setback: Minimum for a single-family dwelling unit on an interior lot shall be five (5) feet. Minimum for a single-family dwelling unit adjacent to a street is ten (10) feet. Minimum for a single story enclosed patio, patio cover or detached accessory structure shall be five (5) feet.
 - c. Rear setback: Minimum for a single-family dwelling unit is fifteen (15) feet, and second story floors, and/or architectural projections, may cantilever a maximum of eighteen (18) inches into the minimum required fifteen (15) foot setback. For single story enclosed patios or open patio covers, or for detached accessory structures the minimum required rear setback is five (5) feet.
 - d. Mechanical equipment: Must be located in the rear yard with a minimum five foot setback from any side or rear property line and must be screened with a decorative masonry wall or landscaping.
3. Maximum building height:
 - a. Thirty-five (35) feet for dwelling units;
 - b. Fifteen (15) feet for a patio cover or accessory structures;
 - c. Second story decks or balconies are prohibited.
4. Fences and Walls. Fences and walls shall comply with the provisions of this code, with the exception that sound attenuation walls shall be constructed to a height as required by a city-approved noise study for the residential planned development permit.
5. Parking. Parking shall comply with Chapter 17.32 of the city of Moorpark Municipal Code.
6. Signage. Signage shall comply with Chapter 17.40 of the city of Moorpark Municipal Code.
7. Recreational Amenities. Residential planned development permit areas with single-family lots that have an average size of less than seven thousand (7,000) square feet shall include private recreational amenities including but not limited to the following: restrooms, swimming pool and spa, play apparatus, picnic shelter, barbecue area with seating, and multipurpose play area field. The types of amenities shall be reviewed and approved with the required residential planned development permit.

8. Eaves and Window Treatments and Surrounds. The eaves and window treatments and surrounds on all sides of a structure shall complement the eaves, window treatments and surrounds on the front elevation.

9. Wrap-Around Front Elevation Treatment. The architectural style and treatment included along the front elevation of a unit shall continue along each side elevation until commencement of fencing or other architecturally feasible termination point as determined by the residential planned development permit approval body.

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOORPARK AND PARDEE HOMES

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

WHEREAS, Pardee Homes, the owners of the land with an application for Amendment No. 2 to Specific Plan No. 2, Moorpark Highlands, Zoning Ordinance Amendment No. 2009-01, Tentative Tract Map No. 5860, and Residential Planned Development No. 2009-02, have applied to the City of Moorpark to seek a Development Agreement with the City pursuant to Chapter 15.40 of the Moorpark Municipal Code; and

WHEREAS, the Planning Commission of the City of Moorpark on June 15, 2010, adopted Resolution No. PC 2010-555 recommending to the City Council approval of Development Agreement No. 2009-01, proposed in conjunction with the project initiated by Pardee Homes, consisting of Amendment No. 2 to Specific Plan No. 2, Moorpark Highlands, Zoning Ordinance Amendment No. 2009-01, Tentative Tract Map No. 5860, and Residential Planned Development No. 2009-02; and

WHEREAS, a duly noticed public hearing was conducted by the City Council on July 7, 2010, to consider the Development Agreement and to accept public testimony related thereto; and

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

WHEREAS, the City Council, prior to making its decision on this project, has considered the Final EIR (SCH No. 96041030) prepared and certified for the Moorpark Highlands Specific Plan No. 2 project and Addendum No. 1 to this Final EIR, prepared for Amendment No. 2 to Moorpark Highlands Specific Plan No. 2 pursuant to the California Environmental Quality Act (CEQA) in accordance with Sections 15162 and 15164 of the California Code of Regulations (CEQA Guidelines). No new information or impacts that require preparation of a new or subsequent EIR have been identified as a result of the proposed amendments to the project.

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

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

- A. The Development Agreement is consistent with the General Plan.
- B. The Development Agreement and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Moorpark Highlands Specific Plan No. 2 as amended.
- C. The Development Agreement is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby adopts Development Agreement No. 2009-01 (attached hereto) between the City of Moorpark, a municipal corporation, and Pardee Homes, and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

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

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

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

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

Ordinance No. _____

Page 3

PASSED AND ADOPTED this 7th day of July, 2010.

Janice Parvin, Mayor

ATTEST:

Maureen Benson, Assistant City Clerk

Attachment: EXHIBIT A - Development Agreement No. 2009-01

Ordinance No. _____

Page 4

Recording Requested By
And When Recorded Return to:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND

PARDEE HOMES

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

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on _____, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Pardee Homes, a California corporation, the owner of real property within the City of Moorpark generally referred to as the Moorpark Highlands Specific Plan Planning Area No. 7 (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Agreement, City and Developer agree as follows:

1. **Recitals.** This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
 - 1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code Chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.
 - 1.2. The City and Developer entered into a Memorandum of Understanding (MOU) on April 1, 2009, regarding development of the school site as identified in Specific Plan No. 95-2, approximately 22 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached hereto and incorporated herein. The property may also be referred to as Moorpark Highlands Specific Plan Planning Area No. 7. This Agreement supersedes the MOU for the development of the Property.
 - 1.3. Prior to approval of this Agreement, the City Council of City ("the City Council") approved Amendment No. 2 to Specific Plan 95-2 for the Property.
 - 1.4. Amendment No. 2 to Specific Plan No. 95-2, Vesting Tentative Tract Map No. 5860 (Tract 5860) and Residential Planned Development Permit No. 2009-02 (RPD 2009-02) [collectively "the Project Approvals"; individually "a Project Approval"] provide for the development of the Property and the construction of certain off-site improvements in connection therewith ("the Project").
 - 1.5. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to

limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.

- 1.6. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. Developer anticipates developing the Property over a minimum of three (3) years. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and conditions imposed upon the development of the Property pursuant to the Project Approvals and this Agreement and to provide the public benefits and improvements specified in this Agreement.
- 1.7. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City, as amended at time of adoption of Ordinance No. ___ for this Agreement by the City Council.
- 1.8. On _____ 200_, the Planning Commission of City commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing recommended approval of the Agreement.
- 1.9. On _____ 200_, the City Council commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on _____ 200_, approved the Agreement by Ordinance No. ("the Enabling Ordinance").
2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may also be referred to hereinafter as "the site" or "the Project".
3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement.
 - 3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property except any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether

or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.

