

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Dave Klotzle, City Engineer/Public Works Director 

DATE: April 24, 2015 (CC Meeting of 5/6/15)

SUBJECT: Consider Resolution Approving Exchange Agreement and Joint Escrow Instructions between the City and the Bennett Partnership for the Princeton Avenue Widening Project (Project 8012)

DISCUSSION

On July 1, 2009, the City Council approved the conceptual design, and directed staff to proceed with the completion of plans, specifications, cost estimate, and acquisition of the right-of-way and construction easements for the Princeton Avenue Widening Project.

The road widening project requires the acquisition of right-of-way and a construction easement from the property located at 14110 Princeton Avenue, currently owned by the Bennett Partnership (Bennett). The Bennett property is located next to property owned by the City. Unpermitted, outdoor storage of vehicles and equipment has occurred on portions of the City property for some time. On October 25, 2006 a settlement agreement between the City and the previous owner of the Bennett property was executed which included provisions for the property owner to sell the right-of-way required by the widening project to the City, convey the required construction easements to the City, pay back-rent for the use of City property, purchase a portion of the City property and enter into a license agreement for the continued use of a portion of the City property. The back-rent for the use of City property up to October 2006 was paid as part of the transaction of Bennett's purchase of the property on October 26, 2006. To date, the remaining provisions of the settlement agreement have not been completed.

An Exchange Agreement and Joint Escrow Instructions (Agreement) between Bennett and the City has been prepared by the City Attorney to update and effectuate the remaining provisions of the settlement agreement (Attachment 1).

The Agreement includes provisions for Bennett to: 1) sell the right-of-way required by the widening project to the City; 2) convey the required construction easements to the City; 3) pay back-rent for the use of City property since October 2006; 4) purchase a portion of the City property; and 5) enter into a license agreement for the continued use of a portion of the City property. The Agreement also requires Bennett to submit an application for an Industrial Planned Development (IPD) Permit within sixty days of the Agreement's effective date. Unless otherwise approved, removal of all outdoor storage is also required within one year of the Agreement's effective date, or by the approval of the IPD Permit, whichever occurs first. The attached resolution (Attachment 2) approves the Agreement and authorizes the execution of the documents required by the Agreement.

FISCAL IMPACT

Execution of all the provisions of the Agreement will result in Bennett paying approximately \$184,000 to the City. The funds will be deposited into the project funding source, Fund 2501, Los Angeles Avenue Area of Contribution.

STAFF RECOMMENDATION

Adopt Resolution No. 2015 - _____ approving the Exchange Agreement and Joint Escrow Instructions between the City and the Bennett Partnership and authorizing the Mayor and City Manager to execute the documents related thereto subject to final language approval by the City Manager and City Attorney.

Attachments:

1. Exchange Agreement and Joint Escrow Instructions
2. Resolution No. 2015 - _____

ATTACHMENT 1

APNs 513-0-022-095, 105 & 125 (Owner – City of Moorpark)
APN 513-0-022-015 (Owner – Bennett)

EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) is made and entered into on this _____ day of _____, 2015, by and between the CITY OF MOORPARK, a municipal corporation (“City”) and THE BENNETT PARTNERSHIP, A GENERAL PARTNERSHIP (“Bennett”), and constitutes an agreement to exchange certain real property interests between the Parties and the Parties’ joint escrow instructions directed to Camarillo Escrow Company (“Escrow Holder”).

RECITALS

A. The City of Moorpark (“City”) and Manuel Asadurian, Jr. (“Asadurian”) entered into a Settlement Agreement on October 25, 2006 (“Settlement Agreement”) in connection with the City’s construction of a street widening and improvement project along Princeton Avenue (hereafter “Project”).

B. The Settlement Agreement involved certain real properties owned by Asadurian, which are identified as Ventura County Assessor’s Parcel Numbers 513-0-022-015 and 513-0-040-105. It also involved the City-owned real property known as “Parcel A”, which is a portion of the real property identified as Ventura County Assessor’s Parcel Number 513-0-022-105, and Parcel “B”, which is commonly known as La Falda Avenue. Parcel “A” and Parcel “B” are depicted on Exhibit 1 to the Settlement Agreement. The Settlement Agreement is attached as Attachment 1 hereto and is incorporated herein by this reference.

C. On October 26, 2006, Bennett purchased from Asadurian that certain real property identified as APN 513-0-022-015, subject to the Settlement Agreement. Pursuant to the Settlement Agreement, the City and Asadurian agreed to the following transfers of real property interests:

i. Asadurian agreed to sell to the City a road right of way in fee, a landscape easement, access and maintenance easement, and a temporary construction easement. Pursuant to the Settlement Agreement, the City agreed to (a) sell to Asadurian Parcel A in fee, subject to a reservation in favor of the City for a slope easement and landscape easement for future construction purposes and (b) authorize Asadurian to use Parcel B (La Falda Avenue) pursuant to a License Agreement.

ii. Pursuant to the Settlement Agreement, the City and Asadurian agreed that the City would obtain fair market value appraisals of the subject property rights described in the Settlement Agreement and that they would each accept the fair

market values set forth in the appraisals. The City and Asadurian also agreed to transfer to each other the subject property interests free and clear of any monetary encumbrances.

