

ITEM 9.C.

MOORPARK CITY COUNCIL AGENDA REPORT

TO: Honorable City Council

FROM: Steven Kueny, City Manager 

DATE: August 29, 2013 (CC Meeting of 9/4/13)

SUBJECT: Consider Agreement Regarding Payment for City Services between Vintage Crest Senior Apartments L.P. (Vintage Crest) and City of Moorpark

BACKGROUND AND DISCUSSION

In July 2002, the City Council approved Residential Planned Development (RPD) Permit No. 2002-02, a 190-unit affordable senior housing project referred to as Vintage Crest. The project financing included an allocation of federal tax credits and a nonprofit California corporation dedicated to providing affordable housing as its Managing General Partner. Inclusion of the nonprofit organization qualified the project to receive the welfare exemption under Section 214(g) of the California Revenue and Tax Code. This exemption means that the project does not pay property taxes.

In May 2004, the City and Vintage Crest entered into a Payment in Lieu of Taxes (PILOT) Agreement (copy attached). This provided an annual payment to the City to offset the loss of property tax revenues by reimbursing the City for services provided to the project and its occupants. Payments under the PILOT Agreement were made from 2004 through 2012. The required 2013 payment has not been made.

In June 2012, Vintage Crest received notice from the Ventura County Assessor that the welfare exemption for the project had been canceled retroactively to FY 2005-06. The Assessor relied on an opinion from the California Board of Equalization (BOE) that a PILOT Agreement renders the project ineligible for the welfare exemption.

In March 2013, a memorandum was issued by Tax Counsel for BOE on this matter clarifying that, "...as long as the developer has maintained rents in accord with those required by Section 214 and has a reasonable belief that PILOT payments will be used to or benefit the low income housing development, in our view, such developer can make the Section 214(g)(2)(B) certification in good faith."

The proposed Agreement (copy attached) is designed to be consistent with the March 2013 BOE memorandum and would suspend the payments due under the PILOT Agreement so long as the payments under the proposed Agreement are made for City services provided to the project and its occupants. The payments for City services under the proposed Agreement are updated to include the provision of library services by the City. At the time of the PILOT Agreement, library services were not provided by the City.

STAFF RECOMMENDATION

Approve Agreement Regarding Payment for City Services between the City and Vintage Crest Senior Apartments, L.P. and authorize the Mayor to execute it subject to final language approval of the City Manager and City Attorney.

SK:db

Attachments:

- 1) Agreement between City of Moorpark and Vintage Crest Senior Apartments, L.P., for Payment in Lieu of Taxes
- 2) Draft Agreement Regarding Payment for City Services between City of Moorpark and Vintage Crest Senior Apartments, L.P.

AGREEMENT BETWEEN

CITY OF MOORPARK

AND

VINTAGE CREST SENIOR APARTMENTS, L.P.

FOR

PAYMENT IN LIEU OF TAXES

**AGREEMENT BETWEEN THE CITY OF MOORPARK
AND VINTAGE CREST SENIOR APARTMENTS, L.P. FOR
PAYMENT IN LIEU OF TAXES**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "Agreement") is entered into this 11 day of may, 2004, by and between the City of Moorpark ("City"), a municipal corporation organized and existing under the laws of the State of California and Vintage Crest Senior Apartments, L.P., a California Limited Partnership ("Vintage Crest"), who agree as follows:

Recitals

A. Vintage Crest is in the process of developing a 6.8 Acre Parcel multifamily rental housing project on certain real property located south of the intersection of Park Lane and Park Crest Lane (the "Property"), which is located within the City of Moorpark. Vintage Crest proposes to construct a 190-unit, multi-family rental housing project on the Property.

B. The Moorpark City Council by Resolution No. 2002-1989 approved Residential Planned Development Permit No. 2002-02 (RPD 2002-02) on the property on July 10, 2002 (the "Project").

C. Vintage Crest has obtained an allocation of federal tax credits in order to assist in the financing of the Project. The Managing General Partner of Vintage Crest is a nonprofit California Corporation dedicated to providing affordable housing.

