ITEM 9.B.

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

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

DATE: **September 11, 2012 (CC Meeting of 9/19/2012)**

SUBJECT: **Consider Providing Direction to City Staff on Applicant's Proposed Amendments to the Essex Portfolio, L.P. Unsigned Development Agreement (Continued from July 18, 2012)**

BACKGROUND/DISCUSSION

On July 18, 2012, the City Council considered recommendations from staff on potential amendments to the Development Agreement with Essex Portfolio. The staff report is attached. The City Council continued this item until September 19, 2012 as the applicant requested more time to address staff's recommendations that parking be provided at a minimum ratio of 2.0 spaces per unit at that the existing flood control channel be covered. Since this meeting, the applicant found that by covering the flood control channel, they would be able to have enough usable land to meet the parking ratio of 2.0 spaces per unit. City staff confirmed with the Watershed Protection District that the district would permit the covering of the channel. With that additional information, the applicant has indicated that they would be able to comply with all the staff recommendations. Staff is now seeking direction on these recommendations so that a draft amendment to the Development Agreement can be formally presented to the City Council for setting of hearings by the Planning Commission and City Council, upon receipt of revised plans and applications.

STAFF RECOMMENDATION

Concur with staff recommendations in July 18, 2012 report.

Attachment: July 18, 2012 Staff Report (with attachments)

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: **Honorable City Council**

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

DATE: **July 5, 2012 (CC Meeting of 7/18/2012)**

SUBJECT: **Consider Providing Direction to City Staff on Applicant's Proposed Amendments to the Essex Portfolio, L.P. Unsigned Development Agreement**

DISCUSSION

Five years ago, on July 18, 2007, the City Council approved General Plan Amendment 2004-05, Zone Change 2004-04, Residential Planned Development Permit 2004-06 (Project Approvals) and a Development Agreement for a 200 unit apartment complex in nine buildings spread throughout a 10.57 acre site located on the south side of Casey Road on a portion of the old high school site. The density of the project is 18.92 units/acre. The project consists of 5 podium style three story buildings (parking at the "basement" level with residential units above) and 4 on grade three story buildings. All Project Approvals became final upon the effective date of the Development Agreement for the Project Approvals by the adoption of Ordinance 355 on August 1, 2007. Prior to City Council action on all entitlements, including the Development Agreement, the applicant replied in the affirmative when asked, if the applicant understood and agreed to all of the conditions of approval and had such authority as a representative of the owner to concur.

The City plan checked the grading plans and was prepared to issue grading permits shortly after project approval. In fact, a stockpile permit for 70,000 cubic yards of dirt was issued on June 2, 2006 to allow fill material to be deposited in advance of project approvals as it became available from a nearby project. The stockpile has existed since this date and is currently bonded, but not in compliance with City engineering standards which allow a maximum 5-foot height and 3:1 side slope unless approved by City Council. In addition, the City held hearings to assist Essex in the processing of bond financing for the project, and staff had drafted an Affordable Housing Agreement. All of this was accomplished without execution of the Development Agreement. The original Development Agreement (Attachment 1) still remains unsigned as of the date of this report. As a result, when the City needed land to extend High Street for the Post Office

project in 2009, it had to enter into a separate agreement with Essex to obtain 1.20 acres of the 8.84 acres that the City was to purchase as part of the Development Agreement

In order to try and bring the conditions of approval and requirements of the Development Agreement to a point where Essex is able to proceed to construct the site, Mayor Parvin and staff had met with representatives of Essex, and there had been some correspondence to address the unresolved issues, including the preparation of a draft Development Agreement amendment (Attachment 2). This draft amendment, prepared by Barry Hogan as consultant to the City, was offered for discussion with the developer and does not represent a formal position or commitment on the part of the City. Rather it focuses on the requests for changes by the developer and does not provide any new public benefits.

The draft amendment prepared by Mr. Hogan includes the following provisions, with staff analysis and recommendations in italics:

1. Removal of the requirement for the on-site public trail that was to run adjacent to the flood control property (Sections 6.7 and 7.5). *Staff supports this amendment as plans for the Hitch Ranch Specific Plan project show a trail connection to the Civic Center property through High Street. With or without the Hitch Ranch Specific Plan project, a trail connection through the Essex property would not provide a significant enhancement to the City's trail network.*

2. Clarification of affordable housing provisions including changing of the indexing date of the $23,400 annual in-lieu affordable housing fee from 2008 to 2011 (Section 6.9). *Staff supports changes that add clarification to the affordable housing terms of the Development Agreement that do not change the basic terms of the agreement, but does not support the change to the base year for the in-lieu fee. This fee escalates at 2% per year, and a change to the base year would result in a slight reduction in the fee that would be paid to the City, if the developer chooses to pay the fee instead of providing 4 additional low income units.*

3. Elimination of the requirement to underground the flood control channel on the subject site or correct or remedy any pre-existing flood conditions that may exist on land adjacent to the property, including, but not limited to, the City site (Section 6.22). *The original plan approved by the City Council called for a trail on top of the existing flood control channel, necessitating covering of the channel. Even if the Council supports the elimination of the trail (Request No. 1, above), covering of the channel still provides an aesthetic benefit to the project. Staff would only support this request if the Watershed Protection District would not allow undergrounding of this channel. It should be noted that the City has constructed the required underground storm drain along the property to be*

purchased by the City as part of the Post Office project. Consistent with the Development Agreement, this was Essex's obligation. The estimated cost for this improvement is $350,000. This cost will need to be reimbursed to the City by Essex and should be included in the amendment to the Development Agreement.

4. Reduction in parking from 2.13 to 2.0 spaces per unit with an increase in uncovered parking (Sections 6.25 and 7.11). *This item is discussed below as the developer is now seeking a further reduction in parking to 1.8 spaces per unit.*

5. Removal of any requirement to improve the extension of High Street (new Sections 6.29 and 7.18). *Temporary secondary emergency only access from the Essex project was to originally come from the southeast corner of the property, to be relocated permanently to the southwest corner when the second phase of the project was constructed. Both emergency only access driveways would connect to High Street. Primary access to the property is from Casey Road. Staff supports this amendment as High Street is projected to be further extended by the Hitch Ranch Specific Plan project, which would use this road as one of its main access points.*

6. Provision for expedited processing of a tentative map for the project (Section 7.1). *Staff supports this amendment subject to final language approval by the City Attorney and City Manager to ensure the tentative map is strictly for financing, and cannot result in any sale of individual units.*

7. Commitment to an expedited TEFRA hearing if City issued bond financing is requested (Section 7.13). *Staff supports this amendment.*

8. Commitment to assisting developer in obtaining public grants, loans or other public assistance (new Section 7.15). *Staff supports this amendment.*

9. Provision for reimbursement of any oversized infrastructure by future beneficiaries (new Section 7.16). *Staff supports this amendment.*

10. Provision for City to pay for revised 66kv power pole relocation plan (new Section 7.17). *Because of the delay in the Essex project, property owned by the Redevelopment Agency south of High Street was used for the 2009 Post Office project, instead of the 8.84 acres that the City was to purchase from Essex as part of the development agreement. This Post Office project created a new alignment for High Street and a need to revise the 66kv power pole relocation plan already prepared by Essex. The City still needed 1.20 acres from Essex for an extension of High Street to serve the Post Office project. As part of the Real Property Acquisition Agreement for these 1.20 acres (Attachment 6), the City agreed to pay for a revised power pole relocation plan. This proposed new section of the Development Agreement would be consistent with the Real*

Property Acquisition Agreement. The City has already entered into an agreement with a utility consultant to perform this work, and some work has started, but the project has been on hold. The $11,720 cost of this revised plan was originally approved to be paid out of the City's endowment fund, however, the funding was not rolled over and funds would have to be re-allocated when this project starts up again.

11. Provision for Redevelopment Agency to assume terms of agreement if agreement is assigned to the Redevelopment Agency (Section 33). *This amendment is no longer necessary.*

Additional requests from the developer are summarized in a letter from John Eudy, Executive Vice President of Development for Essex Property Trust, Inc., dated December 7, 2011 (Attachment 3). Staff is also seeking direction on these remaining issues, with staff analysis and recommendations in italics.

12. Negotiation for competitive costs for bond counsel, financial advisor, and other professionals (Section 6.9 iv). *Staff believes that language can be added to the Development Agreement to address this issue, however, the selection of the bond counsel and other professionals must be made solely by the City.*

13. Reduction in parking to 1.8 spaces per unit (Sections 6.25 and 7.11). *The developer had originally asked for a reduction of the parking requirement from 2.13 to 2.0 spaces per unit. The approved plans showed 434 spaces, more than the 426 originally required by this section of the Development Agreement, but less than the 500 that would be required by the Zoning Ordinance without a Development Agreement. Staff is supportive of this original request based on the number of 1 bedroom units, which typically require fewer spaces than 2 and 3 bedroom units. The developer's latest request calls for a further reduction to 1.8 spaces per unit. This would bring the parking down to 360 spaces. A parking study (Attachment 4) dated December 19, 2011, was submitted to support this request. Staff does not recommend this because of a concern that a reduction below 2.0 spaces per unit would create parking issues in the downtown area given the lack of any available on-street parking serving the project site. The excess parking demand may spill over into nearby residential areas, where overnight parking in the street is permitted.*

14. Removal of requirement for Moderate Income Restricted Housing (Section 6.9). *Section 6.9 of the Development Agreement called for 10 of the 2-bedroom units to be restricted for moderate income housing, if City issued bond financing is used for the project. The developer is concerned that this represents an administrative burden. The current allowable rent for a 2-bedroom apartment affordable to a 3-person moderate income household is $2,009 per month. This exceeds the market rate for 2-bedroom apartments. At the Waterstone*

Apartments, for example, 2-bedroom apartments are averaging $1,747 per month rent. This may not always be the case, as demand for apartments may lead to higher rents in the future. Staff does not recommend any change to this term of the Development Agreement.

15. Confirmation that water quality basin is acceptable on City property. *The original staff report for the project (Attachment 5) had indicated that the water quality basin for the project, approximately 0.19 acres, would be on the property that the City is purchasing from the developer as part of the Development Agreement. This issue was not addressed by the Development Agreement. Because of the project delay and the developer not signing the development agreement, new NPDES permit regulations apply to the project. It is estimated that this would increase the water quality basin size to 0.28 acres. This issue is part of a larger issue involving Sections 6.21 and 7.9 of the Development Agreement, which called for the City to purchase 8.84 acres of the project site.*

    This 8.84 acres, to be used by the City for the Civic Center has the following existing and proposed uses:
    - *High Street Extension for Post Office – 1.20 acres*
    - *Slope below Walnut Canyon School – 0.55 acres*
    - *Slope below proposed Essex Apartments – 0.50 acres*
    - *Emergency only access driveway from High Street to Apartments – 0.13 acres*
    - *Water quality basin for apartments – 0.28 acres*
    - *Extension of High Street to westerly boundary of property – 0.77 acres*
    - *Remnant property south of High Street extension (including flood control channel) – 0.42 acres*
    - *Remainder for Civic Center use – 4.98 acres*

    Staff recommends removing the slope below the school property from the land to be acquired by the City and setting up a back-up maintenance district on this slope and the water quality basin to ensure that these areas are maintained for the life of the project. These properties would not provide a public benefit and would require maintenance. In addition, the slopes below the proposed apartments need to be placed in an assessment district by the project and administered by the City to ensure proper maintenance.

    As such the acreage to be acquired by the City per Sections 6.21 and 7.9 of the Development Agreement would be reduced and the purchase price should be adjusted accordingly with only 4.98 acres available for the future Civic Center. The ultimate location of the emergency only access driveway and water quality basin should be determined by the City Engineer/Public Works Director and Community Development Director to minimize the impact on the City property.

16. Expediting of permits. *The developer is proposing a revised project without the use of podium buildings. This would require a new Residential Planned Development Permit as the existing permit has expired. A Planning Commission Hearing and City Council hearing are required. These hearings can occur simultaneously with any amendment to the Development Agreement. Staff is willing to commit its resources to processing any new permits expeditiously. This would also require a commitment on the part of the developer to submit complete plans and applications for City review. Although not requested by the developer, the stockpile of dirt on property that would be purchased by the City would also need to be addressed in a revised Development Agreement as City Council approval is required due to its height and slopes.*

In summary, the delay to this project has affected the City's ability to use the site it would purchase from Essex. The City has missed opportunities to bring available dirt onto this site (about 40,000-60,000 cubic yards of dirt are estimated to be needed to make this site usable). The usable depth of the City site has been reduced from approximately 300 feet to 200 feet as High Street was placed farther north than originally planned to accommodate the Post Office project. In addition, the City is paying $11,720 for the revised 66kv power pole relocation plan due to the delay, and the Essex project water quality basin, now increased to 0.28 acres, takes up an even larger proportion of the reduced City site. These factors need to be considered in the value of the City site, which was an integral part of the development agreement.

Staff is now seeking direction on these issues so that a draft amendment to the Development Agreement can be formally presented to the City Council for setting of hearings by the Planning Commission and City Council, upon receipt of revised plans and applications.

STAFF RECOMMENDATION

Concur with staff recommendations in report.

Attachments:

1. Development Agreement
2. Draft Development Agreement Amendment (Dated 9/9/2011)
3. December 7, 2011 Letter from John Eudy
4. December 19, 2011 Parking Study
5. July 18, 2007 City Council Staff Report (with Attachments 1&3)
6. March 31, 2009 Real Property Acquisition Agreement

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
ESSEX PORTFOLIO, L.P.

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO
THE REQUIREMENTS OF GOVERNMENT CODE §65868.84

CC ATTACHMENT 1

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on _____, 2007 by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Essex Portfolio, L.P., the owner of real property within the City of Moorpark generally referred to as Residential Planned Development Permit 2004-06 (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Agreement, City and Developer agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:

   1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.

   1.2. Prior to approval of this Agreement, but after the approval of the Mitigated Negative Declaration (MND), Mitigation Measures, and Mitigation Monitoring and Reporting Program ("the MMRP") for the Project Approvals as defined in section 1.3 of this Agreement, the City Council of City ("the City Council") approved General Plan Amendment No. 2004-05 ("GPA 2004-05"), for approximately 10.57 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached hereto and incorporated herein, and changed the zoning of the Property pursuant to Zone Change No. 2004-04 ("ZC 2004-04").

   1.3. GPA 2004-05, ZC 2004-04, and Residential Planned Development Permit No. 2004-06 (RPD 2004-06) [collectively "the Project Approvals"; individually "a Project Approval"] provide for the development of the Property and the construction of certain off-site improvements in connection therewith ("the Project").

1.4. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.

1.5. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. Developer anticipates developing the Property over a minimum of three (3) years. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and conditions imposed upon the development of the Property pursuant to the Project Approvals and this Agreement and to provide the public benefits and improvements specified in this Agreement.

1.6. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City, as amended by GPA 2004-05.

1.7. On June 20, 2007, the Planning Commission commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on June 20, 2007 recommended approval of the Agreement.

1.8. On July 18, 2007, the City Council commenced a duly noticed public hearing on this Agreement, and following the conclusion of the hearing approved the Agreement by adoption of Ordinance No. 355 ("the Enabling Ordinance") on August 1, 2007.

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, 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 section 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 Uniforrn 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 building 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 section, 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 section 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 Subsequent Approval 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 Subsequent 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 Subsequent 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 shall be unreasonably withheld or delayed from Developer. In addition, no Final Building Permit final inspection or certificate of occupancy will be unreasonably withheld or delayed 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 Final 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 section 5.1 of this Agreement, in no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.

5.7. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.

6. Developer Agreements.

6.1. Developer shall comply with (i) this Agreement, (ii) the Project Approvals, (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and (iv) the MMRP of the MND and any subsequent or supplemental environmental actions. Developer agrees not to apply for any institutional uses on the Property. The clubhouse and leasing offices are not considered to be institutional uses.

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 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. The amount of the Development Fee shall be Ten-Thousand Eight-Hundred Seventy-Four Dollars ($10,874.00) per residential unit. The fee shall be adjusted annually commencing July 1, 2008 by the larger increase of a) or b) as follows:

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

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Index 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 building permit for each residential 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. The amount of the Citywide Traffic Fee shall be Five Thousand Seventy-Five Hundred Dollars ($5,075.00) per residential unit. Commencing on

July 1, 2008, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

6.5. [THIS SECTION INTENTIONALLY LEFT BLANK.]

6.6. On the operative date of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND.

6.7. 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). The amount of the Park Fee shall be Four-Thousand Nine-Hundred Eighty-One Dollars ($4,981.00) for each residential dwelling unit within the Property. The fee shall be adjusted annually commencing July 1, 2008 by the larger increase of a) or b) as follows:

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

b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

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

Developer agrees that the above-described payments shall be deemed to satisfy the parkland dedication requirement set forth at California Government Code Section 66477 et seq. for the Property.

6.8. Provided that prior to the approval by City of the utility plans for RPD 2004-06, , Ventura County Waterworks District No. 1 or any successor entity confirms that it has sufficient recycled water to serve the public and

community owned landscaped areas within RPD 2004-06, then Developer shall construct appropriately sized water lines, pumping facilities, and storage facilities for recycled water consistent with the requirements of the City, Waterworks District No. 1 and Calleguas Water District. Said lines shall be installed prior to the final cap being placed on all streets. Developer shall provide service including payment of any connection and meter charges and shall use recycled water for medians and parkways for all public streets adjacent to the Project , and any other public and commonly owned landscaping and recreation areas constructed by Developer as part of the Project Approvals. The amount of recycled water needed and areas to be irrigated by recycled water shall be determined by City at its sole discretion. The recycled water line(s) shall be installed for each City approved phase of development of the Project, and the recycled water shall be in use prior to the first occupancy approval for each City approved phase of the Project. Developer shall install dual water meters and services for all locations in the Project determined necessary by City at its sole discretion to insure that both potable and recycled water are available where restroom and drinking fountains are planned.

6.9. Developer agrees 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 guarantee the affordability of forty (40) rental units (16 for very low income households and 24 for low income households) for the life of the Project. These forty (40) affordable units shall be rented to eligible tenants as shown in the table below. If City-Issued bonds are issued by City, at its sole discretion, through an "Inducement Resolution" and after a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing and used by Developer for the Project, then Developer will be deemed to have a "City Issued Bond Financed Project," in which case, in addition to the aforementioned forty (40) units, Developer shall provide ten (10) additional units for moderate income households for the life of the Project as provided in the table below.

Unit Type	1 Bedroom 1 Bath	2 Bedroom 1 Bath	2 Bedroom 2 Bath	3 Bedroom
Moderate **(for a City Issued City-Issued Bond Financed Project only)**		1	4	5
Low	11	4	8	1
Very Low	8	2	5	1
TOTAL	**19**	**6**	**13**	**2**
TOTAL (for a City Issued Bond Financed Project)	**19**	**7**	**17**	**7**

Four (4) of the nineteen (19) one-bedroom one bath affordable Low and Very Low Income units shall be handicap accessible and shall be reserved for and occupied by persons eligible for such accommodations, to the extent there is a qualified handicapped affordable person ready to occupy such unit. Should there be a qualified low or very low income prospective tenant desiring to rent such units but all such units are rented, Developer shall add such prospective tenant to the waiting list for such affordable handicap accessible units. At the earliest possible time a low or very low income non-handicap affordable unit becomes available, the non-handicapped affordable tenant who occupies the affordable handicap unit shall be relocated to another affordable unit in order to allow the qualified handicap tenant to occupy the handicap accessible unit. Developer shall include a provision in the non-handicap affordable lease that the non-handicap affordable tenant agrees to be relocated, at Developer cost, as soon as a non-handicap unit becomes available.

Low income households shall meet the criteria of sixty percent (60%) or less of median income for Ventura County. Very low income households shall meet the criteria of 50 percent (50%) or less of median income for Ventura County. For a City Issued Bond Financed Project, households for moderate income units shall meet the criteria of one hundred twenty

percent (120%) or less of median income, low sixty percent (60%) and/or very low income fifty percent (50%) or less of median income. The aforementioned forty (40) units (fifty units if it's a City Issued Bond Financed Project, including the additional ten units to be for moderate income tenants) are collectively referred to as the affordable housing units or affordable units. The household income limit, affordability thresholds and the affordable rent for very low income and low income affordable units (and moderate income affordable units in the event of a City Issued Bond Financed Project), may, if required by the issuer of any such bonds, be based on an income equal to or less than (but in no event greater than) the amounts stated in this paragraph, in accordance with the provisions of the Affordable Housing Agreement executed for the Project.

Developer further agrees that no grading permit shall be issued and no TEFRA hearing shall be scheduled until the Affordable Housing Agreement is executed by City and Developer. The Affordable Housing Agreement shall include, but not be limited to all terms addressed in this section 6.9.

