

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** David A. Bobardt, Community Development Director 

**DATE:** June 22, 2010 (CC Meeting of 7/7/2010)

**SUBJECT:** Consider the Amendment of Agreement for Construction of Subdivision Improvements Related to Condition No. 48 of Tentative Tract Map No. 5045 (Pardee Homes)

**BACKGROUND/DISCUSSION**

On August 2, 2000, the City Council approved Tentative Tract Map No. 5045 for the subdivision of the Moorpark Highlands Specific Plan into residential home sites, a condominium development site, public and private streets, and land reserved for a school, park, and habitat conservation area. Condition No. CDD-48 (Attachment 1) required the applicant to submit engineered plans for the grading of future SR-23 bypass and SR-118 bypass (now known as North Hills Parkway) roads within the project boundaries and grade the improvements or pay for the grading at the discretion of City Council, once the engineered plans are approved. A subdivision improvement agreement (Attachment 2) between the City and Pardee Homes was executed on May 14, 2004 and amended on July 1, 2004 to address the implementation of this condition.

The applicant is now seeking a second amendment to this agreement (Attachment 3) to clarify the terms of the agreement with the understanding that the applicant will be grading the roadways and will not be paying in-lieu fees. Staff has reviewed the proposed amendment and finds it to be consistent with the original Condition of Approval. This amendment also clarifies the extent of the improvements that the developer would be responsible for as part of the grading project.

**STAFF RECOMMENDATION**

Approve Amendment No. 2 to the Agreement for Construction of Subdivision Improvements Related to Condition No. 48 of Tentative Tract Map No. 5045, subject to final language approval by the City Manager and City Attorney.

Honorable City Council  
July 7, 2010  
Page 2

Attachments:

1. Condition No. CDD-48
2. Agreement for the Construction of Subdivision Improvements (with Amendment No. 1)
3. Proposed Amendment No. 2 to Agreement

**Resolution No. 2000-1767  
Tentative Tract Map No. 5045 (Moorpark Highlands)  
Condition No. CDD-48**

CDD-48 SR-23/SR-118 Requirements: Applicant shall at his sole cost prepare engineered plans for the vertical and horizontal alignment and grading of the SR-23 and SR-118 arterial bypass reservations shown upon the Tentative Map and Specific Plan No. 2, consistent with CALTRANS standards for public highways. Upon approval of the engineered plans developer shall grade the alignments to accommodate a minimum two lane arterial roadway consisting of one 14 foot travel lane and an 8 foot shoulder in each direction and with a 20 foot median, for the full length of each of the alignments within the Tentative Tract. If approved by action of the City Council, an in-lieu fee as determined by the City Manager may be deposited by the developer to pay for the grading of the rights-of-way, as described, thereby relieving the applicant of the responsibility to grade the areas identified.

**CC ATTACHMENT 1**

**AGREEMENT FOR CONSTRUCTION OF SUBDIVISION  
IMPROVEMENTS RELATED TO CONDITION NO. 48  
OF TENTATIVE TRACT MAP NO. 5045**

This Agreement is entered into this 14<sup>th</sup> day of May, 2004, by and between PARDEE HOMES, a California corporation and Morrison-Fountainwood-Agoura, a partnership with General Partners, hereinafter referred to as "Developer/Owner", and the City Of Moorpark, California, a municipal corporation, hereinafter referred to as "City":

**RECITALS**

WHEREAS, Developer/Owner desires the City's approval of a final subdivision map for Tract No. 5045 ("Final Map") and commonly referred to as Moorpark Highlands ("Subject Tract"); and

WHEREAS, City desires that, Developer/Owner satisfy the conditions of approval for Tentative Tract No. 5045 prior to Final Map approval, or, in the event the Final Map is approved, Developer/Owner be contractually obligated thereafter, consistent with Government Code section 66462, to construct certain improvements in and about the Subject Tract that are required by conditions of approval of the tentative subdivision map for Tentative Tract No. 5045 ("Tentative Map"); and

WHEREAS, CDD Condition of Approval number 48 for the Tentative Map provides that Developer/Owner will either construct certain improvements, or make an in-lieu payment (In-lieu Payment) for such improvements (at the discretion of the City);

WHEREAS, City has elected that Developer/Owner shall construct the improvements required by the referenced CDD Condition of Approval number 48, and City and Developer/Owner desire to clarify the terms under which such construction activity shall occur;

WHEREAS, The City has found and determined, as the lead agency, that an Environmental Impact Report (EIR) will be prepared pursuant to the provisions of the California Environmental Quality Act (CEQA) before the grading and improvement of the future North Hills Parkway and SR-23 extensions (Project), including segments outside the Subject Tract, are commenced.