D. Inclusion of a non-profit organization in the partnership may qualify the Project to receive the welfare exemption under Section 214(g) of the California Revenue and Tax Code. Vintage Crest desires to ensure, to the extent legally permissible, that the City will not suffer any loss of its share of property tax revenues and that the payments to be made under this Agreement are intended to reimburse the City for its delivery of services to the Project, including, but not limited to public safety and general administrative costs.

Agreements

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties agree as follows:

Section 1. Parties

a. The City is a municipal corporation. The office of the City is located at 799 Moorpark Avenue, Moorpark, California, 93021.

b. Vintage Crest is a California Limited Partnership. The office of Vintage Crest is located at 2440 Professional Drive, Roseville, California 95661. Wherever the term "Vintage Crest" or "Vintage Crest Senior Apartments, L.P." is used herein, such term shall include any permitted nominee, assignee or successor in interest as herein provided.

Section 2. Acquisition and Development of the Property

a. The Property is described in Exhibit A, attached hereto and incorporated herein by this reference.

b. Vintage Crest has acquired the Property and intends to develop the Project on the Property. Vintage Crest agrees that it will be responsible, at its sole cost and expense, for applying for and obtaining all necessary environmental and land use approvals and making any submissions required by the City for the development of the Project.

Section 3. Vintage Crest Senior Apartments, L.P. Annual Payments

a. In the event Vintage Crest applies for and receives a Welfare Exemption pursuant to Section 214(g) of the California Revenue and Taxation Code for any fiscal year, for part or all of the Property, Vintage Crest agrees that, so long as it elects to maintain such exemption, it will make payments to the City as follows:

Twenty Thousand Dollars (\$20,000) for any portion of any calendar year commencing on January 1, 2004 in which the project is occupied with one or more residential units. The annual payment shall increase by two percent (2%) each year above the prior year amount. In no event shall there be a decrease in the amount paid in any year compared to the prior year.

b. Payments shall be made on March 10 of each year beginning March 10, 2004. If March 10 falls on a Saturday, Sunday, or City Holiday then payment shall be due on the City's next business day. A late payment penalty equal to 10% of the payment due shall be added to payments received three (3) days or more after the due date as stated herein or when a deficient check has been given for payment. Payments received more than ten (10) days after the due date shall, in addition to the 10% penalty, accrue interest at a rate of 12% from the due date through and including the date the payment is received by the City.

c. (i) In the event of a sale, transfer, assignment of any type or any portion of the Project or Property by Vintage Crest to any other entity, the fee amount referenced above shall be increased based on the new value of the property as if it had been reassessed by the Ventura County Assessor and not exempt from the payment of new property taxes. The calculation shall provide the City .08% (equivalent to \$800 per \$1 million of assessed value) of the assessed value or such higher percentage of the total new property taxes if the City portion has been increased by action of the State of California or by a statewide initiative or referendum. (For example, if the sale results in a value of \$30,000,000 then the annual fee to the city would be $\$30,000,000 \times .0008 = \$24,000$ or if the City portion of the property taxes has been increased to 9% by the State of California on a statewide initiative or referendum then the amount would be \$27,000). In the event the payment to the City would be less than it would per the Section 3.a. above, inclusive of the 2% adjustment, then Section 3.a. shall continue until such time as this section c. would yield a higher annual fee.

(ii) In the event the parties cannot agree on the value of the property then the parties shall agree upon a retired judge to arbitrate the value and the parties shall share equally in the cost of such arbitration proceedings. In the event the parties cannot agree on an arbitrator, then each party will select a nominee and those two nominees will select a third qualified arbitrator to conduct the arbitration proceedings.

(iii) The provisions of paragraph (i) of this Section 3.c shall not apply to the Transfer by Vintage Crest of approximately 2.6 acres of the Property to the Ventura County Watershed Protection District as required by City of Moorpark City Council Resolution No. 2002-1989 approving Residential Planned Development Permit No. 2002-02.