- 3.2. Release Upon Transfer. Upon the sale or transfer of any of Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or transferred subsequent to the operative date of the sale or transfer, provided that the Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivered to City a written assumption agreement in a form acceptable to the City Attorney, duly executed by the purchaser or transferee and notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.
- 3.3. In the event of a partial assignment or transfer, the assumption agreement referenced in subsection 3.2 shall include provisions acceptable to the City to ensure that the phased construction of affordable housing units contemplated by Section 6.9 is achieved, regardless of the identity or number of developers of the Project.
4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.
 - 4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by the Project Approvals and this Agreement.
 - 4.2. Development Standards. All design and development standards, including but not limited to density or intensity of use and maximum height and size of buildings, that shall be applicable to the Property are set forth in the Project Approvals and this Agreement.
 - 4.3. Building Standards. All construction on the Property shall adhere to the Uniform Building Code, including the Fire Resistive Design Manual, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, the Uniform Code for Building Conservation and the Uniform Administrative Code in effect at the time the plan check or permit is approved and to any federal or state

building requirements that are then in effect (collectively "the Building Codes").

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

5. Vesting of Development Rights.

- 5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment.

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

- 5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.
- 5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and

landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do not include building permits.

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

- (a) change any permitted or conditionally permitted uses of the Property from what is allowed by the Project Approvals;
- (b) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the number of proposed buildings or other improvements from what is allowed by the Project Approvals.
- (c) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required by the Project Approvals to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;
- (d) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations;
- (e) control residential rents;
- (f) prohibit or regulate development on slopes with grades greater than 20 percent, including without limitation Moorpark Municipal Code Chapter 17.38 or any successor thereto, within the Property; or
- (g) modify the land use from what is permitted by the City's General Plan Land Use Element at the operative date of this Agreement or that prohibits or restricts the establishment or expansion of

urban services including but not limited to community sewer systems to the Project.

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

The term of any Subsequent Approval, except a tentative map or subdivision improvement or other agreements relating to the Project, shall be one year; provided that the term may be extended by the decision maker for two (2) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's Community Development Department prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval.

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

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

- 5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from Developer if all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. Consistent with Subsection 5.1 of this Agreement, in no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.
- 5.7. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage, including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.
6. Developer Agreements.
- 6.1. Developer shall comply with (i) this Agreement, (ii) the Project Approvals, (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and (iv) Addendum to the Moorpark Highlands Specific Plan No. 2 Final Environmental Impact Report, (Final EIR) and the Mitigation Monitoring Program (MMP) of the Final EIR and any subsequent or supplemental environmental actions.
- 6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.
- 6.3. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Development Fee shall be Eight Thousand One Hundred and Fifty-Three Dollars (\$8,153.00) per

residential unit and Thirty-Six Thousand Six Hundred and Eighty-Nine Dollars (\$36,689.00) per gross acre of institutional land. The fee shall be adjusted annually commencing July 1, 2011 by the larger increase of a) or b) as follows:

- a) Consumer Price Index (CPI): any increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of April over the prior April.
- b) Caltrans Highway Bid Price Index: the calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period ending the first quarter of the same year in which the Development Fee is to be paid.

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

6.4. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Citywide Traffic Fee shall be Nine Thousand Five Hundred and Forty-One Dollars (\$9,541.00) per residential unit, and Forty-Two Thousand Nine Hundred and Thirty-Five Dollars (\$42,935.00) per acre of institutional land on which the institutional use is located. Commencing on July 1, 2011, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period ending the first quarter of the same year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

6.5. As a condition of issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a community services fee as described herein (Community Services Fee). The Community Services Fee may be expended by

City in its sole and unfettered discretion. The amount of the Community Services Fee shall be Six Hundred Forty Dollars (\$640.00) per residential unit and Two Thousand Eight Hundred and Eighty Dollars (\$2,880) per gross acre of institutional land on which the institution is located. The fee shall be adjusted annually commencing on July 1, 2011, by the larger increase of a) or b) as follows:

- a) Consumer Price Index (CPI): any increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of April over the prior April.
- b) Caltrans Highway Bid Price Index: the calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period ending the first quarter of the same year in which the Community Services Fee is to be paid.

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

- 6.6. Prior to the issuance of the building permit for each residential dwelling unit within the property, Developer shall pay a fee in lieu of the dedication of parkland and related improvements (Park Fee). On the operative date of this Agreement, the amount of the Park Fee shall be Seven Thousand Five Hundred Dollars (\$7,500.00) for each residential dwelling unit. The fee shall be adjusted annually commencing July 1, 2011 by the larger increase of a) or b) as follows:

- a) Consumer Price Index (CPI): any increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of April over the prior April.

- b) Caltrans Highway Bid Price Index: the calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period ending the first quarter of the same year in which the Park Fee is to be paid.

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

- 6.7. Prior to the issuance of the building permit for the 100th housing unit, Developer shall improve and dedicate to the City a twelve (12) foot wide multipurpose trail within a minimum twenty-five foot wide easement from Ridgecrest Drive to the Mammoth Highlands Park. The trail improvements shall consist of trail fencing, decomposed granite trail surface, and landscaping on both the east and west sides of the trail consisting of 24-inch box trees and 5-gallon shrubs, along with trees screening the easterly fence of Moorpark Highlands Park. Design of the trail shall be to the satisfaction of the Public Works Director/City Engineer, Parks and Recreation Director, and Community Development Director.
- 6.8. (This section is intentionally left blank.)
- 6.9. Developer agrees that densities vested and incentives and concessions received in the Project Approvals include all densities available as density bonuses and all incentives and concessions to which Developer is entitled under the Moorpark Municipal Code and Government Code Sections 65915 through 65917.5; Developer shall not be entitled to further density bonuses or incentives or concessions and further agrees, in consideration for the density bonus obtained through the Project Approvals that is greater than would otherwise be available to provide ten (10) housing units affordable to low income households as shown in the table below. Up to three (3) of the low income units may be provided in the residential project known as Waverly Place in SP-2 (RPD 2004-01 and Tract Map 5045).

