ITEM 11.A.

ORDINANCE NO. 416

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, TERMINATING DEVELOPMENT AGREEMENT NO. 1998-04 ADOPTED BY ORDINANCE NO. 250 AND ADOPTING DEVELOPMENT AGREEMENT NO. 2012-01 BY AND BETWEEN THE CITY OF MOORPARK AND A-B PROPERTIES FOR APPROXIMATELY 34.53 ACRES, NORTH OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY, WEST OF GABBERT ROAD

WHEREAS, Section 65864 of the Government Code provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, Chapter 15.40 of the Moorpark Municipal Code contains procedures for adopting, administering, amending, and terminating Development Agreements; and

WHEREAS, on December 16, 1998, the Moorpark City Council adopted Ordinance No. 250 (effective January 15, 1999), approving Development Agreement No. 1998-04 by and between the City of Moorpark and A-B Properties regarding approximately 34.53 acres, approximately 1,300 feet west of Gabbert Road and North of the Union Pacific Railroad Right-of-Way, effective on January 15, 1999; and

WHEREAS, Development Agreement No. 1998-04 was recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584; and

WHEREAS, A-B Properties has requested amendments to the subject Development Agreement to address terms for certain public improvements; and

WHEREAS, on April 18, 2012, the City Council adopted Resolution No. 2012-3098, directing the Planning Commission to study, hold a public hearing, and provide a recommendation to the City Council on this matter; and

WHEREAS, on July 24, 2012, the Planning Commission adopted Resolution No. PC 2012-575, recommending to the City Council approval of amendments to certain terms of the Development Agreement; and

WHEREAS, those recommended amendments have been formatted into Development Agreement No. 2012-01 as contained in Exhibit A to replace in its entirety the previously adopted Development Agreement 1998-04 for the December 19, 2012, regular meeting, with additional amendments as noted in the report to the City Council; and

WHEREAS, a duly noticed public hearing was held by the City Council on October 3, 2012, November 7, 2012, December 5, 2012, and December 19, 2012 to consider Development Agreement No. 2012-01 and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to the Development Agreement No. 2012-01 and has given careful consideration to the content of the new Development Agreement; and

WHEREAS, changes to the project with Development Agreement No. 2012-01 do not result in new information or impacts that would require preparation of a new or subsequent environmental document under the California Environmental Quality Act.

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

SECTION 1. The City Council hereby terminates Development Agreement No. 1998-04, as contained within Ordinance No. 250 and recorded by the County Recorder with the assigned document number 98-233584, between the City of Moorpark and A-B Properties.

SECTION 2. The City Council of the City of Moorpark does hereby find as follows:

A. Development Agreement No. 2012-01 is consistent with the General Plan as most recently amended.

B. Development Agreement No. 2012-01 and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Mitigated Negative Declaration adopted by City Council Resolution No. 2000-1714.

C. Development Agreement No. 2012-01 is necessary to ensure the public health, safety and welfare.

D. The Mitigated Negative Declaration adopted by the City Council on March 15, 2000 by Resolution No. 2000-1714 for Tentative Tract Map No. 5147 is the appropriate and applicable environmental document for Development Agreement No. 2012-01 and no further or additional environmental review is required pursuant to Section 15162 of the State CEQA Guidelines. Specifically, there are no substantial changes to the project from what was evaluated in the previously adopted Mitigated Negative Declaration that would have required major revisions to the Mitigated Negative Declaration. This is because the project involves the same property with the same number of lots and similar anticipated uses as was previously evaluated. There are no substantial changes with respect to the circumstances under which the project is undertaken in that the surrounding land uses have not changed from the time the Mitigated Negative Declaration was first adopted. Lastly, no new information of

substantial importance has been identified that would result in new or more severe environmental effects or changes to mitigation measures or alternatives.