Section 4. Obligation on Sale or Disposition of Property

In connection with a transfer of the Property by sale or other disposition, Vintage Crest shall request a novation of this Agreement pursuant to Civil Code Section 1531. The novation will substitute the transferee of the Property into the place of Vintage Crest with respect to Vintage Crest's obligations under this Agreement. The transferee will assume all responsibility for performance hereunder, and the liability of Vintage Crest for such performance shall cease. The City agrees that its consent to such novation shall not be unreasonably withheld.

Section 5. Indemnification

Vintage Crest hereby agrees to indemnify City and hold City harmless from all demands, claims, actions and damages asserted by Vintage Crest or third parties which seek to invalidate this Agreement and/or the obligations created hereunder.

Section 6. Default

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and the other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy whether at law or in equity, consistent with the purpose of this Agreement.

Section 7. Waiver of Protest Rights

Vintage Crest hereby expressly waives any and all right of protest under Government Code Section 66021 or any other statute in connection with the payment of the PILOT fee hereunder.

Section 8. Miscellaneous Provisions

a. Any obligation to pay the PILOT fee, as set forth herein, shall terminate in any year in which the property ceases to be exempt from real property taxes pursuant to Section 214(g). In the event this occurs and the property taxes received by the city for the property are less than the fee required by this agreement then Vintage Crest shall pay the difference to the City for any such years.

b. The obligation to pay the PILOT fee hereunder to City shall be an obligation which runs with the property, and shall not be a personal obligation of any of the Owner(s), its affiliates, successors, or assigns.

c. Promptly following the execution of this Agreement, City shall cause this Agreement to be recorded with the County Recorder's office of Ventura County, California.

d. Time of the Essence. Time is of the essence for every provision of this Agreement.

e. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by first-class mail, postage prepaid. Notices shall be deemed received either at the time of actual receipt or, if mailed in accordance herewith, on the third business day after mailing,

whichever occurs first. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by notice:

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

Vintage Crest Senior Apartments, L.P.
C/O USA Vintage Crest, Inc.
2440 Professional Drive
Roseville, CA 95661
Attention: Geoff Brown, president

f. Headings. The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

g. Waiver. No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

h. Further Assurances. The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

i. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors and assigns, including the Limited Partnership which assumes ownership and management responsibility for the Project.

j. Entire Agreement. This Agreement and Exhibit A, which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

k. No Third Party Beneficiaries. This Agreement, and the obligations created hereunder, exist for the exclusive benefit of the parties hereto, their respective heirs, legal representatives, successors and assigns.

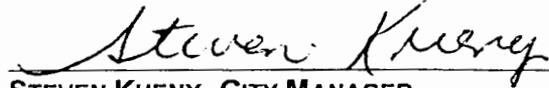
SECTION 9. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement is made, entered into, and executed in Moorpark, Ventura County, California and any action filed in any court or for arbitration for the interpretation, enforcement and/or otherwise of the terms, covenants and conditions referred to herein shall be filed in the applicable court in Ventura County, California.

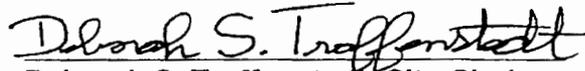
IN WITNESS WHEREOF, the City and Vintage Crest Senior Apartments, L.P. have caused this Agreement to be executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures. The effective date of this Agreement shall be the date it is signed by the City.

DATED: 5/19, 2004

CITY OF MOORPARK


STEVEN KUENY, CITY MANAGER

ATTEST:


Deborah S. Traffenstedt, City Clerk

DATED: MAY 19, 2004

Vintage Crest Senior Apartments, L.P.
By: USA Vintage Crest, Inc.
Its: Administrative General Partner


GEOFF BROWN, PRESIDENT

Exhibit A

Property Description

The land referred to herein is situated in the State of California, County of Ventura and is described as follows:

A portion of Lot "L" Tract "L" of the Rancho Simi, as per Map recorded in Book 5, Page 5, of Maps and Parcel B of Parcel Map No. 5316, in the City of Moorpark, County of Ventura, State of California, as shown on Parcel Map recorded in Book 60, Page 87, of Parcel Maps, in the office of the County Recorder of said county, shown as Parcel 1 on the Lot Line Adjustment No. 2002-05 recorded October 24, 2002, as Instrument No. 2002-0259095-00, Official Records, in the office of the County Recorder of said county.