Location of Unit	3 Bedroom 2 Bath (1,100 Sq. Ft. Minimum)	4 Bedroom 2 Bath (1,400 Sq. Ft. Minimum)
Waverly Place "Carriage Unit"	3	0
Tract 5860	2	5
TOTAL	5	5

Developer explicitly acknowledges that its agreement to construct these affordable units is given both as specific consideration for both the density bonus and in general as consideration for City's willingness to negotiate and enter into this Agreement and for the valuable consideration given by City through this agreement. Developer further acknowledges that its agreement to construct these affordable units is not the result of an existing policy or regulation imposed by City but instead is the result of arm's length negotiation between the Parties.

Developer shall construct the affordable units required of it pursuant to this Subsection 6.9 and shall meet all requirements of this Agreement. The proposed project and property on which the units are to be constructed shall conform to the City's General Plan, Zoning Codes, and the Moorpark Municipal Code. Nothing in this Agreement requires City to consider a General Plan Land Use Amendment, Zone Change, or any other land use entitlement to allow or permit said proposed construction. Developer further agrees that it shall pay the same processing and development fees in the same amounts for the seven low income units as it is required to pay for the market rate units in Tract 5860. (The Developer has already paid the applicable processing and development fees for the three (3) low income units in Waverly Place.)

Prior to recordation of the first Final Map for this Project, the City Council in its sole and unfettered discretion shall approve an Affordable Housing Purchase and Sale Agreement (Affordable Housing Agreement) that provides policies and guidelines to ensure that all of the required affordable housing units are provided consistent with this Agreement and applicable State laws and remains affordable for the longest feasible time. The Affordable Housing Agreement shall include but not be limited to the following items: Initial Purchase Price, market value, buyer eligibility, affordability and resale covenants and restrictions, equity share and second trust deed provisions, respective

role of City and Developer, the responsibility of providing the affordable units by each developer in the event of successors and/or assigns to this Agreement, the final number of attached units that shall be provided to meet Developer's affordable housing obligation arising under this Agreement, quality of and responsibility for selection of amenities and applicability of home warranties to meet all or a portion of its obligation and any other items determined necessary by the City. The Developer and City shall, prior to the occupancy of the first residential unit for the Project, execute the Affordable Housing Agreement that is consistent with this Agreement and with Developers obligations hereunder. Developer shall pay the City's direct costs for preparation and review of the Affordable Housing Agreement up to a maximum of Ten-Thousand Dollars (\$10,000.00).

Developer agrees that three (3) affordable units will be provided within the existing Waverly Place neighborhood prior to the issuance of the first residential building permit within Tract 5860, with seven affordable housing units to be provided within Tract 5860 in accordance with the following schedule:

- Prior to the 31st occupancy in Tract 5860, 2 affordable units in Tract 5860 shall be provided;
- Prior to the 49th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided;
- Prior to the 68th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided;
- Prior to the 85th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided;
- Prior to the 106th occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided;
- Prior to the 133rd occupancy in Tract 5860, 1 additional affordable unit in Tract 5860 shall be provided.

All affordable units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income and very low income persons (in the quantity as specified in this Agreement) and will satisfy a portion of the City's RHNA obligation and if within the Moorpark Redevelopment Agency project area to satisfy a portion of the Agency's affordable housing goals. The affordable units required by this Agreement are consideration for City's entry into this Agreement and therefore none of the affordable units shall duplicate or substitute for the affordable housing requirement of any other developer or development project. All subsequent approvals required of City under this Subsection 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and any Affordable Housing

Agreement required by and negotiated pursuant to this Agreement or the conditions of approval for Vesting Tentative Tract Map No. 5860 and/or RPD No. 2009-02, then the Affordable Housing Agreement shall prevail.

For housing units constructed by Developer to meet its contractual obligation under this Subsection 6.9, Developer agrees to provide the same home warranties associated with other units in the same project as the constructed or purchased unit, or the maximum time required by State law, whichever is longer, but in no event less than ten (10) years. Developer agrees that all such warranties shall inure to the benefit of and be enforceable by the ultimate occupants of the low income units, and that all warranties by subcontractors and suppliers shall inure to the benefit of and be enforceable by such occupants. The qualified buyer (or City in lieu of a qualified buyer at its sole discretion) shall have the same choices of finish options as purchasers of other units in the project and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of units shall be provided to buyer(s) of the required units including but not limited to color and style choices for carpeting and other floor coverings. Flooring selections shall be made within 10 days of Developer's request for selection.

In the event the monthly HOA fees exceed One Hundred Dollars (\$100.00), Developer shall deposit One Hundred Twenty Dollars (\$120.00) for each dollar or portion thereof of the monthly HOA fees that are in excess of One Hundred Dollars (\$100.00) into a City administered trust to assist with future HOA fees for each affected unit.

The Affordable Sales Price for the low-income buyers shall not exceed affordable housing cost, as defined in Sec. 50052.5(b) (2) of California Health and Safety Code. Section 50052.5(h) of the California Health and Safety Code provides that an appropriate household size in terms of determining purchase prices, is one more person than the number of bedrooms. This means that the pricing for a three (3) bedroom unit will be based on a household of four (4), regardless of the actual size of the household purchasing the unit. The pricing for a four (4) bedroom unit will be based on a household of five (5) regardless of the actual size of the household purchasing the unit. For example, the monthly "affordable housing cost" for a three (3) bedroom unit would be 30% times 70% of \$86,100, the current median income for a household of four (4) in Ventura County, divided by twelve (12). The monthly "affordable housing cost" for a four (4) bedroom unit would be 30% times 70% of \$93,000, the current median income for a household of

five (5) in Ventura county, divided by twelve (12). This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below (See Section 50052.5(c) of the Health and Safety Code). The Affordable Sales Price for a low income household would be \$170,850 for a three bedroom unit and \$185,350 for a four bedroom unit under current market conditions, based upon the following assumptions:

Low Income Buyer			
Item	Detail	Amount	
		4 Bedroom	3 Bedroom
Affordable Sales Price		\$185,350	\$170,850
Down Payment	5% of Affordable Sales Price	\$9,268	\$8,543
Loan Amount	Affordable Sales Price less down payment	\$176,082	\$162,308
Interest Rate	6.25%		
Property Tax	1.25% of Initial Purchase Price	\$193/mo	\$178/mo
LMD		\$18/mo	\$18/mo
HOA		\$100/mo	\$100/mo.
Fire Insurance		\$20/mo	\$20/mo.
Maintenance		\$20/mo	\$20/mo.
Utilities		\$214	\$186/mo.

