

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: David Moe, Redevelopment Manager 
Prepared by: Jessica Sandifer, Management Analyst 

DATE: April 30, 2013 (CC Meeting of May 15, 2013)

SUBJECT: Consider Affordable Housing Agreement Between City of Moorpark and Pardee Homes for Seven Single Family Homes to be Sold to Eligible Low Income Buyers

BACKGROUND

On April 1, 2009, the City entered into a Memorandum of Understanding (MOU) with Pardee Homes outlining the process by which Pardee would convert the School Site in Specific Plan 95-2 (SP 95-2) to a residential home site. Subsequent to the MOU, a Development Agreement (DA) was negotiated and approved by the City Council as Ordinance No. 391 and the DA was executed on August 10, 2010.

DISCUSSION

Section 6.9 of the DA requires the preparation and execution of an Affordable Housing Agreement specifying key information pertaining to the affordable units. This Affordable Housing Agreement is to be approved by the City Council prior to the recordation of the final tract map for the project. An Affordable Housing Agreement has been prepared which addresses the items in Section 6.9 of the DA and includes provisions for the City, at its option, to purchase any of the affordable units, in the event that a qualified low income buyer has not been identified by the City by the time a Notice of Completion is approved for any of the affordable units. The City would then resell any affordable units purchased from the Developer to qualified low income households, through the City's First Time Home Buyer Program, and will cause long term covenants to be recorded against the properties to ensure their affordability to low-income households for at least 45 years. Various other provisions, such as the schedule for providing the units, low income affordable sales price calculation, and very low-income In-Lieu fee requirements are included in the Affordable Housing Agreement. The City Attorney reviewed the document and only requested that the title be changed from Affordable Housing Purchase and Sale Agreement to Affordable Housing Agreement and deleted Section

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15 as Section 9.7 contained the same language.

FISCAL IMPACT

There is no fiscal impact for the preparation of the Affordable Housing Agreement. Section 6.9 of the Development Agreement requires Pardee to pay for the City's direct costs for preparation and review of the Affordable Housing Agreement up to \$10,000. The City will also be receiving the In-Lieu fee revenue in exchange for the requirement to build very-low income units. This In-Lieu fee revenue will total approximately \$628,558 (at the current indexing) which will be deposited into the City's Affordable Housing Fund.

STAFF RECOMMENDATION

Approve the Affordable Housing Agreement, subject to final language approval by the City Manager and City Attorney; authorize City Manager to execute said Affordable Housing Agreement; and direct the City Clerk to cause said Affordable Housing Agreement to be recorded in the Office of the Recorder of the County of Ventura.

Attachment: Affordable Housing Agreement

ATTACHMENT

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

Recording Requested By:
THE CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (the "Agreement") is made and entered into as of the ____ day of _____, 2013 by and between PARDEE HOMES, a California corporation, thereafter referred to as "Developer"), and the CITY OF MOORPARK ("City"),

RECITALS

WHEREAS, Developer and City entered into a Development Agreement for Tract 5860 on August 10, 2010 ("Development Agreement"), and Section 6.9 of said Development Agreement obligates Developer to provide ten (10) dwelling units to be sold to buyers who meet the criteria of low income (80% of median income) and to provide an in lieu fee instead of constructing units for qualified very low income buyers; and

WHEREAS, Pursuant to the terms of the Development Agreement, three (3) units of the ten (10) unit low income requirement have been satisfied within Waverly Place (Tract 5045); and

WHEREAS, Section 6.9 of the Development Agreement requires City Council approval of an Affordable Housing Purchase and Sale Agreement (Affordable Housing Agreement) prior to recordation of the first final Tract Map for Tract 5860 and execution of the Affordable Housing Agreement by the City and Developer prior to occupancy of the first residential unit for Tract 5860 in order to provide for the sale of the seven (7) remaining dwelling units to qualified low income buyers; and