EXCEPT a portion of Parcel 1 on the Lot Line Adjustment No. 2002-05, in the City of Moorpark, County of Ventura, State of California, described and shown in document recorded October 24, 2002. as Document No. 2002-0259095 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Southeast corner of said Lot Line Adjustment; thence the following numbered courses:

1st: North 66° 00' 24" West 547.50 feet along the Southerly line of said Lot Line Adjustment, to the Southwest corner of said Lot Line Adjustment;

2nd: North 0° 03' 00" West 213.96 feet along the Westerly line of said Lot Line Adjustment to the Northwesterly prolongation of the first course recited as "South 68° 07' 11" East 269.41 feet" of the parcel described in Exhibit "A" in the deed recorded September 4, 2001, as Document No. 2001-174965 of Official Records, in the office of the County Recorder of said County;

3rd: South 68° 34' 26" East 537.30 feet along said Northwesterly prolongation to a point in the Easterly line of said Lot Line Adjustment;

4th: South 00° 03' beginning. 00" East 240.31 feet, along said Easterly line to the point of

DRAFT

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL
TO:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AGREEMENT REGARDING PAYMENT FOR CITY SERVICES

THIS AGREEMENT REGARDING PAYMENT FOR CITY SERVICES (the "Agreement") is dated as of _____, 2013, and is entered into by and between the CITY OF MOORPARK, a municipal corporation organized and existing under the laws of the State of California ("City") and VINTAGE CREST SENIOR APARTMENTS, L.P., a California limited partnership ("Vintage Crest").

Recitals

A. Vintage Crest owns and operates a 190-unit, residential rental housing community for seniors ("Community") on land located at 4722 Park Crest, City of Moorpark, County of Ventura, California more particularly described in Exhibit "A" attached hereto. Said land and the improvements thereon are hereinafter collectively referred to as the "Property".

B. The Moorpark City Council by Resolution No. 2002-1989 approved the Community on July 10, 2002.

C. City and Vintage Crest entered into that certain "Agreement between City of Moorpark and Vintage Crest Senior Apartments, L.P. for Payment in Lieu of Taxes" dated May 14, 2004 and recorded in the Official Records of Ventura County, California on August 12, 2005 as Document No. 20050812-0200021 (the "PILOT Agreement"), and the existence of the PILOT Agreement has resulted in uncertainty as to whether Vintage Crest is entitled to a so-called "welfare exemption" from property taxes provided by California Revenue and Taxation Code Section 214(g)(2)(b).

D. The City has provided various city services to Community on an ongoing basis since the project was approved, constructed and occupied by the residents living in the Community.

E. In order to remove uncertainty as to whether Vintage Crest qualifies for the "welfare exemption", Vintage Crest desires to pay City for the services heretofore provided to the Community, and for City services delivered to Community in the future, in lieu of making payments under the PILOT Agreement. Payments made under this Agreement are intended to be used by the City to pay or reimburse the costs of

providing the services to the Community, including, but not limited to public safety, infrastructure, building and safety and general administrative costs.

Agreement

NOW, THEREFORE, in consideration of the mutual conditions, promises and covenants hereinafter contained, the parties agree as follows:

Section 1. Parties

a. The City is a municipal corporation. The office of the City is located at 799 Moorpark Avenue, Moorpark, California, 93021.

b. Vintage Crest is a California limited partnership. The office of Vintage Crest is located at 2440 Professional Drive, Roseville, California 95746. Wherever the term "Vintage Crest" is used herein, such term shall include any successor to Vintage Crest Senior Apartments, L.P., any person or entity to whom Vintage Crest Senior Apartments, L.P. assigns this Agreement, and any and all or successors to all or any portion of the interest of Vintage Crest Senior Apartments, L.P. in the Property.

