

ORDINANCE NO. 426

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING AMENDMENT NO. 1 TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF MOORPARK AND SHEA HOMES, LIMITED PARTNERSHIP FOR VESTING TENTATIVE TRACT MAP NO. 5425 TO ADJUST THE AFFORDABLE HOUSING REQUIREMENT AND FINDING THE PREVIOUSLY ADOPTED MITIGATED NEGATIVE DECLARATION APPLICABLE

WHEREAS, on April 6, 2005, the Moorpark City Council adopted Ordinance No. 313, an enabling ordinance for a Development Agreement with Shea Homes, Limited Partnership for Vesting Tentative Tract Map No. 5425, on approximately 14.8 acres of land south of Los Angeles Avenue between Spring Road and Millard Street; and

WHEREAS, on May 23, 2005, the City of Moorpark and Shea Homes, Limited Partnership entered into a Development Agreement for Vesting Tentative Tract Map No. 5425, which was recorded in the Office of the County Recorder on June 27, 2005 by Instrument No. 20050627-0155742; and

WHEREAS, Section 15.40.120 of the Moorpark Municipal Code establishes procedures for the amendment of a Development Agreement; and

WHEREAS, the City has found it necessary to amend the above-referenced Development Agreement Section 6.9 with respect to the provision of affordable housing; and

WHEREAS, on September 4, 2013, the City Council adopted Resolution No. 2013-3214, directing the Planning Commission to study, hold a public hearing, and provide a recommendation to the City Council on a proposed amendment to the Development Agreement with respect to the affordable housing requirement; and

WHEREAS, on September 24, 2013, the Planning Commission considered Amendment No. 1 to the Development Agreement by and between the City of Moorpark and Shea Homes; considered the agenda report and any supplements thereto and written public comments; opened the public hearing and took and considered public testimony both for and against the proposal; closed the public hearing; and adopted Resolution No. 2013-589 recommending approval of Amendment No. 1 to the Development Agreement; and

WHEREAS, a duly noticed public hearing was held by the City Council on October 16, 2013 to consider Amendment No. 1 to the Development Agreement by and between the City of Moorpark and Shea Homes and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to Amendment No. 1 to the Development Agreement and has given careful consideration to the content of Amendment No. 1 to the Development Agreement; and

WHEREAS, on April 6, 2005, the City Council approved Resolution No. 2005-2303, adopting a Mitigated Negative Declaration for the project, including the General Plan Amendment, Zone Change, Residential Planned Development Permit, Tentative Tract Map, and Development Agreement. The Community Development Director has found that the proposed amendment to the Development Agreement, as a change only to the affordable housing provisions, would not result in any physical change to the previously approved project. In addition, there are no substantial changes to the circumstances under which the project would be undertaken, in that the project is on the same site, with the same anticipated surrounding uses and infrastructure as considered in the previously adopted Mitigated Negative Declaration, and the project with the Development Agreement as amended, would not result in new significant effects or substantially more severe significant effects. Finally, there is no new information of substantial importance, which was not known and could not have been known at the time the previous Mitigated Negative Declaration was adopted that shows one or more new significant effects or substantially more severe significant effects from the project with the proposed amendment to the Development Agreement. Therefore, the previously adopted Mitigated Negative Declaration is applicable and no subsequent environmental documentation is needed.

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

SECTION 1. ENVIRONMENTAL DOCUMENTATION: On April 6, 2005, the City Council approved Resolution No. 2005-2303, adopting a Mitigated Negative Declaration for the project, including the General Plan Amendment, Zone Change, Residential Planned Development Permit, Tentative Tract Map, and Development Agreement. The City Council finds, by its independent analysis and judgment, that the proposed amendment to the Development Agreement, as a change only to the affordable housing provisions, would not result in any physical change to the previously approved project. In addition, there are no substantial changes to the circumstances under which the project would be undertaken, in that the project is on the same site, with the same anticipated surrounding uses and infrastructure as considered in the previously adopted Mitigated Negative Declaration, and the project with the Development Agreement as amended, would not result in new significant effects or substantially more severe significant effects. Finally, there is no new information of substantial importance, which was not known and could not have been known at the time the previous Mitigated Negative Declaration was adopted that shows one or more new significant effects or substantially more severe significant effects from the project with the proposed amendment to the Development Agreement. Therefore, the City Council finds the previously adopted Mitigated Negative Declaration is applicable and no subsequent environmental documentation is needed.

SECTION 2. GENERAL PLAN CONSISTENCY: The City Council finds Amendment No. 1 to the Development Agreement between the City of Moorpark and Shea Homes, Limited Partnership, to be consistent with the City of Moorpark General Plan as most recently amended.