In addition to the units referenced above, Developer agrees, at Developer's option, to either provide four (4) additional low income units during the term of the Affordable Housing Agreement, or to pay an in-lieu fee for any years during which the additional four (4) low income units are not continuously provided. The in-lieu fee shall be used by the City for any purposes, in the City's sole discretion.

The in-lieu fee shall be Twenty Three Thousand Four Hundred Dollars ($23,400.00) if paid in calendar year 2008. ("Initial In-lieu Fee Amount") The annual in-lieu payment shall increase by two percent (2%) each year above the prior year amount. In no event shall there be a decrease in the amount paid in any year compared to the prior year.

Payments shall be made on March 10 of each year beginning March 10, 2008, or the first March 10 of any year in which the Project is occupied with one or more residential units, whichever is later. If March 10 falls on a Saturday, Sunday, or City Holiday, then payment shall be due on the City's next business day. A late payment penalty equal to 10% of the payment due shall be added to payments received three (3) days or more after the due date as stated herein or when a deficient check has been given for payment. Payments received more then ten (10) days after the due date shall, in addition to the 10% penalty, accrue interest at a rate of 12% from the due date through and including the date the payment is received by the City.

In the event of a sale, transfer, assignment of any type or any portion of the Project or Property by Developer to any other entity not owned in

whole or in part by Developer, the fee amount referenced above shall be increased based on the new value of the Property as if it had been reassessed by the Ventura County Assessor and not exempt from the payment of new property taxes. The calculation shall provide the City 0.08% (equivalent to $800.00 per $1 million of assessed value) of the assessed value or such higher percentage of the total new property taxes if the City portion has been increased by action of the State of California or by a statewide initiative or referendum. (For example, if the sale results in a value of $36,000,000.00 then the annual fee to the City would be $36,000,000.00 X .0008 = $28,800.00, or if the City portion of the property taxes has been increased to 0.09% by the State of California on a statewide initiative or referendum then the amount would be $32,400.00). In the event the payment to the City under this calculation would be less than the Initial In-lieu Fee Amount, inclusive of any 2% adjustments applied as of the date of sale, transfer or assignment, then such adjusted Initial In-lieu Fee Amount shall continue until such time as the calculation in this paragraph would yield a higher annual fee.

Developer agrees not to convert the Project to for-sale condominiums, comrnunity apartments, planned development, stock cooperative, or other common interest development, hotel/motel, or as congregate care or assisted living facility for the life of the Project. Developer further agrees it shall not permit any of the units (affordable and market rate) to be used on a transient basis and shall not rent any unit for a period of less than monthly.

Developer agrees that the units used to house the qualified low and very low income tenants (and ten [10] units for qualified moderate income tenants if it's a City Issued Bond Financed Project) shall at all times and in all manner be the same as the market rate units including, but not limited to the quality and maintenance of flooring, window covers, appliances, HVAC, storage space and type, and the number and location of required parking spaces.

Developer further agrees that it has the obligation to provide the required number of affordable housing units as specified above regardless of the cost to acquire or construct said housing units. Developer further agrees that City has no obligation to use eminent domain proceedings to acquire any of the required affordable housing units and that this subsection 6.9 is specifically exempt from the requirements of subsection 7.2 of this Agreement.

At no time shall any of the affordable units be rented to an employee, agent, officer, contractor, subcontractor, affiliated company or subsidiary of Developer.

Developer shall pay an annual fee to City of Ten Thousand Dollars ($10,000.00) to administer the affordability provisions and other requirements of the Affordable Housing Agreement. The fee shall be paid on or before February 1 of each year commencing after the first residential occupancy for the Project and adjusted annually commencing each subsequent January by the larger increase of a) or b) as follows:

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

b. The annual percentage amount paid to City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) calendar quarters divided by four (4).

Developer agrees City may at any time assign or transfer or substitute the Moorpark Redevelopment Agency for City relative to affordable housing matters, including the issuance of City-Issued Bonds.

Developer agrees to the greatest extent permitted by state and federal law to grant priority to eligible Moorpark residents for the life of the Project to the extent it does not (i) jeopardize Developer's rights pursuant to this Agreement or the Project Approvals, or (ii) jeopardize or materially affect any City-Issued Bond Financing desired by Developer. In the event Developer obtains a legal opinion letter from bond counsel which confirms that granting priority to Moorpark residents may be in violation of any state or federal laws, Developer shall not grant priority to Moorpark residents.

All units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income and very low income persons (in the quantity as specified in this Agreement) to satisfy a portion of the City's RHNA obligation and the Moorpark Redevelopment Agency's affordable housing goals. None of the affordable units required by this Agreement shall duplicate or substitute for the affordable housing requirement of any other developer or development project. All Subsequent Approvals required of City under this section 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and the Affordable Housing Agreement or the conditions of approval for RPD No. 2004-06 or state and federal laws and regulations, then the provision providing the City the most favorable language for assisting eligible renters who meet the qualification of low and very low income (and

moderate income for the ten [10] units in the event City-Issued Bond Financing is used) shall prevail.

Developer must submit its request, in writing, to City for approval and processing of City Issued Bond Financing for the Project. If City concurs with Developer's request and Developer proceeds with City Issued Bond Financing, then City approval and processing of all documents, agreements, hearings and anything else required specifically for a City Issued Bond Financed Project shall not be unreasonably withheld or delayed.

For a City Issued Bond Financed Project, Developer agrees that City may at its sole discretion select the bond counsel, underwriter, financial advisor and other professional service providers that City deems necessary to effectuate City Issued Bond Financing. Developer further agrees to fund all costs actually incurred by City in connection with such City Issued Bond Financing by providing City with deposits for all such bond financing related costs not contingent on the sale of City-Issued bonds. In addition, Developer will pay for all city attorney and city staff time at applicable rates. With the exception of city staff costs, all other costs including, but not limited to out of pocket and professional services costs shall have City overhead expense of fifteen percent (15%) added to said costs.

In the event of a City Issued Bond Financed Project, Developer shall also pay an initial issuer fee to City of Forty Thousand Dollars ($40,000.00). The fee shall be paid upon funding of the City Issued Bond Financing.

6.10. Developer agrees that the Mitigation Measures included in the City Council approved MND and MMRP, or subsequent environmental clearance document approved by the Council, set forth the mitigation requirements for air quality impacts. Developer agrees to pay to City an air quality mitigation fee, as described herein (Air Quality Fee), in satisfaction of the Transportation Demand Management Fund mitigation requirement for the Project. The Air Quality Fee may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.

The Air Quality Fee shall be Nine-Hundred Twenty-Nine Dollars ($929.00) per residential unit to be paid prior to the issuance of each building permit for the first residential building in RPD 2004-06. Commencing on July 1, 2008, and annually thereafter the Air Quality Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided

by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

6.11. 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.

6.12. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Library Facilities Fees, Police Facilities Fees, Fire Facilities Fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.

6.13. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee of Three-Thousand Seven-Hundred Sixty Dollars ($3,760.00) for each residential unit prior to the issuance of a building permit for each residential building within the Project.

6.14. The street improvements for all streets scheduled for dedication to the City shall be designed and constructed by Developer to provide for a 50-year life as determined by the City Engineer.

6.15. Developer agrees that any fees and payments pursuant to this Agreement and for RPD 2004-06 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 section 6.3 of this Agreement are not public improvement fees collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto.

6.16. Developer agrees to comply with Section 15.40.150 of the Moorpark Municipal Code and any provision amendatory or supplementary thereto for annual review of this Agreement and further agrees that the annual review shall include evaluation of its compliance with the approved MND and MMRP.

6.17. Developer agrees that the Art in Public Places Fee shall not apply to this Project since negotiations for the Development Agreement were begun prior to the effective date of the ordinance adopting the Fee. .

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 Developer agrees that in the case of failure to comply with the terms and conditions of the early grading agreement after the expiration of all cure periods provided for in the early grading agreement, the City Council may by resolution declare its surety forfeited.

6.20 In the event either or both of the "CPI" referred to in sections 6.3, 6.5, 6.7, 6.9, and 6.10, above, the "referenced Index and/or LAIF" referred to in section 6.4, above and LAIF referred to in section 6.9 are discontinued or revised, such successor index with which the "CPI" and or "referenced Index and/or LAIF" 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 final building permit for the last residential building in the Project Developer agrees to sell City an approximate 8.84 acre site (hereinafter referred to as City Site) as shown in Exhibit B pursuant to the Purchase and Sale Agreement attached hereto as Exhibit C (the "Purchase and Sale Agreement") for the amount of One Million Two Hundred Thirty-Eight Thousand Six Hundred Dollars ($1,238,600.00). Developer shall pay all escrow and related costs for the sale of the City Site to City. Developer further agrees that prior to the Final Building Permit for the last residential building, to return the City Site ground elevation to the same elevation that was in place at the time of issuance of a grading permit for the Project. Verification of the elevation shall be determined by the City Engineer in his/her sole discretion.

6.22 Developer agrees to enclose the flood control channel located on the eastern portion of the Project as shown on the approved Project Site Plan and City Site to the satisfaction of the City Engineer and the Ventura County Watershed Protection District. Developer shall be responsible for any aesthetic or landscape improvements over and around the channel

6.23 Developer agrees, prior to issuance of the final building permit for the first residential building, within the Project to improve High Street within its existing right-of-way from its intersection with Moorpark Avenue up to the point of the temporary fire access to the extent required by Ventura County Fire Department, and the City Engineer in accordance with the approved Site Plan for the Project, for emergency secondary access to the Project.

6.24 The Developer agrees, at its sole cost and expense to relocate the existing 66 KV overhead power lines within the Project and City Site and connect to the Civic Center adjacent to the City Site in accordance with the map attached hereto as Exhibit D. Said relocation shall be completed prior to the first residential occupancy of the Project.

6.25 Developer agrees to provide one parking space in a (i) garage or "gang garage" as provided in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.13 parking spaces per unit. At least two parking spaces per unit shall be designated for each unit, guest parking shall be designated and there shall be no extra charges for required parking for the affordable units.

6.26 Developer agrees that if "cable services" (as defined by the federal Cable Act) or their equivalent (including, but not lirnited to, "video services" as defined in Public Utilities Code 5800 et seq., programming provided over a wireless or satellite system contained within the Project, including Satellite Master Antenna Television) are provided to the Project other than by a City Cable Franchisee or a State Video Services Franchisee, the apartment management entity shall pay monthly to City a fee of the highest of (1) five percent (5%) of the gross revenue generated by the provision of those services, (2) the highest franchise fee required from any City Cable Franchise or (3) the highest franchise fee required by any State Video Franchisee. In that event, except as otherwise provided herein, Developer also agrees to comply with all other requirements applicable to state video franchisees, including, but not limited to, customer service, PEG access, and PEG fees. "Gross revenue" as used herein is defined in Chapter 5.06 of the Moorpark Municipal Code and any successor amendment or supplementary provision thereto. Developer further agrees that if cable services or their equivalent are provided to the Project by any means other than by a City Cable Franchisee or a State Video Services Franchisee. Developer will add this language to any Regulatory Agreement as part of the sale of any bonds issued by the City for Project and the Affordable Housing Agreement.

6.27 Developer shall, prior to the issuance of the final building permit for the last building within the Project restore the City Site to a reasonable condition, free of construction debris, piles of construction related dirt and other construction (including construction landscape) material to the satisfaction of the City Engineer and Community Development Director.

6.28 Developer agrees for the life of the Project to cast affirmative ballots for the increase of any assessments for existing assessment districts for the maintenance of parkway and median landscaping, street lighting, and parks conferring special benefits, and for the formation of any new assessment district for the purposes listed above in order to supplement then existing assessments upon properties within the Project. Developer also agrees to add this language to any Regulatory Agreement as part of the sale of any bonds issued by the City for this Project and to the Affordable Housing Agreement.

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 Project Approvals and all Subsequent Approvals and Building Permits for the Project area and if requested in writing by Developer 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. City shall also commit reasonable time and resources of City staff to work with the Ventura County Water Protection District for the processing and permitting of the plans for the undergrounding of the channel.

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 after City Council approval of all Project Approvals. Said early grading agreement shall be consistent with the conditions of approval for RPD 2004-06 and contingent on City Engineer and Director of Community Development

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.

7.4 City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the Project so long as the application for such entitlements are "deemed complete" in compliance with the requirements of Chapter 4.5 Review and approval of Development Projects (Permit Streamlining Act) of the California Government Code.

7.5 City agrees that the Park Fee required under section 6.7 of this Agreement meets all of Developer's obligation for park land dedication provisions of state law and City codes.

7.6 The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Project required herein for the duration such units are required to be maintained as affordable consistent with the provisions of section 6.9 of this Agreement.

7.7. 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 and at City's discretion may include provisions requiring such reimbursement to Developer for the same in such other development project conditions of approval.

7.8. City agrees that the Los Angeles Avenue Area of Contribution (AOC) fee shall be Three-Thousand Seven-Hundred Sixty Dollars ($3,760.00) per residential unit.

7.9. City shall acquire the City Site for One Million Two Hundred Thirty-Eight Thousand Six Hundred Dollars ($1,238,600.00) prior to issuance of the final building permit for the last residential building in the Project.

7.10. City will allow the use of the City Site for the staging for the construction of the Project.

7.11. City will allow one parking space in a (i) garage or "gang garage" as provided in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.13 parking spaces per unit. At least two parking spaces per unit shall be designated for each unit, guest parking

shall be designated and there shall be no extra charges for required parking for the affordable units.

7.12. City agrees that the Art in Public Places Fee shall not apply to this Project since negotiations for this Development Agreement were begun prior to the effective date of the ordinance adopting the Fee.

7.13. City acknowledges Developer may want to use City-Issued Bond Financing for the Project. If City, at its sole and unfettered discretion, authorizes such bond financing, then City agrees to use all good faith best efforts to accommodate any request by Developer for an inducement resolution allowing the use by Developer of City Issued Bond Financing for the Project.

7.14. City agrees that payment of the Development Fee required under section 6.3 of this Agreement also meets Developers' Casey Road/Gabbert Road Area of Contribution obligation.

8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City.

9. Demonstration of Good Faith Compliance. In order to ascertain compliance by Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of Developer hereunder or render this Agreement invalid or void. At the same time as the referenced annual review, City shall also review Developer's compliance with the MMRP.

10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives 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; (f) damage to work in progress by reason of fire, flood, earthquake or other casualty; (g) 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; (h) delay caused by a delay by other third party entities which are required to approve plans or documents for Developer to construct the Project, or restrictions imposed or mandated by such other third party entities or governmental entities other than City, (including but not

limited to, Ventura County Watershed Protection District); or (i) 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 Project.

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 within five (5) days of receipt of written notice from City that the same is due and payable; or

(c) breaches any of the provisions of the Agreement and fails to cure the same within five (5) days of receipt of written notice from City of such breach (or, if the breach is not able to be cured within such five (5) day period, fails to start to cure the same with five (5) days of receipt of written notice from City of such breach).

11.2. Default by City. City shall be deemed in breach of this Agreement if it breaches any of the provisions of this Agreement.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this section of this 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 section. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided as required by this Agreement.

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. In addition, if the breach is of sections 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.21, 6.26, or section 6.28 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 section 11.3 hereof until the date that the breach is cured as provided in the notice of violation. If the violation is of section 6.9, injunctive relief, specific performance and/or monetary damages shall be available.

Nothing in this section 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; provided, however, Financier and such owner shall not be responsible for any matters that occurred prior to their acquisition of the Project.

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 ten (10) 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 written 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 or Subsequent Approvals 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 or Subsequent 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 seven (7) years commencing on the operative date or until one year after the issuance of the final building permit for occupancy of the last building of the Project whichever occurs last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

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

    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 "E" attached hereto and incorporated herein.

    Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contain the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.

22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding,

unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.

23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.

24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.

25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.

26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect.

27. Cooperation Between City and Developer. City and Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.

28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Purchase and Sale Agreement, the Project Approvals or the Subsequent Approvals, the provision of this Agreement 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, Essex Portfolio, L.P., and City of Moorpark have executed this Development Agreement on the date first above written.

CITY OF MOORPARK

_____
Patrick Hunter
Mayor

OWNER/DEVELOPER
Essex Portfolio, L.P.

By: Essex Property Trust, Inc.,
Its General Partner

By: _____
Its: _____

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 2B

PARCEL 2A TOGETHER WITH THAT PORTION OF PARCEL 4A OF LOT LINE ADJUSTMENT NO. 2005-03 IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA. AS RECORDED IN DOCUMENT NO. 20050503-0108315 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A PORTION OF LOT "T" OF TRACT NO. "L" OF RANCHO SIMI, AS PER MAP RECORDED IN BOOK 5, PAGE 5 OF MISCELLANEOUS RECORDS (MAPS) IN SAID OFFICE OF THE COUNTY RECORDER AND A PORTION OF LOT 4, TRACT NO. 3 PER MAP ENTITLED "MAP OF M.L. WICKS SUBDIVISION OF PART OF TRACT U AND ADDITION TO MOORPARK, IN THE RANCHO SIMI, VENTURA COUNTY, CALIFORNIA" IN SAID CITY, COUNTY AND STATE AS SHOWN ON MAP RECORDED IN BOOK 5, PAGE 37 OF SAID MISCELLANEOUS RECORDS (MAPS), LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

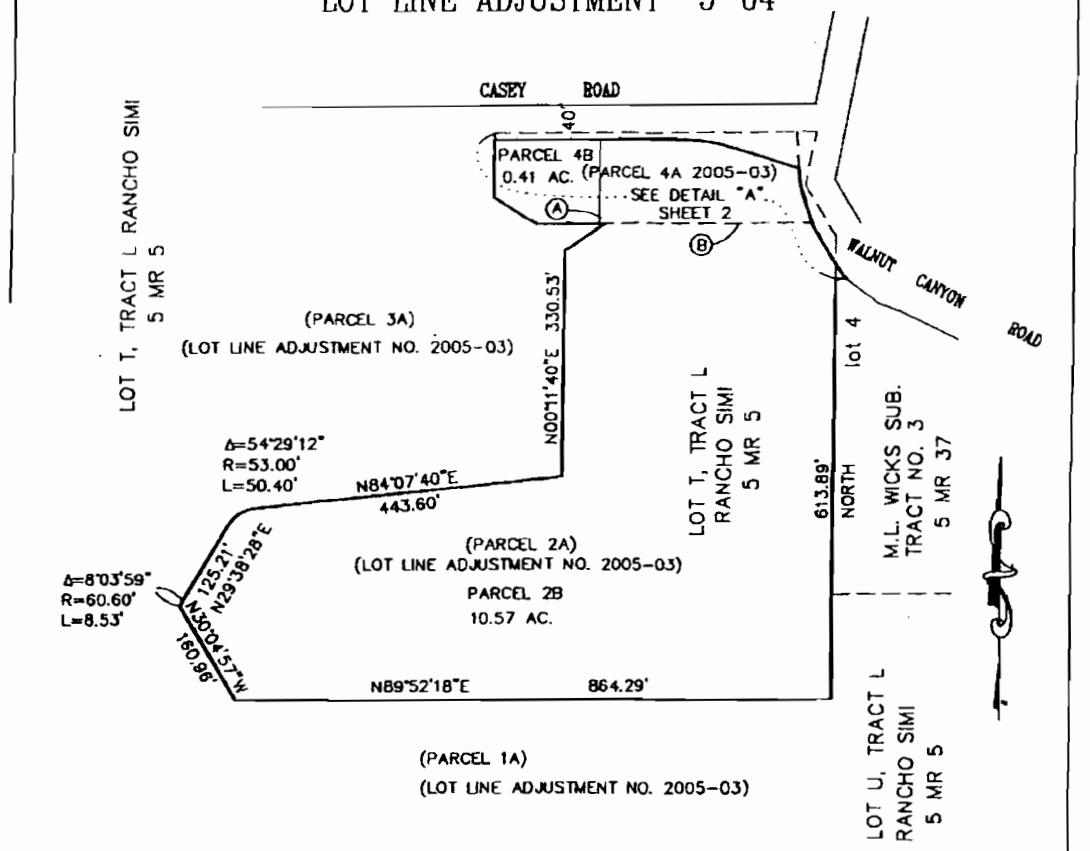
BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 89°52'00" EAST 401.10 FEET IN THE SOUTHERLY LINE OF SAID PARCEL 4A, SAID POINT BEING DISTANT THEREON NORTH 89°52'00" EAST 91.73 FEET FROM THE WESTERLY TERMINUS THEREOF; THENCE

1ST: NORTH 0°07'53" WEST 124.14 FEET TO THE NORTHERLY LINE OF SAID PARCEL 4A.

CONTAINING: 10.57 ACRES, MORE OR LESS.