Section 2. City Services

City has provided and will continue to provide Community and its residents with various services to facilitate a high quality of life similar to that which all residents of the City enjoy. Such services include from time to time and in various forms, but are not limited to, law enforcement, library, parks and recreation, city bus service, dial a ride service, senior nutrition programs, maintenance of public streets serving the apartments, electricity for street lights on public streets serving Community, an active adult center, and general administrative services.

Section 3. Payment for City Services; Use of Payments; Clarification with Respect to Other Payments Due City

a. The payments heretofore made by Vintage Crest to City under the PILOT Agreement (totaling \$_____) shall be credited against the payments required to be made by Vintage Crest to City under this Agreement for calendar years 2004-2012. For the period from January 1, 2013 through December 31, 2014 (two years), Vintage Crest shall be obligated to pay to City, as of the date of this Agreement, the sum of \$_____ for City Services provided during that calendar year 2013 and that will be provided in calendar year 2014.

b. After making the payment under Section 3(a), Vintage Crest shall make annual payments to the City, in advance, in accordance with this Agreement for its share of City services provided to the Community for as long as Vintage Crest receives a Welfare Exemption pursuant to 214(g) of the California Revenue and Taxation Code (or any successor or similar statute).

c. Each annual payment to be made by Vintage Crest to City shall be in the amount of _____ Dollars (\$ _____), increased two (2%) percent each year above the prior year amount and as provided in clause ____ below). In no event shall there be a decrease.

d. In the event of a sale, transfer, assignment of any type or any portion of the Property by Vintage Crest to any other person or entity, the fee amount referenced above shall be increased based on the new value of the property as if it has been reassessed by the Ventura County Assessor and not exempt from the payment of new property taxes. The calculation shall provide the City ____% (equivalent to _____ per \$1 million of assessed value) of the assessed value or such higher percentage of the total new property taxes if the City portion has been increased by action of the State of California or by a statewide initiative or referendum. (For example, if the sale results in a value of \$_____ then the annual fee of the city would be \$_____ x .____ - _____ or if the City portion of the property taxes has been increased to ____% by the State of California on a statewide initiative or referendum then the amount would be \$_____). In the event the payment to the City would be less than it would per clause c above, inclusive of the 2% adjustment, then clause b shall continue until such time as this clause c would yield a higher annual fee.

e. The initial payment (for calendar years 2013 and 2014) shall be paid concurrently with the execution and delivery of this Agreement by Vintage Crest, and subsequent payments shall be made for each calendar year on or before March 10 of the prior calendar year. In the event that a payment is due on a Saturday, Sunday or City holiday, then payment shall be due on the City's next business day. Late payments shall accrue interest from the date due until the date paid at the maximum permitted by law.

f. In the event Vintage Crest fails to make a payment that is not covered by a credit within three (3) business days after the date on which it is due, Vintage Crest shall pay to City the sum of \$_____ (which shall increase on March 10 of each calendar year by three percent of the then current amount) as liquidated damages for the late payment. Vintage Crest and City hereby stipulate and agree that such amount (and the annual adjustment thereto) is a reasonable estimate of damages that will be incurred by City in the event of such late payment, and that the exact amount of such damages would be extremely difficult and impractical to determine.

g. City shall use the payments to pay for (or reimburse itself for) costs incurred by City in providing the services described in Section 2 above to the Community. The parties stipulate and agree that the payments hereunder are a reasonable estimate of such costs, but the parties acknowledge that in a given year, the applicable payment may be less than, or may exceed, such costs. (For example, in 2012, the costs were approximately \$_____, based on \$_____ per unit in the Community multiplied by 190 (i.e., the number of dwelling units in the Community); the payment amount of \$23,433.19 therefore was less than the costs.) If the applicable payment in a given year exceeds such costs for that year, City shall apply the excess payment to any costs of the Services provided to the Community that are not paid by

annual payments in years in which the costs exceed the annual payments under this Agreement.

h. Vintage Crest hereby acknowledges, confirms and agrees that the payments required under this Section 3 are separate from and in addition to the "City Annual Fee" payments, and any other payments required under that certain "Regulatory Agreement and Declaration of Restrictive Covenants" dated as of December 1, 2002 among City, U.S. Bank National Association and Vintage Crest and recorded in the Official Records of Ventura County on December 13, 2002 as Document No. 2002-031679-00.

