

ITEM 9.E.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: Steven Kueny, City Manager 

DATE: November 23, 2010 (CC Meeting of 12/1/10)

SUBJECT: Consider Purchase and Sale Agreement for Purchase of APN 519-0-210-055 and Resolution Amending the Fiscal Year 2010/2011 Budget to Appropriate \$60,000 from the Endowment Fund (2800)

BACKGROUND / DISCUSSION

For several years, one of the City Council's top priorities has been to enhance open space and greenbelts. Recently, approximately 380 acres of property owned by Bordiers Nursery south of Tierra Rejada Road was purchased out of foreclosure proceedings by the primary lender, Heartland Recovery. The property was subsequently placed in escrow by Mr. Ralph Mahan, and the City has been working with these two parties to acquire a portion of the site, specifically an approximate 80 acre parcel located west of Tierra Rejada Road (Attachment 1). This property is outside of the City limits and is within the Tierra Rejada Greenbelt. The intent of the purchase is to protect the ridgelines adjacent to the City and to control and preserve open space consistent with permitted uses.

The proposed Purchase and Sale Agreement (Attachment 2) will confirm the terms of the purchase by the City, and escrow would be opened. Since the seller is a lender and has never used the property, it is being sold in "as is" condition. Since portions of the property were used for farming, a Phase I and possibly a Phase 2 environmental investigation will be conducted. After the Agreement is effective, the City will have 45 days to investigate the property.

The purchase price is \$1,925,000.00 plus a brokerage fee of \$48,125.00. Additional costs include the environmental investigation, legal fees, typical escrow, and title insurance if the City decides to purchase an ALTA Title Insurance Policy. At this time, these collective costs are estimated not to exceed \$2,000,000.00; and staff is requesting an appropriation of \$60,000.00 from the Endowment Fund to fund the Escrow Deposit, environmental investigation and legal costs. The balance of the funds needed will be requested prior to the close of escrow if the City Council decides to

Honorable City Council

Re: Purchase and Sale Agreement & Appropriation from Endowment Fund

November 23, 2010 (CC Meeting of 12/1/10)

Page 2

complete the purchase. The acquisition could also be funded from the General Fund Reserve or Special Projects Fund.

This property is part of the Tierra Rejada Groundwater Basin. At the present time, groundwater may be pumped for use on the site since pumping of water is not controlled by the courts or a regulatory agency. There is not an active well on the site.

FISCAL IMPACT

The purchase is estimated to cost \$2,000,000.00. The annual cost to maintain the property is estimated at about \$25,000.00 including property taxes, since the property is outside of the Moorpark City limits, weed abatement and incidental items such as fence maintenance. It is possible the City could lease portions of the property for agriculture or nursery uses but would need to evaluate the costs and benefits with the need to provide water. A very preliminary cost estimate for providing a well is \$50,000.00.

STAFF RECOMMENDATION ROLL CALL VOTE

1. Approve the Purchase and Sale Agreement and authorize Mayor to sign it subject to final language approval of the City Manager and City Attorney; and
2. Adopt Resolution No. 2010 - ____ Amending the FY 2010/11 Budget to appropriate \$60,000.00 from the Endowment Fund to fund the escrow deposit, environmental investigation, and legal costs.