SECTION 3. The City Council hereby adopts Amendment No. 1 to the Development Agreement (attached hereto and incorporated herein) by and between the City of Moorpark, a municipal corporation, and Shea Homes, Limited 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 Amendment No. 1 to the Development Agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 4. 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 5. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 6. 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 6th day of November, 2013.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

EXHIBIT A

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

AMENDMENT NO. 1 TO
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
SHEA HOMES, LIMITED PARTNERSHIP

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

**AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MOORPARK
AND SHEA HOMES, LIMITED PARTNERSHIP**

This Amendment No. 1 to the Development Agreement ("the Agreement") made and entered into on May 23, 2005, and recorded on June 27, 2005 by Instrument No. 20050627-0155742 by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Shea Homes, Limited Partnership, the owner of real property within the City of Moorpark generally referred to as Vesting Tentative Tract Map 5425 (referred to hereinafter individually as "Developer") is made and entered into on _____, 2013. City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Amendment No. 1 to the Agreement, City and Developer agree as follows:

1. Recitals. This Amendment No. 1 to the Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
 - 1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.
 - 1.2. On May 23, 2005, the City and Developer made and entered into a Development Agreement, recorded on June 27, 2005 by Instrument No. 20050627-0155742, for a project involving the following project approvals: General Plan Amendment No. 2003-02 (GPA 2003-02), Zone Change No. 2003-02 (ZC 2003-02), Vesting Tentative Tract Map 5425 (Tract 5425) and Residential Planned Development Permit No. 2003-02 (RPD 2003-02), for approximately 14.8 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached to and incorporated in the Agreement.
 - 1.3. RPD 2003-02 expired on April 6, 2009, and was replaced by Residential Planned Development Permit No. 2010-02 (RPD 2010-02), which was approved by the City Council on June 15, 2011, and is one of the project approvals.
 - 1.4. Prior to approval of the Agreement, the City adopted a Mitigated Negative Declaration (MND), Mitigation Measures, and a Mitigation Monitoring and Reporting Program ("the MMRP") for the Project Approvals as defined in subsection 1.2 of this Amendment No. 1 to the

Agreement. The MND, Mitigation Measures, and MMRP remain applicable to the project as amended by Amendment No. 1 to the Agreement.

- 1.5. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement as amended by Amendment No. 1 is fair, just and reasonable and that this Agreement as amended by Amendment No. 1 is consistent with the General Plan of City.
- 1.6. On September 24, 2013, the Planning Commission of City commenced a duly noticed public hearing on this Amendment No. 1 to the Agreement, and at the conclusion of the hearing recommended approval of this Amendment No. 1 to the Agreement.
- 1.7. On October 16, 2013, the City Council commenced a duly noticed public hearing on this Amendment No. 1 to the Agreement, and following the conclusion of the hearing approved Amendment No. 1 to the Agreement by adoption of Ordinance No. ____ on _____, 2013.

2. Amendment of Section 6.9. Section 6.9 of the Agreement is amended as follows:

- 6.9. Developer shall provide ~~eightennine (918)~~ three (3) bedroom and two bath single family attached units with a minimum of 1,600 square feet to be sold to buyers who meet the criteria for low income (80 percent or less of median income); ~~six (6) three (3) bedroom and two (2) bath single family attached units with a minimum of 1,600 square feet to be sold to buyers who meet the criteria for very low income (50 percent or less of median income).~~ Developer shall also pay a two hundred fifty thousand dollars (\$250,000.00) in-lieu fee to satisfy the requirement for providing moderate income units the Project. Payment of the in-lieu fee will be made by two methods. The first ; and five (5) three (3) bedroom and two (2) bath single family attached units with a minimum of 1,600 square feet to be sold to buyers who meet the criteria for moderate income (120 percent or less of median income) one hundred twenty-three thousand dollars (\$123,000.00) of the in-lieu fee shall be used by the Developer to increase the number of affordable low income units in the Project from seventeen (17) to eighteen (18) units. The remaining one hundred twenty-seven thousand dollars (\$127,000.00) will be paid to the City at the time the first required affordable unit is sold to a qualified buyer.

All single family attached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18) feet measured from the back of sidewalk, meet minimum

setback requirements of RPD 2003-02, include concrete roof tiles, and other amenities provided in the market rate housing of this Project (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The aforementioned ~~twenty-eighteen (1820)~~ units are collectively referred to as the affordable housing units or affordable units.