NOW, THEREFORE, in anticipation of City's approval of the Final Map prior to construction of the improvements required by the approved Tentative Map, the parties hereto agree as follows:

1. Developer/Owner represents that Developer/Owner is the owner of approximately 455 acres of land located in the City to be developed pursuant to Specific Plan No. 95-2, the Tentative Map, and for which a Development Agreement by and between the City and Developer/Owner has been adopted.

2. Developer/Owner agrees to comply with CDD Condition of Approval number 48 which states:

**CC ATTACHMENT 2**

“Applicant shall at his sole cost prepare engineered plans for the vertical and horizontal alignment and grading of the SR-23 and SR-118 arterial bypass reservations shown upon the Tentative Map and Specific Plan No. 2, consistent with the CALTRANS standards for public highways. Upon approval of the engineered plans developer shall grade the alignments to accommodate a minimum two lane arterial roadway consisting of one 14 foot travel land and an 8 foot shoulder in each direction and with a 20 foot median, for the full length of each of the alignments within the Tentative Tract. If approved by action of the City Council, an in-lieu fee as determined by the City Manager may be deposited by the developer to pay for the grading of the rights-of-way, as described, thereby relieving the applicant of the responsibility to grade the areas identified.”

3. Prior to the issuance of the Early Grading Permit, the Developer/Owner shall provide surety in the amount of \$4,800,000.00 in a form acceptable to the City of Moorpark, as a guarantee for the completion of the grading, site remediation of the portions of the SR-23 and North Hills Parkway within the boundaries of the Tentative Map consistent with the city approved plans. Remediation shall include but not be limited to revegetation with native vegetation (hydroseeding and related irrigation system), and installation of stormwater control measures including, but not limited to passive and mechanical best management practices. The amount of the surety shall be increased on January 1, 2005, and annually thereafter, to reflect the change in the State Highway Bid Price Index for the twelve (12) month period that is reported in the latest issue of the Engineering News Record that is available on December 31 of the preceding year. In the event there is a decrease in the referenced index for the annual indexing, the surety shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. Changes or refinements in design which result in a lower estimated cost for the improvements, as determined by the City Engineer, shall result in a decrease of the required surety to reflect the new estimate. Such surety shall be maintained until such time as the grading to be guaranteed is completed and accepted by the City of Moorpark, or until the City determines after a period of ninety (90) days of grading inactivity that it is necessary to utilize the surety to complete the work.

4. Developer/Owner and City agree that in order to ensure timely approval of plans, the following plan check schedule shall be observed:

- |                         |   |
|-------------------------|---|
| First Plan Check:       | Submittal to the City within ninety (90) calendar days of the execution of this agreement.                      |
|                         | Plan Check comments to be returned to Developer/Owner's Engineer within thirty (30) calendar days of submittal. |
| Subsequent Plan Checks: | Re-submittal to the City within twenty (20) calendar days of return.  |

Plan Check comments to be returned to Developer/Owner's Engineer within thirty (30) calendar days of re-submittal.

Should the Developer/Owner fail to submit an approvable grading plan at the fourth (4<sup>th</sup>) Plan Check, Developer/Owner agrees to pay to the City \$1,000.00 per day beginning on the day the plan is determined to be un-approvable, and shall continue until plans are approved by the City.