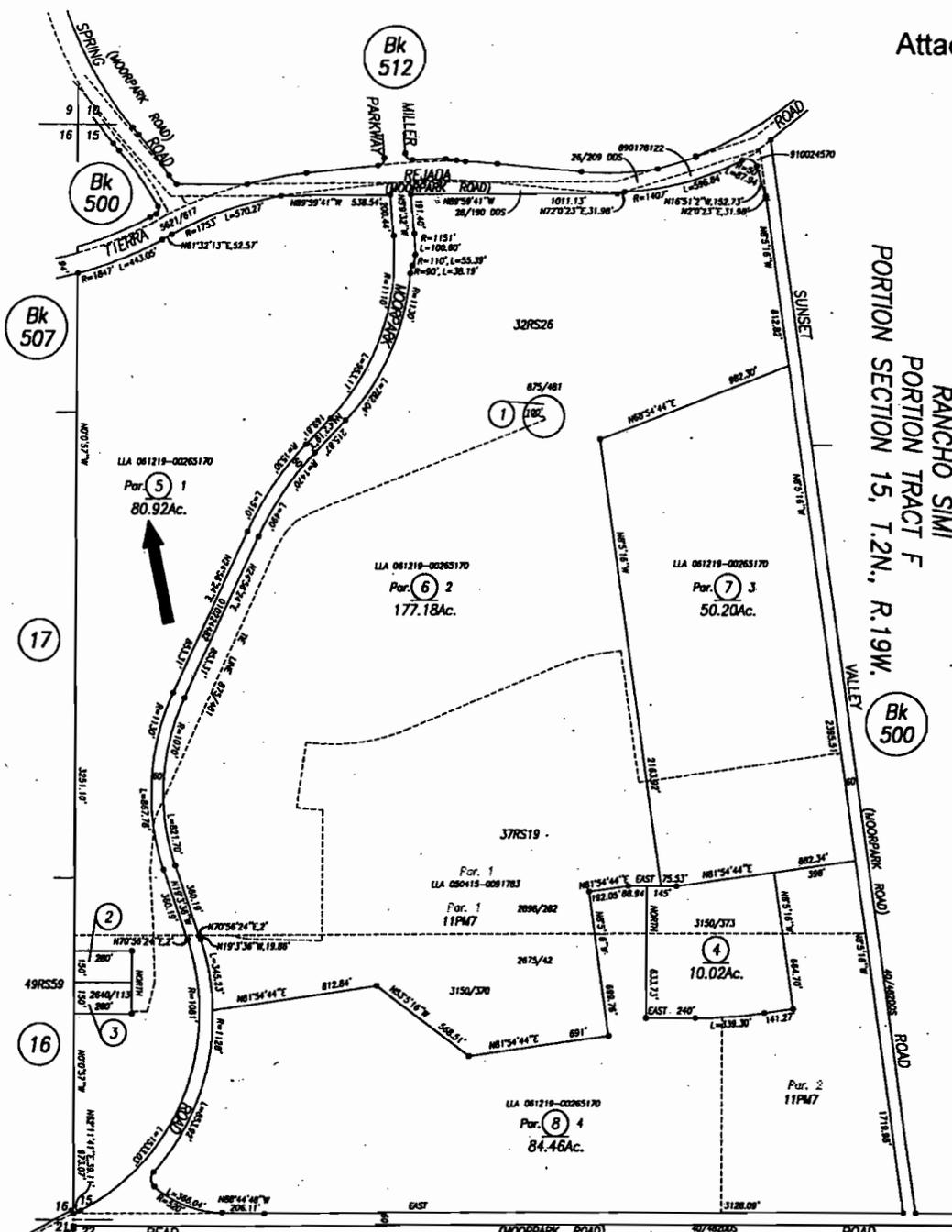
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Attachments:

- 1) Location of APN 519-0-210-055 (2 pages)
- 2) Draft Purchase and Sale Agreement
- 3) Resolution No. 2010 - ____ to Allocate \$60,000.00 from Endowment Fund

Rancho Simi, M.R. Bk.3, Pg.7

RANCHO SIMI
PORTION TRACT F
PORTION SECTION 15, T.2N., R.19W.



NOTE: ASSessor PARCELS SHOWN ON THIS PAGE DO NOT NECESSARILY CONSTITUTE LEGAL LOTS OR CHECK WITH COUNTY SURVEYOR'S OFFICE ON PLANNING DIVISION TO VERIFY.

DATE	DESCRIPTION	DATE	DESCRIPTION
07/07	REVISED	3-7-2007	CREATED
07/07	REVISED	3-7-2007	REVISED
07/07	REVISED	07-08	ROLL
07/07	REVISED	07-08	ROLL