The assumptions associated with the above purchase price figures for low income households include a 5% down payment, based on Affordable Sales Price of \$170,850 for a three (3) bedroom unit and \$185,350 for a four (4) bedroom unit, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$20 per month, and utilities of \$186 per month for a three (3) bedroom unit and \$214 per month for a four (4) bedroom unit. Utilities are adjusted based on unit size.

Developer acknowledges that changes in market conditions may result in changes to the Affordable Sales Price, down payment amounts, mortgage interest rates, and other factors for both low income and very low income buyers. Furthermore, if "affordable housing cost", as

defined in Section 50052.5 of California Health and Safety Code, should change in the future, the above guidelines will be modified. The Affordable Housing Purchase and Sale Agreement negotiated pursuant to this Agreement shall address this potential change.

In the event the City, at its sole discretion purchases one or more of the units from Developer in lieu of a qualified buyer, the Affordable Sales Price shall be based on a household size appropriate to the size of the unit being purchased by the City, consistent with all requirements of this Subsection 6.9. Developer agrees that, pursuant to City's rights under this Agreement and/or the Affordable Housing Agreement and prior to and upon the sale of a required unit to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City may at its sole discretion take any actions and impose any conditions on said sale or subsequent sale of the unit to ensure ongoing affordability to low and very low income households and related matters. After the sale of a housing unit by Developer to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City, not Developer, shall have sole responsibility for approving any subsequent sale of that housing unit.

Developer shall pay closing costs for each affordable unit, not to exceed six thousand five hundred eighty-four dollars (\$6,584.00). Beginning July 1, 2011, and on July 1st for each of fifteen subsequent years, the maximum \$6,584.00 to be paid for closing costs shall be increased annually by any percentage increase in the Consumer Price Index (CPI) for All Urban Consumers for Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the closing costs for each affordable unit shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. The referenced Developer funded closing costs shall be for the benefit of qualified buyers (or City in lieu of qualified buyers as determined by City at its sole discretion for one or more of the required units) in their acquisition of a unit from Developer not Developer's acquisition of a unit from one or more third parties. The Developer's escrow cost shall not exceed the then applicable maximum amount per unit regardless of the number of escrows that may be opened on a specific unit.

In addition, in lieu of constructing any Very Low Income Affordable Housing Units on site, for each of the residential units, Developer shall

pay to the City an In-Lieu Fee which shall be used by the City at its sole discretion for the purpose of providing housing affordable to very-low, low, or moderate income households. The In-Lieu Fee in the amount of Four Thousand Five hundred and Eight Dollars (\$4,508.00) shall be paid prior to issuance of the building permit for each dwelling unit in the Project. Commencing on July 1, 2011, and annually thereafter, the In-Lieu Fee shall be adjusted by any increase in the Consumer Price Index until all In-Lieu Fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month of April over the prior month of April. In the event there is a decrease in the CPI for any annual indexing, the In-Lieu Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.10. A. Developer agrees to (i) limit its total reimbursement from the proceeds of Bonds of CFD 2004-01 to \$27,000,000.00 (ii) any funds in the Project Improvement Fund in excess of the amount required to fund such total reimbursement, less any CFD 2004-01 consultant costs associated with the redemption of Bonds and adding residential units approved in the Project Entitlements to CFD 2004-01, shall be applied to redeem a portion of the Bonds, consistent with applicable provisions of State and Federal laws and regulations. As a result of such redemption, the Special Taxes for Facilities shall be decreased in accordance with the Rate and Method (defined below). Developer agrees that no additional public improvements shall be eligible for reimbursement from CFD 2004-01 resulting from development of this property.
- B. To the extent permitted by applicable law, Developer agrees to initiate action to include the Property (except residential units designated to be sold to low income buyers pursuant to Section 6.9 of this Agreement) in CFD 2004-01 for purposes of levying the Special Tax for Facilities and the Special Tax for Services described in the First Amended Rate and Method of Apportionment as adopted by Resolution No. 2010-_____(the "Rate and Method"), which amends the original Rate and Method of Apportionment attached as Exhibit "B" to City Council Resolution No. 2004-2383.
- 6.11. Developer agrees to pay to City the Transportation System Management Fee (TSM Fee) for each residential unit and institutional use prior to the issuance of a building permit for each residential unit or

institutional use. The TSM fee shall be One Thousand Seven Hundred and Nine Dollars (\$1,709.00) for each residential unit and Twenty-Eight Cents (\$0.28) per gross square foot of institutional building space. Commencing on July 1, 2011, and annually thereafter the TSM Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of April over the prior month of April. In the event there is a decrease in the CPI for any annual indexing, the fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.12. Developer hereby waives any right that it may have under California Government Code Section 65915 et seq., or any successor thereto, or any other provision of Federal, State, or City laws or regulations for application or use of any density bonus that would increase the number of dwelling units approved to be constructed on the Property.
- 6.13. Developer agrees to cast affirmative ballots for the formation of one or more assessment districts and levying of assessments, for the maintenance of parkway and median landscaping, street lighting, including but not limited to all water and electricity costs, and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action. Prior to recordation of the first final map for the Property, if required by City at its sole discretion, Developer shall also form one or more property owner associations to assume ownership and maintenance of open space land, trails, storm water detention and/or debris basins and related drainage facilities, landscaping, and other amenities, and to comply with the National Pollutant Discharge Elimination System (NPDES) requirements of the Project. The obligation of said property owner associations shall be more specifically defined in the conditions of approval of Tract 5860 and RPD 2009-02.