5. The Developer/Owner shall commence grading on the portion of the Project within the Tentative Map within thirty (30) calendar days from a written request from the Community Development Director. Such request shall not occur until after the EIR has been certified by the City Council, and thirty (30) days following the filing of a Notice of Determination on the environmental document for the Project. In the event that substantial delays occur in the preparation and consideration of the EIR, or in the event that the EIR is not certified by the City, or if the Certified EIR is challenged, consistent with applicable law, then City may, at its sole discretion, require the payment of the In-lieu Fee. The In-lieu Fee shall be \$4,800,000.00, but may be increased contingent on changes required by Caltrans which were not part of the original concept that resulted in the \$4,800,000.00 estimate, grading in excess of amount originally anticipated in the original concept resulting from plan refinement, actual soils conditions, including but not limited to the discovery of a landfill or previously unknown geologic conditions, or any items resulting from EIR preparation. The referenced In-lieu Fee shall be increased on January 1, 2005, and annually thereafter, to reflect the change in the State Highway Bid Price Index for the twelve (12) month period that is reported in the latest issue of the Engineering News Record that is available on December 31 of the preceding year. In the event there is a decrease in the referenced index for the annual indexing, the amount shall remain at its then current level until such time as the next subsequent annual indexing which results in an increase. Changes or refinements in design which result in a lower estimated cost for the improvements, as determined by the City Engineer, shall result in a decrease of the required In-lieu Fee to reflect the new estimate. Developer/Owner acknowledges that City is not obligated to certify the EIR, and that the decision to certify the EIR will be based upon the City Council's independent judgment.

6. Developer/Owner shall guarantee the replacement and repair of the Project for one (1) year after they are accepted as complete by the City Council of City. This guarantee shall not include routine maintenance or ordinary wear and tear. The securities required pursuant to Paragraph 3 hereof shall not be exonerated until a security guaranteeing the requirements of this Paragraph, in the amount of at least ten percent (10%) of the sum shown in Paragraph 3 hereof, is accepted by the City Council of City.

7. Developer/Owner shall revegetate and manage the areas shown as Planning Areas 12 and 13 of the Moorpark Highlands Specific Plan until such time as the City accepts fee simple title to these Planning Areas in fulfillment of CDD condition of approval number 45 of the Tentative Map, and upon City's written request

shall grant to the City a conservation easement in a form acceptable to the City consistent with the terms of the Development Agreement for the Moorpark Highlands Specific Plan. Developer/Owner shall also revegetate with native vegetation (hydroseed and related irrigation system) to the satisfaction of City, and maintain the parcel described as APN: 513-0-010-225 until such time as City at its sole discretion accepts fee simple title to this parcel, or directs Owner/Developer to make it part of the Resource Conservation Area.

8. Developer/Owner shall provide to the City within thirty (30) calendar days from a written request from the City, in a form acceptable to City, the following for APN 513-0-010-225:

(a) Fee title to that portion City in its sole discretion determines necessary for rights of way and slope easements for the Los Angeles Avenue (East) Widening Project.

(b) Temporary Construction Easements on that portion City in its sole discretion determines necessary for the Los Angeles Avenue (East) Widening Project.

(c) A conservation easement for that portion not required in (a), above.

9. Developer/Owner shall indemnify, defend with counsel approved by City, and hold harmless City, and their officers, employees, servants and agents 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, or in any way connected with, the performance of this Agreement, except such damage as is caused by the sole negligence of City or any of their officers, employees, servants or agent.

10. Prior to the commencement of any work under this Agreement, Developer/Owner shall have obtained the following insurance coverage and insurance certificates reflecting coverage's, approved by City as to form, amount and carrier. Each policy shall include an endorsement naming City and its officers and employees and the City Engineer and City Attorney as additional insured. Developer/Owner shall also concurrently furnish City satisfactory evidence that each carrier will notify City in writing, at least thirty (30) days prior to any policy cancellation or coverage reduction. All insurance policies required herein shall be written on an occurrence basis.

A. General (Public) Liability not less than the following amounts:

\$1,000,000.00 bodily injury, including wrongful death – each person;  
\$5,000,000.00 bodily injury – aggregate;  
\$1,000,000.00 property damage – each occurrence;  
\$5,000,000.00 property damage – aggregate.