D. Asadurian did not transfer to the City the road right of way in fee, landscape easement, access and maintenance easement, or temporary construction easement on that certain real property identified as APN 513-0-022-015 prior to conveying that property to Bennett. The City seeks to construct the Project. Accordingly, the purpose of this Agreement is to implement the transfer of the real property interests set forth in the Settlement Agreement and to update the completion dates of certain obligations of Bennett under the Settlement Agreement.

E. The City will use an approximate 2,697 square foot portion of the City-owned property identified as Assessor's Parcel Number 513-0-022-105 to construct the public street and related improvements in connection with the Project. The City has determined, however, that it can construct the Project with a reservation of a temporary construction easement on Assessor's Parcel Number 513-0-022-105 in place of the reservation of the slope easement and landscape maintenance easement that the City reserved in the Settlement Agreement. Accordingly, the City and Bennett agree to modify the Settlement Agreement as set forth below to effect the transfers of the following real property interests in place of the real property interests contemplated in the Settlement Agreement:

i. City Sale Property. At the Close of Escrow, as defined below, the City shall transfer to Bennett the following real property interests (referred to collectively below as the "City Sale Property") described more particularly on Attachment 2 to this Agreement, which is incorporated herein by this reference:

- An approximate 10,850 square foot portion of the real property identified as Ventura County Tax Assessor's Parcel Number 513-0-022-105 in fee described more particularly on Exhibit "A" and depicted on Exhibit "C" to Attachment 2 to this Agreement, which is incorporated herein by this reference. The City expressly reserves in favor of the City an approximate 5,265 square foot temporary construction easement for the construction of the Project. The City will use this 5,265 square foot temporary construction easement to construct the Project; to install landscaping; to make minor physical changes to the slope and grade in the 5,265 square foot area; and to demolish a structure and two foundation pads located in the 5,265 square foot area. The approximate 5,265 square foot temporary construction easement that the City is reserving in favor of itself is described more particularly on Exhibit "B" and depicted on Exhibit "C" to Attachment 2 to this Agreement, and incorporated herein by this reference.

ii. Bennett Sale Properties. At the Close of Escrow, as defined below, Bennett shall transfer to the City the following real property interests (referred to collectively below as the "Bennett Sale Properties") described more particularly on Attachment 3 to this Agreement, which is incorporated herein by this reference:

- An approximate 7,146 square foot area in fee for public street purposes, and all uses necessary or convenient thereto described more particularly on Exhibit "A" and depicted on Exhibit "C" to Attachment 3 to this Agreement, and incorporated herein by this reference.
- An approximate 5,560 square foot temporary construction easement to facilitate the City's construction of the Project. The City will use the temporary construction easement to facilitate the construction of a retaining wall for the Project. The City will also use the 5,560 square foot temporary construction easement to complete minor grading in this area as part of the Project. The City will remove the existing driveway, fencing and pavement from the approximate 5,560 square foot temporary construction easement area. The approximate 5,560 square foot temporary construction easement is described more particularly on Exhibit "B" and depicted on Exhibit "C" to Attachment 3 to this Agreement, and incorporated herein by this reference.

F. Except as set forth in this Agreement, the Parties are not modifying any other terms of the Settlement Agreement. Except as set forth in this Agreement, no additional compensation shall be paid by either party in consideration of the changes described in this Recital E.

Now therefore, in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Bennett agree as follows:

AGREEMENT

1. Exchange of Properties.

a. *Conveyance of City Sale Property to Bennett*. In exchange for the conveyance by Bennett to the City of the Bennett Sale Properties, the City hereby agrees to convey to Bennett the City Sale Property discussed above in Recital E.i. and described more particularly on Exhibit "A" and depicted on Exhibit "C" to Attachment 2 to this Agreement. As set forth above in Recital E.i., the City expressly reserves in favor of the City an approximate 5,265 square foot temporary construction easement for the construction of the Project. The City will use this 5,265 square foot temporary construction easement to construct the Project; to install landscaping; to make minor physical changes to the slope and grade in the 5,265 square foot area; and to demolish

a structure and two foundation pads located in the 5,265 square foot area. The approximate 5,265 square foot temporary construction easement is described more particularly on Exhibit "B" and depicted on Exhibit "C" to Attachment 2 to this Agreement.

b. *Conveyance of Bennett Sale Properties to City.* In exchange for the conveyance by the City to Bennett of the City Sale Property, Bennett hereby agrees to convey to the City the Bennett Sale Properties described above in Recital E.ii. The Bennett Sale Properties include (i) an approximate 7,146 square foot area in fee for public street purposes, and all uses necessary or convenient thereto described more particularly on Exhibit "A" and depicted on Exhibit "C" to Attachment 3 to this Agreement, and (ii) an approximate 5,560 square foot temporary construction easement described more particularly on Exhibit "B" and depicted on Exhibit "C" to Attachment 3 to this Agreement to facilitate the City's construction of the Project. The City will use the 5,560 square foot temporary construction easement to to construct the Project; to install landscaping; to make minor physical changes to the slope and grade, and to construct a retaining wall.