WHEREAS, the Developer and City desire that these dwelling units which are affordable to low income households shall remain available at affordable housing cost to, and occupied by, low income households for the longest feasible time, but for not

less than forty-five (45) years of homeownership, to ensure consistency with the City's provision of affordable housing units in other development projects; and

WHEREAS, Developer has received City approval to develop 133 single family detached units on approximately 21.8 acres, consistent with the Development Agreement, and Vesting Tentative Tract Map No. 5860, collectively referred to as the Project; and

WHEREAS, the Four Thousand Five Hundred and Eight dollar (\$4,508) in lieu fee specified in Section 6.9 of the Development Agreement has been increased to Four Thousand Seven Hundred and Twenty-seven dollars (\$4,727) as follows: 3.28% from July 2010 to July 2011, 1.52% from July 2011 to July 2012 and commencing on July 1, 2013 and annually thereafter, the In-Lieu fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all In-Lieu fees have been paid; and

WHEREAS, the Six Thousand Five Hundred and Eighty-four dollar (\$6,584) closing costs specified in Section 6.9 of the Development Agreement has been increased to Six Thousand Eight Hundred and Fifty-seven dollars (\$6,857) as follows: 2.17% from July 2010 to July 2011, 1.93% from July 2011 to July 2012 and commencing on July 1, 2013 and annually thereafter, the In-Lieu fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all units have been sold; and

WHEREAS, the Moorpark City Council adopted Resolution No. 2010-2936 on July 7, 2010, approving Residential Planned Development (RPD) Permit No. 2009-02. Exhibit C of said Resolution approved Special and Standard Conditions of Approval for RPD 2009-02 (Conditions of Approval) for the construction of 133 detached units within Tract 5860.

NOW, THEREFORE, IT IS AGREED by and between the Developer and the City as follows:

SECTION 1. General Terms.

1.1. The parties agree that the seven (7) affordable units to be sold to buyers who meet the criteria for low income (80% of median income) are to be located within RPD 2009-02 and shall consist of two (2) three (3) bedroom and two (2) bath units with no less than 1,100 square feet and five (5) four bedroom and two (2) bath units with no less than 1,400 square feet. The seven (7) units referenced above are collectively referred to as the "affordable units" or "affordable housing units".

1.2. Developer agrees that City shall be responsible at its sole discretion for marketing the affordable units, selecting and qualifying eligible buyers for these units, and overseeing the escrow processes to sell the affordable units to low income households, providing the Deed of Trust, Promissory Note, Resale Refinance Restriction Agreement and Option to Purchase Property and Notice of Affordability Restrictions on Transfer of Property (collectively Affordability Documents) and all

necessary contracts and related documents to ensure that the referenced affordable units remain occupied by low income households for the longest feasible time. Developer further agrees that the difference between the Affordable Sales Price (as referenced in Section 4.2 of this Agreement) paid by a qualified buyer and market value shall be retained by City as a second deed of trust. In the event of termination of this Agreement, Developer shall in any event comply with the Conditions of Approval and the Development Agreement.

1.3. All of the affordable units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income persons to satisfy a portion of the City's Regional Housing Needs Allocation (RHNA) obligation. 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.

SECTION 2. Affordable Housing Fee.

2.1. Pursuant to Section 6.9 of the Development Agreement, Developer agrees to pay to the City a fee (the "Affordable Housing Fee"), which shall be used by the City at its sole discretion for the purpose of providing housing affordable to very low, low and moderate income households. The Affordable Housing Fee in the amount of Four Thousand Seven Hundred and Twenty-seven Dollars (\$4,727.00) shall be paid prior to issuance of the building permit for each of the 133 dwelling units in the Project. Commencing on July 1, 2013, and annually thereafter, the Affordable Housing Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all required fees have been paid. The CPI increase shall be determined by using the information provided by the U. S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Anaheim/Riverside metropolitan area during the prior year. The calculation shall be made using the month of April over the prior month of April. In the event there is a decrease in the CPI for any annual indexing, the Affordable Housing Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

SECTION 3. Terms of Sale.