B. Auto (Comprehensive) Liability not less than the following amounts:

\$1,000,000.00 bodily injury, including wrongful death – each person;  
\$5,000,000.00 bodily injury – aggregate;  
\$1,000,000.00 property damage – each occurrence;  
\$5,000,000.00 property damage – aggregate.

C. Workers' Compensation Insurance as required by law.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Developer/Owner of liability in excess of such coverage, nor shall it preclude City from taking such actions against Developer/Owner as are available to it under any other provision of this Agreement or otherwise in law or at equity. Developer/Owner shall maintain the insurance required by this Paragraph until all of the surety bonds required by Paragraph 3 hereof have been released in accordance with the provisions of that Paragraph.

11. Developer/Owner agrees that any payments pursuant to this Agreement shall be made without reservation, and Developer/Owner 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.

12. Developer/Owner agrees that if that portion of the Project within the boundaries of the Tentative Map is not completed within eighteen (18) months from City authorization to proceed, that City may withhold all building permits and other ministerial and discretionary permits for Tentative Tract Map 5045, and Residential Planned Development Permit numbers 2002-03, 2002-04, 2002-05, 2004-01, 2004-02, and 2004-03, and any modifications to these entitlements, until such time as City at its sole discretion determines the Project to be complete. The City may not issue authorization to proceed until a Notice of Determination has been filed, and the thirty (30) day statute of limitations has expired, or if the EIR is challenged consistent with applicable law, until said litigation is finally adjudicated by the last court of competent jurisdiction.

13. As further consideration for this agreement, Developer/Owner agrees to pay City the amount of \$600,000.00 in two payments as follows:

- (a) July 1, 2004 - \$300,000.00
- (b) July 1, 2005 - \$300,000.00

City may use these monies for any lawful purposes at its sole and unfettered discretion.

14. City agrees to allow Developer/Owner to perform the necessary work to complete the Project so long as Developer/Owner complies with all applicable laws including, but not limited to the payment of prevailing wages for all trades used to complete the Project. Developer/Owner agrees to post bonds as surety for payment of prevailing wages as required by Labor Code 1781(c).

15. City shall not be called upon to assume any liability for the payment of any salary, wage or other compensation to any person employed by Developer/Owner performing services contemplated by this Agreement. The Developer/Owner is and shall at all times remain as to the City a wholly independent contractor. The Developer/Owner shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner employees of the City. Nothing contained in this Agreement shall be deemed, construed or represented by City or Developer/Owner to any third person to create the relationship of principal and agent, partnership, joint venture, or any other association of any kind or nature between City and Developer/Owner.

16. Developer/Owner hereby covenants not to bring any action against City to (a) attack, review, set aside, void, or otherwise annul the City processing of or action on the EIR for the Project, in whole or in part, or (b) recover any compensation or obtain any relief for any injury, damage, loss, or deprivation of any right alleged to have been sustained as a result of City's action on the EIR for the Project.

17. Developer/Owner agrees to indemnify, hold harmless and defend at its sole expense, with counsel acceptable to City, any action brought against it or City to approve the Project, related actions under CEQA, any subsequent permits to implement/construct the Project and this Agreement. Developer/Owner further agrees to reimburse City for any court costs and/or attorneys' fees which City may be required by the court to pay as a result of any such action. City may, at its sole discretion, participate in the defense of any such action at City's cost, but such participation shall not relieve Developer/Owner of its obligation under this Paragraph.

18. Each of the signatories hereby warrants and represents that he, or she, is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

19. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assign, legal representatives, parent, principals, agents, servants, employees, representatives, and all persons, firms, associations, and/or corporations connected with them, including, without limitation, their insurers, sureties and/or attorneys.

20. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief for a breach of this Agreement, or arising out of a breach of this Agreement, or contesting the validity or enforceability of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, suit or other proceeding, including any and all appeals or petitions therefrom.

21. This Agreement and the Early Grading Agreement for Tract No. 5045 are integrated documents and constitute the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, communications, representations, or warranties, whether oral or written,

by any party or any agent, officer, partner, employee, or representative of any Party. In the event of an inconsistency between this Agreement and the Early Grading Agreement, this Agreement shall prevail.