SECTION 3. The City Council hereby adopts Development Agreement No. 2012-01 (attached hereto) between the City of Moorpark, a municipal corporation, and A-B Properties, a California General Partnership, and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 4. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said Agreement.

SECTION 5. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall publish notice of adoption in the manner required by law.

PASSED AND ADOPTED this 16th day of January, 2013.

_____
Janice S. Parvin, Mayor

ATTEST:

_____
Maureen Benson, City Clerk

Attachment: EXHIBIT A - Development Agreement No. 2012-01

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
Sec. 6103

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
A-B PROPERTIES

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

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into this _____ day of _____, 20__, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and A-B Properties a California General Partnership(referred to hereinafter as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreement's 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 the City for the development of such property in order to establish certainty in the development process.

   1.2. [INTENTIONALLY LEFT BLANK]

   1.3. Developer is owner in fee simple of certain real property in the City of Moorpark, as more specifically described by the legal description set forth in Exhibit A, which exhibit is attached hereto and incorporated herein by this reference (the "Property").

   1.4. City has approved General Plan Amendment No. 97-2("GP") and Zone Change No. 97-6 ("ZC"). The GP and ZC are collectively referred to as the "Project Approvals".

   1.5. Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584, is terminated upon the effective date of the enabling ordinance (Ordinance No. 416) for this Agreement.

   1.6. 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.

1.7. 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. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and exactions imposed upon the development of the Property pursuant to the Project Approvals, this Agreement and any Subsequent Approvals (as defined in Section 5.3 of this Agreement) and to provide the public benefits and improvements specified in this Agreement.

1.8. 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 currently amended.

1.9. On July 24, 2012, the Planning Commission of City commenced a duly noticed public hearing on this Agreement and at the conclusion of the hearing recommended approval of the Agreement.

1.10. On October 3, 2012, November 7, 2012, December 5, 2012, and December 19, 2012, the City Council of City ("City Council") commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing approved the Agreement by Ordinance No. 416 ("the Enabling Ordinance").

2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may be referred to hereinafter as "the site" or "the Project area".

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 area 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 in which the Developer has a legal interest is, and 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 the 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 effective 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, delivers 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.

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 all City building codes in effect at the time the plan check or permit is approved per Title 15 of the Moorpark Municipal Code 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, except as provided for in this Agreement.

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. In particular, but without limiting any of the foregoing, no numerical restriction shall be placed on the number of building units that can be built each year within the Project Area. However, 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 in City's sole discretion (collectively "City Laws"), except City Laws that:

(a) change any permitted or conditional permitted uses of the Property from what is allowed by the Project Approvals or this Agreement;

(b) 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 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;

(c) 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; or

(d) control commercial rents.

5.4. Term of Subsequent Approvals. The term of any tentative map for the Property, or any portion thereof, shall expire eight (8) years after its approval or conditional approval or upon the expiration or earlier termination of this Agreement, whichever occurs first, notwithstanding the fact that the final map may be filed in phases. Each Developer hereby waives any right that it may have under the Subdivision Map Act, Government Code section 66410 et seq., or any successor thereto,

to apply for an extension of the time at which the tentative map expires pursuant to this subsection. No portion of the Property for which a final map or parcel map has been recorded shall be reverted to acreage at the initiative of City during the term of this Agreement.

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

It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, the 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, the Developer shall have the right, at its election and without risk to any right that is vested in it pursuant to this section, to apply to City for permit adjustments or modifications to Subsequent Approvals. The approval or conditional approval of any such permit adjustment or 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.

5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from the Developer if all infrastructure required to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. 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. The Developer shall comply with (i) this Agreement, (ii) the Project Approvals, and (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant.

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. Prior to the issuance of each building permit within the boundaries of 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 fifty cents ($0.50) for each square foot of building area.

6.4. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Development Fee shall be Twenty One Thousand Dollars ($21,000.00) per acre of each lot on which the building is located. The fee shall be adjusted annually (commencing one (1) year after the first building permit is issued within the Project Area 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/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which the Development Agreement is approved by the City Council (e.g., if approval occurs in June, then the month of February is used to calculate the increase).