Developer and City may upon mutual agreement reduce the number of required affordable units from eighteen (18) to sixteen (16), contingent on both of the following:

1. Developer purchases APN 506-0-020-240 (adjacent to Tract 5425) from City and constructs two (2) affordable units consistent with Plan 1A in Tract 5425 to be sold in the same manner as provided in this Section 6.9.
2. Developer offers City an opportunity to purchase two (2) Plan 1A units in Tract 5425 for then market price not to exceed \$400,000 for each unit. These two (2) units shall be provided all the same features and amenities of the other affordable units in Tract 5425 consistent with this Section 6.9.

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

Prior to recordation of the first final Tract Map for this Project, the parties agree to execute a Purchase and Sale Agreement which further sets forth the Developer's obligations of this subsection 6.9. and City's obligations per subsection 7.7. The Purchase and Sale Agreement shall be in the form attached hereto as Exhibit "C". The Developer agrees to pay all City costs for preparation of the Purchase and Sale Agreement and its implementation and administration through the sale and occupancy of the last of the ~~twenty (20)~~ affordable housing units.

The Developer agrees that the intent of this subsection 6.9. and the Purchase and Sale Agreement is to provide the ~~twenty (20)~~ affordable housing units consistent with applicable State and Federal laws and that said units remain affordable for the longest feasible time. Developer further agrees that the City at its sole discretion will make all decisions pertaining to the selection of eligible first time home buyers and all requirements placed on the sale of the ~~twenty (20)~~ affordable

housing units to said buyers. The difference between the initial purchase price by a qualified buyer and market value shall be retained by the City as a second deed of trust.

The actual initial purchase price (Affordable Sales Price) paid by a qualified buyer, market value, buyer eligibility, resale restrictions, equity share and second trust deed provisions, and any other items determined necessary by the City will be approved by the City Council in its sole and unfettered discretion prior to or at such time as qualified buyers are selected to purchase the affordable housing units.

All units shall meet the criteria of all applicable State laws to qualify as newly affordable to ~~moderate income, low income and very low income~~ persons (in the quantity as specified in this Agreement) to satisfy a portion of the City's RHNA obligation and ~~the Moorpark Redevelopment Agency's~~ affordable housing goals. None of the affordable units required by this Agreement shall duplicate or substitute for the affordable housing requirement of any other developer or development project. All subsequent approvals required of City under this subsection 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and the Purchase and Sale Agreement or the conditions of approval for Tract Map No. 5425 and/or RPD No. 2003-02, then the provision providing the City the most favorable language for assisting eligible first time home buyers ~~who meet the qualification of moderate, low and very low income~~ shall prevail.

Developer agrees to provide the same home warranties associated with the market rate units in the same project as the affordable 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 moderate income, low income and very low income 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 other units in the project and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of units shall be provided to buyer(s) of the required affordable housing units including but not limited to color and style choices for carpeting and other floor coverings. Flooring selections shall be made within 10 days of Developer's request for selection.

In the event the monthly HOA fees for the affordable units exceed \$100.00 for each affordable unit, Developer shall deposit \$120.00 for

each dollar or portion thereof of the monthly HOA fees that are in excess of \$100.00 into a City administered trust to assist with future HOA fees for each affected affordable unit.

The Affordable Sales Price for the low-income buyers shall not exceed affordable housing cost, as defined in Sec. 50052.5(b) (2) of California Health and Safety Code. For a household of 4, the current monthly "affordable housing cost" would be 30% times 70% of ~~\$8089,600~~300.00, the current median income for a household of 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 low income household of 4 would be ~~\$165~~205,000.00 under current market conditions, based upon the following assumptions:

**Low Income Buyer
Household of Four**

Item	Detail	Amount
Affordable Sales Price		\$165 <u>205,000</u>
Down Payment	5% of Affordable Sales Price	\$810,250
Loan Amount	Affordable Sales Price less down payment	\$156 <u>194,750</u>
Interest Rate	5.955.0%	
Property Tax	1.25% of Affordable Sales Price	\$172 <u>214/mo.</u>
HOA		\$100/mo.
Fire Insurance		\$20/mo.
Maintenance		\$30/mo.
Utilities		\$171 <u>162/mo.</u>

~~The Affordable Sales Price for a low income household of five or more would be based on the affordable housing cost for the actual household size.~~

The assumptions associated with the above purchase price figures for low income households include a 5% down payment, based on the Affordable Sales Price, mortgage interest rate of ~~5.955~~0%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$30 per month, and utilities of ~~\$171~~162 per month for a household of 4, assuming a 3 bedroom unit.