22. This Agreement may not be modified, altered, amended, or rescinded except by an instrument in writing, which is signed by all parties affected by any such modification, alteration, amendment or rescission.

23. Should any part, term or provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.

24. Each Party shall from and after the date hereof execute, acknowledge and deliver such further instruments and perform such additional acts as any other Party may reasonably request to effectuate the intent of this Agreement.

25. The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the Party so failing to perform.

26. No term or provision of this Agreement or the exhibits hereto is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

27. Developer/Owner and City each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; and (iii) this Agreement is the result of negotiations between the Parties and the advice and assistance of their respective counsel. Each of the Parties has equally participated in the drafting and preparation of this Agreement, and it is the intention of the Parties that the construction or interpretation of this Agreement shall be made without reference to the Party who drafted any portion or particular provision of this Agreement or the relative size and/or bargaining power of the Parties.

28. No waiver of any provision of this Agreement shall be deemed, or 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 executed in writing by the party making the waiver.

29. Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

CITY: CITY OF MOORPARK  
799 Moorpark Avenue  
Moorpark, CA 93021  
Attention: Steven Kueny, City Manager

With Copy to: Burke Williams & Sorensen, LLP  
611 West Sixth Street, Suite 2500  
Los Angeles, CA 90017  
Attention: Joseph M. Montes, City Attorney

DEVELOPER/OWNER:

MORRISON-FOUNTAINWOOD-AGOURA  
621 Via Alondra #607  
Camarillo, CA 93012  
Attention: Michael Greynold

PARDEE HOMES  
26650 The Old Road, Suite 110  
Valencia, CA 91381  
Attention: Jim Bizzelle

With Copy to: Hewitt & O'Neill LLP  
19900 MacArthur Boulevard, Suite 1050  
Irvine, CA 92612  
Attention: Dennis D. O'Neill

30. Either 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. Demands and other documents shall be deemed delivered upon receipt by personal service or upon deposit in the United States mail.

31. 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.

*[Signature page follows]*

DEVELOPER/OWNER

PARDEE HOMES, a California corporation

DATED: 5/14/04

By: [Signature]  
Jim Bizzelle,  
Vice President Community Development

By: [Signature]  
Barbara Bail,  
Assistant Secretary

MORRISON-FOUNTAINWOOD-AGOURA, a  
Partnership with general partners

DATED: 5/14/04

By: [Signature]  
Michael Greynold,  
General Partner

CITY

CITY OF MOORPARK, a municipal  
corporation

DATED: 5/17/04

By: [Signature]  
Steven Kueny, City Manager

DATED: 5/17/2004

ATTEST: [Signature]  
Deborah S. Traffenstedt,  
City Clerk



**AMENDMENT No. 1 TO  
SUBDIVISION IMPROVEMENT AGREEMENT  
FOR TRACT MAP No. 5045**

This Amendment ("Amendment") to Subdivision Improvement Agreement for Tract No. 5045 ("Agreement") is entered into to be effective on July   1  , 2004 by and between the City of Moorpark, a California municipal corporation ("City"), and Pardee Homes, a California corporation and Morrison-Fountainwood-Agoura, a Partnership with general partners ("Developer/Owner"), with reference to the following recitals.

**R E C I T A L S**

A. Developer/Owner represents that they are the owner of approximately 455 acres of land located in the City (the "Property") to be developed pursuant to Specific Plan No. 95-2, known as Moorpark Highlands Specific Plan, for which the Agreement by and between the City and Developer/Owner has been executed.

B. The Agreement grants the Developer/Owner certain rights and Developer/Owner agreed to certain obligations relative to Developer/Owner's intent to develop the Property with a residential subdivision approved by the City as Tentative Map No. 5045 (the "Project").

C. Under the terms of the Agreement Section 22: This Agreement may not be modified, altered, amended, or rescinded except by an instrument in writing, which is signed by all parties affected by any such modification, alteration, amendment or rescission.

D. All parties signatory to the Agreement desire to amend Section 10 of the Agreement, relative to the provision of insurance. No further changes are intended as a result of this Amendment.