LOT LINE ADJUSTMENT 5-04

SCALE 1" = 200'



PARCEL	OLD AREA	NEW AREA
2B	9.80 AC.	10.57 AC.
4B	1.18 AC.	0.41 AC.

Ⓐ = NEW LOT LINE
Ⓑ = OLD LOT LINE

PROFESSIONAL LAND SURVEYOR
GORDON S. LEDBETTER
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA

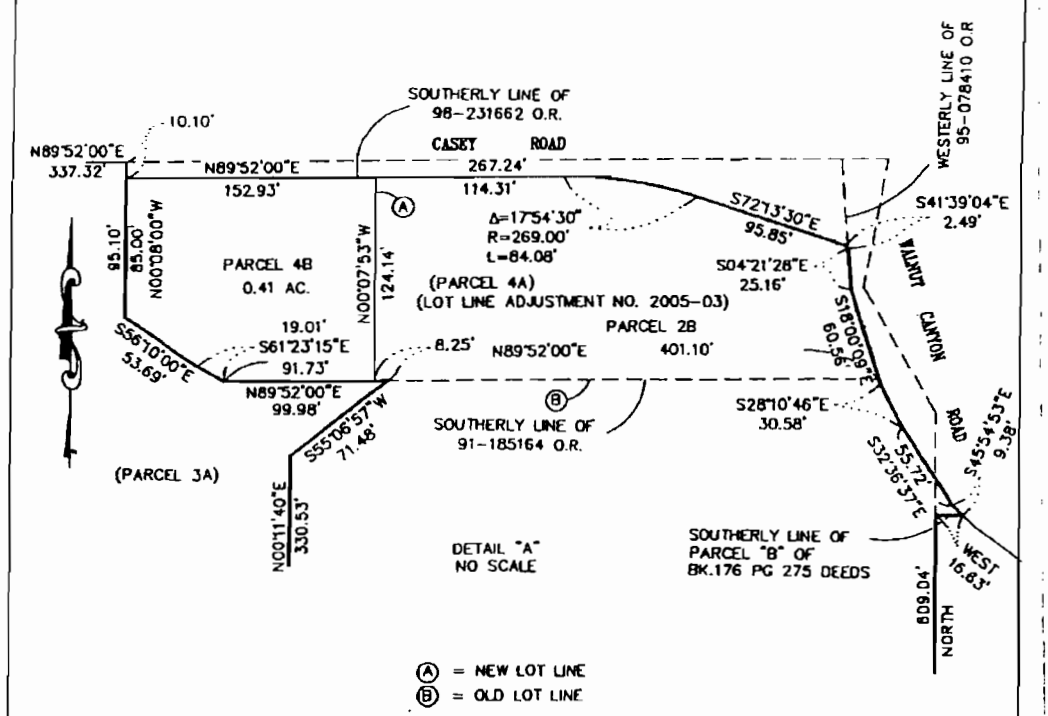
Keith Companies | TKC
310 N. Westlake Blvd. Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6502

6/30/05

LS No. PLS 4438 EXP. DATE 9/30/05

SHEET 1 OF 2

LOT LINE ADJUSTMENT 5-04



PROFESSIONAL LAND SURVEYOR
GORDON S. LEMBOUTE
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA

Keith Companies | TKC

310 N. Westlake Blvd. Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6502

6/30/05

LS NO. PLS 4438 EXP. DATE 9/30/05

SHEET 2 OF 2

EXHIBIT B

LEGAL DESCRIPTION OF CITY SITE

PARCEL 1A

PARCEL 1 TOGETHER WITH THAT PORTION OF PARCEL 3 OF LOT LINE ADJUSTMENT NO. 2005-01 IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS RECORDED IN DOCUMENT NO. 20050406-0083167 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A PORTION OF LOT "T" OF TRACT NO. "L" OF RANCHO SIMI, AS PER MAP RECORDED IN BOOK 5, PAGE 5 OF MISCELLANEOUS RECORDS (MAPS) IN SAID OFFICE OF THE COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 30°04'57" WEST 157.82 FEET IN THE NORTHEASTERLY LINE OF SAID PARCEL 1; THENCE ALONG THE PROLONGATION OF SAID LINE

1ST: NORTH 30°04'57" WEST 3.14 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 60.60 FEET, TO WHICH A RADIAL LINE OF SAID CURVE BEARS SOUTH 52°17'33" EAST; THENCE; THENCE

2ND: WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°07'57" A DISTANCE OF 86.87 FEET; THENCE TANGENT TO SAID CURVE

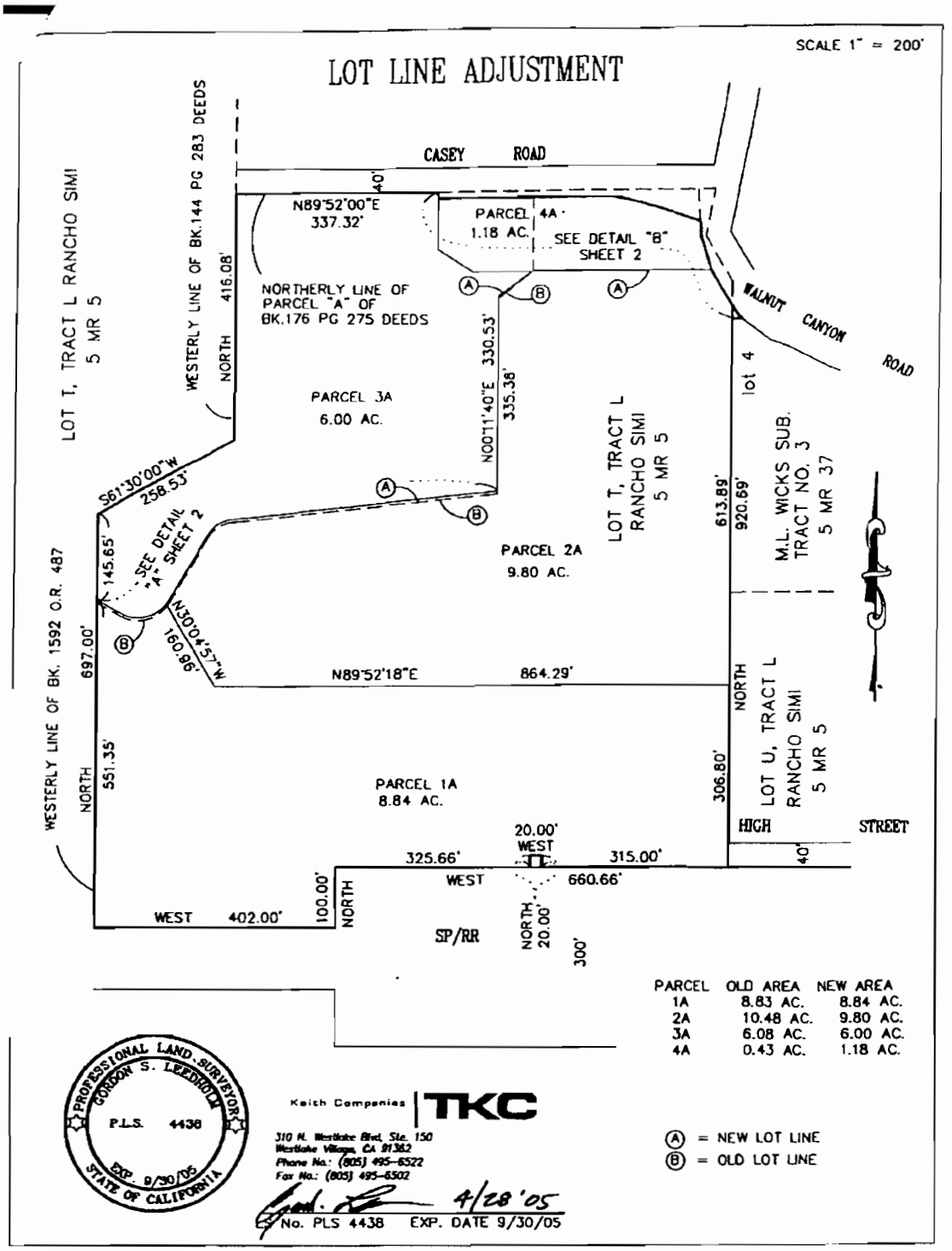
3RD: NORTH 60°09'36" WEST 45.65 FEET TO THE WESTERLY LINE OF SAID PARCEL 3; THENCE ALONG SAID BOUNDARY THE FOLLOWING THREE COURSES,

4TH: SOUTH 4.85 FEET; THENCE

5TH: SOUTH 60°09'36" EAST 45.65 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 60.60 FEET; THENCE

6TH: EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'23" A DISTANCE OF 89.52 FEET TO THE POINT OF BEGINNING.

CONTAINING: 8.84 ACRES, MORE OR LESS.


SCALE 1" = 200'
LOT LINE ADJUSTMENT
CASEY ROAD
40'
N89°52'00"E
337.32'
PARCEL 4A
1.18 AC.
SEE DETAIL "B"
SHEET 2
WALNUT CANYON ROAD
NORTHERLY LINE OF
PARCEL "A" OF
BK.176 PG 275 DEEDS
WESTERLY LINE OF BK.144 PG 283 DEEDS
NORTH 416.08'
LOT T, TRACT L RANCHO SIMI
5 MR 5
PARCEL 3A
6.00 AC.
N00°11'40"E 330.53'
335.38'
LOT T, TRACT L
RANCHO SIMI
5 MR 5
lot 4
M.L. WICKS SUB.
TRACT NO. 3
5 MR 37
613.89'
920.69'
S61°30'00"W
258.53'
SEE DETAIL
"A" SHEET 2
145.65'
PARCEL 2A
9.80 AC.
N30°04'57"W
160.96'
697.00'
WESTERLY LINE OF BK. 1592 O.R. 487
N89°52'18"E
864.29'
NORTH
551.35'
PARCEL 1A
8.84 AC.
306.80'
LOT U, TRACT L
RANCHO SIMI
5 MR 5
HIGH STREET
20.00'
WEST
325.66'
315.00'
WEST
660.66'
100.00'
NORTH
WEST 402.00'
SP/RR
NORTH 20.00'
300'
PARCEL OLD AREA NEW AREA
1A 8.83 AC. 8.84 AC.
2A 10.48 AC. 9.80 AC.
3A 6.08 AC. 6.00 AC.
4A 0.43 AC. 1.18 AC.
PROFESSIONAL LAND SURVEYOR
GORDON S. LEEDHOLM
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA
Keith Companies
TKC
310 N. Westlake Blvd. Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6502
4/28 '05
No. PLS 4438 EXP. DATE 9/30/05
(A) = NEW LOT LINE
(B) = OLD LOT LINE

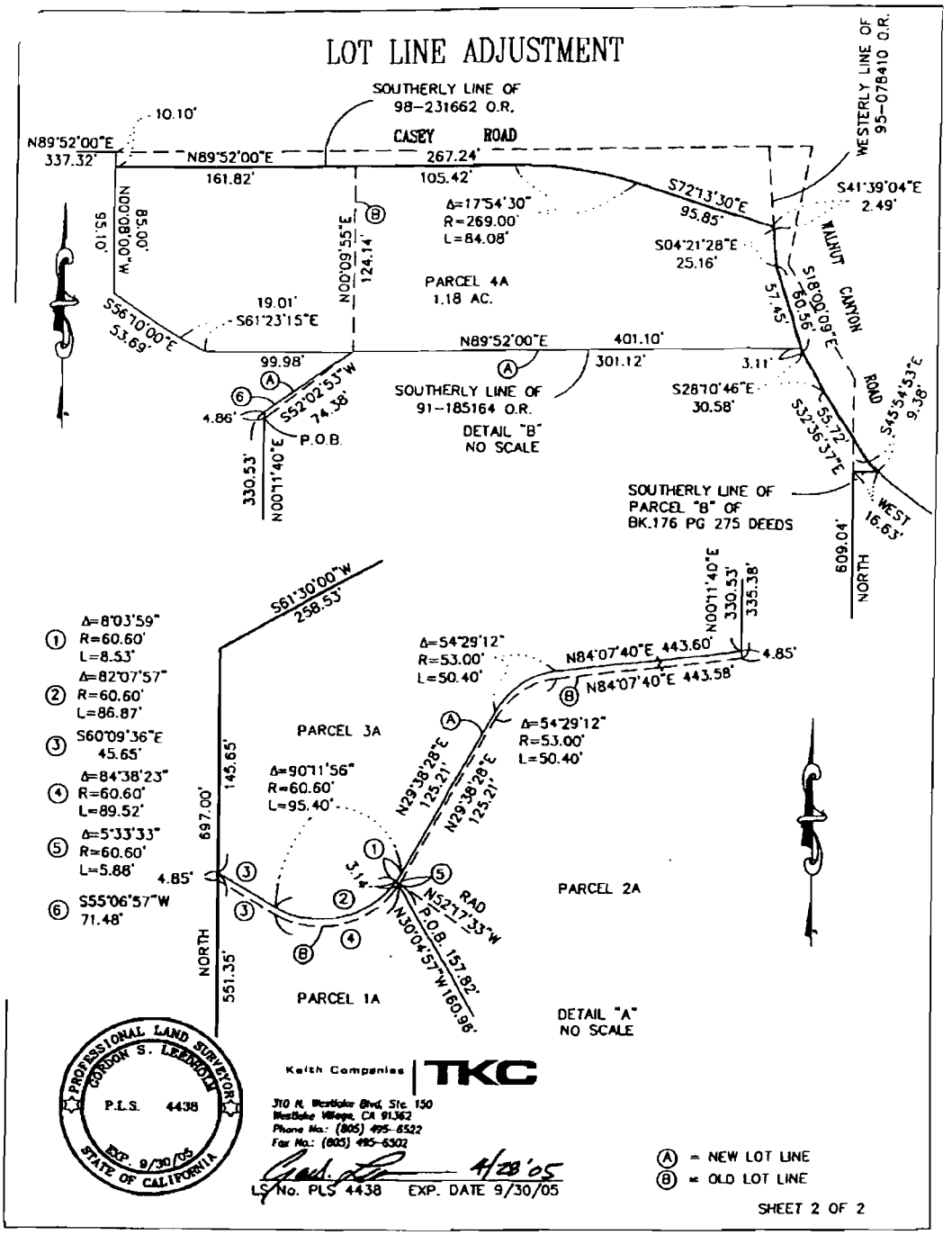

LOT LINE ADJUSTMENT
SOUTHERLY LINE OF 98-231662 O.R.
CASEY ROAD
WESTERLY LINE OF 95-078410 O.R.
N89°52'00"E 337.32'
10.10'
N89°52'00"E 161.82'
267.24'
105.42'
Δ=17°54'30" R=269.00' L=84.08'
S72°13'30"E 95.85'
S41°39'04"E 2.49'
S04°21'28"E 25.16'
95.10'
N00°08'00"W 85.00'
N00°09'55"E 124.14'
PARCEL 4A 1.18 AC.
WALNUT CANYON ROAD
S18°00'09"E 60.56'
57.45'
19.01'
S61°23'15"E
S56°10'00"E 53.69'
N89°52'00"E 401.10'
301.12'
3.11'
99.98'
S52°02'53"W 74.38'
4.86'
P.O.B.
SOUTHERLY LINE OF 91-185164 O.R.
DETAIL "B" NO SCALE
S28°10'46"E 30.58'
55.72'
S32°36'57"E
S45°54'53"E 9.38'
330.53'
N00°11'40"E
SOUTHERLY LINE OF PARCEL "8" OF BK.176 PG 275 DEEDS
WEST 16.63'
609.04'
NORTH
S61°30'00"W 258.53'
N00°11'40"E 330.53' 336.38'
Δ=8°03'59" R=60.60' L=8.53'
Δ=82°07'57" R=60.60' L=86.87'
S60°09'36"E 45.65'
Δ=84°38'23" R=60.60' L=89.52'
Δ=5°33'33" R=60.60' L=5.88'
S55°06'57"W 71.48'
Δ=54°29'12" R=53.00' L=50.40'
N84°07'40"E 443.60'
4.85'
N84°07'40"E 443.58'
PARCEL 3A
Δ=54°29'12" R=53.00' L=50.40'
Δ=90°11'56" R=60.60' L=95.40'
N29°38'28"E 125.21'
N29°38'28"E 125.21'
145.65'
697.00'
3.18'
4.85'
PARCEL 2A
N52°17'33"W
P.O.B. 157.82'
N30°04'57"W 160.96'
NORTH
551.35'
PARCEL 1A
DETAIL "A" NO SCALE
PROFESSIONAL LAND SURVEYOR GORDON S. LEEKMAN P.L.S. 4438 EXP. 9/30/05 STATE OF CALIFORNIA
Keith Companies TKC
310 N. Westlake Blvd. Ste. 150 Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6302
4/28/05
LS No. PLS 4438 EXP. DATE 9/30/05
Ⓐ = NEW LOT LINE
Ⓑ = OLD LOT LINE
SHEET 2 OF 2

EXHIBIT C

Real Estate Purchase Agreement

Essex Portfolio L.P., a California limited partnership (the "Seller"), hereby agrees to sell to the City of Moorpark ("Buyer")for a price of One Million Two Hundred Thirty-Eight Thousand Six Hundred Dollars ($1,238,600.00), and on the terms and conditions stated herein, the following real property located in the City of Moorpark, County of Ventura, State of California (the "Property"): approximately eight and eighty-four one hundredths (8.84) acres of land further described in Exhibit "A" attached hereto. Exact legal description to follow in escrow. In addition, as additional purchase price, Buyer shall also pay to Seller at closing an amount equal to the actual Costs (as defined below) of any site improvements required by any governmental authority to be constructed on the Property, including, without limitation, flood control channel improvements, to the extent same do not solely and directly benefit that certain property adjacent to the Property which is also owned by Seller, such adjacent property being more particularly described in Exhibit "B" attached hereto (the "Adjacent Property"). The term "Costs" shall mean all direct and actual costs incurred by Seller, including, without limitation, consultants' costs, fees and permit costs, to construct improvements on the Property.

1) **ESCROW:** Escrow shall be opened within three (3) days after the Effective Date (as defined in Section 16 E. below). Escrow shall close on the date which is five (5) days from and after the date that a final certificate of occupancy, or its equivalent, is issued by the City of Moorpark for all residential apartment units to be built on the Adjacent Property. Escrow shall be held by LandAmerica Lawyer's Title, 2535 Townsgate Road, Suite 207, Westlake Village, California, 91361 Attention: Connie Ferraro, Phone: 805.446.6465, Fax: 805.446.6469 (the "Escrow Agent"). The entire balance of the purchase price shall be paid in cash by Buyer at closing. The provisions hereof shall constitute joint instructions to the Escrow Agent to consummate the purchase in accordance with the terms and provisions hereof; provided, however, that the parties shall execute such additional escrow instructions, not inconsistent with the provisions hereof, as may be deemed reasonably necessary to carry out the intentions of the parties as expressed herein. The cost of escrow shall be paid by Seller. The cost of documentary transfer tax, or other taxes imposed upon the sale, if any, shall be paid by Buyer. All other costs shall be paid in accordance with the custom in the County in which the Property is located.

2) **TITLE:** No later than thirty (30) business days after the Effective Date, Seller shall procure and deliver to Buyer a preliminary title report or title insurance commitment for the Property. Within twenty (20) business days following receipt thereof, Buyer shall either approve in writing the exceptions contained in said title report or commitment or specify in writing any exceptions to which Buyer objects; provided, however, those certain exceptions shown on Exhibit "C" attached hereto are hereby approved by Buyer. Failure by Buyer to object to any such exceptions in said title report or commitment within such twenty (20) business day period shall be deemed to mean that Buyer has waived any objections to the exceptions in such title report or commitment. In addition, Buyer agrees to grant to Seller or to any public utility, or permit Seller to place or have placed on the Property, prior to the issuance of a Grading Permit for the Project, certain easements over the Property for certain [construction of the Project, water detention basin, electrical and other utility overhead lines and related items], which easement agreements shall be in form and substance reasonably satisfactory to Buyer, Seller and/or any such applicable public utility. If any such exception which is objected to by Buyer cannot be removed or Seller does not wish to remove same, Buyer may terminate this Agreement by providing written notice of same to Seller and Escrow Agent not later than ten (10) days after its receipt of written notice from Seller advising Buyer that it cannot or will not remove such exception, in which event Buyer and Seller shall have no further obligations under this Agreement; or, alternatively, Buyer may purchase the Property subject to such exceptions. Failure by Buyer to provide such written notice of termination within such ten (10) day period shall be deemed to mean that Buyer has waived its objection to such title exception. Seller shall convey to Buyer marketable fee title subject only to the items approved by Buyer in accordance with this Agreement. Title shall be insured by a CLTA standard owner's policy of title insurance issued by LandAmerica Lawyer's Title Insurance Company, in an amount equal to the purchase price with the premium for same to be paid by Seller; provided, however, the cost of any title endorsements shall be paid for by Buyer. Title will be conveyed by Grant Deed. Seller shall also execute and/or deliver to Buyer at closing (i) a FIRPTA Affidavit and California Form 593-C, and (ii) any other documents or instruments reasonably requested by Buyer and/or Escrow Agent, all in form and substance reasonably satisfactory to Buyer and Escrow Agent. Buyer shall execute and deliver to Seller at closing any documents or instruments reasonably requested by Seller or Escrow Agent.