- 6.14. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Library Facilities Fees, Police Facilities Fees, Fire Facilities Fees, Art in Public Places Fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.
- 6.15. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee for each residential unit and institutional use prior to the issuance of a building permit for each residential unit or institutional use. The AOC fee shall be the dollar amount in effect at the time of issuance of the building permit.
- 6.16. Developer agrees that any fees and payments pursuant to this Agreement shall be made without reservation, and Developer expressly waives the right to payment of any such fees under protest pursuant to California Government Code Section 66020 and statutes amendatory or supplementary thereto. Developer further agrees that the fees it has agreed to pay pursuant to Subsections 6.3, 6.5, 6.9, 6.17 and 6.22 of this Agreement are not public improvement fees collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto.
- 6.17. Developer agrees to comply with Section 15.40.150 of the Moorpark Municipal Code and any provision amendatory or supplementary thereto for annual review of this Agreement and further agrees that the annual review shall include evaluation of its compliance with the MMP of the Final EIR.
- 6.18. Developer agrees that any election to acquire property by eminent domain shall be at City's sole discretion, and only after compliance with all legally required procedures including but not limited to a hearing on a proposed resolution of necessity.
- 6.19. On the operative date of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and the MMP of the Final EIR.

- 6.20. In the event any of the “referenced Index” or “CPI” referred to in any portion of Section 6 above, are discontinued or revised, such successor index with which the “CPI” and or “referenced Index” are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the “CPI” and “referenced Index” had not been discontinued or revised.
- 6.21. Prior to the issuance of the building permit for the one-hundredth (100th) residential unit, Developer shall either extend and pave Ridgecrest Drive to Alternate SR-23 or pay the City for the cost of the improvements at the sole discretion of the City. The improvements shall be to the satisfaction of the Public Works Director/City Engineer and Community Development Director and shall consist of concrete curb and gutter, full pavement, concrete sidewalk on the south side of Ridgecrest Drive consistent with the existing improvements on the south side of Ridgecrest Drive.
- 6.22. Developer agrees, effective July 1, 2011, the One Hundred Fifty Thousand Dollar (\$150,000.00) payment contained in Section 6.30 of the Development Agreement of Ordinance No. 263 to fund the maintenance of the trail system and the Three Hundred Fifty Thousand Dollar (\$350,000.00) payment contained in Section 6.9 of the Development Agreement of Ordinance No. 263 to fund the replacement of park amenities shall be increased in the same manner as the CPI increase provided for in Section 6.6 of the Development Agreement of Ordinance No. 263. These fees are to be paid only once to meet the requirements of both the Development Agreement under Ordinance No. 263 and this Development Agreement.
- 6.23. Developer agrees to provide additional improvements to the Elk Run Loop public right-of-way between Ridgecrest Drive and Grottoes Way in the form of a raised landscaped median street section to the satisfaction of the Public Works Director/City Engineer and Community Development Director.
- 6.24. Prior to the issuance of the first building permit for a residential unit, Developer agrees to provide a plan for City review and approval at City’s sole discretion, for improvements that would be completed immediately, should ongoing construction of residential units be suspended at any time and for any reason after the first residential unit is occupied. Improvements to be addressed in the plan shall include, but not be limited to, the trail identified in Section 6.22, the Elk Run Loop improvements identified in Section 6.25, the private recreation facility approved as part of RPD 2009-02 and Tract 5860, internal private streets, and the maintenance of undeveloped lots. Developer

further agrees to provide surety to the City in an amount and form acceptable to the City Manager, City Attorney, and Public Works Director/City Engineer to ensure completion of all improvements identified in the plan.

- 6.25. Developer agrees to withdraw any legal action against City pertaining to the School Site and CFD 2004-01 within one hundred twenty (120) calendar days following the later of (i) the effective date of this Agreement, or (ii) the effective date of all of the project approvals if no legal action or referendum petition has been filed regarding the approval of this Agreement. Developer also agrees to withdraw any legal action against Moorpark Unified School District pertaining to the School Site within one hundred twenty (120) calendar days following the later of (i) the effective date of this Agreement, or (ii) the effective date of all of the project approvals if no legal action or referendum petition has been filed regarding the approval of this Agreement.
- 6.26. Developer assumes all risk, liabilities and costs including submission of revised plans, or removal, or repair or reconstruction of any improvement, for any model homes, or grading, or other improvements prior to City Council approval of a final map for Tract 5860.

7. City Agreements.

- 7.1. City shall commit reasonable time and resources of City staff to work with Developer on the expedited and parallel processing of applications for Subsequent Approvals for the Project area and shall use overtime and independent contractors whenever possible. Developer shall assume any risk related to, and shall pay the additional costs incurred by City for, the expedited and parallel processing.
- 7.2. If requested in writing by Developer and limited to City's legal authority, City at its sole discretion shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer including any land which is outside City's legal boundaries. The process shall generally follow Government Code Section 66462.5 et seq. and shall include the obligation of Developer to enter into an agreement with City, guaranteed by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs.

- 7.3. The City Manager is authorized to sign an early grading agreement on behalf of City to allow rough grading of the Project prior to City Council approval of a final subdivision map. Said early grading agreement shall be consistent with the approved conditions of Specific Plan 95-2 Amendment 1, Tract 5860 and RPD 2009-02 and contingent on City Engineer and Community Development Director acceptance of a Performance Bond in a form and amount satisfactory to them to guarantee implementation of the erosion control plan and completion of the rough grading and construction of on-site and off-site improvements. In the case of failure to comply with the terms and conditions of the early grading agreement, the City Council may by resolution declare the surety forfeited.
- 7.4. City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the same property so long as said entitlements are deemed complete.
- 7.5. City agrees to issue building permits for model homes for which an Administrative Permit has been approved and that meet all applicable Building Code requirements prior to the recordation of a Final Map, so long as Developer has executed an agreement in a form approved by the City Attorney and City Manager absolving City of any responsibilities, liabilities and costs for construction of the model homes. No final building permits will be issued by the City to allow for residential occupancy of the model homes unless all applicable conditions for residential occupancy are met.
- 7.6. City agrees that the Park Fee required under subsection 6.6 of this Agreement combined with the trail improvements and dedication required under Subsection 6.7 of this Agreement meet Developer's obligation for park land dedication provisions of state law and City codes.
- 7.7. The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Property required herein for the duration such units are required to be maintained as affordable consistent with the provisions of Subsection 6.9 of this Agreement and the Purchase and Sale Agreement.
- 7.8. City shall facilitate the reimbursement to Developer of any costs incurred by Developer that may be subject to partial reimbursement from other developers as a condition of approval of a tract map development permit or development agreement with one or more other developers.