NOW, THEREFORE, incorporating the recitals as part of this Amendment, the parties hereto agree as follows:

Section 10 of the Agreement shall be amended to read as follows:

10. Prior to the commencement of any work under this Agreement, Developer/Owner shall have obtained the following insurance coverage and insurance certificates reflecting coverage's, approved by City as to form, amount and carrier. Each policy shall include an endorsement naming City and its officers and employees and the City Engineer and City Attorney as additional insured. Developer/Owner shall also concurrently furnish City satisfactory evidence that each carrier will notify City in writing, at least thirty (30) days prior to any policy cancellation or coverage reduction. All insurance policies required herein shall be written on an occurrence basis.

A. General (Public) Liability not less than the following amounts:

- \$1,000,000.00 bodily injury, including wrongful death – each occurrence;
- \$5,000,000.00 bodily injury – aggregate;
- \$1,000,000.00 property damage – each occurrence;
- \$5,000,000.00 property damage – aggregate.

B. Auto (Comprehensive) Liability not less than the following amounts:

- \$1,000,000.00 bodily injury, including wrongful death – each occurrence;
- \$5,000,000.00 bodily injury – aggregate;
- \$1,000,000.00 property damage – each occurrence;
- \$5,000,000.00 property damage – aggregate.

C. Workers' Compensation Insurance as required by law.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Developer/Owner of liability in excess of such coverage, nor shall it preclude City from taking such actions against Developer/Owner as are available to it under any other provision of this Agreement or otherwise in law or at equity. Developer/Owner shall maintain the insurance required by this Paragraph until all of the surety bonds required by Paragraph 3 hereof have been released in accordance with the provisions of that Paragraph.

*[Signature page follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Subdivision Improvement Agreement for Tract 5045 on the dates set forth below.

“CITY”

CITY OF MOORPARK, a municipal corporation

Dated: 9/13, 2004

By: Steven Kueny  
Steven Kueny,  
City Manager

ATTEST:

By: Deborah S. Traffanstedt  
City Clerk



APPROVED AS TO FORM:

Burke Williams & Sorensen, LLP

Joseph M. Montes  
Joseph M. Montes, City Attorney

“DEVELOPER/OWNER”

MORRISON-FOUNTAINWOOD-  
AGOURA, a Partnership with general partners

Dated: 7/19, 2004

By: Michael Greynold  
Michael Greynold  
General Partner

PARDEE HOMES, a California corporation

Dated: 7/13, 2004

By: Jim Bizzelle  
Jim Bizzelle  
Vice President Community Development

By: Barbara Bail  
Barbara Bail  
Assistant Secretary

**SECOND AMENDMENT TO AGREEMENT FOR CONSTRUCTION OF  
SUBDIVISION IMPROVEMENTS RELATED TO CONDITION NO. 48 OF TENTATIVE  
TRACT MAP NO. 5045**

This second amendment to the Agreement for Construction of Subdivision Improvements Related to Condition No. 48 of Tentative Tract Map No. 48 (this "Second Amendment"), dated \_\_\_\_\_, 2010, is entered into between the CITY OF MOORPARK, a California municipal corporation, (the "City") and PARDEE HOMES, a California corporation, with reference to the following facts:

A. Condition No. 48 of Tentative Tract Map No. 48, as adopted by the City Council of the City of Moorpark through Resolution No. 2000-1767 reads as follows:

CDD-48 SR-23/SR-118 Requirements: Applicant shall at his sole cost prepare engineered plans for the vertical and horizontal alignment and grading of the SR-23 and SR-118 arterial bypass reservations shown upon the Tentative Map and Specific Plan No. 2, consistent with CALTRANS standards for public highways. Upon approval of the engineered plans developer shall grade the alignments to accommodate a minimum two lane arterial roadway consisting of one 14 foot travel lane and an 8 foot shoulder in each direction and with a 20 foot median, for the full length of each of the alignments within the Tentative Tract. If approved by action of the City Council, an in-lieu fee as determined by the City Manager may be deposited by the developer to pay for the grading of the rights-of-way, as described, thereby relieving the applicant of the responsibility to grade the areas identified.