3) **RISK OF LOSS:** In the event that any improvements on the Property are destroyed or damaged by any casualty, or the Property becomes the subject of any condemnation proceeding or if any such condemnation proceeding is threatened, between the date this Agreement is executed by the Seller and the date title is conveyed to Buyer, Buyer shall accept the Property in its then condition, all insurance proceeds payable to Seller by reason of the damage to the Property, or, as the case may be, all condemnation proceeds payable by reason of such condemnation, shall be paid and/or assigned, as the case may be, to Buyer.

4) **PRORATIONS:** Real estate taxes for the fiscal year in which escrow closes and other expenses of the Property shall be prorated as of the close of escrow. All prorations shall be credited against the purchase price.

5) **POSSESSION:** Possession of the Property is to be delivered to Buyer as of the date of close of escrow.

6) **SELLER'S REPRESENTATIONS AND WARRANTIES:** Seller hereby warrants and represents, for the benefit of Buyer, the following both as of the date hereof and as of the date of the closing of escrow:

A. This Agreement and all documents delivered by Seller to Buyer, now or at the closing, have been or will be duly authorized and executed and delivered by Seller, and are legal, valid and binding obligations of Seller, sufficient to convey title to the Property, and enforceable.

7) **BUYER'S REPRESENTATIONS AND WARRANTIES:** Buyer hereby warrants and represents, for the benefit of Seller, the following both as of the date hereof and as of the date of the closing of escrow:

A. This Agreement and all documents delivered by Buyer to Seller now or at closing, have been or will be duly authorized and executed by Buyer, and are legal, valid and binding obligations of Buyer sufficient to accept conveyance of title to the Property, and

enforceable.

All representations and warranties contained in this Agreement or implied by law shall be deemed to survive the date of closing and shall not merge with the deed.

8) **AS IS, WHERE IS SALE:** Buyer acknowledges and agrees that except for the representations and warranties of Seller expressly set forth in this Agreement, that Buyer is purchasing the Property in its existing "As Is" "Where Is" condition and "With All Faults", and that (i) Seller makes no representations or warranties concerning the Property, and (ii) Seller has no liability with respect to (x) the value of the Property or its financial condition, (y) projections or estimates regarding size, income or expenses of the Property as provided by Seller or Seller's broker, or (z) the completeness or accuracy of any third party documents, information, market or other data or reports it has provided or shall provide to Buyer. Buyer acknowledges and represents to Seller that Buyer will have during the investigation period ample opportunity to inspect and evaluate the Property; that Buyer is experienced in the ownership of real estate; and to the extent that Buyer's own expertise with respect to any matter is insufficient to enable Buyer to reach an informed conclusion, Buyer has or will have engaged the services of persons qualified to advise Buyer with respect to such matters. Therefore, it is understood and agreed that, with respect to the physical and environmental condition of the Property and its suitability for Buyer's proposed use or development, the Property is being sold and conveyed and Buyer agrees to accept the Property "As Is", "Where Is" and "With All Faults" and subject to any physical or environmental condition which may exist, without any representation or warranty by Seller except as expressly set forth in this Agreement or in any documents executed by Seller in connection with the closing. Buyer hereby expressly acknowledges and agrees that (i) Buyer shall be solely responsible for determining the physical condition of the Property, the legal restrictions applicable to the development and use of the Property, and the suitability of the Property for Buyer's proposed use, and Buyer, prior to the end of the investigation period, will have thoroughly inspected and examined the Property to the extent deemed necessary by Buyer in order to enable Buyer to evaluate the purchase of the Property, and (ii) Buyer is relying solely upon such inspections, examination and evaluation of the Property by Buyer in purchasing the Property on an "As-Is", "Where-Is" and "With All Faults" basis. Except for a breach by Seller of a warranty or representation of Seller expressly set forth in this Agreement, in the event that closing occurs hereunder, Buyer hereby assumes the risk that physical and environmental conditions may exist on the Property. To the extent that the foregoing imposes any risk to Buyer, the same is reflected in the purchase price. Buyer, on behalf of itself and its successors and/or assigns, or anyone claiming by, through or under Buyer, hereby fully releases Seller and its subsidiaries and affiliates, and each of their respective employees, shareholders, officers, directors, partners, representatives and agents from any and all claims that it may have now or in the future against Seller and/or any of its subsidiaries and/or affiliates, and/or any of their respective employees, shareholders, officers, directors, partners, representatives or agents for any cost, loss, liability, damage, expense (including, without limitation, attorneys' fees and costs and court costs), demand, action or cause of action arising from or related to any adverse physical or other condition affecting the Property (including, without limitation, any adverse conditions as to environmental matters, including, without limitation, soils and groundwater conditions). Seller agrees to indemnify Buyer as a condition of this Agreement, that in the event of any adverse physical or other condition (including, without limitation, regarding any adverse conditions as to environmental matters, including, without limitation, soils and groundwater conditions) affecting the Property, Seller shall be responsible therefor, for any cause of action any judgment, however obtained, executed against Seller and/or any of its subsidiaries and/or affiliates, and/or any of their respective employees, shareholders, officers, directors, partners, representatives, contractors, subcontractors or agents on account thereof.

With respect to the claims released in this Section 8, Buyer expressly waives any rights or benefits available to it under the provisions of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Buyer acknowledges that its attorney at law has explained to it the meaning and effect of this statute. Buyer understands fully the statutory language of Civil Code Section 1542, and, with this understanding, Buyer nevertheless elects to, and does, assume all risk for claims released under this Agreement whether arising before or after the date of this Agreement and whether now known or unknown, and Buyer specifically waives any rights it may have under California Civil Code Section 1542. Buyer fully understands that if the facts with respect to which this Agreement is executed are later found to be other than or different from the facts now believed by it to be true, it expressly accepts and assumes the risk of that possible difference in facts and agrees that this Agreement shall be and remain effective notwithstanding that difference in facts.

The provisions of this Section 8 shall survive the termination of this Agreement and/or the Closing.

_____ Buyer's Initials

9) **BROKERS:** No broker or other party has a claim for brokerage commission, finder's fee, or like payment arising out of or in connection with Buyer's purchase of the Property. Each party shall indemnify, defend, protect and hold the other harmless from and against any liability, cause of action, claim, loss, cost, damage and/or expense, including, without limitation, attorneys' fees and costs and court costs arising out of or incurred in connection with any claim by any broker of finder for any such commission, fee or like payment provided the person or entity making any such claim alleges that such claim arose out of acts or dealings of the indemnifying party.

10) **FOREIGN INVESTOR DISCLOSURE:** Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code of 1986 ("IRC"), or under any similar sections of any similar laws of the State of California, i.e., Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the IRC and Income Tax Regulations or similar California laws or regulations. Seller shall sign under penalty of perjury and deliver to Buyer at close of escrow a certification thereof indicating thereon Seller's U.S. taxpayer identification number and address.

11) **EXCHANGE:** Buyer agrees to cooperate should the Seller elect to sell the Property as part of a like-kind exchange under IRC Section 1031. Such cooperation may include the assignment of all or a portion of this Agreement to a third party, the substitution of such third party as the Seller and the execution of all documents reasonably necessary to complete the exchange in accordance with applicable laws and regulations. Seller agrees that the consummation of this Agreement is not predicated or conditioned upon the completion of any such exchange. Buyer shall not incur any additional liability or financial obligation as a consequence of the Seller's contemplated exchange, nor shall Buyer be obligated to take title to any property other than the Property.

12) **ADDENDA:** Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This writing, including addenda if any, expresses the entire agreement of the parties. There are no other understandings, oral or written, which in any manner alter its terms. This Agreement supersedes any and all prior oral or written agreements between the parties hereto regarding the Property. Seller and Buyer agree to execute such additional documents as may be reasonable and necessary to carry out the provisions of this Agreement.

13) **ATTORNEY FEES:** If this Agreement or the transactions contemplated herein gives rise to a lawsuit, arbitration or other legal proceeding between the parties hereto, the prevailing party shall be entitled to recover its costs and reasonable attorney fees in addition to any other judgment of the court or arbitrator(s).

14) **SELLER'S DEFAULT:** If Seller fails to perform its obligations pursuant to this Agreement for any reason except failure by Buyer to perform hereunder, or if prior to the close of escrow any of Seller's representations or warranties are breached in any materially adverse respect, and any such failure or breach is not cured by Seller within ten (10) days after receipt of written notice from Buyer specifying the nature of any such failure and/or breach, Buyer shall elect, as its sole remedy, either to (i) terminate this Agreement by giving Seller timely written notice of such election prior to or at closing, (ii) enforce specific performance, or (iii) waive said failure and/or breach and proceed to closing. IN NO EVENT SHALL SELLER'S DIRECT OR INDIRECT PARTNERS, SHAREHOLDERS, OWNERS OR AFFILIATES, OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS HAVE ANY LIABILITY FOR ANY CLAIM, CAUSE OF ACTION OR OTHER LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE PROPERTY, WHETHER BASED ON CONTRACT, COMMON LAW, STATUTE, EQUITY OR OTHERWISE.

15) **ACCESS:** Seller hereby grants to Buyer, its employees, agents, contractors and nominees (collectively, "Buyer's Agents"), the right to enter onto the Property during the term of this Agreement to conduct such engineering, soils, geological, surveying, environmental investigation and assessment, and other tests as Buyer desires; provided that (i) Buyer provides Seller at least five (5) business days prior written notice of same and affords Seller the opportunity to have its representative present, and (ii) Buyer shall not conduct any invasive testing, including, without limitation, Phase II environmental testing, without first obtaining Seller's prior written consent, which consent may be withheld, or granted on conditions, in Seller's sole discretion. Buyer shall (i) indemnify, defend, protect, and hold harmless Seller and the Property from and against all loss, claim, injury, liability, damage, cost and/or expense (including, without limitation, attorneys' fees and costs and court costs) for injury to persons or property incurred as a result of or in connection with any such entry by Buyer or any of Buyer's Agents, and (ii) promptly and properly repair any damage to the Property caused by any such entry by Buyer or any of Buyer's agents. In addition, prior to any entry upon the Property, Buyer shall deliver certificates or other reasonable proof of a commercial general liability insurance policy written on an occurrence basis with a combined single limit of not less than Two Million Dollars ($2,000,000.00), under which Seller is named as an additional insured, with an insurance company reasonably acceptable to Seller. The certificate shall require at least thirty (30) days' written notice to Seller prior to any termination of that insurance. The provisions of this Section 15 shall survive the closing and/or the termination of this Agreement.

16) **MISCELLANEOUS:**

A. All notices or tenders required or permitted hereunder shall be made and given in writing and sent to the parties at the respective addresses set forth below by either overnight mail (by a nationally recognized overnight courier) or telecopy and shall be effective as of the date of mailing or telecopying, as the case may be. Should any act or notice required hereunder fall due on a weekend or holiday, the time for performance shall be extended to the next business day.

B. This Agreement shall be governed by the law of the state in which the Property is located, without regard to any choice of law principles.

C. Paragraph headings contained herein are included solely for convenience of reference and shall in no way affect the construction of this Agreement.

D. The provisions of this Agreement are to be construed in accordance with the normal interpretation thereof, and, since both parties are sophisticated real estate investors and have employed counsel to review this Agreement, the party who has actually drafted this Agreement shall be deemed to be irrelevant in determining the meaning of any such provision.

E. The date that this Agreement has been executed by all parties hereto shall be known as the "Effective Date".

F. The individuals executing this Agreement represent and warrant that they are fully authorized to execute this Agreement on behalf of their respective entities.

G. This Agreement may be executed in two or more counterparts, each of which shall constitute a separate document but all of which taken together shall constitute one and the same instrument.

H. Escrow Holder agrees to be the designated "reporting person" under Section 6045(e) of the U.S. Internal Revenue Code with respect to the real estate transactions described in this Agreement and to prepare, file and deliver such information, returns, and statements as the U.S. Treasury Department may require by regulations or forms in connection therewith, including Form 1099-B. The provisions of this Section 15 H. shall survive the closing.

I. Each party and its counsel has reviewed and revised this Agreement and any rule of contract interpretation to the effect that ambiguities or uncertainties are to be interpreted against the drafting party or the party who caused it to exist shall not be employed in the interpretation of this Agreement or any document executed in connection herewith.

J. This Agreement shall not be construed as creating a partnership or joint venture between Seller and Buyer or between either of them and any third party or cause either of them to be responsible in any manner for the other's or any third party's debts or obligations.

K. Buyer and Seller shall each promptly sign and deliver all additional documents and perform all acts reasonably necessary to perform its obligations and carry out the intent expressed in this Agreement.

L. If any part of this Agreement is invalid or unenforceable, then the remainder of this Agreement shall remain valid and enforceable and in force and effect.

M. No party besides Buyer, Seller, their permitted successors and assigns and Escrow Holder has any rights or remedies under this Agreement.

N. Neither this Agreement nor any interest herein may be assigned by Buyer without the prior written consent of Seller, which consent may be granted or withheld in Seller's sole and absolute discretion.

O. Time is of the essence with respect to the performance by Buyer and Seller of each and every obligation under any provision of this Agreement.

P No document or other memorandum relating to the subject matter hereof shall be recorded without the prior written consent and approval thereof by Seller, and any attempt to record same shall be deemed a material default hereunder and thereupon, at the sole option of Seller, this Agreement shall be deemed cancelled and Seller shall have any and all remedies for default by Buyer as provided for in this Agreement.

Q. Buyer and Seller acknowledge that Seller may be required to disclose if the Property lies within the following natural hazard areas or zones: (i) a special flood hazard area designated by the Federal Emergency Management Agency; (ii) an area of potential flooding; (iii) a very high fire hazard severity zone; (iv) a wild land area that may contain substantial forest fire risks and hazards; (v) earthquake fault zone; or (vi) a seismic hazard zone (sometimes all of the preceding are herein collectively called the "Natural Hazard Matters"). Seller has engaged the services of Disclosure Source or any other entity that provides such reports (who, in such capacity, is herein called the "Natural Hazard Expert") to examine the maps and other information specifically made available to the public by government agencies for the purposes of enabling Seller to fulfill its disclosure obligations, if and to the extent such obligations exist, with respect to the natural hazards referred to in California Civil Code Section 1103 et seq. and to report the result of its examination to Buyer and Seller in writing, which report has been delivered to Buyer. The written report prepared by the Natural Hazard Expert regarding the results of its full examination will fully and completely discharge Seller from its obligations referred to herein, if and to the extent any such obligations exist, and, for the purpose of this Agreement, the provisions of Civil Code Section 1103 et seq. regarding non-liability of Seller for errors or omissions not within its personal knowledge shall be deemed to apply and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the regarding the natural hazards referred to above. Buyer acknowledges that the Real Property may be within a special study zone as designated under the Alquist-Priolo Geologic Hazard Act (Section 2621 et seq. of California Public Resources Code); if the real property is so located, construction or development on the real property of any structures intended for human occupancy may be subject to the findings of a geological report prepared by a geologist registered in the State of California. Buyer hereby expressly assumes such risk and hereby releases Seller and its subsidiaries, affiliates, partners and/or constituent entities, and each of their respective employees, shareholders, officers and directors from any and all loss, injury or damage which will or may be sustained by Buyer as a consequence of the Property being within any such special study zone.

R. Except to the extent otherwise expressly limited by the provisions of this Agreement, the provisions of Paragraphs 6, 7, 8, 9, 13, 15 and 16 shall survive the closing or the termination of this Agreement.

The undersigned Buyer and Seller agree to sell the above-described Property to Buyer for the price and upon the terms and conditions herein stated.

SELLER

Essex Portfolio, L.P.,
a California limited partnership

By: Essex Property Trust, Inc.,
a Maryland corporation,
its general partner

By: _____
Its: _____

DATE: _____

Address: 925 East Meadow Drive
Palo Alto, CA 94303
Attention: John Eudy, Maura Lederer
and Jordan E. Ritter, Esq.

Telephone: (650) 849-1600

Telecopy: (650) 858-1372 / Ritter
(650) 494-1671 / Eudy
(818) 593-5857 / Lederer

BUYER:

The City of Moorpark

By: _____
Patrick Hunter,
Mayor

DATE: _____

Address: 799 Moorpark Avenue
Moorpark, California 93021
Attention: Deborah Traffenstedt, City Clerk

Telephone: 805-517-6213

Telecopy:

Exhibit "A"

Legal Description of Property

[To Be Attached]

Exhibit "B"

Legal Description of Adjacent Property

[To Be Attached]

Exhibit "C"

Permitted Exceptions

[To Be Attached]

EXHIBIT D

MAP FOR RELOCATED POWER LINES

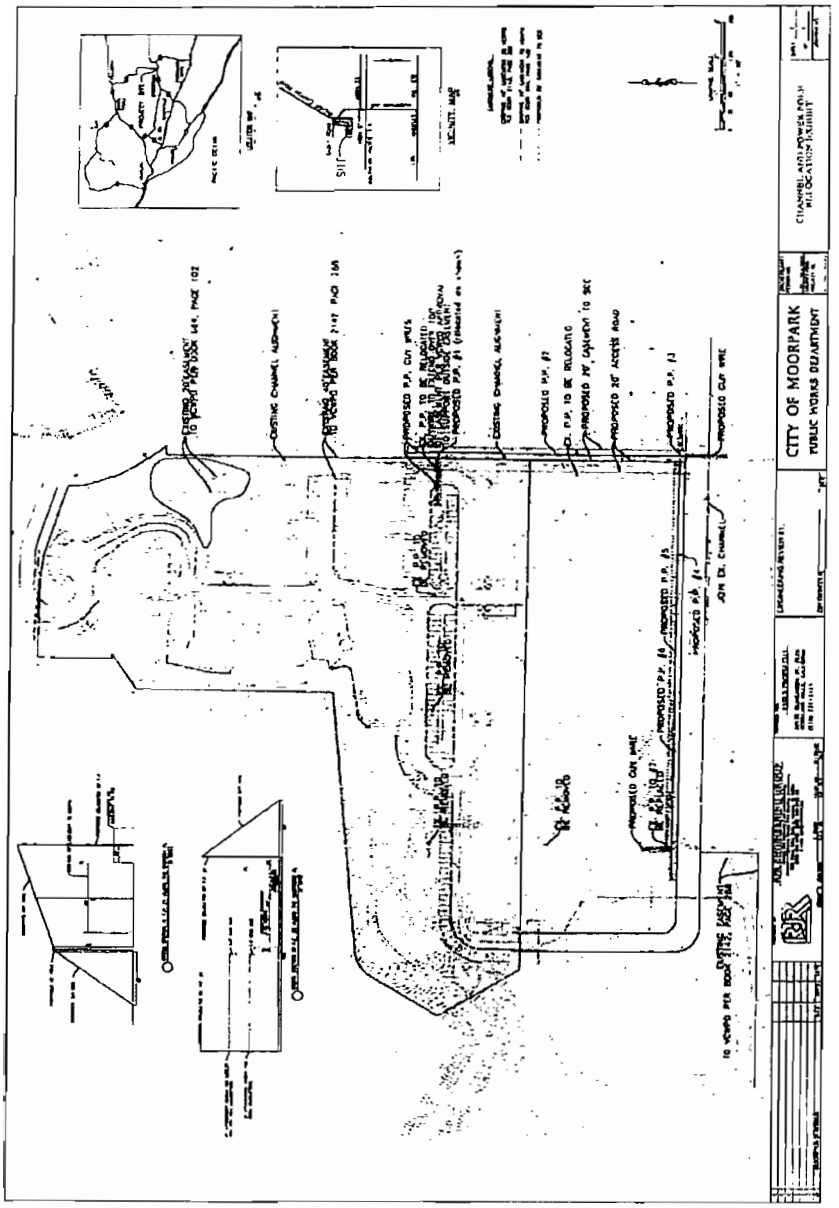


EXHIBIT E

ADDRESSES OF PARTIES

To City:

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

To Developer:

ESSEX PORTFOLIO, L.P.
Attention John D. Eudy
925 East Meadow Drive
Palo Alto, CA 94303

With a Copy To:

ESSEX PORTFOLIO, L.P.
Attention Jordan Ritter
925 East Meadow Drive
Palo Alto, CA 94303

And

ESSEX PORTFOLIO, L.P.
22120 Clarendon Street, Suite 200
Woodland Hills, CA 91367
Attention: Maura Lederer

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 Section 6103

FIRST AMENDMENT OF DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
ESSEX PORTFOLIO, L.P., a California limited partnership

FIRST AMENDMENT OF DEVELOPMENT AGREEMENT

This FIRST AMENDMENT OF DEVELOPMENT AGREEMENT (the "First Amendment") is made and entered into on _____, 2011 by and between the City of Moorpark, a municipal corporation, ("City") and Essex Portfolio, L.P., a California limited partnership, ("Developer") with respect to the following facts:

RECITALS

A. City and Developer have entered into that certain Development Agreement, Ordinance No. 355, passed and adopted on August 1, 2007 and effective on September 1, 2007 herewith (the "Original Development Agreement"). The Original Development Agreement will be recorded immediately prior to the First Amendment's recordation. Any capitalized term not otherwise defined herein shall have the meanings ascribed to such terms in the Original Development Agreement.