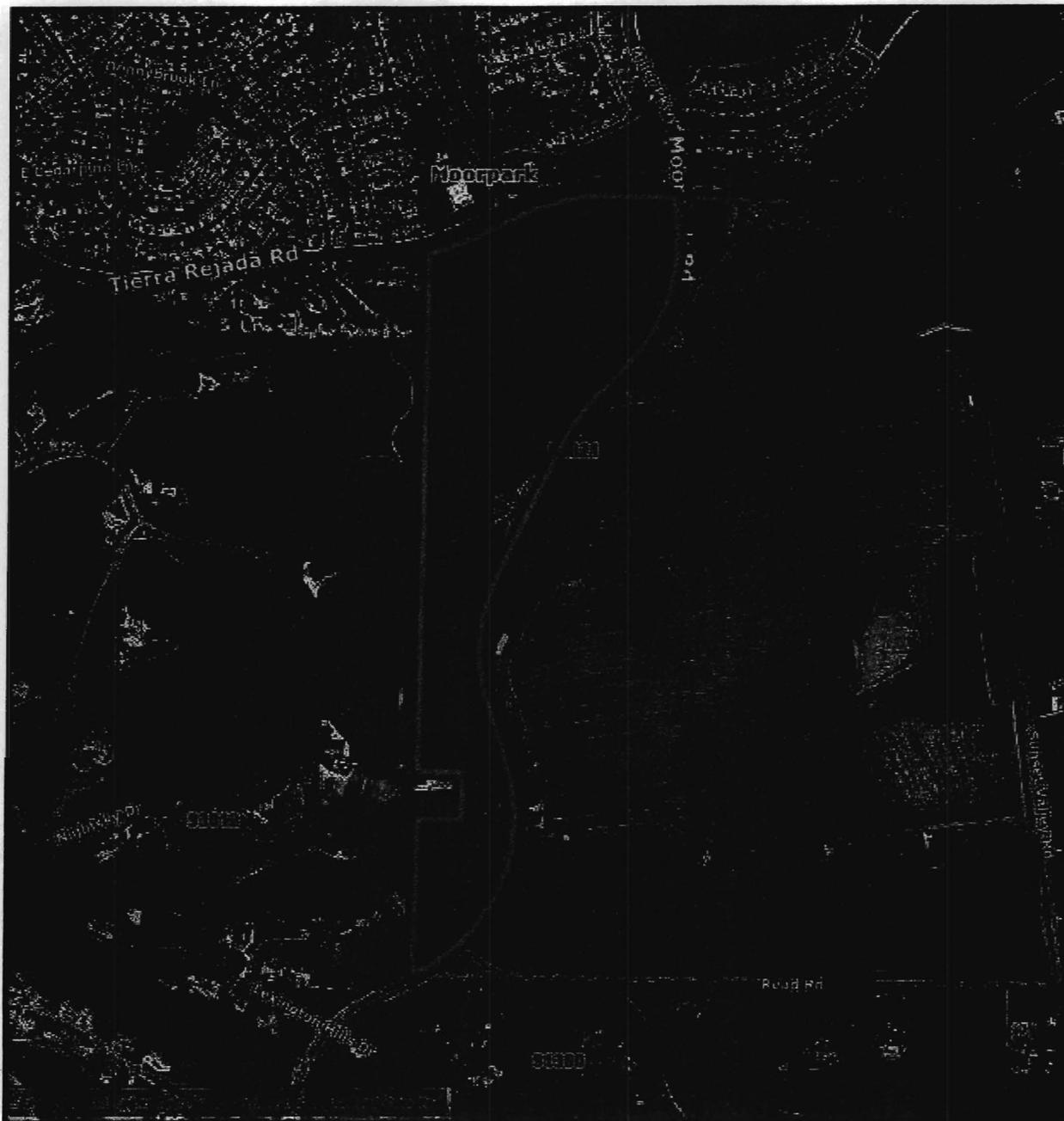
Compiled By Ventura County Assessor's Office

UNINCORPORATED AREA
Ventura County Assessor's Map

Assessor's Block Numbers Shown in Circles.
Assessor's Parcel Numbers Shown in Circles.
Assessor's Aerial Numbers Shown in Squares.

Tax Rate Area 519-21
89028

Roll-Year 07-08		BK 519 , PG. 21 REVISION LOG				
DATE	REFERENCE DOC.	Code	EXPLANATION	VOID A.P.N.(s)	RESIDUAL A.P.N.(s)	NEW A.P.N.(s)
3/7/07		REDNW	From Bk.500 Pg.38	500-0-381-080 & 105		519-0-210-010 & 035
3/7/07				500-0-381-115 & 155		519-0-210-045 & 025
3/7/07	20081219-02265170	LLA	Log #83	500-0-381-185,085,125		519-0-210-085
3/7/07				500-0-381-175		519-0-210-055,065,075



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DRAFT

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE OF PROPERTY AND JOINT ESCROW INSTRUCTIONS ("Agreement") is made and entered into this _____ day of _____, 2010 ("Acceptance or Effective Date"), whereby Heartland Recovery, California F#1, LLC ("Seller"), agrees to sell, and City of Moorpark ("Buyer"), agrees to purchase, on the terms and conditions hereinafter set forth, the following:

(a) That certain real property (the "Land") in the County of Ventura, State of California, as more particularly described in Exhibit "A" attached hereto; and

(b) All rights (including water and mineral rights), privileges, easements, tenements, rights of way and appurtenances which belong to or appertain to the Land (the "Appurtenances"). The Land and Appurtenances are collectively referred to herein as the "Property."

The terms and conditions of this Agreement and the instructions to Lawyer's Title ("Title Company" and "Escrow Holder") with regard to the escrow ("Escrow") created pursuant hereto are as follows:

1. **SALE OF PROPERTY.**

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, upon the terms and conditions herein set forth.

2. **PURCHASE PRICE AND BROKERAGE FEE.**

The total purchase price ("Purchase Price") for the Property and any and all interests Seller has in the Property shall be One Million, Nine Hundred Twenty-Five Thousand Dollars (\$1,925,000.00).