For all building permits issued for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), the Development Fee shall be $44,325 per acre and shall be adjusted annually commencing one (1) year after this date, beginning on January 1, 2016, by the Consumer Price Index (CPI) 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 during the month of August over the prior August. In the event there is a decrease in the CPI for 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.

6.5. As a condition of the issuance of each building permit for any use within the boundaries of the Project Area, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the effective date of this Agreement, the amount of the Citywide Traffic Fee shall be Eighteen Thousand Dollars ($18,000.00) per acre of each lot on which the use is located. Commencing on January 1, 2001, and annually thereafter, the Citywide Traffic Fee shall be increased to reflect the change in the California Department of Transportation Price Index for Selected Highway Construction Items for the previous twelve (12) month period that is 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 Citywide Traffic Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

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

6.7. Prior to the issuance of each building permit within the boundaries of the Property, Developer shall pay an Air Quality Fee of sixty-three cents ($0.63) for each square foot of office building area and twenty-eight cents ($0.28) for each square foot of industrial building area. The Air Quality Fee shall satisfy the Transportation System Management Fee requirement for the Project and may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.

6.8. Developer agrees to cast affirmative ballots for the formation of an assessment district and levying of assessments, for the maintenance of parkway and median landscaping, street lighting and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action.

6.9. 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 Police Facilities Fees, Fire Facilities Fees, Library Facilities Fees, Art in Public Places fees, 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 and unfettered discretion so long as said fee is imposed on similarly situated properties.

6.10. Prior to City Council action on any Subsequent Approval, or grading or the Property, whichever occurs first, Developer agrees to provide City an irrevocable offer of dedication to dedicate right-of-way at no cost to City for the future North Hills Parkway (also known as future 118 bypass) along the entire length of the north side of the Property and along the entire length of the west side of the Property east of the

Gabbert Channel. The right-of-way shall be a minimum of one hundred (100) feet in width on both sections and shall also include necessary on-site and off-site slope easements in addition to this width to accommodate a grade-separated crossing of the existing railroad tracks south of the Property, along with turn radii and entry/exit lanes as determined by the City at its sole and unfettered discretion. Developer further agrees to dedicate access rights from the Property to the City along the entire North Hills Parkway frontage, except for private streets as part of the Tract Map for this Project.

6.11. Developer agrees that as part of any grading of the property the right-of-way for the future North Hills Parkway shall be graded per City direction.

6.12. Developer agrees to comply with all the provisions of the Hillside Management Ordinance (Chapter 17.38 of the Municipal Code) of the City.

6.13. Developer agrees to pay a pro-rata share, as determined by the City at its sole and unfettered discretion, for the funding and construction of the improvements identified in the Gabbert and Walnut Canyon Channels Deficiency Study. Developer also acknowledges that interim improvements may also be necessary to facilitate any new use or development of the property and Developer agrees that they shall be responsible for any such interim improvements as their sole responsibility, without credit of these costs, except as may be provided in the implementation plan for the Gabbert and Walnut Canyon Channels Deficiency Study.

6.14. Prior to any subdivision or new use of the property, Developer agrees to acquire and construct, at their sole cost, dedicated public access to the properties, as approved by the City Council. Secondary access to comply with City and public safety requirements shall also be provided at their sole cost.

6.15. Developer agrees to terminate Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584.

6.16. Developer agrees not to request any concession, waiver, modification or reduction of any fee, regulation, requirement, policy or standard condition for any Subsequent Approval and further agrees to pay all fees imposed by City for future buildings, so long as said fees are also imposed in a similar manner on similar projects.