B. Developer is the owner of that certain real property within the City of Moorpark generally referred to as Residential Planned Development Permit 2004-06 and defined in the Original Development Agreement as the Property.

B. The Original Development Agreement and the Project Approvals contemplated development of the Property with a multi-family residential project and certain off-site improvements defined in the Original Development Agreement as the Project.

C. Developer and City are engaged in a continuous dialogue regarding the feasibility of developing the Property, including the affordable units. Developer and City both understand and acknowledge that expeditious resolution of any issues, including this First Amendment, negotiating any future documents or agreement for the Project, and if applicable holding the required hearings to issue City bonds to finance the Project are in the City's and the Project's best interest.

D. Developer intends to proceed with the development of the Project in an expeditions manner. In order to facilitate such expeditious development and to assist Developer in obtaining financing for the Project, City must work with Developer in good faith to expedite the approval of certain Subsequent Approvals and modification of the Project Approvals.

E. Due to the uncertain economic climate generally, and the downturn in real estate in particular, certain aspects of the Project have been revised to ensure the Project's success, including the ability to continue providing numerous affordable housing units. The Project revisions also require certain amendments to the Original Development Agreement.

F. Accordingly, Developer and City desire to amend the Original Development Agreement as set forth in this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties amend the Original Development Agreement as follows:

1. **Amendment of Development Agreement.** The Original Development Agreement is hereby amended as follows:

A. **Revised Section 6.7.** Section 6.7 shall be revised by adding the following sentence to the last paragraph in Section 6.7:

Developer also understands that because the above-described payments shall be deemed to satisfy applicable parkland dedication requirements, a public trail through the Property shall not be required.

B. **Revised Section 6.9.** Section 6.9 shall be as follows:

(i) The third paragraph of Section 6.9 (page 15 of the Original Development Agreement) shall be amended by adding the following sentence at the end of the paragraph:

Developer and City agree that the terms of the Original Development Agreement and this First Amendment, shall be materially consistent with the terms of the Affordable Housing Agreement and the Affordable Housing Implementation Plan. If there are any inconsistencies between the Original Development Agreement and this First Amendment, the Affordable Housing Agreement and the Affordable Housing Implementation Plan shall govern.

(ii) The first sentence in the sixth paragraph of Section 6.9 (page 15 of the Original Development Agreement) shall be revised and replaced with the following:

The in-lieu fee shall be Twenty Three Thousand Four Hundred Dollars ($23,400.00) if paid in calendar year 2011 ("Initial In-lieu Fee Amount").

(iii) The ninth paragraph of Section 6.9 (page 16 of the Original Development Agreement) shall be amended by adding the following clause to the first sentence at the beginning of the paragraph:

With the exception of obtaining a subdivision map to facilitate tax credit financing for the Project as discussed in more detail in Section 7.1,

(iv) The seventeenth paragraph of Section 6.9 (page 18 of the Original Development Agreement) is deleted in its entirety and replaced with the following:

"For a City Issued Bond Financed Project, Developer agrees that City may at its sole discretion select the bond counsel, financial advisor and other professional service providers, but not any bond credit enhancement provider, DUS Lender or seller/servicer, appraisers, interest rate hedge providers, Developer legal counsel, Developer financial consultants, or other service providers deemed necessary and appropriate by Developer, that City deems necessary to effectuate City Issued Bond Financing. Developer further agrees to fund all

costs actually incurred by City in connection with such City Issued Bond Financing by providing City with deposits for all such bond financing related costs not contingent on the sale of bonds. In addition, Developer will pay for all city attorney and city staff time at applicable rates. With the exception of city staff costs all other costs including, but not limited to out of pocket and professional services costs shall have City overhead expense of fifteen percent (15%) added to said costs. Moreover, City agrees that City shall, in good faith, expedite the process to approve City Issued Bond Financing for the Project, including, but not limited to scheduling a TEFRA hearing within 120 days from Developer's written request for City Issued Bond Financing for the Project, preparing and negotiating documents, and executing all necessary agreements.

C. **Revised Section 6.22.** Section 6.22 shall be revised in its entirety to read as follows:

6.22. Developer shall not be required to enclose or underground the flood control channel located on the eastern portion of the Project shown on the approved Project Site Plan and City Site. Developer shall not be responsible to correct or remedy any pre-existing flood conditions that may exist on land adjacent to the Property, including, but not limited to, the City Site. Subject to obtaining the requisite Subsequent Approvals, Developer shall be responsible for the construction of a decorative block wall a minimum of six-feet in height (the "Wall") on the Property adjacent to the existing channel's eastern boundary. The Wall height shall be measured from the existing grade on the adjacent property. To the extent Developer determines that construction of the Wall at this location creates any negative impacts to the Property or the Project, the City shall accept a reasonable alternative to the Wall, including, but not limited to a six-foot minimum height wrought iron fence with adjacent landscaping. City understands, acknowledges and agrees that the Wall or a reasonable alternative, as the case may be, is intended to create a visual boundary between the Property and the City Site.

D. **Revised Section 6.25.** Section 6.25 shall be revised and replaced in its entirety with the following:

6.25 In Developer's sole and absolute discretion, and subject to obtaining modification of the Project Approvals or requisite Subsequent Approvals, Developer shall be permitted to redesign the Project to eliminate some or all of the podium designed buildings, which may result in a Project with less than 200 residential dwelling units. If podium designed buildings are included in the Project, Developer agrees to provide one parking space in a (i) garage or "gang garage" as provided in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.0 parking spaces per unit inclusive of both tenant and guest parking. There shall be no extra charges for required parking for the affordable units.

E. **New Section 6.29.** Section 6.29 shall be added to read as follows:

6.29. Pursuant to the RPAA, Developer has conveyed to City a portion of the City Site, which City intends to use for the future extension of High Street. Developer shall not be required to pay any fees or costs, or make any improvements related to any future High Street extension, except to meet Ventura County Fire Protection District requirements for a

second access to the project. The cost of improving and the improvement of the future High Street extension shall be City's sole responsibility and obligation.

F. **Revise Section 7.1.** Section 7.1 shall be revised and replaced in its entirety with the following:

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 Project Approvals and all Subsequent Approvals and Building Permits for the Project area and if requested in writing by Developer shall use overtime and independent contractors whenever possible; provided, that upon satisfaction of the City Attorney that a subdivision map is necessary to facilitate tax credit financing for the Project, City shall expedite the processing of the aforementioned map upon receipt of a complete application from Developer. Developer shall assume any risk related to, and shall pay the additional costs incurred by City for, the expedited and parallel processing.

G. **Revised Section 7.5.** Section 7.5 shall be revised by adding the following language to the end of Section 7.5:

City also agrees that Developer shall not be required to provide a public trail through the Property.

H. **Revised Section 7.11.** Section 7.11 shall be revised and replaced in its entirety with the following:

7.11. To the extent podium designed buildings are part of the Project pursuant to Section 6.25, the City will allow one parking space in a (i) garage or "gang garage" in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.0 parking spaces per unit inclusive of both tenant and guest parking. There shall be no extra charges for required parking for the affordable units.

I. **Revised Section 7.13.** Section 7.13 shall be revised and replaced in its entirety with the following:

7.13. City acknowledges Developer may want to use City-Issued Bond Financing for the Project. City understands and acknowledges that time is of the essence, and City agrees that City shall use all good faith best efforts to expedite the scheduling of a TEFRA hearing within 120 days from Developer's written request for City Issued Bond Financing for the Project if City, at its sole and unfettered discretion, authorizes such bond financing. City also agrees to use all good faith best efforts to accommodate any request by Developer for an inducement resolution allowing the use by Developer of City Issued Bond Financing for the Project.

J. **New Section 7.15.** The following new Section 7.15 shall be added to read as follows:

7.15. City shall assist Developer in obtaining public grants, loans or other public assistance from public agencies other than the City, including, but not limited to MetroLink, but only if assisting Developer in obtaining such funds does not financially burden City or if Developer agrees to fully fund such assistance.

K. **New Section 7.16.** The following new Section 7.16 shall be added to read as follows:

7.16. The Project Approvals require that Developer install certain on-site and off-site infrastructure improvements (the "Infrastructure Improvements") that will be dedicated to and owned by City. To the extent that such Infrastructure Improvements are oversized and benefit any future development projects, City shall require any future project that benefits from the oversized Infrastructure Improvements to pay their pro-rata share of the cost of such Infrastructure Improvements. Developer shall provide to City evidence of the total cost of such oversized Infrastructure Improvements. City shall impose a condition of approval requiring a pro-rata payment from all future development projects benefiting from the oversized Infrastructure Improvements. Upon a determination by City of a future project's pro-rata share of such costs, the developer of a particular future project shall pay to City the pro-rata amount, and City shall deliver such funds to Developer within 5 business days of receipt by City.

L. **New Section 7.17.** The following new Section 7.17 shall be added to read as follows:

7.17. Southern California Edison ("Edison") has approved Developer's plan to relocate certain utility poles (the "Utility Plan") currently located on the Property. City desires to relocate the utility poles in a manner and to a location that differs from the Utility Plan. Accordingly, City has or will, at City's sole cost and expense, obtain a consultant to revise the Utility Plan (the "Revised Utility Plan") to relocate the utility poles to an area south of the curb line of High Street within the landscape setback area of the post office project planned for the City Site. City also understands and acknowledges that Developer cannot commence grading the Property until the existing utility poles have been relocated pursuant to the Revised Utility Plan. Accordingly, City shall use all best efforts, at its sole cost and expense, to obtain expeditious approval of the Revised Utility Plan from Edison and any government agency with jurisdiction over the relocation of the utility poles or the Property (the "Necessary Approvals"). City shall obtain the Necessary Approvals as soon as possible, but in no event later than 3 months prior to the date Developer intends to obtain a grading permit for the Property. Developer shall notify City at least 5 months before Developer intends to obtain a grading permit for the Property. City also understands, acknowledges and agrees that City shall be solely responsible for any increased cost associated with implementing the Revised Utility Plan when compared to the cost of implementing the Utility Plan. If City fails to obtain Edison approval of the Revised Utility Plan within the time prescribed above, Developer shall have the right to relocate the utility poles pursuant to the Utility Plan.

M. **New Section 7.18.** . New Section 7.18 shall be added to read as follows:

7.20. City acknowledges that pursuant to the RPAA, Developer has conveyed a portion of the City Site to City, which City intends to use for the future extension of

High Street. City shall not require Developer to pay any fees or costs, or make any improvements related to the future High Street extension. City understands, acknowledges and agrees that the cost of improving and the improvement of the future High Street extension shall be City's sole responsibility and obligation, except where the Project needs to meet Ventura County Fire Protection District requirements for a second access per Section 6.29 of this Agreement.

N. **New Section 33.** New Section 33 shall be added to read as follows:

To the extent the City assigns any portion of the Original Development Agreement or this First Amendment to the City of Moorpark Redevelopment Agency, the City shall enter into an assignment and assumption agreement whereby the City expressly assigns and the City of Moorpark Redevelopment Agency expressly assumes the relevant terms of the Original Development Agreement and the First Amendment, as the case may be.

2. Other Provisions Remain in Full Force and Effect. All provisions of the Original Development Agreement not otherwise inconsistent with this First Amendment are and shall remain in full force and effect. Such provisions are herewith reenacted, readopted and approved and ratified as though fully set forth herein. As and to the extent necessary due to the additions and amendments herein, cross references to Sections within the Original Development Agreement shall be deemed to be amended consistent therewith, such that the Original Development Agreement and this First Amendment can be read as a single, whole document.

IN WITNESS WHEREOF, Essex Portfolio, L.P., and City of Moorpark have executed this First Amendment on the date first written above.

CITY OF MOORPARK

_____
Janice S. Parvin
Mayor

DEVELOPER
ESSEX PORTFOLIO, L.P.,

By: Essex Property Trust, Inc.,
Its General Partner

By: _____
Its: _____

ESSEX

PROPERTY TRUST, INC.

December 7, 2011 via Email and US Mail

Mr. Steve Kueny
City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

Re: Essex Moorpark 200 Unit Apartment Project ("**Project**")

Dear Mr. Kueny:

This letter is intended as a follow up to our last meeting on our Moorpark development and the remaining open items. If we can conclude resolution to the open issues we will concurrently sign the Development Agreement and First Amendment to the Development Agreement, dated September 9, 2011 (see attached) as soon as you want. Financial feasibility is the key to our starting construction and while neither of us can change the economy and the recovery of rents on-set by the recession; we can certainly close the gap with resolution of the remaining issues without it costing the city of Moorpark anything.

In our comments below, we have used the draft First Amendment to the Development Agreement we received from your staff as a guideline. In the meeting you said you had not personally had a chance to sign off on the First Amendment so if there are concerns you have on the Amendment prior to our comments below, let us know. Beyond our comments to the First Amendment Draft, the other items pending which we discussed in our meeting and our recollection and comment to the open issues follow the comments to the First Amendment Comments below:

Comments/changes to the First Amendment of the Development Agreement.

- Revised section 6.9(iv). If Essex is to pay for all the costs of the consultants (which we are agreeable to) we need to add language that the city will negotiate for competitive costs for such consultants on our behalf. Essex can not be in a position to give a blank check for costs which we have no control over and we need to make sure such costs are competitive.

- Revised section 6.25. The parking ratio needs to be reduced to 1.8 parking spaces per unit in order to allow for us to eliminate the podium buildings. Essex owns and manages over 32,000 apartment units and in no way would it be to our advantage or serve our interests to under park the community. We know 1.8

925 East Meadow Drive Palo Alto California 94303 telephone 650 494 3700 facsimile 650 494 1671

www.essexpropertytrust.com

CC ATTACHMENT 3

parking spaces per unit are more than enough. We also agreed to give you a detailed study of our entire portfolio parking we have on site in all 155 communities we own; which should give you the necessary documentation that a 1.8 parking spaces per unit is more than necessary. We are in the process of concluding the parking study and will send it to you next week.

In addition to our comments to the First Amendment to the Development Agreement, the following was discussed in our meeting and are still open. We need resolution to these matters in addition to our comments to the First Amendment items noted above.

- Essex will provide on site the 20% affordable units as we have agreed. The additional 5% Moderate income units you are asking us to provide are not necessary and are not below market rate rent to the tenant. What the Moderate requirement would do is put an administrative burden on the monitoring and requires a lot of paperwork tenants do not want to provide or be called as affordable tenants when they get nothing for it. We need the moderate restriction removed. As a result of tenants' concerns, we have to offer them economic concessions to accept the requirements of being in a restricted market rate unit. The concessions negatively impact the bottom line on this project's economics that is struggling to be financially feasible.

- On the NPDES /SWPP issue you rose in the meeting, if in fact that is an issue which it appears it is, Essex needs verification that the city will allow us to have the retention issues, if required, reside on the parcel that will be deeded to the city. This was agreed to from the beginning of the process, we need your confirmation on this matter.

- We need you to confirm that you have verified that the approved PD and original Development Agreement can be expedited, entered into and completed immediately. Our goal is to be in the ground, permits pulled and under construction by June 2012, and we need confirmation that this is feasible on your end and agree to a schedule.

The current market conditions remain difficult and we appreciate the cooperative efforts you and your staff have made with the shared goal of seeing this project move forward. Provided we can clear up these remaining issues we are committed to going forward as soon as we reasonably can and get the Development Agreement and Amendment to the Development Agreement signed. We fully recognize Essex has no control over the destiny of this development and the City of Moorpark holds the discretionary control to agree to the remaining open issues. We have done our best to do everything we can to make the deal financially feasible and as we have stated from the onset of theses negotiations, we would be happy to provide and pay for a financial feasibility report for the benefit of the city to insure you we are not taking unfair advantage of anything.

Quite to the contrary, if we were to proceed even getting these last items we are requesting, the returns are still below an economically feasible transaction in the current economic environment. We are willing to proceed on the assumption of a recovery within reason.

We are committed to provide the housing, to the community, grant the city 8 acres in the process and get this deal going, we just need your continuing assistance to get these last issues done.

We look forward to getting the documents finalized.

Sincerely,

John Eudy,
Executive Vice President
Development

Cc: Wayne Colmer, Colmer Construction
Andrew Baker, Essex Property Trust
Danny Ross, Essex Property Trust

Attachment: First Amendment of Development Agreement dated 9/9/2011

ESSEX

PROPERTY TRUST, INC.

December 19, 2011 via E-mail and US Mail

Mr. Steve Kueny
City Manager
City of Moorpark
799 Moorpark Ave.
Moorpark, CA 93021

Re: Essex Moorpark 200 Unit Apartment Project ("Project")

Dear Steve,

Enclosed is the statistical study on the amount of parking we have in each of our apartment communities. The information is compiled by property and organized by region. The average parking ratio of our entire portfolio is 1.61 spaces per unit and 1.02 per bedroom over the portfolio of 33,395 units we own, operate and manage. We are proposing that the parking ratio on our Moorpark development be modified to 1.8 spaces per unit and 1.15 per bedroom, which is far more parking than necessary. We are extremely comfortable from a property management operational point of view.

Please let me know if you need anything further.

Best regards and happy holidays,

John Eudy
Development Executive Vice President

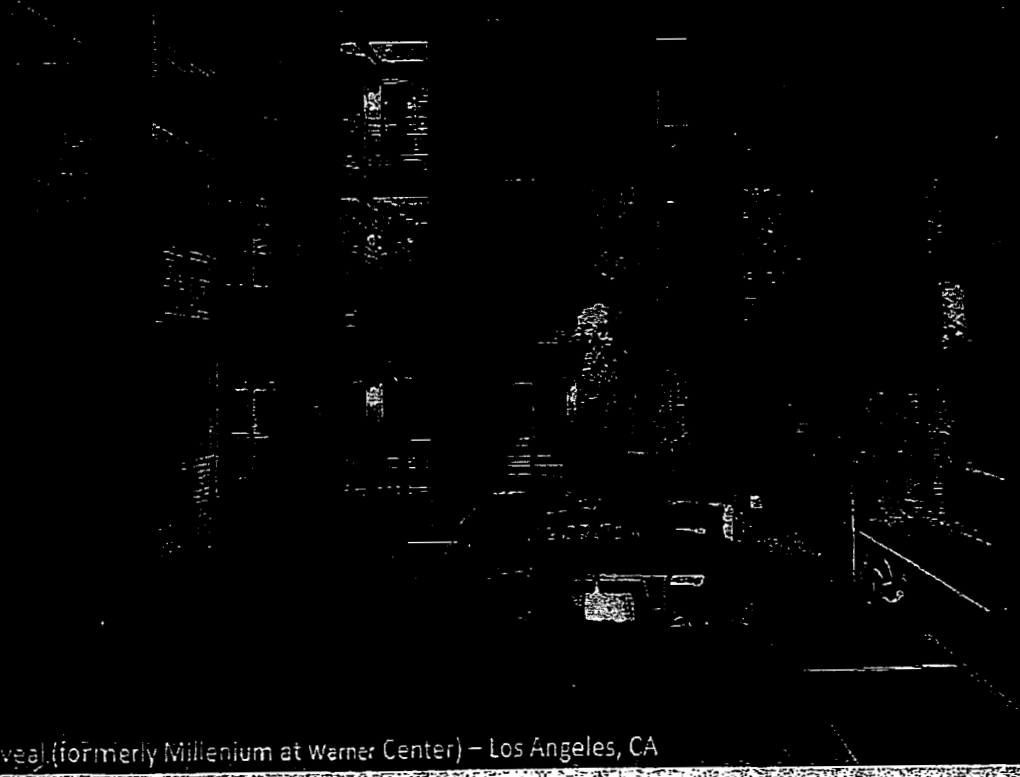
925 East Meadow Drive Palo Alto California 94303 telephone 650 494 3700 facsimile 650 494 1671

www.essexpropertytrust.com

ESSEX

Parking Statistics

Updated December 2011



Reveal (formerly Millenium at Warner Center) – Los Angeles, CA

West Coast Leader in Apartment Ownership

Seattle Metro Area

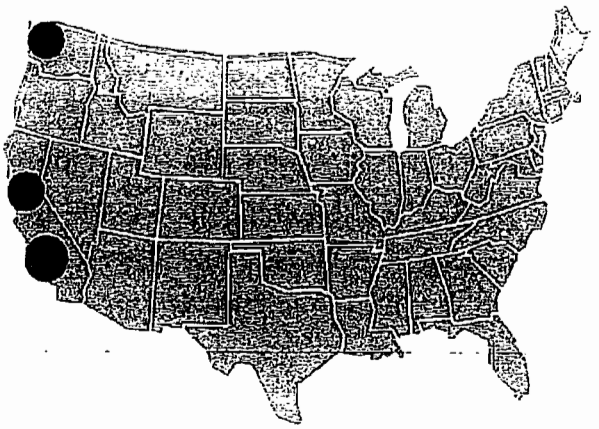
Units: 8,745

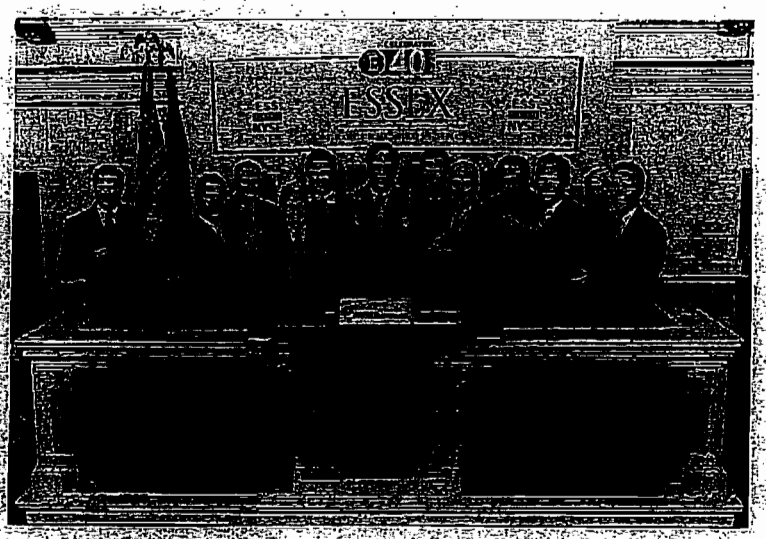
Northern California

Units: 9,661

Southern California

Units: 14,989





Essex Property Trust is listed on the New York Stock Exchange (ESS). The company is a fully integrated Real Estate Investment Trust (REIT) that acquires, develops, redevelops, and manages multifamily residential properties in selected West Coast communities. Essex has ownership interests in 155 multifamily communities consisting of 33,395 units with an additional 6 properties in various stages of development for an additional 1,412 units.