- 7.9. Upon Completion of annexation of the Property into CFD 2004-01, City agrees that funds in the Project Improvement Fund may be disbursed to fund City Fees applicable to such residential units in accordance with the Funding Agreement, upon Developer's submittal of one or more Payment Requests, and Developer may receive a total reimbursement from the Project Improvement Fund in an amount of \$27,000,000.00, inclusive of any disbursements for such City fees, consistent with subsection 6.10.A.
8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City.
9. Demonstration of Good Faith Compliance. In order to ascertain compliance by Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of Developer hereunder or render this Agreement invalid or void. At the same time as the referenced annual review, City shall also review Developer's compliance with the Final EIR and Mitigation and Monitoring Program.
10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives written notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.

11. Default Provisions.

- 11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:
- (a) practices, or attempts to practice, any fraud or deceit upon City; or willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Developer may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Developer; or
 - (b) fails to make any payments required under this Agreement; or
 - (c) materially breaches any of the provisions of the Agreement.
- 11.2. Default by City. City shall be deemed in breach of this Agreement if it materially breaches any of the provisions of the Agreement.
- 11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed given on the date that it is personally delivered or on the date that it is deposited in the United States mail, in accordance with Section 20 hereof.
- 11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided pursuant to Subsection 11.3 herein.

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

The remedies for breach of the Agreement by Developer shall be injunctive relief and/or specific performance, including, in the case of a failure to pay a fee required hereunder, to compel such payment. In addition, if the breach is of Subsections 6.9, 6.10, 6.12, 6.13, 6.14, 6.16, 6.17, 6.19, 6.21, 6.23, 6.24, 6.25 and 6.26 of this Agreement, City shall have the right to withhold the issuance of building permits to Developer throughout the Project from the date that the notice of violation was given pursuant to Subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

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

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

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

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

13. Estoppel Certificate. At any time and from time to time, Developer may deliver written notice to City and City may deliver written notice to Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties,

(ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.

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

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

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

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

Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement, or any provision thereof, or any Project Approval or Subsequent Approval or modifications thereto, or any other subsequent entitlements for the project and including any related environmental approval.

17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.
19. Term. This Agreement shall remain in full force and effect for a term of ten (10) years commencing on its operative date or until the close of escrow on the initial sale of the last Affordable Housing Unit required by Subsection 6.9, whichever occurs last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein. Upon notice in accordance with Subsection 20 below the Developer may notify City at least one hundred eighty (180) days in advance of the term of this Agreement that an additional term is necessary for the completion of the Project. City may, at its sole and unfettered discretion, extend the agreement for a term of not less than one (1) year and no more than ten (10) years. Said extension of the term of this Agreement may include the addition of any new fees which may be in effect at the time of the extension request.

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

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

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "B" attached hereto and incorporated herein. Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.
21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contain the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein. Where there is a conflict between this Agreement and the Development Agreement adopted by Ordinance No. 263 for the development of the Property, this Agreement shall prevail. This Agreement shall not be amended, except as expressly provided herein.

22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.
23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.
26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect.
27. Cooperation Between City and Developer. City and Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.
28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail. Should any provision of the Implementation Plan be found to be in conflict with any provision of this Agreement, the provisions of the Implementation Plan shall prevail.
29. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.

30. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.
31. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.
32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

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

CITY OF MOORPARK

Janice S. Parvin
Mayor

OWNER/DEVELOPER

PARDEE HOMES, a California corporation

By: _____
Amy L. Glad
Senior Vice President

By: _____
James C. Bizzelle, III
Vice President, Community Development

ALL SIGNATURES MUST BE NOTARIZED

EXHIBIT A
LEGAL DESCRIPTION

EXHIBIT "B"

ADDRESSES OF PARTIES

To City:

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

To Developer:

Pardee Homes
James C. Bizzelle, III
Vice President, Community Development
10880 Wilshire Boulevard, Suite 1900
Los Angeles, CA 90024

RESOLUTION NO. 2010-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING RESIDENTIAL PLANNED DEVELOPMENT NO. 2009-02, A REQUEST TO CONSTRUCT 133 DETACHED SINGLE-FAMILY HOMES AND A PRIVATE RECREATIONAL FACILITY; AND TENTATIVE TRACT MAP NO. 5860, A REQUEST TO SUBDIVIDE THE 21.8 ACRE PROPERTY INTO 133 RESIDENTIAL LOTS WITH PRIVATE STREETS LOCATED AT THE SOUTHEAST CORNER OF ELK RUN LOOP AND RIDGECREST DRIVE, ON THE APPLICATION OF PARDEE HOMES

WHEREAS, at a duly noticed public hearing on June 15, 2010, the Planning Commission adopted Resolution No. PC 2010-555, recommending approval to the City Council of Residential Planned Development No. 2009-02, a Request to Construct 133 Detached Single-Family Homes and a Private Recreational Facility and Tentative Tract Map No. 5860, a Request to Subdivide the 21.8 Acre Property Into 133 Residential Lots with Private Streets, located at Southeast Corner of Elk Run Loop and Ridgcrest Drive on the application of Pardee Homes; and

WHEREAS, at a duly noticed public hearing held on July 7, 2010, the City Council considered the agenda report and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal; and on July 7, 2010 reached a decision on this matter; and

WHEREAS, the City Council, prior to making its decision on this project, has considered the Final EIR (SCH No. 96041030) prepared and certified for the Moorpark Highlands Specific Plan No. 2 project and Addendum No. 1 to this Final EIR, prepared for Amendment No. 2 to Moorpark Highlands Specific Plan No. 2 pursuant to the California Environmental Quality Act (CEQA) in accordance with Sections 15162 and 15164 of the California Code of Regulations (CEQA Guidelines). No new information or impacts that require preparation of a new or subsequent EIR have been identified as a result of the proposed amendments to the project.