6.17. Developer shall grant, in a form acceptable to City, a conservation easement to retain that portion of the Property west of and including the Gabbert Canyon drain in a predominantly open space condition consistent with Civil Code Section 815 et seq., except for the following purposes: temporary construction (including temporary pumping needed for dewatering as part of any approved grading operations for the Property), landscape maintenance of manufactured slope areas, vegetation clearance within two hundred (200) feet of any structure for fire hazard reduction, revegetation and biological habitat enhancement required by City consistent with any Mitigation Monitoring Program, drainage conveyance, emergency access and extension of State Route 118. No excavation, drilling, extraction, pumping (excluding such pumping as may be needed for dewatering as part of approved grading operations), mining, or similar activity shall be allowed in any portion of the Property zoned Open Space. The limitations and exclusions described in this subsection shall be included in the conservation easement. The foregoing does not restrict the extraction of subsurface mineral resources by drilling from off the Property so long as the drilling apparatus and equipment are screened from view from all points within the City. Further, if the drilling site is not within the City, Developer agrees that before proceeding with any drilling it shall secure a use permit from the City which may include conditions ordinarily placed upon drilling opertations. Further, noise impacts from the drilling shall meet the same noise standards as placed on Industrial Planned Development Permits and there shall be no visible evidence or impacts on the ground surface of the Property:

The conservation easement shall be recorded concurrently with the recordation of the first final subdivision map for the Property.

6.18. Prior to approval of a Final Map, Developer shall execute in favor of City and record in the Office of the County Recorder of the County of Ventura a Covenant running with the Land (Covenant) as set forth in Exhibit "B" attached hereto and incorporated herein to limit use of the Property.

6.19. Developer agrees that prior to the issuance of a building permit for any portion of the Property that exceeds forty percent (40%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), Developer shall:

- Improve Gabbert Road from Poindexter Avenue north to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way, with improvements to include four (4) travel lanes, with bike lanes, curbs, gutters, parkways, and sidewalks on each side of the street, and widening of the rail crossing, all consistent with City plans to the satisfaction of the City Engineer/Public Works Director.

- Improve North Hills Parkway along the project frontage from the easterly project boundary to and including the intersection with the future project access road on the west side of the Property. Improvements shall be made within the south side of the ultimate right-of-way north of the developable lots and within the entire ultimate right-of-way west of the developable lots to include half of the ultimate roadway not to exceed forty five (45) feet in width, to allow for two twelve (12) foot wide travel lanes, left turn lanes, and an eight (8) foot wide bike lane on the south/east side. Improvements shall also include curb, gutter, parkway and sidewalk on the south/east side of the street and a median curb and temporary bike lane on the north/west side of the street consistent with City plans for the right-of-way improvements to the satisfaction of the City Engineer/Public Works Director.

All public street improvements described above shall be designed and constructed at Developer's expense to provide for a 50-year life as determined by the City Engineer/Public Works Director. Surety for the improvements shall be provided by the developer to the City prior to approval of the Final Map in an amount and form determined by the City in its sole and unfettered discretion to guarantee these improvements.

If the developer improves North Hills Parkway from Gabbert Road to the eastern project boundary prior to the City's planned improvement of this road, developer shall obtain all necessary right-of-way and slope easements and shall design and construct the roadway with a minimum of thirty-two (32) feet of pavement and positive drainage to the satisfaction of the City Engineer/Public Works Director on this section of North Hills Parkway. Prior to opening this improvement to the public,

Developer shall also improve Gabbert Road from a point one-hundred and twenty-five (125) feet north of the railroad right-of-way north to and including the North Hills Parkway intersection to have thirty-two (32) feet of pavement and positive drainage to the satisfaction of the City Engineer/Public Works Director.

Developer recognizes that the City's improvement plans for Gabbert Road and North Hills Parkway include elevating Gabbert Road above its current grade and re-aligning the roadway near its intersection with North Hills Parkway. If Developer constructs the North Hills Parkway improvements to meet Gabbert Road at its existing grade as described above before the City improvements are constructed, Developer shall be responsible for any additional City construction costs to the North Hills Parkway between Gabbert Road and the Property as a result of the Developer's improvements as determined by the City Manager at his/her sole discretion.