Section 4. Additional Covenants of Vintage Crest

a. Vintage Crest agrees for the life of the Community (hereinafter referred to as the "Project") to cast affirmative ballots for the increase of any assessments for existing assessment districts for the maintenance of parkway and median landscaping, street lighting, and parks conferring special benefits, and for the formation of any new assessment district for the purposes listed above in order to supplement then existing assessments upon properties within the Project.

b. Vintage Crest agrees not to convert the Project to for-sale condominiums, community apartments, planned development, stock cooperative, or other common interest development, or as congregate care or assisted living facility for the life of the Project.

c. Vintage Crest agrees that in the event the cable television services or their equivalent are provided to the Project under collective arrangement or any collective means other than by a City Cable Franchisee (including, but not limited to, programming provided over a wireless or satellite system contained within the Project), the apartment management entity shall pay monthly to City an access fee of five percent (5%) of gross revenue generated by the provision of those services, or the highest franchise fee required from any City Cable Franchisee, whichever is greater. "Gross revenue" is as defined in Chapter 5.06 of the Moorpark Municipal Code and any successor amendment or supplementary provision thereto. Vintage Crest further agrees that in the event cable television services or their equivalent are provided to the Project by any means other than by a City Cable Franchisee, that the City's government channel shall be available to all units as part of any such service on the same basis as if the Project was served by a City Cable Franchisee.

Section 5. Suspension of PILOT Agreement

Upon the execution and recordation of this Agreement, [and City's receipt of the [initial payment described in Section 3a above] [?], the terms of the PILOT Agreement shall be suspended; provided, however, that upon a default by Vintage Crest under this Agreement that is not cured within the cure period described in Section 7 below, then such suspension shall no longer be in effect (except for Section 7(a) thereof, which will remain suspended); (ii) the City may notify the County-Auditor Controller or any other

agency or successor agency administering the so-called “welfare exemption” that the PILOT Agreement has been reinstated, and that the intent of the reinstatement is that Vintage Crest shall no longer qualify for the “welfare exemption” or any similar exemption); and (iii) Vintage Crest need not make any payments due thereafter under this Agreement, but shall remain personally liable for any obligations arising under this Agreement prior to the uncured default by Vintage Crest under this Agreement.

Section 6. Indemnification

Vintage Crest hereby agrees to defend, indemnify, and hold City harmless from and against any and all claims, liabilities, damages, costs and expenses (including, without limitation, attorneys’ fees and costs) relating in any way to this Agreement, except to the extent caused by a default by City.

Section 7. Default

Failure by either party to perform its obligations hereunder shall constitute a default under this Agreement, and if the default is not cured within [thirty (30)] [?] days after written notice from the other party, said other party may institute legal action to cure, correct or remedy such default, to recover damages for such default or to obtain any other remedy available at law or in equity.

Section 8. Waiver of Protest Rights

Vintage Crest hereby expressly waives any and all right of protest under Government Code Section 66021 or any other statute in connection with the payments for City services.

Section 9. Miscellaneous Provisions

a. Promptly following the execution of this Agreement, City shall cause this Agreement to be recorded with the County Recorder’s office of Ventura County, California.

b. Time of the Essence. Time is of the essence for every provision of this Agreement in which time is a factor.

c. Notices. Notices or other communications given under this Agreement shall be in writing and shall be served personally or transmitted by certified mail, return receipt requested. Notices that are personally delivered shall be deemed received at the time of actual delivery or, if mailed in accordance herewith, on the date shown on the return receipt as the date of delivery or attempted delivery, as applicable. Notices shall be directed to the parties at the following addresses or at such other addresses as the parties may indicate by written notice given pursuant to this Section:

CITY: City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021
Attention: City Manager

VINTAGE CREST: Vintage Crest Senior Apartments, L.P.
C/O USA Vintage Crest, Inc.
2440 Professional Drive
Roseville, CA 95746

with a copy to:

Riverside Charitable Corporation
3803 E. Casselle Ave.
Orange, CA 92869
Attention: Ken Robertson, President

d. **Headings.** The titles and headings of the various sections of this Agreement are intended solely for reference and are not intended to explain, modify or place any interpretation upon any provision of this Agreement.

e. **Waiver.** No waiver of any provision of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver (and any waiver by City shall require the consent of the City Council).

f. **Further Assurances.** The parties shall execute, acknowledge, file or record such other instruments and statements and shall take such additional action as may be necessary to carry out the purpose and intent of this Agreement.

g. **Binding Effect; Runs with Land.** This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns and all successors to all or any portion of the interest of Vintage Crest in the Property (excluding tenants who occupy their rental units). This Agreement is intended to bind, encumber and "run with" the Property.

h. **Entire Agreement.** This Agreement and Exhibit "A", which is incorporated herein, together constitute the entire agreement between the parties and supersede all prior or contemporaneous agreements, representations, warranties and understandings of the parties concerning the subject matter contained herein, written or oral. No change, modification, addendum or amendment to any provision of this Agreement shall be valid unless executed in writing by each party hereto.

i. **No Third Party Beneficiaries.** This Agreement, and the obligations created hereunder, exist for the exclusive benefit of the parties hereto, and their successors, assigns and successors-in-interest. There are no third party beneficiaries of this Agreement.

j. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. This Agreement is made, entered into, and executed in Moorpark, Ventura County, California and any action filed in any court for the interpretation, enforcement and/or otherwise of the terms, covenants and conditions referred to herein shall be filed in the applicable court in Ventura County, California.

IN WITNESS WHEREOF, the City and Vintage Crest have caused this Agreement to be duly executed by their respective representatives thereunto duly authorized as of the dates set forth below their signatures. The effective date of this Agreement shall be the date it is signed by the City.

CITY OF MOORPARK

Dated: _____, 2013

Janice Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

**VINTAGE CREST SENIOR APARTMENTS,
L.P.**

By: USA Vintage Crest, Inc.
Administrative General Partner

Dated: _____, 2013

By: _____
Geoff Brown, President

By: Riverside Charitable Corporation
Its: Managing General Partner

By: _____
Kenneth Robertson, President

**[SIGNATURES MUST BE DULY
ACKNOWLEDGED BY A NOTARY PUBLIC]**

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

State of California)
County of Los Angeles)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

Property Description

The land referred to herein is situated in the State of California; City of Moorpark, County of Ventura and is described as follows:

A portion of Lot "L" Tract "L" of the Rancho Simi, as per Map recorded in Book 5, Page 5, of Maps and Parcel B of Parcel Map No. 5316, in the City of Moorpark, County of Ventura, State of California, as shown on Parcel Map recorded in Book 60, Page 87, of Parcel Maps, in the office of the County Recorder of said county, shown as Parcel 1 on the Lot Line Adjustment No. 2002-05 recorded October 24, 2002, as Instrument No. 2002-0259095-00, Official Records, in the office of the County Recorder of said county.

EXCEPT a portion of Parcel 1 on the Lot Line Adjustment No. 2002-05, in the City of Moorpark, County of Ventura, State of California, described and shown in document recorded October 24, 2002, as Document No. 2002-0259095 of Official Records, in the office of the County Recorder of said County, described as follows:

Beginning at the Southeast corner of said Lot Line Adjustment; thence the following numbered courses:

1st: North 66° 00' 24" West 547.50 feet along the Southerly line of said Lot Line Adjustment, to the Southwest corner of said Lot Line Adjustment;

2nd: North 0° 03' 00" West 213.96 feet along the Westerly line of said Lot Line Adjustment to the Northwesterly prolongation of the first course recited as "South 68° 07' 11" East 269.41 feet" of the parcel described in Exhibit "A" in the deed recorded September 4, 2001, as Document No. 2001-174965 of Official Records, in the office of the County Recorder of said County;

3rd: South 68° 34' 26" East 537.30 feet along said Northwesterly prolongation to a point in the Easterly line of said Lot Line Adjustment;

4th: South 00° 03' beginning. 00" East 240.31 feet, along said Easterly line to the point of