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

SECTION 1. PLANNED DEVELOPMENT FINDINGS: Based upon the information set forth in the staff report, accompanying studies, and oral and written public testimony, the City Council makes the following findings in accordance with City of Moorpark, Municipal Code Section 17.44.040:

1. The proposed project site design, including structure location, size, height, setbacks, massing, scale, architectural style and colors, and landscaping is

consistent with the provisions of the City's General Plan, Specific Plan No. 2 and Zoning Ordinance, with amendments proposed by Amendment No. 2 to Specific Plan No. 2, in that the proposed project will provide for the orderly development of land identified in the City's General Plan, Specific Plan No. 2 and Zoning Ordinance as appropriate for residential development within Planning Area No. 7, to be compatible with the developed residential neighborhoods within the Moorpark Highlands, and;

2. The site design of the proposed project would not create negative impacts on or impair the utility of properties, structures or uses in the surrounding area, in that the use proposed is similar to uses existing or proposed to the north, south, east and west, and access to adjacent uses is not hindered by this project; and
3. The proposed project is compatible with existing and permitted uses in the surrounding area, in that the surrounding existing and future development includes a variety of single-family detached homes and open space throughout the Moorpark Highlands master planned community of similar densities.

SECTION 2. SUBDIVISION MAP ACT FINDINGS: Based on the information set forth in the staff report and accompanying maps and studies the City Council has determined that the Tentative Tract Map No. 5860, with imposition of the attached special and standard Conditions of Approval, meets the requirements of California Government Code Sections 66473.5, 66474, 66474.6, and 66478.1 et seq., in that:

- A. The proposed map would be consistent with the City of Moorpark General Plan and Zoning Ordinance if the Specific Plan No. 2 is amended to change the school site to Residential Planned Development with approval of Zoning Ordinance Amendment No. 2009-01 to allow for a Residential Planned Development at a density up to one (1) unit per 6.1 acres.
- B. The design and improvements of the proposed subdivision are consistent with the City of Moorpark General Plan if the Specific Plan is amended to change the school site to Residential Planned Development to allow for a density up to one (1) unit per 6.1 acres.
- C. The site is physically suitable for the type of development proposed in that the site can be engineered to allow for all required utilities to be brought to the site, adequate ingress and egress can be obtained, and the site can be provided with public and emergency services.
- D. The site is physically suitable for the proposed density of development of one (1) unit per 6.1 acres, in that all City Development standards would be met by the proposed project while preserving 2.8 acres of the project site as landscaped open space.

- E. The design of the subdivision and the proposed improvements are not likely to cause substantial environmental damage, in that all potential impacts would be mitigated through project design, conditions, or implementation of approved mitigation measures as adopted with the original final Environmental Impact Report (SCH# 96041030) for the project, as presented in the Addendum to the Final EIR for Specific Plan No. 2.
- F. The design of the subdivision and the type of improvements are not likely to cause serious public health problems, in that adequate sanitation is both feasible and required as a condition of this development.
- G. The design of the subdivision and the type of improvements will not conflict with easements acquired by the public at large, for access through, or use of the property within the proposed subdivision, in that access easements are provided into Tract 5860 and use of the public streets developed with Tract 5045 to the north and west of the site have been identified and incorporated in the design of this project.
- H. There will be no discharge of waste from the proposed subdivision into an existing community sewer system in violation of existing water quality control requirements under Water Code Section 13000 et seq.
- I. The proposed subdivision does not contain or front upon any public waterway, river, stream, coastline, shoreline, lake, or reservoir, in that it is located on a hilly site at elevations between 785 and 850 feet, away from any public waterways.

SECTION 3. CITY COUNCIL APPROVAL: The City Council hereby approves Residential Planned Development No. 2009-02 and Tentative Tract Map No. 5860, subject to the special and standard Conditions of Approval for Residential Planned Development No. 2009-02 and Tentative Tract Map No. 5860 included in Exhibit A (Special and Standard Conditions of Approval), attached hereto and incorporated herein by reference.

SECTION 4. 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 7th day of July, 2010.

Janice Parvin, Mayor

ATTEST:

Maureen Benson, Assistant City Clerk

Exhibit A – Standard and Special Conditions of Approval

EXHIBIT A

STANDARD AND SPECIAL CONDITIONS OF APPROVAL FOR RESIDENTIAL PLANNED DEVELOPMENT PERMIT NO. 2009-02 AND TRACT NO. 5860

STANDARD CONDITIONS OF APPROVAL

The applicant shall comply with Standard Conditions of Approval for Planned Development Permits as adopted by City Council Resolution No. 2009-2799 (Exhibit A), except as modified by the following Special Conditions of Approval. In the event of conflict between a Standard and Special Condition of Approval, the Special Condition shall apply.

SPECIAL CONDITIONS

1. Prior to the issuance of the first building permit for a residential unit within Tract 5860, a master plotting plan must demonstrate that for house floor plans 2, 3 and 4, there are no less than 20% or no more than 40% of any one of the floor plan, to the satisfaction of the Community Development Director.
2. Prior to the issuance of the first building permit for a residential unit within Tract 5860, a master plotting plan must demonstrate that at least three architectural styles, (i.e. Early California, Craftsman, French and Italian) must be provided per floor plan with no less than 20% nor more than 40% of any one architectural style used per floor plan, and side by side houses of the same floor plan must use different architectural styles to the satisfaction of the Community Development Director.
3. Prior to the issuance of the first building permit for a residential unit within Tract 5860, final colors and materials must be reviewed and approved to include a minimum of three color schemes per architectural style, consistent with proposed design guidelines, to the satisfaction of the Community Development Director.
4. Prior to the issuance of the first building permit for a residential unit within Tract 5860, a master plotting plan must demonstrate that no adjacent unites, (side by side) will be allowed to use the same colors and materials palette to the satisfaction of the Community Development Director.
5. Prior to the issuance of the first building permit for a residential unit within Tract 5860, the applicant shall submit garage door specifications, and the garage door designs must include paint treatment and be decorative sectional roll up garage doors, and must including garage window glazing, and the doors must be compatible with the architectural style of each home including the affordable residences, to the satisfaction of the Community Development Director.
6. Prior to the issuance of the first building permit for a residential unit within Tract 5860, the applicant shall submit construction plan details for plan check and the trim

on the ground floor levels of the homes must be constructed of durable materials, (i.e. wood window trim or ¼” minimum cementous stucco coat over foam), to the satisfaction of the Community Development Director.