6.20. Prior to approval of the final map for Tract No. 5906 for the Property, Developer shall submit and gain approval from City Manager of an Implementation Plan. The Implementation Plan shall address the requirements for phasing and construction responsibilities of Developer and any successors including sureties for performance for all grading, construction of storm drains and utilities, private and public streets, and other private and public improvements on or offsite required by Tract 5906 and this Agreement. The Implementation Plan shall also address entities responsible and method of timing of guarantee for each component of Developer's obligations pursuant to Tract 5906 and this Agreement, and no portion of the responsibility for these improvements may be transferred to owners of any individual lots in Tract 5906. The approval of the Implementation Plan and any amendments thereto shall be at the City Manager's sole discretion. Prior to sale or transfer of ownership of any portion of Tract 5906, except individual lots, Developer shall seek City Manager approval of an amendment to the Implementation Plan to address the responsibilities of each entity.

6.21. Developer shall design and construct at Developer's expense a thirty-two (32) foot wide paved access road on Southern California Edison property (paved access road) to the Property to serve as the primary access until such time as the Improvements referenced in Section 6.19 are constructed. At such time as the improvements in Section 6.19 are opened to the public, the paved access road shall become an

emergency access only for the Property. The paved access road shall be located as described in the road, slope and drain easement grant from Southern California Edison Company to AB Properties, recorded on December 8, 2010 in the Office of the Recorder, County of Ventura by Instrument No. 20101208-00191903-0 1/24, and shall be constructed to City Standards for an industrial street but with no requirement for curb, gutter, sidewalk, streetlights, or landscaping. Drainage improvements shall be provided as necessary, and slopes shall be landscaped to prevent erosion. At such time as the improvements in Section 6.22 are opened to the public, the paved access road shall be closed to the public.

6.22. Prior to the recording of the Final Map for the Project, a Community Facilities District or other funding mechanism to the satisfaction of the City Council, shall be established to provide funding for improvements to North Hills Parkway from the future eastern Property access road along the east-west section of North Hills Parkway to Gabbert Road and Gabbert Road from North Hills Parkway to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way. A full or partial buyout in an amount and timing to the satisfaction of the City Council may substitute for the establishment of a district or other funding mechanism.

Prior to the issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private streets), the North Hills Parkway undercrossing at the Railroad Right-of-Way immediately south of the Property shall be completed in a manner approved by the City.

7. <u>City Agreements</u>.

7.1. City shall use its best efforts to process plan checking and related processing for the project in an expedited manner.

7.2. City shall exempt this project from payment of the Gabbert Road/Casey Road Area of Construction (AOC) fees.

7.3. City agrees that upon receipt of a landowners' petition by developer and Developer's payment of a fee as determined necessary by City in its sole and unfettered discretion, City shall commence proceedings to form a Mello-Roos Community Facilities District ("District") and to incur

bonded indebtedness to finance all or portions of the on site and off site public facilities, infrastructure and services that are required by this Agreement and Subsequent Approvals and that may be provided pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); provided, however, the City Council, in its sole and unfettered discretion, may abandon establishment of the District upon the conclusion of the public hearing required by California Government Code Section 53321 and/or deem it unnecessary to incur bonded indebtedness at the conclusion of the hearing required by California Government Code Section 53345. The formation, type of assessment district (if City determines another type of assessment district other than District is more appropriate) and method and spread of assessment shall be at the City's sole and unfettered discretion.

7.4. If requested in writing by Developer and limited to City's legal authority, City 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 which are outside Developer's legal boundaries. The process shall generally follow Government Code Section 66457 et. seq. and shall include the obligation of Developer to enter into an agreement with City, guarantee 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, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs and City staff costs.