2. Consideration.

a. *Consideration for Bennett Sale Property.* As consideration for Bennett's conveyance to the City of the Bennett Sale Properties, the City shall, at the Close of Escrow (as defined below in Section 5.b.):

i. Convey the City Sale Property to Bennett by executing and delivering to Escrow Holder a Grant Deed conveying the City Sale Property with the reservation in favor of the City of the approximate 5,265 square foot temporary construction easement in the form attached hereto as Attachment 4, which is incorporated herein by this reference.

ii. Pay to Bennett the total sum of One Hundred Thirty-five Thousand Six Hundred Thirty-four Dollars (\$135,634.00) for the Bennett Sale Properties. This sum includes the payment for the fair market value of the Bennett Sale Properties, payment for the loss, replacement and moving of any improvements, except for the mobilehome used as an office that is located within the approximate 5,560 square foot temporary construction easement area that the City will protect in place during the construction of the Project. The City's payment of the \$135,634.00 is subject to the deduction of the amount of the Bennett Cash Payment (as defined in Section 2.b.). Said sums shall be paid by the City at the Close of Escrow (as defined below in Section 5.b.).

iii. Enter into a License Agreement with Bennett in the form attached hereto as Attachment 5 authorizing Bennett to use Parcels B and F, which are depicted as access roadways on Exhibit 1 to Attachment 1 to this Agreement.

b. *Consideration for City Sale Property.* As consideration for the City's conveyance to Bennett of the City Sale Property and Bennett's use of City Parcels B and F pursuant to the License Agreement described in Section 2.a.iii., Bennett shall, at the Close of Escrow (as defined below in Section 5.b.):

i. Convey the Bennett Sale Properties to the City by (a) executing and delivering to Escrow Holder a Grant Deed in the form attached hereto as Attachment 6 conveying to the City in fee the approximate 7,146 square foot area described on Exhibit A and depicted on Exhibit C to Attachment 3 to this Agreement for public street purposes and all uses necessary or convenient thereto; and (b) executing and delivering to Escrow Holder a Grant of Temporary Construction Easement in the form attached hereto as Attachment 7 conveying to the City the approximate 5,560 square foot temporary construction easement to facilitate the construction of the Project. Attachments 6 and 7 are incorporated herein by this reference.

ii. Pay to the City the sum of Three Hundred Twenty-two Thousand Two Hundred Thirty-eight Dollars and Seventy-four Cents (\$322,238.74) ("Bennett Cash Payment"), consisting of the following components: (a) One Hundred Ninety-five Thousand Three Hundred Dollars (\$195,300.00) for the fair market value of the City Sale Property, replacement and moving of any improvements; (b) Twenty-Two Thousand Five Hundred (\$22,500) for the cost of the six-foot tall screen wall described below in Section 3; (c) 7 ½ cents per square foot per month for the rental amounts due City by Asadurian, and Asadurian's successor-in-interest, commencing on October 25, 2006 up to the Close of Escrow for the rental of the approximate 10,850 square foot City Sale Property, which rental was converted to a month-to-month rental upon the holdover by Asadurian and Asadurian's successor-in-interest on the City Sale Property (said rental amount is One Hundred Four Thousand Four Hundred Thirty Dollars and Seventy-four Cents (\$104,430.74) as of March 31, 2015); and (d) Eight Dollars (\$8.00) for the unpaid license fee (\$1.00 per year due annually commencing October 25, 2006 through October 25, 2014) due to City by Asadurian and Asadurian's successor-in-interest. Bennett shall pay the above sums in favor of the City at the Close of Escrow (as defined below in Section 6.b.).