Essex Portfolio Parking Analysis Totals

Shown in the following tables are the statistics on the parking spaces provided on site in the portfolio of apartment communities owned, operated and managed by Essex. Parking spaces provided are shown by region and by property. Essex's entire portfolio of 33,395 apartment units has an average parking spaces provided of 1.61 spaces per apartment unit and more importantly 1.02 parking spaces per bedroom.

	Number of Units	Studio Units	1 bed-room Units	2 bed-room Units	3 bed-room Units	4 bed-room Units	Total Bed-rooms	Total parking spaces	Average parking spaces per unit	Average parking spaces per bedroom
Pacific Northwest	8745	430	3403	4326	583	8	14268	14544	1.66	1.02
Northern California	9681	556	4651	4141	312	0	14425	15022	1.55	1.04
Southern California	14969	1138	5691	7282	878	0	24027	24192	1.61	1.01
Entire Portfolio	33395	2124	13745	15749	1773	8	52718	53758	1.61	1.02

Pacific Northwest

Parking Statistics

Updated December 2011

PACIFIC NORTHWEST

Property	City, State	Number of Apartment Units	Studio Units	1 Bedroom Units	2 Bedroom Units	3 Bedroom Units	4 Bedroom Units	Total Bedroom Count	Total Parking Spaces	Average Spaces per unit	Average Spaces per bedroom
Cedar Terrace	Bellevue, WA	180	0	70	102	8	0	298	236	1.31	0.79
Foothill Commons	Bellevue, WA	360	0	259	96	10	0	481	551	1.53	1.15
Palisades, The	Bellevue, WA	192	0	114	78	0	0	270	335	1.74	1.24
Woodland Commons	Bellevue, WA	236	48	80	92	16	0	360	438	1.86	1.22
Courtyard Off Main	Bellevue, WA	110	0	44	63	3	0	179	219	1.99	1.22
Emerald Ridge N.	Bellevue, WA	180	0	72	108	0	0	288	358	1.99	1.24
Sammamish View	Bellevue, WA	153	0	51	102	0	0	255	258	1.69	1.01
Canyon Pointe	Bothell, WA	250	0	114	106	30	0	416	459	1.84	1.10
Inglenook Court	Bothell, WA	224	0	56	168	0	0	392	365	1.63	0.93
Salmon Run @ Perry Creek	Bothell, WA	132	0	65	59	8	0	207	272	2.06	1.31
Stonehedge Village	Bothell, WA	196	0	0	196	0	0	392	425	2.17	1.08
North Creek Heights	Bothell, WA	114	0	39	45	30	0	219	240	2.11	1.10
Firdale Village	Edmonds, WA	386	0	132	214	40	0	680	628	1.63	0.92
Charter Club	Everett, WA	201	0	72	117	12	0	342	323	1.61	0.94
Highlands @ Wynhaven, The	Issaquah, WA	333	0	3	280	42	16	721	637	1.91	0.88
Park Hill @ Issaquah	Issaquah, WA	245	0	83	111	51	0	456	430	1.76	0.94
Wandering Creek	Kent, WA	156	0	72	74	10	0	250	365	2.34	1.46
Bridle Trails	Kirkland, WA	108	0	32	76	0	0	184	186	1.72	1.01
Corbella at Juanita Bay	Kirkland, WA	169	24	96	49	0	0	218	248	1.47	1.14
Evergreen Heights	Kirkland, WA	200	0	60	112	28	0	368	338	1.69	0.92
Laurels @ Mill Creek, The	Mill Creek, WA	164	0	68	96	0	0	260	274	1.67	1.05
Morning Run	Monroe, WA	222	0	12	162	48	0	480	501	2.26	1.04
Anchor Village	Mukilteo, WA	301	0	88	213	0	0	514	538	1.79	1.05
Castle Creek	Newcastle, WA	216	0	104	81	31	0	369	427	1.98	1.19
Elevation	Redmond, WA	156	0	24	132	0	0	288	273	1.75	0.95
Redmond Hill East	Redmond, WA	440	0	116	228	96	0	860	751	1.71	0.87
Redmond Hill West	Redmond, WA	442	0	220	207	15	0	679	866	1.96	1.28
Plum Tree Park	Renton, WA	196	0	70	126	0	0	322	333	1.70	1.03
Brighton Ridge	Renton, WA	264	0	132	132	0	0	396	374	1.42	0.94
Fairwood Pond	Renton, WA	194	0	136	122	36	0	388	375	1.93	0.97
Forestview	Renton, WA	192	0	42	126	24	0	366	287	1.49	0.78
Bernard, The	Seattle, WA	63	30	33	0	0	0	63	75	1.19	1.19
Cairns Apartment Homes, The	Seattle, WA	100	43	30	27	0	0	127	103	1.03	0.81
Eastlake 2851 on Lake Union	Seattle, WA	133	40	76	17	0	0	150	188	1.26	1.12
Fountain Court	Seattle, WA	320	97	188	35	0	0	356	288	0.90	0.81
Linden Square	Seattle, WA	183	0	124	44	15	0	257	198	1.08	0.77
Tower at 801	Seattle, WA	173	18	128	26	1	0	201	101	0.58	0.50
Wharfside Pointe	Seattle, WA	142	5	92	40	5	0	192	196	1.38	1.02
Joule	Seattle, WA	295	125	133	37	0	0	332	333	1.13	1.00
Echo Ridge	Snoqualmie, WA	120	0	21	75	24	0	243	244	2.03	1.00
Meadow Creek	Tigard, WA	304	0	152	152	0	0	456	528	1.74	1.16

Northern California

Parking Statistics

Updated December 2011

NORTHERN CALIFORNIA

Property	City, State	Number of Apartment Units	Studio Units	1 Bedroom Units	2 Bedroom Units	3 Bedroom Units	4 Bedroom Units	Total Bedroom Count	Total Parking Spaces	Average Spaces per unit	Average Spaces per bedroom
Belmont Terrace	Belmont, CA	171	0	27	40	4	0	119	132	1:86	1:11
Carlmont Woods	Belmont, CA	185	120	74	0	0	0	194	283	1:45	1:46
Davey Glen - (CONDO)	Belmont, CA	69	10	14	42	3	0	117	91	1:32	0.78
Fourth & U	Berkley, CA	171	0	132	39	0	0	210	172	1:01	0.82
Commons, The	Campbell, CA	264	72	144	46	0	0	312	384	1:45	1:23
Pointe at Cupertino, The	Cupertino, CA	116	0	0	53	63	0	295	148	1:28	0.50
Harbor Cove	Foster City, CA	400	24	259	117	0	0	517	503	1:26	0.97
Boulevard, The	Fremont, CA	172	0	116	56	0	0	228	283	1:65	1:24
Stevenson Place	Fremont, CA	200	0	128	72	0	0	272	305	1:53	1:12
City View	Hayward, CA	560	0	356	204	0	0	764	800	1:43	1:05
Alderwood Apartments	Newark, CA	96	0	48	48	0	0	144	146	1:52	1:01
Bridgeport Apartment Homes	Newark, CA	184	0	60	124	0	0	308	335	1:82	1:09
Regency Tower	Oakland, CA	200	0	128	72	0	0	272	305	1:53	1:12
Grand, The - (CONDO)	Oakland, CA	243	38	146	48	11	0	313	333	1:37	1:06
San Marcos	Richmond, CA	432	0	216	216	0	0	648	780	1:81	1:20
Mt. Sutro	San Francisco, CA	99	25	59	15	0	0	114	102	1:03	0.89
Bella Villaggio	San Jose, CA	231	0	78	130	23	0	407	382	1:66	0.94
101 San Fernando	San Jose, CA	323	34	181	104	4	0	435	543	1:68	1:25
Carlyle, The	San Jose, CA	132	0	48	48	36	0	252	252	1:91	1:00
Esplanade, The	San Jose, CA	278	22	122	121	13	0	424	405	1:46	0:96
Waterford, The	San Jose, CA	238	0	120	106	12	0	388	396	1:66	1:02
Enclave, The - (CONDO)	San Jose, CA	637	45	305	287	0	0	924	1136	1:78	1:23
Hillsdale Garden Apartments	San Mateo, CA	697	72	156	395	74	0	1240	676	0:97	0:55
Bel Air - (CONDO)	San Ramon, CA	462	32	170	260	0	0	722	905	1:96	1:25
Canyon Oaks	San Ramon, CA	250	0	146	92	12	0	366	329	1:32	0:90
Foothill/Twin Creeks - (CONDO)	San Ramon, CA	176	0	0	176	0	0	352	390	2:22	1:11
Mill Creek	San Ramon, CA	400	0	230	152	18	0	588	682	1:71	1:16
1000 Kiely	Santa Clara, CA	121	0	11	82	38	0	279	268	2:21	0:96
Chestnut Street Apartments	Santa Cruz, CA	96	0	33	63	0	0	159	151	1:57	0:95
Harvest Park Apartments - (CONDO)	Santa Rosa, CA	104	0	48	56	0	0	160	212	2:04	1:33
Le Parc Luxury Apartment Homes	Sata Clara, CA	140	0	56	84	0	0	224	215	1:54	0:96
Marina Cove	Sata Clara, CA	292	0	145	147	0	0	439	408	1:40	0:93
Bristol Commons	Sunnyvale, CA	188	0	92	96	0	0	284	329	1:75	1:16
Magnolia Lane Apartments	Sunnyvale, CA	32	0	12	19	1	0	53	58	1:84	1:11
Magnolia Square	Sunnyvale, CA	156	0	120	36	0	0	192	252	1:62	1:31
Summerhill Park	Sunnyvale, CA	100	0	40	60	0	0	160	160	1:60	1:00
Windsor Ridge - (CONDO)	Sunnyvale, CA	216	0	126	90	0	0	306	336	1:56	1:10
Brookside Oaks	Sunnyvale, CA	170	18	150	12	0	0	182	295	1:74	1:62
Montclaire (Oak Pointe)	Sunnyvale, CA	390	54	168	168	0	0	558	578	1:48	1:04
Via - (CONDO)	Sunnyvale, CA	284	0	168	116	0	0	400	484	1:70	1:21
Vista Belvedere	Tiburon, CA	76	0	29	47	0	0	123	76	1:00	0:62

ITEM 8. B

MOORPARK CITY COUNCIL
AGENDA REPORT

TO: Honorable City Council

FROM: Barry K. Hogan, Deputy City Manager
David A. Bobardt, Planning Director

DATE: July 9, 2007 (CC Meeting of 7/18/2007)

SUBJECT: **Consider General Plan Amendment No. 2004-05, Zone Change No. 2004-04, Development Agreement No. 2004-03 and Residential Planned Development No. 2004-06 for a 200-Unit Apartment Project on Approximately 10.57 Acres with 8.84 Acres of Public/Institutional Land South of Casey Road and West of Walnut Canyon Road and Moorpark Avenue on the Application of Essex Portfolio, L.P.**

BACKGROUND

On September 24, 2004, applications for a General Plan Amendment, Zone Change, Development Agreement and Residential Planned Development Permit were submitted by Essex Portfolio, L.P., for the construction of a 200-unit apartment complex on 10.57 acres with access from Casey Road, just east of the Moorpark Boys and Girls Club Gymnasium. The proposed project includes an additional 8.84 acres of land to the south that, as part of the terms of the development agreement, would be sold to the City for future public/institutional use. On June 26, 2007, the Planning Commission held a public hearing on these entitlements, and adopted a resolution recommending adoption of a Mitigated Negative Declaration and approval of the project, subject to conditions. A copy of the staff report and not-yet-signed Planning Commission resolution are attached.

DISCUSSION

At the Planning Commission meeting, staff noted that the applicant was concerned with the initial recommendation of 2.17 parking spaces per unit (based on a count of spaces on the site plan) and requested more flexibility. The commission and staff concurred that the 2.13 spaces per unit would be sufficient, as this is the ratio used for the Waterstone Apartments. The draft Development Agreement has been amended to reflect the 2.13 parking spaces per unit. The only public speaker at the Planning

Commission public hearing other than the applicant expressed support for the project for its provision of affordable housing.

Other issues discussed by the Planning Commission focused on architectural details and ingress/egress on Casey Road. The commission recommended that the emergency access to High Street be designed so that it can be converted to permanent access at the City's request if determined necessary. Design concerns of the commission focused on the leasing office (for which plans were included after the staff report to the Planning Commission was completed), the pool size and location, and the availability of parking in the vicinity of the pool.

The site dimensions and topography make it difficult to provide an ideal pool location. Some residents at the southern edge of the property may choose to drive to the pool because of its distance and elevation difference from these units. Parking is proposed in front of the pool. Since parking spaces must be assigned (Special Condition No. 7), staff will make sure that sufficient spaces in the pool vicinity are reserved for the pool. The proposed conditions have been amended to review and approve the pool size by staff as appropriate for a complex of this size. Other recommendations of the Planning Commission on project design have been incorporated into the conditions of approval, attached to the draft resolution for approval of the Residential Development Permit. Additionally, there has been some language clarification to special condition 3 regarding the gates on the temporary access and an addition to special condition 13 to add in timing for the pool to be complete and ready for use in the RPD resolution. In the Development Agreement there has been a clarification to the Cable TV section 6.26 to recognize the latest changes in state law.

The Affordable Housing Agreement was planned to be a part of the Development Agreement. It will now be a stand alone agreement. Staff and the applicant are still working on the final proposed language for the Affordable Housing Agreement. It is currently scheduled for Council consideration and action on August 1, 2007. It should be approved at the same time as the adoption of the Zone Change and Development Agreement ordinances. If the Council approves the project and related actions on July 18, 2007, and if the Affordable Housing Agreement is ready for Council consideration, adoption of the Zone Change and the Development Agreement ordinances will be scheduled for August 1, 2007.

STAFF RECOMMENDATION

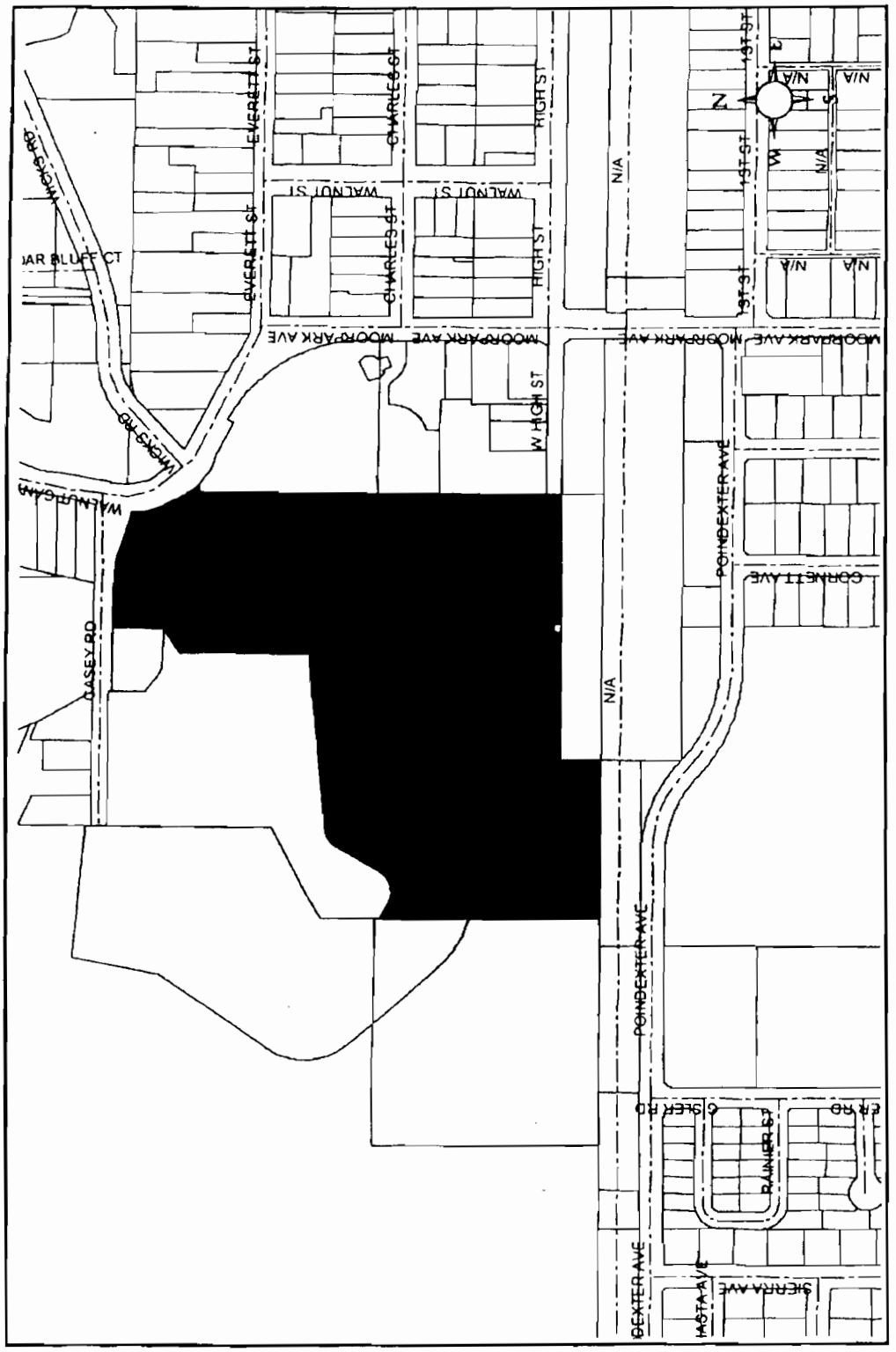
1. Open the public hearing, take public testimony, and close the public hearing.
2. Adopt Resolution No. 2007-____ adopting a Mitigated Negative Declaration and approving General Plan Amendment No. 2004-05.
3. Introduce, for first reading, Ordinance No. ___ approving Zone Change No. 2004-04, and set August 1, 2007, for second reading.