3.1. The terms and conditions of the sale of seven (7)_ units in RPD 2009-02 to qualified low income buyers or City in lieu of said buyers shall be consistent with Development Agreement.

3.2. If any conflict exists between this Affordable Housing Agreement or the Development Agreement or the Conditions of Approval, then the provision providing the City the most favorable language for assisting eligible first time home buyers who meet the qualifications of low income shall prevail.

3.3. Developer shall satisfy all mechanic's, laborer's, materialman's, supplier's, or vendor's liens and any construction loan or other financing affecting any

unit or lot in RPD 2009-02 which has been designated for an affordable unit, before the close of escrow for that affordable unit.

3.4. Developer agrees if it sells any of the affordable units directly to a qualified low income buyer, as provided for in this Agreement, all requirements of the buyer, including, but not limited to, completion of a City approved homebuyer education training workshop, and execution of the Affordability Documents, shall be included as a requirement of the sale. The language of all such documents shall be approved by City at its sole discretion.

3.5. The parties agree that prior to and upon the sale of an affordable unit to a qualified buyer or City, City may at its sole discretion take any actions and impose any conditions on buyer eligibility and on said sale or subsequent sale of the unit to ensure ongoing affordability to low income households and related matters. After the sale of an affordable unit by Developer to a qualified buyer or City, City shall have sole responsibility for approving any subsequent sale of that housing unit and enforcing the Affordability Documents. Developer further agrees that City has the sole discretion to make all determinations on buyer eligibility including but not limited to income and household size.

3.6. Developer agrees that, the required low income units shall be provided by Developer and occupied by qualified buyers (or at City's sole discretion sold to City) on terms consistent with this agreement and the Development Agreement, as specified in the following schedule for the 133 single family units in RPD 2009-02:

Prior to Final Inspection Approval of:	# of Low income Units	
	3 BR	4 BR
31 st Unit	0	2
49 th Unit	1	0
68 th Unit	0	1
85 th Unit	1	0
106 th Unit	0	1
133 rd Unit	0	1
Total	2	5

For purposes of this schedule, final inspection approval requires approval of the City's Building Official and Director of Community Development.

3.7. The location of the seven (7) affordable units shall be selected by the Director of Community Development prior to issuance of the first building permit for RPD 2009-02. Once selected the locations of the seven (7) affordable units cannot be changed without prior written approval of the Community Development Director.

3.8. Developer agrees that it shall prepay all special taxes levied, or which may be levied in the future, as part of Community Facilities District No. 2004-1 (CFD 2004-1) or any successor or any additional CFD prior to the sale of any of the seven (7) affordable units to the City or qualified buyer. The intent of this section is that the owners of the affordable units shall at no time have any obligations to make any special tax payments to or for the benefit of the CFD or its bondholders.

3.9. Developer also agrees that subsidiaries, divisions or affiliates of Developer may not be used to provide lending, escrow or other services relevant to the purchase transactions for the affordable units.

SECTION 4. Conditions of Purchase and Sale.

4.1. If a qualified low income buyer is identified by City prior to or at the time of final inspection approval of any one of the affordable units, Developer shall open escrow for the sale of said unit as provided for in this Agreement, and shall enter escrow directly with the buyer identified by City, and proceed to closing of said escrow. If a qualified low income buyer has not been identified at the time Developer receives its final inspection approval for an affordable unit, City, at its option, may agree to purchase the affordable unit required to be provided by Developer for the amount and at the time as provided for in this Agreement. Developer and City agree to use their best efforts to complete the close of escrow within forty-five (45) days of the final inspection approval of an affordable unit.