3. Modifications to Settlement Agreement.

a. *Screening Wall and Improvements.*

i. Screening Wall. In lieu of Bennett constructing the 8-foot high screen wall required in Paragraph 1.j. of the Settlement Agreement, the Parties agree to modify the Settlement Agreement to expressly authorize the City to build a 6-foot high screen wall as part of the construction of the Project and that the City shall recapture the estimated cost of \$22,500 from Bennett during Escrow. This sum is described above in Section 2.b.ii.(b).

ii. City's Construction of Improvements. City shall further construct and install the curb, gutter, sidewalk and street improvements pursuant to

Paragraph 1.k. of the Settlement Agreement. Bennett shall pay to the City the cost of those improvements as provided in Section 1.k. of the Settlement Agreement within 15 calendar days of receiving an invoice from the City for the City's costs of installation of the curb, gutter, sidewalk and street improvements in accordance with Paragraph 1.k. of the Settlement Agreement.

b. *Business Registration.* Within 30 calendar days from the Effective Date of this Agreement, Bennett shall pay or cause to be paid a business registration for all uses on real property identified as APN 513-0-022-015 determined to be legal and thus authorized to be on said property by the City.

c. *Industrial Planned Development Permit.* Pursuant to the Settlement Agreement, Bennett's predecessor-in-interest sought to obtain approval of an Industrial Planned Development Permit (IPD) to establish the development and use rights of the Property and Parcel A. The time period for processing the IPD under the Settlement Agreement has lapsed. Accordingly, modifications to the time periods set forth in the Settlement Agreement are required. Within 60 calendar days of the Effective Date of this Agreement, Bennett shall submit to the City an Industrial Planned Development Permit (IPD) with all accompanying plans and documents. Bennett shall diligently pursue the IPD Permit application to completion in accordance with the Permit Streamlining Act.

i. Unless outdoor storage is approved by the City on the real property identified as APN 513-0-022-015 or on Parcel A, Bennett shall remove and cease all outdoor storage on said parcels within (a) one year of the effective date of this Agreement, or (b) the approval of the IPD Permit, whichever occurs first.

ii. If the IPD is approved by the City, Bennett shall complete the construction and implementation of the conditions of the IPD within three years of the date of the City's approval of said IPD. If Bennett fails to complete the construction and implementation of the conditions of the IPD within three years of the effective date of the City's approval of the IPD, Bennett shall be deemed noncompliant and shall remove from the real property identified as APN 513-0-022-015 and on Parcel A all uses authorized by the IPD.

4. Driveway Access. In accordance with the Settlement Agreement, if Bennett has not constructed a new improved driveway access along Parcel F prior to construction of the Project, then the City shall design and construct said new improved driveway access, at its sole cost and expense.

5. Terms of Temporary Construction Easements.

a. *Duration of Temporary Construction Easements.* The City shall have the right to enter, use and possess the following temporary construction easements to construct the Project 30 calendar days after the date that the City mails the Notice of Commencement of Construction of the Project to Bennett at the address

listed herein: (i) 5,560 square foot temporary construction easement described on described on Exhibit "B" and depicted on Exhibit "C" to Attachment 3 to this Agreement, and (ii) the approximate 5,265 square foot temporary construction easement that it is reserving in favor of itself described on Exhibit "B" and depicted on Exhibit "C" to Attachment 2 to this Agreement. The City's right to use these temporary construction easements shall terminate on the date that the City records the Notice of Completion of Construction for the Project.

b. *Restoration by City of Temporary Construction Easements.* City shall generally restore the temporary construction easement areas described above in Section 5.a. to as close as possible to the pre-construction condition of these areas. Bennett, however, agrees and acknowledges that these temporary construction easements will have permanent minor grading and topography changes in the after condition as a result of the construction of the Project. The City will construct the Project and make these permanent changes to the temporary construction easements areas in accordance with the street improvement plans for the Project. Bennett further agrees and acknowledges that the temporary construction easement areas will not be returned to their pre-construction condition after the City completes the construction of the Project.

c. *Removal by Bennett of Personal Property from Temporary Construction Easements.* Bennett agrees to remove any personal property, including mobilehomes and vehicles, from the Temporary Construction Easements within 30 days after Notice of Commencement of Construction is sent to Bennett at the address listed herein. City agrees to protect in place during construction the mobilehome currently utilized as an office by Bennett on Assessor's Parcel Number 513-0-022-015.

6. Opening and Close of Escrow.

a. *Opening of Escrow.* For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened (the "Opening of Escrow") on the date Escrow Holder receives a copy of this Agreement fully executed by City and Bennett. Escrow Holder shall promptly notify City and Bennett in writing of the date of the Opening of Escrow. City and Bennett may agree to execute, deliver and be bound by supplemental escrow instructions; provided, however, that no such supplemental escrow instructions shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of such instruments and the terms of this Agreement, then the terms of this Agreement shall control.

b. *Close of Escrow.* For purposes of this Agreement, the "Close of Escrow" shall be the date that the City Deed, Bennett Deed and Bennett Grant of Temporary Construction Easement (as defined below in Section 9) are recorded pursuant to applicable law in the Official Records of the County of Ventura, California. Unless changed in writing by the City and Bennett, and provided all of City's Contingencies (as defined below) and Bennett's Contingencies (as defined below) have

been satisfied or waived in writing by the City and Bennett, respectively, the Close of Escrow shall occur sixty-days after the Opening of Escrow ("Outside Closing Date"); provided, however, that if either the City or Bennett is not prepared for the Close of Escrow, the Outside Closing Date shall automatically be extended by 15 business days. In no event shall the Close of Escrow occur after the Outside Closing Date unless a later date is mutually agreed to in writing by the Parties. This Agreement shall automatically terminate if the Close of Escrow has not occurred on or before, the Outside Closing Date, or later date extended by the Parties.