4. Introduce, for first reading, Ordinance No. ___ to adopt the Development Agreement No. 2004-03, and set August 1, 2007, for second reading;

5. Adopt Resolution No. 2007-____ approving Residential Planned Development Permit No. 2004-06, subject to Conditions of Approval.

ATTACHMENTS:

1. Location Map
2. Project Exhibits (Provided under Separate Cover)
   A. Grading Plan
   B. Building Plans (including Site Plan, Floor Plans, and Elevations)
   C. Conceptual Landscape Plan
3. Planning Commission, June 26, 2007, Agenda Report (without attachments)
4. Planning Commission Resolution PC-2007-518 (without attachments)
5. Draft Resolution No. 2007-___ Adopting a Mitigated Negative Declaration and Approving General Plan Amendment No. 2004-05.
6. Draft Ordinance No. ___ Approving Zone Change No. 2004-04.
7. Draft Ordinance No. ___ Adopting Development Agreement No. 2004-03.
8. Draft Resolution No. 2007-___ Approving Residential Planned Development Permit No. 2004-06.



ESSEX MOORPARK APARTMENTS
GPA 2004-05, ZC 2004-04, RPD 2004-06

CC ATTACHMENT 1

MOORPARK PLANNING COMMISSION
AGENDA REPORT

TO: **Honorable Planning Commission**

FROM: **Barry K. Hogan, Community Development Director**
Prepared By: David A. Bobardt, Planning Manager

DATE: **June 7, 2007 (PC Meeting of 6/26/2007)**

SUBJECT: **Consider General Plan Amendment No. 2004-05, Zone Change No. 2004-04, Development Agreement No. 2004-03 and Residential Planned Development No. 2004-06 for a 200-Unit Apartment Project on Approximately 10.57 Acres with 8.84 Acres of Public/Institutional Land South of Casey Road and West of Walnut Canyon Road and Moorpark Avenue on the Application of Essex Portfolio, L.P.**

BACKGROUND

On September 24, 2004, applications for a General Plan Amendment, Zone Change, Development Agreement and Residential Planned Development Permit were submitted by Essex Portfolio, L.P., for the construction of a 200-unit apartment complex on 10.57 acres with access from Casey Road, just east of the Moorpark Boys and Girls Club Gymnasium. The proposed project includes an additional 8.84 acres of land to the south that, as part of the terms of the development agreement, would be sold to the City for future public/institutional use. On June 28, 2005, the Planning Commission opened a public hearing for these entitlements with the exception of the Development Agreement. Staff analysis of the project was not presented at that meeting as the applicant and staff had not resolved all project issues related to the Development Agreement. Without resolution of project issues, the Planning Commission continued the agenda item several times until January 24, 2006, when the public hearing was closed and the item was taken off calendar. No speakers addressed the commission on the project at that time. The outstanding issues have since been resolved for the project review to proceed. On June 6, 2007, the City Council set Planning Commission and City Council public hearings on the Development Agreement for June 26, 2007 and July 18, 2007, respectively. This public hearing agenda item has now been re-advertised and re-noticed with the inclusion of the Development Agreement.

DISCUSSION

Project Setting

Existing Site Conditions:

The project site is on land that was part of the former Moorpark High School athletic fields. This land has not been maintained and is mostly covered with weeds. The southern portion of the site has been used as a fill site, primarily for earth material imported from the Las Llajas Debris Basin in Simi Valley. In addition, a small portion of the site along Casey Road is currently occupied by the Moorpark Boys and Girls Club as part of its facilities.

Previous Applications:

No previous applications are on file for this project site.

GENERAL PLAN/ZONING			
Direction	**General Plan**	**Zoning**	**Land Use**
Site	Specific Plan 9 (School Overlay) and Public/Institutional	Rural Exclusive	Portion of Boys and Girls Club, Vacant Land (Former High School Athletic Fields)
North	Medium Density Residential	Rural Exclusive	Single-Family Homes and Vacant Land
South	School, General Commercial, and Light Industrial	Rural Exclusive and Limited Industrial	Vacant Land and Railroad Right-of-Way
East	Public/ Institutional and General Commercial	Institutional and Old Town Commercial	City Hall, Active Adult Center, Library, Vacant Land
West	Specific Plan 9 (School Overlay), Specific Plan 1 (Agriculture Overlay)	Rural Exclusive, Agricultural Exclusive	Boys and Girls Club Gymnasium, Walnut Canyon School, Vacant Land

General Plan and Zoning Consistency:

The 1992 Land Use Element calls for a specific plan with up to 80 housing units on the entire 24.8-acre former high school site, including most of the project site and the Walnut Canyon School site (developed after adoption of the General Plan), but excluding the land sold by the school district to the Moorpark Boys and Girls Club. The General Plan allows the specific plan to increase the density up to 120 housing units on the site if the Council determines that the proposed development provides substantial public benefit to the community. Without a specific plan, the Land Use Element overlay designation for this portion of the site is for school development. The General Plan designation for the Moorpark Boys and Girls Club portion of the site is for public/institutional uses. The zoning

for the entire site is Rural Exclusive, which allows single-family homes on minimum 10,000 square-foot lots. The project, as proposed, does not comply with the provisions of the existing General Plan land use designation and zoning for the site. The applicant is seeking amendments to the General Plan and zoning as described below.

Project Summary

General Plan Amendment No. 2004-05:

The applicant is requesting a General Plan Amendment for the site to be designated for very high density residential uses (VH). This category would allow up to 15 units per acre of market-rate housing, or up to 20 units per acre when affordable housing is provided. The proposed project density is 18.92 units per acre. The applicant is proposing that 40 or twenty (20%) percent of the units be reserved for affordable to very low and low income households, with an additional 10 units to be reserved for affordable to moderate income households, if bond financing will be used. A copy of the proposed General Plan Amendment map is attached to the draft resolution

Zone Change No. 2004-04:

The applicant is requesting a zone change to Residential Planned Development at nineteen units per acre (RPD – 19.0 u). A copy of the proposed zone change map is attached to the draft resolution. General Plan and zoning issues are addressed in the analysis section.

Development Agreement No. 2004-03:

A Development Agreement between the City and the developer of this property is proposed as part of this project (attached). A Development Agreement Ad-Hoc Committee (Mayor Hunter and former Councilmember Harper) met with representatives from Essex Portfolio, L.P. (applicant) and staff on numerous occasions to discuss the terms of the agreement. On February 23, 2006, the Committee finalized the negotiations on the substantive points of the attached draft development agreement. Staff and the applicant then worked on the language in the agreement. On June 6, 2007, the City Council considered the recommendation of its Ad Hoc Committee and directed staff to advertise a public hearing on the Development Agreement before the Planning Commission on June 26, 2007 and before the City Council on July 18, 2007.

As with all of the City's development agreements, a standard format has been utilized, making slight adjustments to suit the particular project. Development Agreement No. 2004-03 is patterned after the Development Agreement approved for the Shea Homes development project. Details of the developer's obligations are in Section 6 and the City's obligations are in Section 7. This Development Agreement is fairly consistent with the Development Agreements that have been named above. One aspect unique to this Development Agreement is the affordable housing provision. The following table details the units allocated to meet the affordable housing requirement. This affordable housing will substantially help the City in achieving its housing goals in the next Housing Element cycle.

Affordable Housing Per Development Agreement No. 2004-03				
Affordability	Unit Type			
	1 Bdrm 1 Bath	2 Bdrm 1 Bath	2 Bdrm 2 Bath	3 Bdrm 2 Bath
Low Income (24)	11	4	8	1
Very Low Income (16)	8	2	5	1
TOTAL without Bond Financing (40)	19	6	13	2
Additional Affordable Units Provided if Bond Financing is Utilized				
Moderate Income (10)		1	4	5
TOTAL with Bond Financing (50)	19	7	17	7

In addition, 4 of the 19 one-bedroom one bath affordable low and very low income units will be handicap accessible and reserved for and occupied by persons eligible for such accommodations, to the extent there are qualified tenants ready to occupy these units.

Residential Planned Development Permit No. 2004-06:

A Residential Planned Development Permit is requested for the 200-unit apartment project, with a leasing office and recreation building. The unit mix includes 94 one-bedroom units, 98 two-bedroom units, and 8 three-bedroom units in four 20-unit buildings and five 24-unit buildings, as detailed in the following table.

Bldg. Type	No. of Bldgs.	Type of Apartment Units	Range of Apartment Sizes (Sq. Ft.)	No. of Units Per Building	Total No. of Units
1	4	1 Bedroom – 1 Bath	643-795	11	44
		2 Bedroom – 1 Bath	906	2	8
		2 Bedroom – 2 Bath	908-1086	5	20
		3 Bedroom – 2 Bath	1116	2	8
			SUBTOTAL	20	80
2	5	1 Bedroom – 1 Bath	643-737	10	50
		2 Bedroom – 1 Bath	906	4	20
		2 Bedroom – 2 Bath	908-990	10	50
			SUBTOTAL	24	120
				TOTAL	**200**

Proposed Project

Architecture:

The project proposes development of 200 units of apartments in nine buildings of two different types. Building type 1, a twenty-unit apartment building, is proposed for four buildings at the southern edge of the property. It is three stories tall with individual garage units on the north side of the ground floor. Total building height is approximately thirty-nine (39') feet. Building type 2, a twenty-four unit apartment, is proposed for five buildings on the northeastern portion of the site. This building type has three-stories on a podium above a parking level. The parking level is at grade at its entrance, and fully below grade at the opposite side of the building as these units are set into sloping portions of the project site. Total building height measured from the parking level floor is approximately forty-nine (49') feet. Building height is addressed in the analysis section of this report. The building style for both building types is contemporary, with warm-colored stucco finishes on the walls and earth-tone concrete-tiled hip roofs. Details include arched entries and window trim, raised window sills, balconies with decorative metal railing, and exposed corbels above the individual garage units. Floor plans and elevations are attached. Plans have not been provided for the leasing office or the recreation building. This issue is addressed in the analysis section.

Setbacks:

The proposed leasing office for the apartment buildings is set back approximately fifteen (15') feet from Casey Road. The apartment buildings are set back between fifteen (15') and seventy (70') feet from side property lines and approximately thirty (30') feet from the rear property line. Setbacks in the proposed RPD zone are established through the development review process. The building setbacks proposed in the site plan are appropriate for the scale of the buildings proposed to avoid imposition on surrounding property. A fill slope and a stormwater quality/detention basin are proposed south of the rear property line of the apartment site on the land to be sold to the City as part of the new Civic Center campus. This issue is addressed in the analysis section.

Circulation:

Access to the site is proposed from Casey Road, with emergency only access at the western terminus of High Street. The applicant has proposed to construct the emergency access originally at the eastern edge of the property, to be relocated to the western edge when the property being sold to the City will be developed.

Traffic:

An April 2005 traffic study prepared by Austin Foust Associates for the City identified project-specific mitigation including the extension of queuing on Casey Road, signal modification at Casey Road and Walnut Canyon Road, and signal modification at Moorpark Avenue and High Street. It also identified the contribution of the project to fair-share funded improvements. These measures have been included in the Mitigated Negative Declaration prepared for the project and are incorporated as conditions of approval. It should be noted that the northbound left-turn phase at the Casey Road/Walnut Canyon Road intersection has already been constructed.

Parking:

A total of 434 parking spaces are proposed for the apartments, with 52 in private garages, 125 in common garages, 30 in covered spaces, and 227 in open spaces. Of the open spaces, 15 are proposed adjacent to the leasing office outside the gate. The Zoning Code requires 2 covered parking spaces per unit, one of which must be in a garage, with an additional ½ space per unit for visitor parking, for a total of 500 spaces. The applicant is requesting a waiver from the parking requirements as part of a development agreement with the City. This issue is discussed in greater detail in the analysis section.

Loading Area:

No loading areas are proposed or required for this project.

Landscaping:

The former site of the Moorpark High School athletic fields has not been maintained in years and consists of overgrown shrubs, weeds, and a few trees. Trees on the site include California pepper, Brazilian pepper, jacaranda, elm, and palm trees. No native trees are growing on the site. The proposed landscaping for the project site includes substantial planting of trees, shrubs, and groundcover, which would greatly enhance the appearance of the site. Conceptual landscape plans, which are subject to plan check for compliance with the City's Landscape Standards and Guidelines, are attached.

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

Conditions recommended by the City Engineer call for 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. A 0.193 acre-foot detention basin is proposed at the southwest corner of the parcel to be sold to the City to accommodate drainage from the site. The location of the detention basin is adjacent to a proposed detention basin for the Hitch Ranch Specific Plan project. It is possible that as the Hitch Ranch Specific Plan is developed, these two detention basins may be connected.

Air Quality:

According to the 2003 Ventura County Air Quality Assessment Guidelines, the proposed project will generate vehicle traffic that will produce NOx emissions in excess of the 25 pound per day threshold, providing a conclusion that there will be an impact on regional air quality. As is required with all larger projects, staff has incorporated a mitigation measure and standard condition requiring a contribution to the Moorpark Traffic Systems Management Fund to off-set air pollutants, consistent with the 2003 Ventura County Air Quality Assessment Guidelines.

ANALYSIS

Issues

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

- Area One: General Plan and Zoning Issues
- Area Two: Building Heights
- Area Three: Accessory Building Design
- Area Four: Parking

Area One: General Plan and Zoning Issues

The project involves an increase in the number of housing units contemplated by the General Plan for the site. The 1992 General Plan Land Use Element contemplated use of the entire 24.8-acre former high school site for a project developed under a specific plan with 80-120 homes. Since the time of this plan, the City adopted a Downtown Specific Plan, a SOAR Ordinance, and a revised Housing Element. Housing affordability has become a more critical issue than ever before, as the local housing market is only building for sale homes affordable to high income (> 120% of County median income) households. In addition, the school district redeveloped part of the specific plan site with an elementary school, leaving no reason to developing the rest of the site under a specific plan. The development of a new City Hall in the vicinity of the project site has also become a Council priority and the purchase of the 8.84 acres by the City would allow for civic uses to complement the new City Hall. These factors all suggest that the proposed residential density of 19.0 units per acre on the northern 10.57 acres is appropriate for this site.

Area Two: Building Heights

At thirty-nine (39') and forty-nine (49') feet high, the two apartment building types would be the tallest residential buildings in Moorpark. In comparison, the Archstone (renamed Waterstone) Apartments on Moorpark Avenue south of Los Angeles Avenue are thirty-five (35') feet high. The Essex project site is, however, isolated from the low-rise homes east of

Moorpark Avenue, separated by the current civic center and the Walnut Canyon flood control channel. It is also near other buildings of similar height (Walnut Canyon School auditorium, Boys and Girls Club gymnasium). In addition, the site also slopes down south from Casey Road, reducing the massing of the buildings and the project when viewed from the north. While the project would clearly change the development character of the area, the building height would be compatible with present and planned uses in the project vicinity.

Area Three: Accessory Building Design

Plans have not been provided for the accessory buildings on the site; including the leasing office, recreation building, trash/recycling areas, and carports. These buildings do not make up a substantial portion of the site, but the design of these buildings should be compatible with the rest of the buildings on the site. A condition is included in the draft resolution requiring compatible design and materials to the satisfaction of the Community Development Director.

Area Four: Parking

With 434 parking spaces proposed, the project has a ratio of 2.17 spaces per unit. A waiver from the 500 spaces required by the Zoning Ordinance is requested as part of the Development Agreement (Section 7.11). The following table compares the proposed parking to code requirements.

TYPE OF SPACE	CODE	PROPOSED
GARAGE	200	177 (52 Private, 125 Common)
CARPORT	200	30
OPEN	100	227
TOTAL	500 (2.5/u)	434 (2.17/u)

The parking ratio is comparable to the 2.13 spaces per unit at the 312-unit Waterstone Apartment project, where the 666 off-street parking spaces have proven to be sufficient. Given that the unit mix of the Essex project is similar to that of the Waterstone Apartments (as shown in the following table); staff does not anticipate a shortage of off-street parking. Special condition of Approval No. 7 provides for maintenance of parking spaces.

TYPE OF UNIT	ESSEX Number (Percent)	WATERSTONE Number (Percent)
1 BEDROOM	94 (47%)	156 (50%)
2 BEDROOM	98 (49%)	120 (38%)
3 BEDROOM	8 (4%)	36 (12%)
TOTAL	200 (100%)	312 (100%)

Findings

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

A. 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 and Zoning Ordinance, if amended by General Plan Amendment No. 2004-05 and Zone Change No. 2004-04, in that the proposed project will provide an appropriate density development for the site given its proximity to the downtown area and that the project will contribute substantially toward the City's Housing Element goal to expand and protect housing opportunities for lower income households and special needs groups.

B. 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 buildings proposed are appropriate in height, scale, and setback given the proximity of the site to the downtown area and the traffic improvement conditions of approval will avoid negative traffic impacts.

C. 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 housing types, along with public and school uses.

PROCESSING TIME LIMITS

General Plan Amendments, Zone 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 Residential Planned Development Permit application is dependent on the approval of the General Plan Amendment, Zone Change, and Development Agreement, and therefore is also not subject to the Permit Streamlining Act in this case.

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.

The Director has prepared or supervised the preparation of an Initial Study to assess the potential significant impacts of this project. Based upon the Initial Study, the Director has determined that there is no substantial evidence that the project or any of its aspects may cause a significant effect on the environment and has prepared a Mitigated Negative Declaration for Planning Commission review and consideration before making a recommendation on the project.

STAFF RECOMMENDATION

1. Open the public hearing, accept public testimony and close the public hearing.

2. Adopt Resolution No. PC-2007-____ recommending to the City Council adoption of a Mitigated Negative Declaration and approval of General Plan Amendment No. 2004-05, Zone Change No. 2004-04, Development Agreement No. 2004-03 and Residential Planned Development No. 2004-06 with Conditions of Approval.

ATTACHMENTS:

1. Location Map
2. Project Exhibits (under separate cover)
   A. Site Plan
   B. Floor Plans and Elevations
   C. Conceptual Landscape Plan
3. Initial Study and Mitigated Negative Declaration
4. Draft Development Agreement
5. Draft PC Resolution with Conditions of Approval

CITY AGREEMENT NUMBER: 2009-105
ASSESSORS PARCEL NUMBER: 511-0-020-225 (Ventura County)
PROJECT: U. S. Postal Service Vehicular Access

REAL PROPERTY ACQUISITION AGREEMENT

THIS REAL PROPERTY ACQUSITION AGREEMENT ("Agreement") is made and entered into this 31st day of March, 2009 ("Effective Date") by and between the CITY OF MOORPARK, a California municipal corporation and general law city ("City") and ESSEX PORTFOLIO, L.P., a California limited partnership ("Grantor").

RECITALS

This Agreement is made with reference to the following facts and circumstances, which are deemed material to the Agreement:

A. Grantor is the owner of that certain real property located in the City of Moorpark, County of Ventura, State of California, generally referred to in Residential Planned Development Permit 2004-06 and identified by Assessor's Parcel Number 511-0-020-225 ("Property").

B. The City requires the acquisition of a fee interest to a portion of the Property as described and depicted in the Grant Deed attached as Exhibit "1" to this Agreement ("Real Property Interests") for the construction of vehicular access to the approved U. S. Post Office and the construction of drainage improvements in conjunction with the Post Office development ("Project").

C. Grantor now desires to transfer title of the Real Property Interests in the Property and Grantor is willing to sell the Property on the terms and conditions set forth in this Agreement.

IN CONSIDERATION OF THE PROMISES, COVENANTS AND REPRESENTATIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1) For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees to transfer the Real Property Interests to City, and City agrees to acquire the Real Property Interests from Grantor, upon the terms

and conditions herein set forth.

2) Concurrent with this Agreement, Grantor agrees to execute (with notarized signatures by all required signatories) and deliver to City a copy of the Grant Deed attached hereto as Exhibit "1." Upon receipt, City is authorized to record the Grant Deed with the Ventura County Recorder, which will complete the conveyance of the Real Property Interests from Grantor to City subject to the terms of this Agreement.