4.2. The Affordable Sales Price for the low-income buyers shall not exceed affordable housing cost, adjusted for family size appropriate for the unit, as defined in Sec. 50052.5 (b) (3) of California Health and Safety Code. As provided in Sec. 50052.5 (h) of the California Health and Safety Code, "adjusted for family size appropriate to the unit" means four (4) persons in the case of a three-bedroom unit, and five (5) persons in the case of a four-bedroom unit.

For a low income household of four (4), the current monthly 'affordable housing cost' (as of February 2013) would be 30% times 70% of \$89,300, the current median income for a household of four (4) in Ventura County, divided by 12. This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below. (See Section 50052.5 (c) of the Health and Safety Code.) The Affordable Sales Price for a 3-bedroom unit for a low income household of four (4) would be \$179,750 under current market conditions, based upon the following assumptions:

**Low Income Buyer
3 bedroom 2 bath unit (Household of Four)**

Item	Detail	Amount
Affordable Sales Price		\$179,750
Down Payment	5% of Affordable Sales Price	\$8,988
Loan Amount	Affordable Sales Price less down payment	\$170,763
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$187/mo.
LMD		\$18/mo
HOA		\$100/mo
Fire Insurance		\$ 20/mo
Maintenance		\$ 20/mo
Utilities		\$ 186/mo

The assumptions associated with the above purchase price figures for a 3-bedroom unit for a low income household include a 5% down payment, based on the Affordable Sales Price, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price of \$179,750.00), Homeowners' Association (HOA) dues of \$100.00 per month, fire insurance of \$20.00 per month, maintenance costs of \$20.00 per month, and utilities of \$186.00 per month.

For a low income household of five (5), the current monthly 'affordable housing cost' (as of February 2013) would be 30% times 70% of \$96,450 the current median income for a household of five (5) in Ventura County, divided by 12. This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below. (See Section 50052.5 of the Health and Safety Code.) The Affordable Sales Price for a 4-bedroom unit for a low income household of five (5) would be \$194,250 under current market conditions, based upon the following assumptions:

**Low Income Buyer
4 bedroom 2 bath unit (Household of Five)**

Item	Detail	Amount
Affordable Sales Price		\$194,250
Down Payment	5% of Affordable Sales Price	\$ 9,713
Loan Amount	Affordable Sales Price less down payment	\$184,538
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$202/mo.
LMD		\$18/mo
HOA		\$100/mo
Fire Insurance		\$ 25/mo
Maintenance		\$ 20/mo
Utilities		\$214/mo

The assumptions associated with the above purchase price figures for a 4-bedroom unit for a low income household include a 5% down payment based on the Affordable Sales Price, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, HOA dues of \$100.00 per month, fire insurance of \$25.00 per month, maintenance costs of \$20.00 per month, and utilities of \$214.00 per month.

4.3. Developer agrees to deposit, into a City administered trust, \$120.00 for each dollar or portion thereof of the monthly HOA fees that are in excess of \$100.00, using the highest HOA fee amount documented (in any phase) in the approved Department of Real Estate (DRE) report for Tract 5860, for each of the seven (7) affordable units. Trust account funds are to be used to assist with future HOA fees for each affordable low income unit. This is a one-time payment to assist the qualified low income buyers whether said buyers or City initially purchases the affordable unit from the developer.

4.4. Developer and City acknowledge that changes in market conditions may result in changes to the Affordable Sales Price, market value, down payment amounts, mortgage interest rates, and other factors for the low income buyers. Furthermore, if “affordable housing cost”, as defined in Section 50052.5 of California Health and Safety Code, should change in the future, the above guidelines will be modified to achieve substantially the same result as would otherwise have been obtained had it not been changed.

In the event City, in its sole discretion, purchases one or more of the affordable units from Developer in lieu of a qualified buyer, the Affordable Sales Price shall be based on a household size of four (4) persons for a 3-bedroom unit and a household size of five

(5) persons for a 4-bedroom unit, and consistent with all provisions of this Agreement. Developer agrees that prior to and upon the sale of a required unit to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City may at its sole discretion take any actions and impose any conditions on said sale or subsequent sale of the unit to ensure ongoing affordability to low income households and related matters. After the sale of a housing unit by developer to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City, not Developer, shall have sole responsibility for approving any subsequent sale of that affordable housing unit.