(a) Buyer shall give a good faith deposit in the amount of Fifty Thousand Dollars (\$50,000.00) (together with any interest earned thereon, the "Deposit"), made payable to Lawyer's Title within five (5) business days after Escrow has been opened. The Deposit shall be applied as a credit against the Purchase Price at Closing and, except as may otherwise be provided in this Agreement, shall be returned to Buyer on any cancellation or termination of this Agreement.

(b) Buyer shall be responsible to pay a brokerage fee in the amount of Forty-Eight Thousand, One Hundred Twenty Five Dollars (\$48,125.00) upon close of escrow to JOHN W. NEWTON & ASSOCIATES, INC., dba MOORPARK ADVANTAGE REALTY.

3. ESCROW.

3.1 Opening of Escrow.

Within three (3) business days following the Effective Date hereof, Buyer and Seller shall open escrow ("Escrow") with Escrow Holder by delivering an executed Agreement, or copy hereof, to Escrow Holder. Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened and the scheduled Closing Date. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

3.2 Close of Escrow.

For purposes of this Agreement, the "Close of Escrow" or "Closing" shall be defined as the date the Grant Deed conveying the Property to Buyer is recorded in the Official Records of Ventura County, California. The "Closing Date" shall be _____, unless otherwise subsequently agreed to in writing signed by buyer and seller. The new "Close of Escrow" shall occur as soon as possible thereafter.

(a) Buyer does not intend to occupy the property as Buyer's primary residence.

(b) Possession to be delivered to Buyer at 2:00 p.m. on the date of "Close of Escrow", but no later than two days after "Close of Escrow", in all events free from all claims to possession or title by third parties.

4. TITLE INVESTIGATION

4.1 Title Insurance.

Promptly following the full execution of this Agreement, Escrow Agent shall cause Title Company to issue to Buyer (with a copy to Seller) a preliminary title report for a Standard Form CLTA (or if requested by Buyer, ALTA) Owner's Policy of Title Insurance for the Property, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Seller's title to the Property ("Preliminary Report"), together with copies of all documents relating to title exceptions referred to in the Preliminary Report ("Title Exception Documents"). Buyer shall approve or disapprove each exception shown in the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that affects title to the Property or that violates any law, rule, or regulation reflected therein (each an "Exception") within forty-five (45) days following the receipt of the Preliminary Report and all Title Exception

Documents ("Title Approval Period"). Buyer's failure to disapprove within the Title Approval Period shall be deemed approval of the Exceptions. If any Exception is disapproved (each a "Disapproved Exception"), Seller shall, within twenty one (21) days following receipt of Buyer's disapproval ("Cure Period"), use its best efforts to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to Buyer and Escrow Agent, all at Seller's sole cost and expense. Upon Seller's written request and with Buyer's approval, Escrow Agent will be authorized to disburse from the cash portion of the Purchase Price and proceeds otherwise disbursable to Seller upon Closing the sum sufficient to discharge or endorse over any Disapproved Exception that may be discharged or endorsed over only by the payment of money. If Seller is unable to obtain a discharge, satisfaction, release, or termination within the Cure Period specified above, Buyer shall have the right, by written notice given within ten (10) days following the expiration of the Cure Period, to:

(a) Waive the Disapproved Exception(s) and proceed with Closing, accepting title to the Property subject to the Disapproved Exception, or

(b) Terminate this Agreement and receive the return of the Deposit, whereupon Seller and Buyer shall be released from all further liability and obligation under this Agreement, except for such as has accrued prior to the date of termination.

4.2 Title Exceptions.

It is understood and agreed that, whether or not Purchaser gives its disapproval pursuant to Section 4.1, any encumbrances, security interests, liens, deeds of trust and/or mortgages which secure, in whole or in part, any monetary indebtedness not arising by, through or under Buyer shall be deemed to be Disapproved Exceptions and shall be paid off, satisfied, released and/or discharged by Seller at or prior to Closing.

4.3 Title Policy.

Seller shall cause the Title Company to issue its Standard CTLA Owner's form Policy of Title Insurance ("Title Policy") in the amount of the Purchase Price showing good and marketable title to the Property vested in Buyer subject only to the exceptions to title approved in Section 4.1. Buyer may, at Buyer's option, elect to cause the Title Company to issue an ALTA form Title Policy with such extended coverage protection and other endorsements as Buyer may request of Title Company. All additional cost and expense of such ALTA Title Policy, endorsements and extended coverage protection (above the cost and expense of the Standard CTLA Owner's form Policy of Title Insurance) shall be borne by Buyer, including the cost of any survey of the Property that may be required to obtain such coverage.