3) The method by which the compensation for Grantor's conveyance of the Real Property Interests to the City ("Purchase Price") shall be as follows:

   a. City will have, at the City's sole cost and expense, the Real Property Interests appraised by a licensed, independent MAI appraiser with at least five (5) years experience appraising similar types of real property, as the Real Property Interests (an "Appraiser") within two (2) month from the Effective Date ("City Appraisal"). In the case that the City Appraisal is not completed and delivered to Grantor within said two (2) month period, then the Purchase Price shall be the value of the Grantor Appraisal (as defined below). If the City Appraisal's value of the Real Property Interests is acceptable to Grantor, then Grantor shall be paid said value within twenty (20) days following Grantor's written notice to City of Grantor's acceptance of the City Appraisal.

   b. If the City Appraisal's value of the Real Property Interests is not acceptable to Grantor, then Grantor has two (2) months from Grantor's receipt of the City Appraisal to have completed, at the City's sole cost and expense, an appraisal of the Real Property Interests by an Appraiser selected by Grantor ("Grantor Appraisal"). If Grantor's Appraisal has not been completed within two (2) months from Grantor's receipt of the City Appraisal, then the Purchase Price shall be the value of the City Appraisal. If the Grantor Appraisal's value of the Real Property Interests is acceptable to City, then Grantor shall be paid said value within twenty (20) days following City's written notice to Grantor of City's acceptance of the Grantor Appraisal.

   c. If the City Appraisal's value of the Real Property Interests is not acceptable to Grantor, and the Grantor Appraisal was timely prepared and its value of the Real Property Interests is not acceptable to City, then City and Grantor will have completed an Appraisal completed by a mutually-selected third Appraiser, the cost and expense of which shall be paid solely by the City, to appraise the value of the Real Property Interests ("Joint Appraisal"). In the event the City and Grantor are unable to mutually select an Appraiser to prepare the Joint Appraisal within twenty (20) days of the last of the City's or the Grantor's rejection of the other's appraisal, City and Grantor shall, within ten (10) days after the expiration of such twenty (20) day period, each

select two (2) proposed Appraisers, each of whom has represented an ability to complete an appraisal within six (6) months from the Effective Date. Failure by either party to timely so select such two (2) Appraisers shall be deemed to mean that such party has waived its right to select such two (2) Appraisers, in which event the party who has selected its two (2) Appraisers shall promptly select one (1) of its two (2) previously selected Appraisers to complete the Joint Appraisal at the City's sole cost. Provided that a party has not waived its right to select its two (2) Appraisers, after all such Appraisers have been selected each party shall, within ten (10) days of the date that such Appraisers have been selected (the "Striking Period"), strike one (1) of the other parties' proposed Appraisers selected. Failure to strike one (1) of the other parties proposed Appraisers within the Striking Period shall be deemed to mean that such party has waived the right to strike such Appraiser. The Appraiser ultimately selected to prepare the Joint Appraisal will be drawn from one of the remaining proposed Appraisers by a neutral third party in a random, lottery-style process, by the Grantor (the "Final Appraiser"). The parties agree the procedure described in the immediately preceding sentence shall occur no later than five (5) days following the expiration of the Striking Period. All costs of the Final Appraiser shall be paid for solely by the City.

In all circumstances, the Property shall be appraised in the City Appraisal, Grantor Appraisal and Joint Appraisal using the following criteria:

- ◊ the date of value for shall be February 1, 2009;
- ◊ the appraisal shall be of the land only, as vacant, and shall not consider any improvements existing thereon;
- ◊ the land shall be valued on an "as is" basis;
- ◊ the applicable zoning shall be RE, Rural Residential;
- ◊ the highest and best use of the Property shall be RE, Rural Residential, as if said land were still part of the Property;
- ◊ no compensation shall be included for damages to the remainder ("severance damages").

d. In no event shall the Purchase Price be paid to Grantor later than thirty (30) days after the completion of the applicable appraisal.

e. In the event the City and Grantor have, within six months from the Effective Date, finalized a written agreement to develop the Property for use as an apartment complex which assigns a different value to the transfer of the Real Property Interests to City, the value prescribed in the subsequent written

agreement will supersede the value of the Real Property Interests set forth in this paragraph of the Agreement, and an appropriate adjustment shall be made to any price previously paid.

4) Grantor, and its representatives, predecessors, successors, subsequent transferees, attorneys, assigns and agents, and each of them, agree to knowingly and voluntarily waive, and release and discharge City for liability or responsibility for or related to any right Grantor has, has had, or may in the future have to any claim for compensation, damages or liability of any kind, whether known or unknown, foreseen or unforeseen, relating in any way to or arising out of City's acquisition of the Real Property Interests and/or construction of the Project for which the Real Property Interests is being acquired. In that regard, Grantor, and its representatives, predecessors, successors, subsequent transferees, attorneys, assigns and agents, and each of them, knowingly and voluntarily waive, discharge and release City's employees, agents, officers, servants, representatives, contractors, attorneys and assigns, from the following: compensation for injury to the remainder ("severance damages"), relocation assistance, precondemnation damages, loss of goodwill and/or lost profits, loss or impairment of any "bonus value" attributable to any lease, damage to improvements pertaining to the realty, damage or loss to machinery, fixtures and/or equipment, any right to repurchase or leaseback the Real Property Interests, any right to receive any notices pursuant to Code of Civil Procedure section 1245.245, any and all rights conferred upon Grantor pursuant to Code of Civil Procedure sections 1245.245 and 1263.615 and 1263.025, attorney's fees and costs, and any other claim to compensation or damages arising out of City's acquisition of the Real Property Interests and/or the construction and/or use of the Project for which the Real Property Interests is being acquired.)

In that regard, Grantor acknowledges that it is familiar with the provisions of California Civil Code Section 1542, which is expressly understood by each party hereto to provide as follows:

> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Grantor being aware of said code section hereby expressly waives any and all rights it may have thereunder, as well as under any other statute or common law principles of similar effect.

_____/_____
GRANTOR'S INITIALS

5) Grantor warrants that there are no leases or licenses affecting all or any portion of the Real Property Interests. City will have no obligation to pay or provide any payments or compensation for or to any holder of a lease or license of the Real Property Interests, and Grantor agrees to hold City harmless and reimburse City for any and all of its losses and expenses, including relocation assistance costs, occasioned by reason of any undisclosed lease or license, and any and all such costs may be deducted from the payment set forth in Paragraph 3 of this Agreement.

Grantor represents and warrants, to the best of Grantor's actual knowledge, and subject to environmental reports regarding the Property, the following:

a) During Grantor's ownership of the Real Property Interests, Grantor knows of no disposal, releases, or threatened releases of hazardous substances on, from, or under the Real Property Interests. Grantor further represents and warrants that Grantor has no knowledge of any disposal, release, or threatened release of hazardous substances on, from, or under the Real Property Interests, which may have occurred prior to Grantor taking title to the Real Property Interests.

b) There is no pending claim, lawsuit, agency proceeding, or any administrative challenge concerning the presence or use of hazardous substances on the Real Property Interests.

c) Grantor has not used the Real Property Interests for any industrial operations that use hazardous substances. The Grantor is not aware of any such prior use of the Real Property Interests.

d) Grantor has not installed any underground storage tanks, above ground storage tanks, barrels, sumps, impoundments or other containers used to contain hazardous substances on any part of the Real Property Interests. Grantor is not aware of any such prior installations.

e) The undersigned signatories for Grantor are fully authorized to enter into this Agreement and constitute all persons required to execute this Agreement on behalf of Grantor.

6) All notices regarding the Grant Deed or under the terms of this Agreement must be made by either personal delivery or by mail with proof of delivery to the addressees below, which contact information the parties may change at any time by giving notice under this section:

Grantor: ESSEX PORTFOLIO, L.P.
925 East Meadow Drive
Palo Alto, CA 94303
Attention: John D. Eudy

Copies to: ESSEX PORTFOLIO, L.P.
925 East Meadow Drive
Palo Alto, CA 94303
Attention: Jordan Ritter

And

ESSEX PORTFOLIO, L.P.
22120 Clarendon Street, Suite 200
Woodland Hills, CA 91367
Attention: Maura Lederer

City: City of Moorpark
Attention: City Clerk
City Hall
799 Moorpark Avenue
Moorpark, CA 93021

Copies to: Burke, Williams & Sorensen, LLP
444 S. Flower Street, 24th Floor
Los Angeles, CA 90071
Attention: Joseph M. Montes, Esq.

7) This Agreement is binding upon the heirs, devisees, executors, administrators, legal representatives, successors, subsequent transferees and assigns of the parties.

8) Each of the agreements, representations, warranties, waivers and releases contained herein will survive the recordation of, and will not be merged into, the Grant Deed.

9) This Agreement contains the entire understanding between the parties relating to the transactions contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged in this Agreement and are of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Exhibit "1", which is incorporated herein.

10) This Agreement will be interpreted as though prepared jointly by both parties. Any alteration, change or modification of or to this Agreement, in order to become effective, must be made in writing and in each instance signed on behalf of each party. This Agreement will be interpreted and governed under the laws of the State of California.

11) Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Agreement.

12) This Agreement may be executed in counterparts, each of which will be deemed an original, and all such counterparts together will constitute one and the same instrument.

13) The Essex Plan, approved by Edison for the apartment project, is shown on the Channel and Power Pole Relocation Exhibit prepared by RJR Engineering Group. City agrees to pay, at its sole cost, a private utility consultant (BJ Palmer & Associates) to redesign (Revised Plan) the Edison 66kv Essex Pole Relocation Plan (Essex Plan) in order to plan for the relocation of the existing poles to the area south of the curbline of High Street within the landscape setback area of the Post Office project. The Revised Plan (Revised Plan) will be subject to City and Edison approval. Installation of any poles or guy poles required in addition to those shown on the Essex Plan shall be paid for solely by the City. In no event shall the City require Essex to fund undergrounding of any of the poles shown in the Essex Plan.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first set forth hereinabove.

GRANTOR:

ESSEX PORTFOLIO, L.P., a California limited partnership
By: Essex Property Trust, Inc., a Maryland corporation, its general partner

By: _____
Its: _____

CITY OF MOORPARK

By: _____
Steven Kueny, City Manager

ATTEST:

_____
Deborah Traffenstedt, City Clerk

Exhibit "1"

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

City Clerk
CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, CA 93021

Exempt Recording Per Government Code Sections 6103 and 27383

Space Above This Line For Recorder's Use

GRANT DEED

A.P. NOS.:

THE UNDERSIGNED GRANTOR DECLARES THAT THE CITY OF MOORPARK IS ACQUIRING TITLE AND IS EXEMPT FROM DOCUMENTARY TRANSFER TAX PURSUANT TO R & T 11922

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, ESSEX PORTFOLIO, L.P., a California limited partnership ("Grantor"), hereby grants to the CITY OF MOORPARK, a California municipal corporation and general law city ("Grantee"), the fee interest in that certain real property located in the City of Moorpark, County of Ventura, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed on April 21, 2009, to be effective upon its recordation in the Official Records of the County of Ventura, California.

GRANTOR:

Essex Portfolio

By: _____

Its: Executive Vice President

ATTEST:

_____
Secretary

City of Moorpark

799 Moorpark Avenue, Moorpark, California 93021 (805) 517-6200 fax (805) 532-2520

CERTIFICATE OF ACCEPTANCE

NOTICE IS HEREBY given by the City of Moorpark in the County of Ventura, State of California, as follows:

1. That on the 18th day of March 2009, the City Council of the City of Moorpark approved acquisition of fee interest and thereby acceptance of a Grant Deed by and between Essex Portfolio, L.P., a California limited partnership and the City of Moorpark, a municipal corporation (the City) for the real property located in the City of Moorpark, County of Ventura, State of California (APN 511-0-020-25) as described in Exhibit A of the Grant Deed.

2. That the name of the political subdivision accepting said Grant Deed dated April 21, 2009, is the CITY OF MOORPARK, in the County of Ventura, State of California, whose address is 799 Moorpark Avenue, Moorpark, California, 93021.

3. That the City Clerk of the City of Moorpark is authorized to accept and consent to the recordation of any deed or grant conveying any interest in or easement upon real property to said City which the City Council has approved pursuant to Resolution No. 85-163, which was duly recorded with the County Recorder of Ventura County.

City of Moorpark

Deborah S. Traffenstedt

Deborah S. Traffenstedt, City Clerk

JANICE S. PARVIN
Mayor

MARK VAN DAM
Mayor Pro Tem

ROSEANN MIKOS
Councilmember

KEITH F. MILLHOUSE
Councilmember

ACKNOWLEDGMENT

State of California)
) ss
County of Santa Clara)

On April 21, 2009, before me, Elisa M. Taylor, Notary Public,
(Name of Notary)
personally appeared John Eudy who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Elisa M. Taylor (Seal)
(Notary Signature)

ELISA M. TAYLOR
Commission # 1818818
Notary Public - California
Santa Clara County
My Comm. Expires Nov 16, 2012

EXHIBIT "A"
80' Right of Way Legal Description for High Street

The Southerly 80.00 feet and Easterly 660.66 feet of Parcel 1A of LLA 050503-018315, in the City of Moorpark, County of Ventura, State of California, being a part of Lot T, Tract L, Rancho Simi as per map recorded in Book 5, Page 5, of Maps and also being a part of Lot 4, Tract No. 3 of the M.L. Wicks Subdivision of part of Tract U and Addition to Moorpark, in the Rancho Simi, Ventura County, California and recorded in the Office of the County Recorder of said Ventura County in Book 5 of Miscellaneous Records (Maps) at Page 37.

EXCLUDING 20.00 feet by 20.00 feet of Well Site described in 1442 OR 249 of Records, Ventura County, California;

EXCEPT as to a portion of Parcel 1A, all oil, gas or other hydrocarbon substances, but without the right to enter upon the surface or subsurface thereof within 500 feet, measured vertically from the present surface as reserved by Merl V. Burkholder, a married man, as a widower, by Deed recorded in Book 1592, Page 487 of Official Records;

ALSO EXCEPT 50% of a portion of Parcel 1A, all oil and mineral rights in and under said land as reserved by Wally F. McFfelt, a widow, in Deed recorded March 28, 1942 as Instrument No. 3224, Book 653, Page 659 of Official Records.

ALSO EXCEPT an undivided 25% in and to a portion of Parcel 1A, the total oil and mineral rights in and under said land, without however, the right of surface or subsurface entry upon said land within 500 feet of the present surface measured vertically therefrom as reserved by Riley Spencer and Dora E. Spencer, husband and wife, in Deed recorded Book 1587, Page 274 of Official Records.

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to The Pacific Light and Power Corporation, a corporation for the purpose of public utilities, recorded July 20, 1914, in Book 144, page 85 of Deeds affecting all of Parcel 1A;

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to The Pacific Light and Power Corporation, a corporation for the purpose of public utilities and recorded in book 144, page 87 of Deeds affecting a portion of Parcel 1A as therein described;

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to the Pacific Light and Power Corporation, a corporation for the purpose of public utilities and recorded in book 144, page 89 of Deeds affecting a portion of Parcel 1A as therein described;

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to Southern California Edison Company for the purpose of public utilities and recorded June 11, 1954 in book 1210, page 117 of Official Records affecting a portion of Parcel 1A as therein described;

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to John I. Cornett for the purpose of pipeline in Book 1442, Page 249 of Official Records affecting a portion of Parcel 1A as therein described;

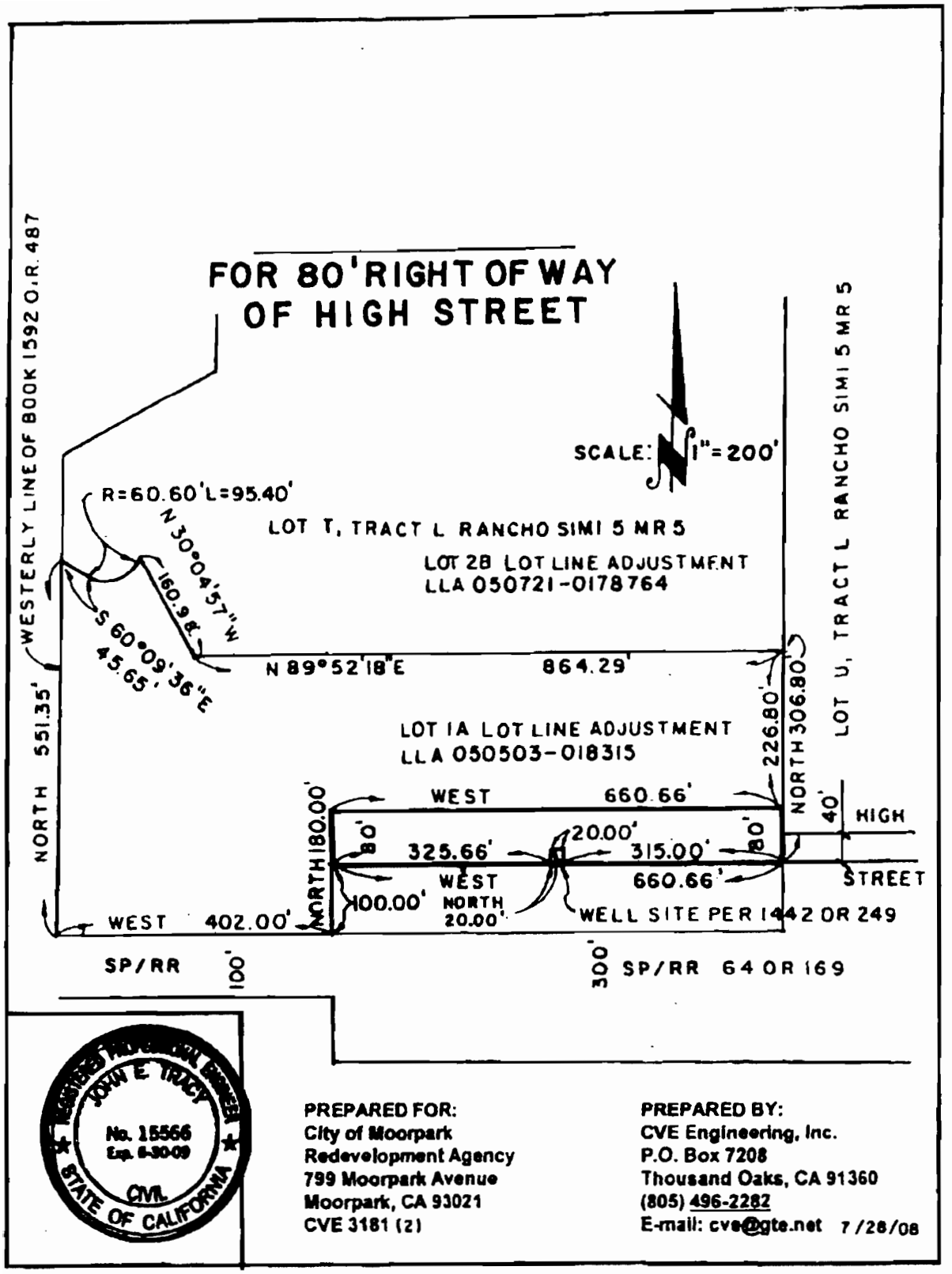
ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to Ventura County Flood Control District for the purpose of flood control recorded April 27, 1962, in Book 2142, Page 288 of Official Records affecting a portion of Parcels 1A and 2B as therein described;

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to County of Ventura Acting for and on behalf of Ventura County Waterworks District No.1 for the purpose of sewer pipelines and incidental purposes, affecting a portion of said land, recorded January 18, 1968 in Book 3252, Page 323 of Official Records.

ALSO EXCEPT an easement for the purpose shown below and rights incidental thereto as set forth in a document granted to Southern California Edison Company for the purposes for public utilities in unrecorded Documents Nos. 201519, 19604, 13969, 325684 of Official Records affecting all of Parcels 1A and 2B.

ALSO EXCEPT any easements not disclosed by those public records which impart constructive notice and which are not visible and apparent from an inspection of the surface of said land. .

Prepared by:
CVE Engineering, Inc.
P.O. Box 7208, Thousand Oaks, CA 91360
(805) 496-2282 / CVE # 3181 / July 28, 2008


FOR 80' RIGHT OF WAY
OF HIGH STREET
SCALE: 1" = 200'
WESTERLY LINE OF BOOK 1592 O.R. 487
R=60.60' L=95.40'
N 30°04'57" W
160.98'
S 60°09'36" E
45.65'
LOT T, TRACT L RANCHO SIMI 5 MR 5
LOT 2B LOT LINE ADJUSTMENT
LLA 050721-0178764
N 89°52'18" E
864.29'
LOT U, TRACT L RANCHO SIMI 5 MR 5
NORTH 306.80'
226.80'
NORTH 551.35'
LOT 1A LOT LINE ADJUSTMENT
LLA 050503-018315
WEST
660.66'
NORTH 180.00'
80'
325.66'
20.00'
315.00'
80'
40'
HIGH
STREET
WEST
660.66'
100.00'
NORTH
20.00'
WELL SITE PER 1442 OR 249
WEST 402.00'
SP/RR
100'
300'
SP/RR 64 OR 169
REGISTERED PROFESSIONAL ENGINEER
JOHN E. TRACY
No. 15566
Exp. 6-30-09
CIVIL
STATE OF CALIFORNIA
PREPARED FOR:
City of Moorpark
Redevelopment Agency
799 Moorpark Avenue
Moorpark, CA 93021
CVE 3181 (2)
PREPARED BY:
CVE Engineering, Inc.
P.O. Box 7208
Thousand Oaks, CA 91360
(805) 496-2282
E-mail: cve@gte.net
7/28/08