Pursuant to Section 6.9 of the Development Agreement, and in addition to its closing costs as the seller, Developer shall pay all of buyers' closing costs, up to a maximum of Six Thousand Eight Hundred and Fifty-seven Dollars (\$6,857.00) per unit. Beginning July 1, 2013, and on July 1st for each subsequent year, the maximum \$6,857.00 per unit to be paid for closing costs shall be increased annually by any percentage increase in the Consumer Price Index (CPI) for All Urban Consumer for Los Angeles/Orange/Riverside 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 amount due shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. The referenced Developer funded closing costs shall be for the benefit of qualified buyers (or City in lieu of qualified buyers as determined by City in its sole discretion for one or more of the required units) in their acquisition of a unit from Developer. The Developer's payment of Buyer's escrow costs shall not exceed the then applicable maximum amount per unit regardless of the number of escrows that may be opened on a specific unit prior to the closing of the initial sale to a qualified buyer or City in lieu of a qualified buyer.

SECTION 5. Quality of Construction. Developer warrants that the quality of materials and construction techniques of the affordable units sold to the City shall in all manner be identical to that of all other units constructed in RPD 2009-02 and subject to the Development Agreement and all Conditions of Approval and shall meet all Building Codes. This includes but is not limited to all appliances, hardware, doors and plumbing fixtures. The Developer further agrees that all affordable units shall be provided with clothes washing and drying machines and window coverings to the satisfaction of the Director of Community Development.

SECTION 6. Amenities and Warranties. Developer acknowledges that the affordable units will not be occupied by the City but, if purchased by the City, will be sold to qualified low income buyer(s). Developer agrees to provide the same amenities and home warranties associated with the affordable units as the amenities and home warranties associated with the market rate units for the maximum time required by State law, but in no event less than ten (10) years. Developer agrees that all such warranties shall inure to the benefit of and be enforceable by the ultimate occupants of the affordable units, and that all warranties by subcontractors and suppliers shall inure to the benefit of and be enforceable by such occupants. The qualified buyer (or City in lieu

of a qualified buyer at its sole discretion) shall have the same choices of finish options as purchasers of the market rate units in RPD 2009-02 and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of market rate units in RPD 2009-02 shall be provided to City or buyer(s) of the affordable units and buyers of any unit described in this Agreement, including, but not limited to, color and style choices for carpeting and other floor coverings, counter tops, roofing materials, exterior stucco and trim of any type, fixtures, and other decorative items to the satisfaction of the Community Development Director.

SECTION 7. Defense and Indemnity. Developer agrees to indemnify, hold harmless and defend at its sole expense, with counsel reasonably acceptable to City, any action brought against it or City by a purchaser of an affordable unit for any alleged construction defects or related problems, or any action brought by any party to approve, extend or renew any permit, related actions under CEQA, any subsequent permits to implement/construct RPD 2009-02 and this Agreement. Developer further agrees to reimburse City for any court costs and/or attorneys' fees which City may be required by the court to pay as a result of any such action. City may, at its sole discretion, participate in the defense of any such action at City's cost, but such participation shall not relieve Developer of its obligation under this Section.

SECTION 8. Waiver. Developer hereby covenants not to bring any action against City to (a) attack, review, set aside, void, or otherwise annul this Agreement, in whole or in part, or (b) recover any compensation or obtain any relief for any injury, damage, loss, or deprivation of any right alleged to have been sustained as a result of City's action on any matter related to this Agreement.