7. Title and Title Insurance. Upon the Opening of Escrow, Escrow Holder will obtain and issue title commitments for the City Sale Property and the Bennett Sale Properties. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitments. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and the title commitments to the City and Bennett. Escrow Holder will insure the City's fee interest in the approximate 7,146 square foot portion of the Bennett Sale Properties described on Exhibit "A" and depicted on Exhibit "C" to Attachment 3 to this Agreement at the Close of Escrow by a CLTA Owners' Standard of Policy Insurance ("City Policy"). Escrow Holder will insure Bennett's fee interest in the approximate 10,850 square foot City Sale Property described on Exhibit "A" and depicted on Exhibit "C" to Attachment 2 to this Agreement at the Close of Escrow by a CLTA Owners' Standard of Policy Insurance ("Bennett Policy"). The City Policy and the Bennett Policy provided for pursuant to this Section will insure, respectively, (i) the City's interest in the Bennett Sale Properties and (ii) Bennett's interest in the City Sale Property free and clear of all liens, restrictions and encumbrances, subject only to the following permitted conditions of title ("Permitted title Exceptions"):

a. General and special real property taxes for the then current tax fiscal year that are a lien not then due and payable;

b. The applicable zoning, building and development of any regulations of any municipality, county, state or federal jurisdiction affecting the Property;

c. Public rights of way and utility easements of record; and

d. Those non-monetary exceptions as provided below for the Bennett Sale Properties and the City Sale Property.

i. Bennett Sale Properties. Those non-monetary exceptions approved by the City regarding the Bennett Sale Properties within ten (10) business days after the date the City receives the title commitment and legible copies of all instruments noted as exceptions therein. If the City unconditionally disapproves any such exceptions, Escrow will thereupon terminate, all funds deposited therein by the City will be refunded to the City (less City's share of escrow cancellation charges), and this Agreement will have no further force or effect. If the City conditionally disapproves any such exceptions, then Bennett will use Bennett's best efforts to cause such

exceptions to be removed by the Close of Escrow. If such conditionally disapproved non-monetary exceptions are not removed by the Close of Escrow, the City may, at the City's option, either accept the Bennett Sale Properties subject to such encumbrances, or terminate the Escrow and receive a refund of all funds deposited into Escrow by the City (less City's share of escrow cancellation charges), if any, and this Agreement will thereupon be of no further force or effect. At the Close of Escrow, the City's interest in the Bennett Sale Properties will be free and clear of all monetary encumbrances.

ii. City Sale Property. Those non-monetary exceptions approved by Bennett regarding the City Sale Property within ten (10) business days after the date Bennett receives the title commitment and legible copies of all instruments noted as exceptions therein. If Bennett unconditionally disapproves any such exceptions, Escrow will thereupon terminate, all funds deposited therein by Bennett will be refunded to Bennett (less Bennett's share of escrow cancellation charges), and this Agreement will have no further force or effect. If Bennett conditionally disapproves any such exceptions, then the City will use the City's best efforts to cause such exceptions to be removed by the Close of Escrow. If such conditionally disapproved non-monetary exceptions are not removed by the Close of Escrow, Bennett may, at Bennett's option, either accept the City Sale Property subject to such encumbrances, or terminate the Escrow and receive a refund of all funds deposited into Escrow by Bennett (less Bennett's share of escrow cancellation charges), if any, and this Agreement will thereupon be of no further force or effect. At the Close of Escrow, Bennett's interest in the City Sale Property will be free and clear of all monetary encumbrances.

8. Deposit into Escrow of Funds Described in Section 2.

a. The City covenants and agrees to deposit the funds described in Section 2.a.ii. with Escrow Holder within 15 business days after the date this Agreement is fully executed by the Parties.

b. - Bennett covenants and agrees to deposit the funds described in Section 2.b.ii. with Escrow Holder within 15 business days after the date this Agreement is fully executed by the Parties.