The Affordable Sales Price for the very low income buyers shall not exceed affordable housing cost, as defined in Section 50052.5(b)(2) of California Health and Safety Code. For a household of 4, the current monthly “affordable housing cost” would be 30% times 50% of \$80,600.00, the current median income for a household of 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 very low income household of 4 or fewer would be \$104,000.00 under current market conditions, based upon the following assumptions:

**Very Low Income Buyer
Household of Four**

Item	Detail	Amount
Affordable Sales Price		\$104,000
Down Payment	5% of Affordable Sales Price	\$5,200
Loan Amount	Affordable Sales Price less down payment	\$98,800
Interest Rate	5.95%	
Property Tax	1.25% of Affordable Sales Price	\$108/mo.
HQA		\$100/mo.
Fire Insurance		\$20/mo.
Maintenance		\$30/mo.
Utilities		\$171/mo.

That Affordable Sales Price for a very low income household of five or more would be based on the affordable housing cost for the actual household size.

The assumptions associated with the above purchase price figures for very low income households include a 5% down payment, based on the Affordable Sales Price, mortgage interest rate of 5.95%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners’ association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$30 per month, and utilities of \$171 per month for a household of 4, assuming a 3 bedroom unit.

**Moderate Income Buyer
Household of Four**

The Affordable Sales Price for the moderate income buyers shall not exceed affordable housing cost, as defined in Sec. 50052.5(b) (2) of California Health

~~and Safety Code. For a household of 4, the current monthly “affordable housing cost” would be 35% times 110% of \$80,600.00, the current median income for a household of 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 moderate income household of 4 would be \$313,000.00 under current market conditions, based upon the following assumptions:~~

Item	Detail	Amount
Affordable Sales Price		\$313,000
Down Payment	5% of Affordable Sales Price	\$15,650
Loan Amount	Affordable Sales Price less down payment	\$297,350
Interest Rate	5.95%	
Property Tax	1.25% of Market Price	\$326/mo.
HOA dues		\$100/mo.
Fire/casualty ins.		\$50/mo.
Maintenance		\$30/mo.
Utilities		\$171/mo.

~~That Affordable Sales Price for a moderate income household of five or more would be based on the affordable housing cost for the actual household size.~~

~~The assumptions associated with the above purchase price figures for moderate income households include a 5% down payment based on the Affordable Sales Price, mortgage interest rate of 5.95%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners’ association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$30 per month, and utilities of \$171 per month for a household of 4, assuming a 3 bedroom unit.~~

~~Developer acknowledges that changes in market conditions may result in changes to the Affordable Sales Price, down payment amounts, mortgage interest rates, and other factors for the moderate, low income and very 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 the City, at 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 4 persons and consistent with all requirements of this subsection 6.9. 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 moderate, low and very 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.

Developer shall pay closing costs for each unit, not to exceed six-thousand seven-hundred twenty-five dollars (\$6,000725.00). Beginning March 1, 2007~~14~~, and on March 1st for each of fifteen subsequent years, the maximum six-thousand seven-hundred twenty-five dollars (\$6,725.00)~~\$6,000~~ to be paid for closing costs shall be increased annually by any percentage increase in the Consumer Price Index (CPI) for All Urban Consumers 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 at its sole discretion for one or more of the required units) in their acquisition of a unit from Developer not Developer's acquisition of a unit from one or more third parties. The Developer's escrow cost 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.

No less than thirty (30) days prior to the offering for sale to the general public of units 33 and 80 as approved by RPD 2003-02, with approximately 1600 square feet (units), Developer shall provide City with notice of said intended sale. Said notice shall include the proposed sale price. Within thirty (30) days of receiving said notice, City may purchase one or both of the above-referenced units and enter into escrow at the stated price or such other price as may be negotiated by the parties. Developer warrants that said price shall be no higher than what would be offered to a bona fide qualified purchaser from the general public. City warrants that if it exercises its right to purchase, it will purchase said units for the purpose of reselling

it to a qualified first time home buyer with income not exceeding moderate income. Upon mutual agreement of the parties, said first time home buyer may be substituted for City with the requirement that the City will work with buyer to finance the purchase of the unit. Buyer gets all the same new home warranties as the purchase of any market rate unit in the Project. The Developer with the written approval of the City Manager or designee may substitute a different unit location within the Project for either unit 33 or 80 so long as the unit contains no less than 1,600 square feet.

The location of the ~~twenty (20)~~ affordable units within the Project and the schedule for providing the affordable units by the Developer to qualified buyers or City in lieu of said buyers shall be included in the Purchase and Sale Agreement.

3. All other provisions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, Shea Homes, Limited Partnership, and City of Moorpark have executed this Amendment No. 1 to the Development Agreement on the date first above written.

CITY OF MOORPARK

Janice S. Parvin
Mayor

OWNER/DEVELOPER
Shea Homes, Limited Partnership

By: J.F. Shea, Co., Inc., a Nevada corporation, its General Partner

By: _____
(name)
(title)

By: _____
(name)
(title)