SECTION 9. Defaults and Remedies. Each of the following shall constitute an "Event of Default" by the Developer:

9.1.1 Failure by Developer to duly perform, comply with and observe any of the conditions, terms, or covenants of Tract. 5860 or RPD No. 2009-02, or this Agreement, or the Development Agreement, or any other Conditions of Approval, if such failure remains uncured ten (10) days after written notice of such failure from the City to the Developer in the manner provided herein or, with respect to a default that cannot be cured within ten (10) days, if the Developer fails to commence such cure within such ten (10) day period or thereafter fails to diligently and continuously proceed with such cure to completion.

9.1.2 Any representation or warranty contained in this Agreement or in any certificate or report submitted to City by Developer proves to have been incorrect in any material respect when made.

9.1.3 A court having jurisdiction shall have made or rendered a decree or order (a) adjudging Developer to be bankrupt or insolvent; (b) approving as properly filed a petition seeking reorganization of Developer or seeking any arrangement on behalf of Developer under the bankruptcy law or any other applicable debtor's relief law

or statute of the United States or of any state of other jurisdiction; (c) appointing a receiver, trustee, liquidator, or assignee of Developer in bankruptcy or insolvency or for any of its properties; or (d) directing the winding up or liquidation of Developer, providing, however, that any such decree or order described in any of the foregoing subsections shall have continued unstayed or undischarged for a period of ninety (90) days.

9.1.4 The Developer shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment or execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure hereunder) or prior to sale pursuant to such sequestration, attachment, or execution. If Developer is diligently working to obtain a return or release of the property and the City's interests hereunder are not imminently threatened in City's reasonable business judgement, then City shall not declare a default under this subsection.

9.1.5 The Developer shall have voluntarily suspended its business or dissolved.

9.1.6 Should there occur any default declared by any lender under any loan document or deed of trust relating to any loan made in connection with the Project or property on which the Project is to be constructed, which loan is secured by a deed of trust or other instrument of record.

9.2 Liens. Developer shall pay and promptly discharge when due, at Developer's cost and expense, all liens, encumbrances and charges upon the Project or the underlying property, or any part thereof or interest therein (except the lien of any mortgage, deed of trust or other recorded instrument securing any construction or permanent financing for the Project), provided that the existence of any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than forty-five (45) days after the performance thereof. Developer shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided that within ten days after service of a stop notice or ninety days after recording of a mechanic's lien, Developer shall deposit with City a bond or other security reasonably satisfactory to City in such amounts as City shall reasonably require, but no more than the amount required to release the lien under California law and provided further that Developer shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged, and shall, in any event, cause such lien, encumbrance or charge to be removed or discharged not later than sixty (60) days prior to any foreclosure sale. If Developer shall fail either to remove and discharge any such lien, encumbrance or charge or to deposit security in accordance with the preceding sentence, if applicable, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or

charge nor into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Developer shall, immediately upon demand therefore by City, pay to City an amount equal to all costs and expenses incurred by City in connection with the exercise by City of the foregoing right to discharge any such lien, encumbrance or charge. To the extent not paid, all costs and expenses paid by the City shall be a lien on the Property pursuant to Civil Code Section 2881.

9.3 Costs of Enforcement. If any Event of Default occurs, City may employ an attorney or attorneys to protect its rights hereunder. Subject to California Civil Code Section 1717, Developer promises to pay to City, on demand, the fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby including without limitation, recording fees, receiver's fees and expenses, and all other expenses of whatever kind or nature, incurred by City in connection with the enforcement of the obligations secured hereby, whether or not such enforcement includes the filing of a lawsuit.

9.4 Remedies Not Exclusive. City shall be entitled to enforce payment and performance of any indebtedness or obligation of Developer arising under this Agreement and to exercise all rights and powers under this Agreement or any law now or hereafter in force, notwithstanding some or all of the said indebtedness and obligations secured thereby may now or hereafter be otherwise secured, whether by guaranty, mortgage, deed of trust, pledge, lien, assignment or otherwise. Neither the acceptance of this Agreement nor its enforcement by court action shall prejudice or in any manner affect City's right to realize upon or enforce any other security now or hereafter held by City, it being agreed that City shall be entitled to enforce this Agreement and any other security now or hereafter held by City, as applicable, in such order and manner as City may in its absolute discretion determine. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Agreement to City may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by City, and it may pursue inconsistent remedies.