9. Deposit of Documents in Escrow by Parties.

a. Deposit of City Documents. On or before the Close of Escrow, the City shall deposit, or cause to be deposited, with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("City's Delivered Items"):

i. City Grant Deed. The Grant Deed conveying in fee to Bennett the approximate 10,850 square foot area subject to the City's reservation of an approximate 5,265 square foot temporary construction easement in the form attached hereto as Attachment 4 ("City Grant Deed").

ii. FIRPTA. The Certification of Non-Foreign Status in accordance with Internal Revenue Code Section 1445 (the "City FIRPTA Certificate").

iii. 593-C Form. A Withholding Exception Certificate (Form 593(c)) as contemplated by California Revenue and Taxation Code Section 18662 (the "City Withholding").

iv. Authority. Such evidence of City's authority and authorization to enter into this Agreement and to consummate the Close of Escrow as may be reasonably requested by Bennett and/or the Title Company.

v. Further Documents, Funds or Items. Any other documents, funds or items, including, but not limited to, funds sufficient to pay for the City's Costs (as defined below in Section 14.a.), reasonably required for the Close of Escrow.

b. Bennett's Deliveries to Escrow Holder. On or before the Close of Escrow, Bennett shall deposit, or cause to be deposited, with Escrow Holder the following items, duly executed and, where appropriate, acknowledged ("Bennett's Delivered Items"):

i. Bennett Grant Deed. The Grant Deed conveying to the City in fee the 7,146 square foot area of the Bennett Sale Properties in the form attached hereto as Attachment 6 ("Bennett Grant Deed").

ii. Bennett Grant of Temporary Construction Easement. The Grant of Temporary Construction Easement to the City granting to the City the approximate 5,560 square foot temporary construction easement on the Bennett Sale Properties in the form attached hereto as Attachment 7 ("Bennett Grant of Temporary Construction Easement").

iii. FIRPTA. The Certification of Non-Foreign Status in accordance with Internal Revenue Code section 1445 (the "Bennett FIRPTA Certificate").

iv. 593-C Form. A Withholding Exception Certificate (Form 593(c)) as contemplated by California Revenue and Taxation Code § 18662 (the "Bennett Withholding").

v. Authority. Such evidence of Bennett's authority and authorization to enter into this Agreement and to consummate the Close of Escrow as may be reasonably requested by City and/or the Title Company.

vi. Further Documents, Funds or Items. Any other documents, funds or items, including, but not limited to funds sufficient to pay for Bennett's costs (as defined below) reasonably required for the Close of Escrow.

10. The City's Due Diligence Contingency.

a. *Due Diligence.* The City's obligation to acquire the Bennett Sale Properties and Bennett's obligations to convey the Bennett Sale Properties to the City are contingent upon the City determining, in the exercise of its sole and absolute discretion, that it is satisfied with its due diligence of all aspects of the Bennett Sale Properties ("City Due Diligence Contingency").

b. *Property Documents.* Within ten business days after the Execution Date, Bennett shall provide to the City copies of any and all information regarding the Bennett Sale Properties in Bennett's possession or control, including but not limited to the following: soil reports, environmental or hazardous waste studies, engineering studies or any other studies or reports relating to the physical condition of the property or any agreements relating to the physical condition or use and development of the Bennett Sale Properties, if any ("Bennett Sale Properties Documents").

c. *Right of Access.* The City and its agents, employees and designees shall be afforded reasonable access and entry onto the Bennett Sale Properties during the Due Diligence Period to conduct such studies, tests, inspections and other investigations as determined by the City in its sole and absolute discretion in order to fully investigate the Bennett Sale Properties. All such studies, tests, inspections and other investigations shall occur at the City's sole cost and expense. The City shall provide Bennett with at least two business days' advance written notice prior to entering upon the Bennett Sale Properties for such purposes. The City shall indemnify, defend and hold Bennett harmless from any claim, liability, loss or expense asserted against Bennett or the Bennett Sale Properties in connection with the City's or its agents', employees' and designees' entry on the Bennett Sale Properties for such purposes, and, so long as this Agreement has not been terminated by the City due to Bennett's nonperformance, the City shall provide Bennett, at no cost to Bennett, copies of all reports issued in connection with the tests, studies, inspections and/or other investigations conducted by the City on the Bennett Sale Properties.

d. *Due Diligence Period.* The City shall have 30 calendar days from the Execution Date ("City Due Diligence Period") within which to determine the City's satisfaction in its sole and absolute discretion with the City Due Diligence Contingency. If the City is not satisfied with the City Due Diligence Contingency within the City Due Diligence Period, the City may terminate this Agreement by delivering written notice of such termination to Bennett on or before the expiration of the City Due Diligence Period, in which case all of the Parties' rights and obligations hereunder (other than those which are intended to survive such termination by the express terms hereof) shall terminate as well. Upon such termination, each party shall promptly take any and all actions necessary to cancel Escrow and to cause any documents or monies deposited therein to be returned to the depositing party. If the City does not provide written notice of termination of this Agreement within the City Due Diligence Period, the City Due Diligence Contingency shall be deemed to have been satisfied and waived, and this Agreement shall continue in full force and effect.

e. *Condition of the Bennett Sale Properties.* The satisfaction and waiver of the City Due Diligence Contingency shall constitute the City's determination that it is satisfied with its investigation of the condition of the Bennett Sale Properties and all material facts bearing on its acquisition of the Bennett Sale Properties. Except for Bennett's express representations and warranties under this Agreement, the City will acquire the Bennett Sale Properties "AS IS", with any and all faults and defects.