B. The City, Morrison-Fountainwood-Agoura, and the Pardee Homes entered into the Agreement for Construction of Subdivision Improvements Related to Condition No. 48 of Tentative Tract Map No. 5045 in May, 2004, (the "Original Agreement") in order to allow the recordation of a final subdivision map for tract 5045 prior to the completion of improvements required as conditions of approval of the tentative map. Section 10 of this Original Agreement was amended on July 1, 2004 (the "Agreement as Amended 7/1/2004").

C. Pardee Homes is now the sole owner of the land in Tract No. 5045.

D. The City has decided that the improvements called for in CDD Condition of Approval No. 48 should be constructed by Pardee Homes rather than having Pardee Homes pay an in-lieu fee.

E. Pardee Homes is willing to commence that grading on the terms set forth in this Second Amendment.

F. The City and Pardee Homes desire to further amend the Agreement as Amended 7/1/2004 to reflect the City's decision.

THEREFORE, IN LIGHT OF THE FOREGOING FACTS, it is hereby agreed that:

**CC ATTACHMENT 3**

1. All defined terms in the Agreement as Amended 7/1/2004 shall have the same meaning in this Second Amendment except that a reference to "Developer/Owner" shall be a reference to Pardee Homes. Where the context requires it, a reference to "this Agreement" shall include the modification contained in this Second Amendment.

2. Paragraph 5 of the Agreement as Amended 7/1/2004 is amended to read:

"5. Pardee Homes shall commence grading on the portion of the Project within the Tentative Map within thirty (30) calendar days from the delivery of a written request from the Community Development Director to Pardee Homes. Such request shall not occur until all necessary State and Federal permits are obtained by the City, City Permits have been issued, and the time within which to challenge those permits has expired without any lawsuit having been filed or, if any such lawsuits have been filed, after they have been finally resolved in such a manner that Pardee Homes has the right to commence grading under the permits. Grading will be consistent with all of the requirements of Tentative Tract Map No. 5045 Condition of Approval No. CDD-48 including CALTRANS standards as stated in Section A of this Second Amendment above, and will include clearing, grubbing, remedial earthwork, mass excavation, reconstruction of any existing storm drain facilities, construction of drainage facilities and appurtenant structures such as headwalls, velocity reducers, etc. for surface runoff and engineered slopes, and landscaping and temporary irrigation of slopes for erosion control associated with creating the roadway right-of-way within the portion of the Property within the Tentative Map. Grading will also comply with all NPDES requirements applicable at the time of permit issuance, along with the City's Engineering Policies and Standards as adopted by Resolution of City Council. Final engineering plans for the grading work shall be prepared by the City and shall be in substantial conformance with the concept plan prepared by RBF, dated February 16, 2010, titled "City of Moorpark SR-23 and North Hills Parkway Earthwork Exhibit," previously reviewed and approved by the City. Grading will not include, and Pardee Homes shall not be responsible for, the import or export of dirt (the grading work will balance within the portion of the Property within the Tentative Map), the construction or installation of utility crossings, storm drain facilities for the streets (including curbs, gutters, catch basins and subterranean pipes as part of a storm drain system), paving, barricades, landscaping (except for erosion control), signage, or any other improvements required to complete the roadway paving."

3. The definition of DEVELOPER/OWNER in paragraph 29 is amended to read:

'DEVELOPER/OWNER: PARDEE HOMES  
26650 The Old Road, Suite 110  
Valencia, CA 91381  
Attention: Jim Bizzelle

With a copy to:

Cox, Castle & Nicholson LLP  
2049 century Park east, 28th Floor  
Los Angeles, CA 90067-3284  
Attention: Kenneth B. Bley”

4. Except as amended above, the Agreement as Amended 7/1/2004 remains in full force and effect.

DEVELOPER/OWNER

PARDEE HOMES, a California corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jim Bizzelle,  
Vice President Community Development

By: \_\_\_\_\_  
Barbara Bail  
Assistant Secretary

CITY

CITY OF MOORPARK, a municipal corporation

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steven Kueny, City Manager

Dated: \_\_\_\_\_

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