4.4 Investigation Period.

From and after the Effective Date to and including the date which is forty-five (45) days after the Effective Date (the "Investigation Period"), Buyer, and its agents, consultants, contractors, engineers, surveyors, attorneys, and employees shall, at no cost or expense to Seller, have the right to enter on to the Property to conduct and make any and all customary studies, tests, examinations, inquiries, inspections and investigations of or concerning the Property, its soils, geological and environmental condition and to otherwise confirm any and all matters which Buyer may reasonably desire to confirm with respect to the Property and Buyer's intended use thereof (collectively, the "Investigations"). Without Seller's written consent, Buyer shall neither make nor cause to be made: invasive or destructive Investigations; or inspections by any governmental building or zoning inspector or government employee (other than those employed by Buyer), unless required by law. Buyer shall: (i) keep the Property free and clear of liens; (ii) repair all damage arising from Buyer Investigations; and (iii) indemnify and hold Seller harmless for all resulting liabilities, claims, demands, damages, and costs resulting from Buyer's Investigations, except to the extent due to Seller's negligence or willful misconduct. Seller shall make the Property available for all Buyer investigations between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday. Seller shall have water, gas, electricity on and operable. Buyer shall give Seller, at no cost, and without any representation or warranty whatsoever as to accuracy or completeness, copies of all Buyer Investigation reports obtained by Buyer, upon availability, but no later than forty-five (45) days after Investigation Period. If any matter disclosed by Buyer's Investigations, or if any matter disclosed by the Materials (as defined in Section 15.5), is disapproved of by Buyer (each a "Disapproved Matter"), Seller shall, within twenty-one (21) days following receipt of Buyer's disapproval ("Remedy Period"), use its best efforts to cause each Disapproved Matter to be corrected, discharged, released, or terminate the Disapproved Matters within the Remedy Period specified above, Buyer shall have the right, by written notice given within ten (10) days following the expiration of the Remedy Period, to:

(a) Waive the Disapproved Matter(s) and proceed with Closing, accepting title to the Property subject to the Disapproved Matter(s), or

(b) Terminate this Agreement and receive the return of the Deposit, whereupon Seller and Buyer shall be released from all further liability and obligation under this Agreement, except for such as has accrued prior to the date of termination.

4.5 Extension of Investigation Period.

At Buyer's option and by written notice given to Seller and Escrow Holder prior to the expiration of the Title Approval Period or Investigation Period, as applicable, Buyer may extend the Title Approval Period and/or Investigation Period by up to fifteen (15) days to permit Buyer to complete any survey or Phase II Environmental Assessment Report, as applicable, which Buyer has elected to perform. In such event, if the Closing Date would otherwise occur prior to the expiration of such

extension, the Closing Date shall be extended, as necessary, to permit such extension and to allow for the notices and Cure Period and Remedy Period, as applicable, provided for in Section 4.1 and 4.4.

5. SELLER'S DELIVERIES.

Prior to the Close of Escrow, Seller shall deposit or cause to be deposited into Escrow for delivery to Buyer at Closing the following:

- (a) A duly executed and acknowledged Grant Deed in the Title Company's usual form;
- (b) A Certificate of Non-Foreign Status required under Section 1445(b) of the Internal Revenue Code;
- (c) A Certificate pursuant to California Revenue and Taxation Code Section 18662 pertaining to Seller's status as a resident of California or as having a corporate permanent place of business in California;
- (d) Any other document provided for herein or reasonably required by Escrow Holder;
- (e) Real Estate Transfer Disclosure; and
- (f) Natural Hazard Disclosure.

6. BUYER'S DELIVERIES.

Prior to the Close of Escrow, Buyer shall deposit or cause to be deposited into Escrow, to be delivered to Seller upon the Closing, the following:

- (a) The Purchase Price plus the Brokerage Fee, less the Deposit, in accordance with Section 2; and
- (b) Any other document provided for herein or reasonably required by Escrow Holder.

7. [INTENTIONALLY LEFT BLANK]

8. AUTHORIZATION TO RECORD DOCUMENTS AND DISBURSE FUNDS.

Escrow Holder is hereby authorized and directed to record the documents and disburse the funds and documents called for hereunder pursuant to the written closing instructions, if any, of Buyer and Seller delivered prior to Closing, provided each of the following conditions have been or will concurrently with the Close of Escrow be fulfilled;

(a) Title Company has committed to issue to Buyer the Title Policy with liability equal to the Purchase Price, in accordance with Section 4 above;

(b) Seller shall have deposited in Escrow the documents and instruments required of it under Section 5;

(c) Buyer shall have deposited into Escrow the funds, documents and instruments required of it under Section 6; and

(d) Escrow Holder is authorized to record any instrument delivered through this Escrow if necessary or proper for the issuance of the Title Policy referred to above.

9. COSTS AND EXPENSES.

The Seller shall pay one-half of the Escrow Holder's Escrow fee and that portion of the premium for the title policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price, plus the cost of any endorsements obtained in connection with Disapproved Exceptions. Any additional Title Policy costs, including the cost of an ALTA policy or any endorsements requested by the Buyer, shall be borne by the Buyer. Buyer agrees to pay all other usual fees, charges, and costs which arise from Escrow.