11. Bennett's Due Diligence Contingency.

a. *Due Diligence.* Bennett's obligation to acquire the City Sale Property and the City's obligations to convey the City Sale Property to Bennett are contingent upon Bennett determining, in the exercise of its sole and absolute discretion, that it is satisfied with its due diligence of all aspects of the City Sale Property ("Bennett Due Diligence Contingency").

b. *Property Documents.* Within ten business days after the Execution Date, the City shall provide to Bennett copies of any and all information regarding the City Sale Property in the City's possession or control, including but not limited to the following: soil reports, environmental or hazardous waste studies, engineering studies or any other studies or reports relating to the physical condition of the property or any agreements relating to the physical condition or use and development of the City Sale Property, if any ("City Sale Property Documents").

c. *Right of Access.* Bennett and its agents, employees and designees shall be afforded reasonable access and entry onto the City Sale Property during the Due Diligence Period to conduct such studies, tests, inspections and other investigations as determined by Bennett in its sole and absolute discretion in order to fully investigate the City Sale Property. All such studies, tests, inspections and other investigations shall occur at Bennett's sole cost and expense. Bennett shall provide the City with at least two business days' advance written notice prior to entering upon the City Sale Property for such purposes. Bennett shall indemnify, defend and hold the City harmless from any claim, liability, loss or expense asserted against the City or the City Sale Property in connection with Bennett's or its agents', employees' and designees' entry on the City Sale Property for such purposes, and, so long as this Agreement has not been terminated by Bennett due to the City's nonperformance, Bennett shall provide the City, at no cost to the City, copies of all reports issued in connection with such studies, tests, inspections and/or other investigations conducted by Bennett on the City Sale Property.

d. *Due Diligence Period.* Bennett shall have 30 days from the Execution Date ("Bennett Due Diligence Period") within which to determine Bennett's satisfaction in its sole and absolute discretion with the Bennett Due Diligence Contingency. If Bennett is not satisfied with the Bennett Due Diligence Contingency within the Bennett Due Diligence Period, Bennett may terminate this Agreement by delivering written notice of such termination to the City on or before the expiration of the Bennett Due Diligence Period, in which case all of the Parties' rights and obligations

hereunder (other than those which are intended to survive such termination by the express terms hereof) shall terminate as well. Upon such termination, each party shall promptly take any and all actions necessary to cancel Escrow and to cause any documents and monies deposited therein to be returned to the depositing party. If Bennett does not provide written notice of termination of this Agreement within the Bennett Due Diligence Period, the Bennett Due Diligence Contingency shall be deemed to have been satisfied and waived, and this Agreement shall continue in full force and effect.

e. *Condition of the City Sale Property.* The satisfaction and waiver of the Bennett Due Diligence Contingency shall constitute Bennett's determination that it is satisfied with its investigation of the condition of the City Sale Property and all material facts bearing on its acquisition of the City Sale Property. Except for the City's express representations and warranties contained in this Agreement, Bennett will acquire the City Sale Property "AS IS", with any and all faults and defects.

12. City's Conditions Precedent and Termination Right.

a. *City's Conditions Precedent.* The Close of Escrow and City's obligation to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "City's Contingencies"), which are for City's benefit only.

i. *Due Diligence Contingency.* The City's Due Diligence Contingency has been satisfied or waived.

ii. *Title Policy.* On or before the Close of Escrow, the Title Company shall, upon payment of the Title Company's regularly scheduled premium, have agreed to issue to City a CLTA standard coverage owner's policy of title insurance naming City as the insured (such policy being referred to herein as the "City's Title Policy") in the amount of the purchase price as noted in Section 2.a.ii showing fee title to the approximate 7,146 square foot portion of the Bennett Sale Properties described on Exhibit "A" and depicted on Exhibit "C" to Attachment 3 to this Agreement vested solely in the City and subject only to the Permitted Title Exceptions and matters affecting the Bennett Sale Properties created by or approved by the City.

iii. *No Changes.* As of the Close of Escrow, the physical condition of the Bennett Property shall be substantially the same as the condition existing as of the expiration of the City Due Diligence Period.

iv. *Representations and Warranties.* All representations and warranties of Bennett contained in this Agreement shall be materially true and correct as of the date made and as of the Close of Escrow with the same effect as if those representations and warranties were made at and as of the Close of Escrow.

v. No Default. As of the Close of Escrow, Bennett shall not be in Default (as defined below).

b. Termination Right. Should any of City's Contingencies not be met, City may, by written notice to Bennett, terminate this Agreement. In the event that this Agreement is so terminated, any escrow, title or other cancellation fees shall be shared equally by City and Bennett unless Bennett is in default hereunder, in which case Bennett shall pay all such fees.

c. Waiver. The City may waive any of City's Contingencies.