7.5 City shall refund Developer twelve-thousand six hundred dollars ($12,600.00) collected to process Lot Line Adjustments 2010-01 through 2010-07 by crediting this amount to the Development Deposit Fund for this project.

7.6 During project construction, City agrees to allow the on-going import, stockpiling, and use of recycled concrete and asphaltic concrete material for road base for the private streets within the property when in compliance with all Moorpark Municipal Code requirements and all other applicable City Council polices, based on the issuance of a Stockpiling Permit and up to four (4) temporary use permits, for each crushing operation of uncrushed material not to exceed thirty (30) days in length for crushing up to ten-thousand (10,000 tons) of uncrushed material and subject to the following terms:

- Hauling and crushing operations shall be limited to 7:00 AM to 5:00 PM Monday through Friday, excluding City Holidays. The City Engineer/Public Works Director may impose stricter hours on hauling as needed to avoid impacts to peak-hour traffic.
- The stockpiling location shall be subject to approval by the City Engineer/Public Works Director with proper surety for removal of material.
- Stockpiling shall not exceed ten-thousand (10,000) tons of material at any time.
- Prior to bringing any material to the stockpiling location, a report on the source and quantity shall be provided to the satisfaction of the City Engineer/Public Works Director to ensure the material is suitable for recycling and consistent with the terms of the Development Agreement and Stockpiling Permit
- All stockpiling under the permit shall be removed prior to the issuance of a building permit for any portion of the Property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private streets).
- The recycled road base shall meet acceptable green book standards to the satisfaction of the City Engineer/Public Works Director.

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. For road improvements, this shall include the Gabbert Road improvements from the intersection with Poindexter Avenue north to a point one-hundred and twenty-five (125) feet north of the railroad right-of-way as specified in Section 6.19 as well as improvements made by Developer to North Hills Parkway between Gabbert Road on the east and the eastern Project boundary on the west, where, as determined at the sole discretion of the City Manager, such improvements are consistent with City plans and specifications for North Hills Parkway improvements and may be used in conjunction with City-constructed improvements to North Hills Parkway.

7.8 In the event City has not initiated construction of the North Hills Parkway undercrossing of the railroad right-of-way in a time as required by Section 6.22 prior to issuance of a building permit for any portion of the property that exceeds seventy percent (70%) of the acreage of the total of all developable lots (excluding lots used solely as private

streets), City shall allow Developer to construct undercrossing and City shall reimburse Developer for expenses as agreed upon by City and Developer prior to construction in a manner as allowed by law.

7.9 City agrees to terminate Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584.

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 in its sole and unfettered discretion.

9. Demonstration of Good Faith Compliance. In order to ascertain compliance by the 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 the Developer hereunder or render this Agreement invalid or void.

10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, and Developer's obligations and restrictions on development as provided for in Sections 6.19, 6.20, 6.21 and 6.22 of this Agreement shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of

this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.

11. Default Provisions.

11.1. Default by Developer. The Developer shall be deemed to have breached this Agreement if it:

(a) practices, or attempts to practice, any fraud or deceit upon City; or

(b) 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

(c) fails to make any payments required under this Agreement; or

(d) materially breaches any of the other provisions of the Agreement and the same is not cured within the time set forth in a written notice of violation from City to Developer, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if Developer cannot reasonably cure the breach within the time set forth in the notice, Developer fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.2. Default by City. City shall be deemed in breach of this Agreement if it:

(a) materially breaches any of the provisions of the Agreement and the same is not cure within the time set forth in a written notice of violation from Developer to City, which period shall not be less than ten (10) days from the date the notice is deemed received, provided if City cannot reasonably cure the breach within the time set forth in the notice, City fails to commence to cure the breach within such time limit and diligently effect such cure thereafter.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure,

which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed 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 "C" attached hereto and incorporated herein, in accordance with Section 20 hereof.