10. PRORATION.

The following proration shall be made between Buyer and Seller by Escrow Holder at the Close of Escrow, computed as of the closing date:

10.1 Taxes.

Real property taxes, special taxes, and assessments shall be prorated as of the Close of Escrow based upon the latest available tax information. Seller shall be responsible for all special taxes and assessments accrued against the Property to and including the day prior to the Close of Escrow based upon payment of such assessments in installments to the greatest extent permitted. Unless any special tax or assessment payment or installment specifies the time period for which such payment is owed, it shall be presumed that such payment is for the full year immediately preceding the day upon which such payment is due.

11. WAIVER BY SELLER.

Seller knowingly and voluntarily waives the following rights: the right to seek any compensation for the acquisition of the property in any amount greater than that set forth in Section 2 herein; the right to claim relocation benefits or assistance; the right to claim damage or injury to business goodwill; the right to claim loss of rent; the right to claim severance damages; the right to claim fixtures and equipment; or any similar right or claim arising out of the acquisition of the Property.

12. SELLER'S REPRESENTATIONS.

In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations, each of which (i) is a condition to Close of Escrow, (ii) is true as of the Effective Date and will be true as of the Closing, and (iii) is material and is being relied upon by Buyer.

12.1 Authority.

Seller has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein without obtaining the consent or approval of any other person, entity or governmental authority. The persons whose names are set forth below hereby personally represent and warrant that they have full power and authority to sign the name of Seller to this Agreement and to cause this Agreement to be a binding obligation of Seller.

12.2 Litigation.

There is no litigation, bankruptcy or receivership proceeding or any other proceeding pending, or, to Seller's knowledge, threatened against, relating to, or involving Seller's interest in the Property, nor does Seller know or have any reasonable ground to know of any basis for any such action. No consents or waivers of or by any third party are necessary to permit the consummation by Seller of the transactions contemplated pursuant to this Agreement.

12.3 Compliance with Laws.

Seller has received no notice and has no actual knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Property, including, without limitation, any subdivision, building, use or environmental law, ordinance, rule, requirement or regulation.

12.4 Governmental Notices.

Seller shall deliver to Buyer each and every notice or communication Seller receives from any governmental body relating to the Property or any portion thereof upon Seller's receipt of the same.

12.5 Leases.

There are no leases or other agreements (either oral or written) affecting or relating to the right of any party with respect to the possession of the Property, or any portion thereof.

12.6 Future Action.

From and after the date hereof, without the prior written consent of Buyer, Seller shall not execute nor consent to the execution of any lease of any portion of the Property or any other instrument which may result in an alteration of the condition of title.

12.7 Hazardous Materials.

The Property is being sold on an "as is" basis and the Seller makes no representations or warranties with regard to the existence of Hazardous Materials on or below the surface of the Property, including, without limitation, contamination of the soil, subsoil or ground water, which constitute a violation or any law, rule or regulation of any government entity having jurisdiction thereof or which expose Buyer to liability to third parties.

12.8 Environmental Violations.

The Seller is selling the Property on an "as is" basis and makes no representations or warranties with regard to environmental violations.

12.9 Work and Materials Furnished.

Bills for work done and materials furnished with respect to the Property have been paid in full by Seller or will be discharged and paid in full by Seller by the date of Closing.

12.10 Not a Foreign Person.

Seller is not, and never has been, a "foreign person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1954, as amended, or California Revenue and Taxation Code Section 18662, and Seller will furnish to Buyer, prior to the Closing, an affidavit in form satisfactory to Buyer confirming the same.

12.11 Declaration, Covenants, Restrictions.

Other than as identified in the Title Report, there are no declarations or covenants affecting the use of the Property; and there is no association which has been formed for the purpose of managing any portion of the Property.

12.12 Contracts.

Except as may be disclosed by the Title Documents, there are no contracts or agreements relating to the operation, development, management or ownership of the Property or any portion thereof.

12.13 Truthfulness at Closing.

Except as expressly herein otherwise provided, the representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

13. BUYER'S REPRESENTATIONS.

In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, each of which is material and is being relied upon by Seller:

13.1 Authority.

Buyer has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein without obtaining the consent or approval of any other person, entity or governmental authority. The person(s) whose name(s) are set forth below hereby personally represent and warrant that they have full power and authority to sign the name of Buyer to this Agreement and to cause this Agreement to be a binding obligation of Buyer.