9.5 Enforcement; Specific Performance. City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require Developer to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof.

9.6 Right of Contest. Developer shall have the right to contest in good faith any claim, demand, levy, or assessment the assertion of which would constitute an Event of Default hereunder. Any such contest shall be prosecuted diligently and in a manner unprejudicial to City or the rights of City hereunder.

9.7 Action at Law; No Remedy Exclusive. City may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of Developer under this Agreement. No remedy herein conferred upon or reserved by City is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law, in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

9.8 Termination. City's rights and remedies set forth herein shall include as a cumulative remedy the right to terminate this Agreement if an Event of Default is not cured, pursuant to section 9.1 herein. Such termination shall, at a minimum, require full compliance by Developer with the conditions of approval for Tract 5860, Conditions of Approval and the Development Agreement.

SECTION 10. Warranty of Authorized Signatories. Each of the signatories hereby warrants and represents that he or she is competent and authorized to execute this Agreement on behalf of the party for whom he or she purports to sign.

SECTION 11. Miscellaneous.

(a) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns, legal representatives, parent, subsidiary, affiliated and related entities, officers, directors, principals, agents, servants, employees, representatives, and all persons, firms, associations and/or corporations connected with them, including, without limitation, their insurers, sureties and/or attorneys.

(b) Attorneys' Fees. In the event that any action, suit or other proceeding is instituted to remedy, prevent or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and cost incurred in such action, suit or other proceeding, including any and all appeals or petitions therefrom.

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

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

SECTION 12. 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.

SECTION 13. Waiver of Protest Rights. Developer agrees that any fees and payment for this Project 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 statues amendatory or supplementary thereto, or any other applicable state or federal law.

SECTION 14. Notices. Any notice to be given pursuant to this Agreement shall be in writing, and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, and addressed to the party for whom intended as follows:

To: City Manager
City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021

To: Ralph J. Pistone, Vice President of Operations
Pardee Homes
10880 Wilshire Boulevard, Suite 1900
Los Angeles, California 90024

Either party may, from time to time, by written notice to the other, designate a different address or contact person, which shall be substituted for the one above specified. Notices, payments and other documents shall be deemed delivered upon

receipt by personal service or as of the third (3rd) day after deposit in the United States mail.

SECTION 15. Amendments and Waivers. No term or provision of this Agreement can be amended or waived, either orally or by a course of conduct, but only by an instrument in writing signed by the party against whom enforcement of such amendment or waiver is sought.

SECTION 16. Entire Agreement. This Agreement, the Development Agreement, and the Conditions of Approval constitute the entire agreement and understanding of the parties with respect to its subject matter and they supersede all prior and contemporaneous agreements and understandings of the parties with respect to that subject matter.

SECTION 17. Headings and Attachments. The title of this Agreement and the headings of its sections are for convenience of reference only and are not to be referred to in interpreting or construing this Agreement. However, all attachments and exhibits to this Agreement, as well as the Recitals, are a part of this Agreement.

SECTION 18. Governing Law and Interpretation. This Agreement is to be governed by and construed in accordance with the laws of the State of California. No term or provision of this Agreement is to be construed against a party by reason of its having drafted the same. This Agreement is made, entered into and executed in Ventura County, California, and any action filed in any court for the interpretation, enforcement or other action arising from any term, covenant or condition herein shall be filed in Ventura County.

CITY:

DEVELOPER:

CITY OF MOORPARK

PARDEE HOMES,
a California corporation

By: _____
Janice S. Parvin
Mayor

By: _____
Ralph J. Pistone
Vice President of Operations

Attest:

By: _____
Maureen Benson, City Clerk