11.4. Remedies for Breach. The Parties acknowledge that remedies at law, including without limitation money damages, would be inadequate for breach of this Agreement by any Party due to the size, nature and scope of the Project. The Parties also acknowledge that it would not be feasible or possible to restore the Property to its natural condition once implementation of the Agreement has begun. Therefore, the Parties agree that the remedies for breach of the Agreement shall be limited to the remedies expressly set forth in this subsection. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided pursuant to subsection 11.3 herein.

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

The remedies for breach of the Agreement by the Developer shall be injunctive relief and/or specific performance. In addition, and notwithstanding any other language of this Agreement, if the breach is of Subsection 6.3, 6.4, 6.5, 6.6, 6.7, 6.9, 6.10, 6.11, 6.12, 6.19, 6.21, or 6.22 of this Agreement, City shall have the right to withhold the issuance of building permits from the date that the notice of violation was given pursuant to Subsection 11.3 hereof until the date that the breach is cured as provided in the notice of violation.

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

12. Mortgage Protection. At the same time that City gives notice to the Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of

its name and mailing address to City and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

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

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

13. Estoppel Certificate. At any time and from time to time, any Developer may deliver written notice to City and City may deliver written notice to the Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.

14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within ten (10) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed. The

Developer shall not seek judicial review of any staff decision without first having exhausted its remedies pursuant to this section.

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

    15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement.

16. Indemnification. The 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, the 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 the Project Approvals or any Subsequent Approvals or modifications thereto, or any other subsequent entitlements for the project 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 twenty (20) years commencing on its operative date or until a building permit is issued and all fees identified in this agreement are paid for the last developable lot in the Project, whichever comes last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

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 "C" 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 contains 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 the other Party 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 15.30 of the Moorpark Municipal Code of City or any successor thereof then in effect.

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

28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail.

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.

33. Termination of Previous Development Agreement. Development Agreement No. 1998-04, adopted by the City Council on December 16, 1998 through Ordinance No. 250, and recorded by the County Recorder on December 30, 1998 with the assigned document number 98-233584, is terminated upon the effective date of the enabling ordinance (Ordinance No. 416) for this Agreement.

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

CITY OF MOORPARK

_____
Janice S. Parvin
Mayor

OWNER/DEVELOPER

A-B Properties

By: _____
Paul D. Burns
General Partner

EXHIBIT A
LEGAL DESCRIPTION

Tract 5147, as recorded in Miscellaneous Records (Maps) Book 158, Page 37 in the office of the County Recorder of Ventura County.

EXHIBIT B

COVENANT RUNNING WITH THE LAND

THIS COVENANT is made this _____day of _____, by and between A-B Properties (Covenantors") and the City of Moorpark ("Covenantee").

WHEREAS, Covenantor is the owner of certain real property consisting of approximately 34.53 acres, approximately 1,300 feet west of Gabbert Road and North of the Union Pacific Railroad Right-of-Way in the City of Moorpark, County of Ventura, more particularly described in Exhibit "A" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee is the owner of certain real property at 799 Moorpark Avenue, in the City of Moorpark, County of Ventura, more particularly described in Exhibit "B" attached hereto and made a part hereof ("the Covenantor Property"); and

WHEREAS, Covenantee rezoned the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2) through Ordinance No. 249 on December 16, 1998, but for the concern that some of the uses that are presently, or may subsequently be, allowed by right or permit in the M-2 zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location;

WHEREAS, Covenantor acknowledges that some of the uses that are presently, or may subsequently be, allowed by right or permit in the M-2 zone are, or may be, inappropriate uses for the Covenantor Property because of its particular location; and

NOW, THEREFORE, in consideration of the mutual promises of the parties to this Covenant, each to the other as Covenantor and Covenantee, and expressly for the benefit of, and to bind, their successors in interest, the parties agree as follows:

1. Covenantee adopted Ordinance No. 249 rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2);

2. Covenantor agrees that, commencing on the effective date of the ordinance rezoning the Covenantor Property from Agricultural Exclusive (AE) to Limited Industrial (M-2). Subject to the following restrictions in addition, and superseding the M-2 regulations.