13.2 Truthfulness at Closing.

The representations of Buyer set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

14. DEFAULT.

14.1 Liquidated Damages.

If Buyer commits a material default under this Agreement and the close of escrow fails to occur by reason of such default, then in such event, the escrow holder may be instructed by Seller to cancel the escrow and Seller and Buyer shall thereupon each be released from its obligations hereunder and the deposit shall be returned to Buyer. Buyer and Seller agree that based upon the circumstances now existing known and unknown, it would be impractical or extremely difficult to establish Seller's damages by reason of Buyer's default. Accordingly, Buyer and Seller agree that it would be reasonable at such time to award Seller "liquidated damages" equal to Five Thousand Dollars (\$5,000.00). For the purpose of the foregoing provisions of this section, Buyer shall be deemed to have committed a material default under this Agreement at the time Buyer is in fact in default and/or Buyer notifies Seller of Buyer's election to terminate this Agreement and the escrow at a time when Buyer does not have the right under the terms of this Agreement to so terminate this Agreement or the escrow. Seller and Buyer acknowledge and agree that the applicable foregoing amount of liquidated damages are reasonable as liquidated damages and shall be Seller's sole

and exclusive remedy in lieu of any other relief, right of remedy, at law or in equity, to which Seller might otherwise be entitled by reason of Buyer's default.

Accordingly, if Buyer fails to complete the purchase of the property and such failure constitutes a breach of this Agreement, Seller may instruct the escrow holder to cancel the escrow, whereupon Seller shall be relieved from all liability hereunder. Seller and Buyer acknowledge that they have read and understand the provisions of this section and by their initials immediately below agree to be bound by its terms.

Seller's Initials

Buyer's Initials

14.2 Seller's Default.

In the event that Seller shall fail to perform Seller's obligations hereunder, Buyer shall have the option to: (i) extend the Closing for such time as Buyer chooses to allow Seller to remedy such default, (ii) waive such default in writing, (iii) pursue all legal or equitable remedies available to it, including, without limitation, terminating this Agreement by written notice to Seller prior to cure of the default. In the event of termination of this Agreement pursuant to this Section 14.2 or otherwise as a result of Seller's default, the parties shall be discharged from any further obligation and liabilities hereunder, and the Deposit shall be immediately released to Buyer.

15. MISCELLANEOUS.

15.1 Risk of Loss

The risk of loss or damage to the Property until the Closing is assumed by Seller. If any damage occurs to the Property prior to Closing, Seller shall promptly give Buyer written notice of the occurrence thereof and of the amount of any insurance proceeds available for the repair of such damage. Buyer at its sole option may terminate this Agreement by written notice given to Seller within thirty (30) days of Buyer's receipt of such notice, in which case the Deposit and any other monies and documents deposited with Escrow Holder shall be returned to Buyer and this Agreement shall be null and void. If Buyer does not give such notice, or gives notice that it will nonetheless proceed with the Closing, then this Agreement will remain in full force and effect and Seller shall assign any available insurance proceeds to Buyer at or before the Closing.

15.2 Notices.

All notice or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; sent by registered or certified mail, postage prepaid, return receipt requested; scanned and delivered by

email; delivered or sent by telex, telecopy, or overnight courier and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the date of posting by the United States Post Office, (iii) if sent by overnight courier, when delivered to the specified address, or (iv) if given by telex, telecopy or email, when sent.

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

To Seller: Heartland Recovery, California F#1, LLC

To Escrow Holder: Lawyer's Title Company
1701 Solar Drive, Ste. 250
Oxnard, CA 93030
Attn: Judy Cook

Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

15.3 Assignment.

Buyer may not assign, transfer or convey its rights or obligations under this Agreement without the prior written consent of Seller, and release to Seller of Buyer's Good Faith Deposit; provided, however, that Buyer shall in no event be released from its obligations hereunder by reason of any assignment. No assignment or transfer, if permitted, shall be effective unless each assignee or transferee expressly agrees in writing to be bound by the terms and conditions of this Agreement. Any purported assignment, transfer, or encumbrance in violation of the foregoing may, at the option of Seller, be deemed null and void or be a default hereunder.

15.4 Seller's Use of Property.

From and after the date of Seller's execution hereof, Seller shall maintain the Property in the same condition and state of repair as on the Effective Date, and Seller shall not grant or convey any easement, lease, license, permit, encumbrance, lien or any other legal or beneficial interest in or to the Property, improvements thereon, mineral or water rights appurtenant thereto, or any other property rights whatsoever without the prior written consent of Buyer, nor shall Seller violate, or allow the violation of any law, ordinance, rule or regulation affecting the

Property. Seller shall do or cause to be done all things reasonably within its control to preserve intact and unimpaired any and all easements, grants, appurtenances, privileges and licenses in favor of or constituting any portion of the Property. Further, Seller agrees to pay, as and when due, all payments on any liens or encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the Close of Escrow.