7. Prior to the issuance of the first building permit for a residential unit within Tract 5860, the secondary access must be designed with radius curb returns on both ends of the proposed second access, (residential driveway aprons are prohibited); the grade on the second access must not exceed a six percent change in elevation within any ten-foot section; the final paving plan within the street section of the access must be decorative, including but not limited to the use of colored stamped concrete, paving stones or a combination thereof; and a signing and striping plan must be submitted showing no left turns into and out of the secondary access, to the satisfaction of the Public Works Director/City Engineer and Community Development Director.
8. Prior to the issuance of the first building permit for a residential unit within Tract 5860, landscaping plans for the areas adjacent to the secondary access must include enhanced landscaping with specimen species of trees and shrubs, and must be submitted to the satisfaction of the Landscape / Parks Maintenance Superintendent.
9. Prior to final occupancy of any homes within 200' of an “L” intersection with a modified knuckle, in order to improve the function of the modified knuckle design and to provide adequate width and curb radii to meet emergency vehicle requirements with the modified design, the inside curb cut through the radius, and an extra 15 feet into and out of the curb return, must be painted red by the applicant to prohibit parking around curves, and this design must be shown on the private street improvement plans to the satisfaction of the Public Works Director/City Engineer and Community Development Director.
10. Prior to the issuance of the first building permit for a residential unit within Tract 5860, the applicant shall provide a minimum of three standard plans demonstrating front yard decorative hardscape features and driveways, including but not limited to the use of decorative pavers, and colored and stamped concrete, to be used for the construction of the front yard hardscape of the residential units to the satisfaction of the Community Development Director.
11. Prior to the issuance of occupancy for any residential unit within Tract 5860, the applicant shall install front yard landscaping for each residential property according to a front yard landscaping and irrigation plan which must be submitted to the satisfaction of the Landscape / Parks Maintenance Superintendent and the Community Development Director.
12. Prior to the issuance of the first building permit for a residential unit within Tract 5860, the applicant shall include in the HOA maintenance budget and prepare CC&Rs to address the following:

- a. the HOA maintenance of the residential front yards, to be included in the CC&Rs;
 - b. the HOA maintenance of the painted red curbs on private streets within Tract 5860, including a requirement that the red curbs be painted no less than annually by the HOA, to be included in the CC&Rs;
 - c. a disclosure to be included in the CC&Rs to notify any potential buyer of any property within Tract 5860 adjacent to the public park, disclosing to the potential buyer information that the park is publicly open and accessible until 10:00PM and includes sport court lighting available until 10:00PM;
 - d. a disclosure to be included in the CC&Rs to notify any potential buyer of any property adjacent to multi use trail easements within Tract 5860, to disclose that the multi-use trail is publicly open and accessible;
 - e. a disclosure to be included in the CC&Rs to notify any potential buyer of any property within Tract 5860, disclosing to the potential buyer information of the planned construction of roadway improvements on the State Route 23 alternate route. The CC&Rs shall disclose potential impacts associated with these improvements, including, but not limited to noise and light impacts. An acknowledgement that planned construction of future roadway improvements on the SR 23 alternate route shall be signed by any potential buyer of any property within Tract 5860, and the original signed notices and completed acknowledgements shall be provided to the Community Development Department prior to the issuance of a zoning clearance for occupancy of each unit, and copies shall also be kept on file by the developer.
 - f. the language of the CC&Rs and disclosures must be submitted to the City Attorney for review, with an initial \$2,000.00 deposit to cover review costs;
 - g. and the language of the CC&Rs must be determined acceptable by the Community Development Director and the City Attorney and recorded with the Ventura County Recorder's Office.
13. Prior to recordation of Final Map, the applicant shall create sub-landscape maintenance district for annexation into the existing Moorpark Highlands Landscaping Maintenance District, incorporating all landscape areas of Tract 5860, that are visible from public rights of way, including but not limited to the frontages of Elk Run Loop and Ridgecrest drive, including the slopes adjacent to Ridgecrest Drive, and the easement for the Multi-use trail and landscaping, providing the connection to the Mammoth Highlands park and areas visible from SR-23 alternate route, to the satisfaction of the Public Works Director/City Engineer, Parks and Recreation Director, and Community Development Director.
14. Prior to issuance of the building permit for the one-hundredth (100th) residential unit, the applicant shall provide additional roadway improvements to the Elk Run Loop public right-of-way between Ridgecrest Drive and Grottoes Way in the form of a raised landscaped median to the satisfaction of the Public Works Director/City Engineer and Community Development Director.

15. Prior to the issuance of the first building permit for a residential unit within Tract 5860, a decorative wall must be installed along the south property line, to be a minimum of 6.5' in height due to lots located adjacent to public park location, and the wall plans must be submitted for review, to the satisfaction of the Community Development Director.
16. Prior to the issuance of the first building permit for a residential unit within Tract 5860, a decorative fence plan for the private recreation facility must be submitted for review, to the satisfaction of the Community Development Director.
17. Prior to issuance of the building permit for the one-hundredth (100th) residential unit, the applicant must prepare a sound wall plan for the construction of a sound wall along the right-of-way for SR-23 alternate route, consistent with review and approval of an acoustical assessment, demonstrating the location, decorative materials and height of the sound wall to the satisfaction of the Public Works Director/City Engineer and Community Development Director and the developer shall provide a deposit to the City for the estimated cost of the construction of this soundwall in lieu of completing the construction before the SR-23 alternate route is completed.
18. Prior to the issuance of the first building permit for a residential unit, that applicant shall submit improvement plans providing for the replacement of Specific Plan required Class I Bike Path on the northern side of Planning Area No. 7, with an 8-foot Class II Bike Path on the northern and southern sides of Ridgecrest Drive and along the western frontage of the project site on Elk Run Loop, with design specifications to the satisfaction of the Public Works Director/City Engineer, Parks and Recreation Director, and Community Development Director.
19. Prior to the issuance of the building permit for the 100th housing unit, the applicant shall improve and dedicate to the City a 12 foot wide multipurpose trail within a minimum twenty-five foot wide easement from Ridgecrest Drive to the Mammoth Highlands Park. The trail improvements shall consist of trail fencing, trail bollard lighting, decomposed granite trail surface, and landscaping on both the east and west sides of the trail consisting of 24-inch box trees and 5-gallon shrubs, along with trees screening the easterly fence of Moorpark Highlands Park. The plan for the multi use trail must comply with Federal, State and Local accessibility codes and ordinances and the design of the trail connections shall be to the satisfaction of the Public Works Director/City Engineer, Parks and Recreation Director, and Community Development Director.

- End -