A. Primary uses, except agricultural crops, shall be conducted within completely enclosed buildings and metal faced buildings shall not be allowed as principal buildings. Outside storage and operations shall not be allowed as primary uses, only accessory outside storage shall be allowed, subject to the permitting requirements (Administrative Permit) and limitations in the M-2 zone (in conjunction with an approved use and screened by an eight (8) foot high masonry wall matched to the structure.

B. The following uses shall not be allowed as a primary use:

- Manufacturing - Batteries
- Manufacturing - Metal industries, primary; Rolling, drawing, and extruding
- Manufacturing - Rubber and plastics products including tire retreading and recapping
- Manufacturing - Cement, concrete and plaster, and product fabrication
- Self-storage or mini-storage
- Recreational vehicle storage
- Distribution and transportation facilities

3. Covenantor and Covenantee agree that, commencing on the effective date of the Development Agreement, all uses specified in Paragraph 2.B. hereof that are presently allowed or that at any time in the future may be allowed in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from the Covenantors Property to the Covenantee Property for the benefit of the Covenantee Property.

4. Covenantors and Covenantee agree that from time to time Covenantee may substitute any other property owned by Covenantee on the date of the substitution for the Covenantee Property ("the Substitute Covenantee Property") without the consent of Covenantor by the recordation of an amendment to this Covenant. The amendment shall describe the Substitute Covenantee Property and shall provide that, commencing on the date of recordation of the amendment, all uses not specified in Paragraph 2 hereof that are presently allowed, or that at any time in the future may be allowed, in the M-2 (Limited Industrial) zone, whether by right or by permit, shall be deemed transferred from that Covenantor Property to the Substitute Covenantee Property for the benefit of the Substitute Covenantee Property.

5. All of the covenants, restrictions, and limitations set forth herein shall run with the Covenantee Property and the Covenantor Property and shall benefit and bind all persons, whether natural or legal, having or acquiring any right, title, or interest in any portion of the Covenantee Property or the Covenantor Property. Each grantee of a conveyance or purchaser under a contract of sale or similar instrument that covers any right, title, or interest in or to any portion of the Covenantee Property or the Covenantor Property, by accepting a deed or a contract of sale or similar instrument, accepts the conveyance or sale subject to, and agrees to be bound and benefited by, all of the covenants, restrictions and limitations set forth herein.

6. Nothing in this Covenant shall be construed so as to limit the right of Covenantee to rezone, or the right of Covenantor to petition Covenantee to rezone, the Covenantor Property in the future.

7. This Covenant shall remain in full force and effect until such time as an ordinance rezoning the Covenantor Property from Limited Industrial (M-2) to another zone designation becomes effective.

8. This Covenant may be enforced by proceedings at law or in equity against any person who violates or attempts to violate a covenant, restriction or limitation hereof. The prevailing party shall be entitled to recover such attorneys' fees and court costs as it reasonably incurs in such a proceeding.

9. In the event any provision of this Covenant is found to be invalid or unenforceable in any proceeding at law or in equity, such finding shall not affect the other provisions of this Covenant, which shall remain in full force and effect.

10. Either party may record in the office of the Recorder of Ventura County this Covenant or any amendment hereto specified in Paragraph 4 hereof without the consent of the other party.

IN WITNESS WHEREOF, Covenantor and Covenantee have executed this Covenant on the date first above written

COVENANTORS	COVENANTEE
_____	_____
A-B PROPERTIES	CITY OF MOORPARK

EXHIBIT C

To City:	City of Moorpark 799 Moorpark Avenue Moorpark, CA 93021 Attn. City Manager
To Developer:	A-B Properties 505 E. Thousand Oaks Blvd. Thousand Oaks, CA 91360 ATTN: Paul Burns