15.5 Delivery of Materials.

Seller shall deliver to Buyer, at no expense to Buyer, within ten (10) days of Seller's execution hereof, copies of any and all contracts affecting the Property (including service and materials contracts), soils investigations and reports, water and sewer studies, topographic maps, photographs, mapping, platting and other materials, if any, concerning the Property, which are owned by Seller or are in Seller's possession (collectively, the "Materials").

15.6 Survival and Conditions Precedent.

Agreements, representations, covenants and warranties contained in this Agreement or any amendment or supplement hereto shall survive Closing and delivery of deed hereunder and shall not be merged thereby, and, in addition to any effect any of the same have in law or in equity, all of the same will be deemed to be conditions precedent to the Buyer's obligations hereunder, whether so expressed or not. Seller acknowledges that all of the conditions to this Agreement which are for the sole benefit of the Buyer may unilaterally be waived by the Buyer only in writing.

16. GENERAL PROVISIONS.

16.1 Required Actions of Buyer and Seller.

Buyer and Seller agree to execute such further instruments and documents and to consummate the purchase and sale herein contemplated, and to effectuate the intent of this Agreement.

16.2 Time of Essence.

TIME IS OF THE ESSENCE OF EACH AND EVERY TERM, CONDITION, OBLIGATION AND PROVISION HEREOF.

16.3 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. Faxed copies of signed documents may be considered as originals.

16.4 Captions.

Any captions to, or headings of, the paragraph or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

16.5 No Obligations to Third Parties.

Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

16.6 Exhibits.

The Exhibit attached hereto is hereby incorporated herein by this reference.

16.7 Amendment to this Agreement.

The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

16.8 Waiver.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

16.9 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16.10 Fees and Other Expenses.

Except as otherwise provided herein, each of the parties shall pay its own attorneys', consultants' and other fees and expenses in connection with this Agreement.

16.11 Entire Agreement.

This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer,

agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

16.12 Successors and Assigns.

Subject to any limitations on assignment contained herein, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

16.13 No Presumption.

Each provision of this Agreement has been independently and freely negotiated by both parties as if this Agreement were drafted by both parties. In the event of any ambiguity in this Agreement, the parties waive any presumption or rule requiring or permitting interpretation of said ambiguity against or in favor of either party.

16.14 Attorneys' Fees.

In the event that either party is required to commence any action or proceedings against the other in order to enforce the provisions hereof, or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing party (which shall be the party receiving the larger award or otherwise receiving the more significant relief) therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, all reasonable costs incurred in connection therewith, including reasonable attorneys' fees.

16.15 Survival.

Except as otherwise provided herein, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the Closing and shall not merge into any deed, assignment or other instrument executed or delivered pursuant hereto.

16.16 IRS Real Estate Sales Reporting.

Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Internal Revenue Code of 1986 Section 6045(e). Escrow Agent shall prepare and file the informational return (IRS Form 1099-S) required by and otherwise comply with the terms of IRS Section 6045(e).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

This Agreement creates certain legal rights and responsibilities as described herein and all parties should consider obtaining legal advice prior to execution of it.

"Buyer" City of Moorpark

By: _____
Steven Kueny
City Manager

ATTEST:

Maureen Benson
City Clerk

"Seller" Heartland Recovery, California F#1, LLC

By: _____

Exhibit "A"

LEGAL DESCRIPTION

Assessor Parcel Number (APN): **519-0-210-055**

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA AMENDING THE FISCAL YEAR 2010/2011 BUDGET TO ALLOCATE \$60,000 FROM THE ENDOWMENT FUND (2800) TO THE PARKS AND RECREATION DEPARTMENT FOR OPEN SPACE ACQUISITION

WHEREAS, on June 16, 2010, the City Council adopted the Operating and Capital Improvement Budget for Fiscal Year 2010/2011; and

WHEREAS, a staff report has been presented to the City Council requesting a \$60,000 budget appropriation from the Endowment Fund (2800) for open space acquisition outside the City limits south of Tierra Rejada Road; and

WHEREAS, Exhibit "A" hereof describes said budget amendment and its resultant impacts to the budget line item.

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

SECTION 1: That a Budget Amendment of \$60,000 as more particularly described in Exhibit "A", is hereby approved.

SECTION 2: The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 1st day of December, 2010.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

EXHIBIT A: Budget Amendment

**Budget Amendment for
Endowment Fund (2800)
for Open Space Acquisition
FY 2010/2011**

A. Fund Allocation

Fund Description	Account	Amount
Endowment Fund	2800-5500	60,000
	Total	60,000

B. Expenditure Appropriation

Fund	Adopted Budget	Budget Change	Revised Budget
2800-7800-7840-9610	\$0	60,000	\$60,000
			\$60,000

Finance Approval: 