13. Bennett's Conditions Precedent and Termination Right.

a. Bennett's Conditions Precedent. The Close of Escrow and Bennett's obligation to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, "Bennett's Contingencies"), which are for Bennett's benefit only.

i. Due Diligence Contingency. Bennett's Due Diligence Contingency has been satisfied or waived.

ii. Title Policy. On or before the Close of Escrow, the Title Company shall, upon payment of the Title Company's regularly scheduled premium, have agreed to issue to Bennett an ALTA standard coverage owner's policy of title insurance naming Bennett, as the insured (such policy being referred to herein as "Bennett's Title Policy") in the amount of the purchase price as noted in Section 2.b.ii showing fee title to the approximate 10,850 square foot City Sale Property described on Exhibit "A" and depicted on Exhibit "C" to Attachment 2 to this Agreement vested solely in Bennett, subject only to the reservation in favor of the City of the approximate 5,265 square foot temporary construction easement described on Exhibit "B" to Attachment 2, Permitted Title Exceptions and matters affecting the City Sale Property created by or approved by Bennett.

iii. No Changes. As of the Close of Escrow, the physical condition of the City Sale Property shall be substantially the same as the condition existing as of the expiration of the Bennett Due Diligence Period.

iv. Representations and Warranties. All representations and warranties of City contained in this Agreement shall be materially true and correct as of the date made and as of the Close of Escrow with the same effect as if those representations and warranties were made at and as of the Close of Escrow.

v. No Default. As of the Close of Escrow, City shall not be in Default.

b. Termination Right. Should any of Bennett's Contingencies not be met, Bennett may, by written notice to City, terminate this Agreement. In the event that

this Agreement is so terminated, any escrow, title or other cancellation fees shall be shared equally by City and Bennett unless City is in default hereunder, in which case City shall pay all such fees.

c. *Waiver.* Bennett may waive any of Bennett's Contingencies.

14. Costs and Expenses.

a. *City's Costs.* If the Close of Escrow is consummated, then City shall bear the following costs and expenses: (i) the Escrow Holder's fee; (ii) the cost of the City's Title Policy and Bennett's Title Policy; (iii) all document recording fees; (iv) the cost of all endorsements to City's Title Policy; (v) City's share of all charges prorated under this Agreement; and (vi) all documentary transfer taxes (collectively, "City's Costs").

b. *Bennett's Costs.* Subject to the provisions of Section 14.a. above, if the Close of Escrow is consummated, then Bennett shall bear the following costs and expenses: (i) the cost of all endorsements to Bennett's Title Policy; and (ii) Bennett's share of all charges prorated under this Agreement (collectively, "Bennett's Costs").

c. *Generally.* If, through no fault of either City or Bennett, the Close of Escrow fails to take place, City and Bennett shall share equally all of Escrow Holder's fees and charges; provided, however, that if the Close of Escrow fails to occur as the result of the Default of either party, then such defaulting party shall bear all Escrow Holder's fees and expenses. Each party shall bear the costs of its own attorneys and consultants in connection with the negotiation and preparation of this Agreement and the consummation of the Close of Escrow. Except as set forth in this Section 14, all other costs and expenses shall be allocated between City and Bennett in accordance with the customary practice of the County of Ventura, California. The items provided in this Section 14.c. are hereinafter referred to as "General Expenses."

15. Prorations. Property taxes and assessments will be prorated as of the Close of Escrow based on a 30 day month and 360 day year. Bennett is solely responsible for applying to the County Tax Collector of the County of Ventura for any refund of taxes to which Bennett may be entitled in connection with Bennett's payment of taxes on the Bennett Sale Properties.

16. Procedure for Close of Escrow. When the Title Company is ready to issue City's Title Policy and Bennett's Title Policy and all required documents and funds have been deposited with Escrow Holder, Escrow Holder shall immediately close Escrow in the manner and order provided below.

a. *Payment from Funds Deposited by City into Escrow to Clear Monetary Encumbrances on Bennett Sale Properties.* Escrow Holder will use the proceeds deposited in Escrow by the City to obtain a partial reconveyance or subordination of any monetary liens or deeds of trust encumbering the Bennett Sale

Properties so that the City's fee interest in the approximate 7,146 square foot area described on Exhibit "A" and depicted on Exhibit "C" to Attachment 3 is free and clear of monetary liens and encumbrances as at the Close of Escrow. Escrow Holder will provide the City and Bennett written confirmation of the funds required to clear the monetary encumbrances prior to disbursing any such proceeds to the holder(s) of the monetary liens encumbering the Bennett Sale Properties, including but not limited to any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the close of escrow.

b. *Payment from Funds Deposited by Bennett into Escrow to Clear Monetary Encumbrances on City Sale Property.* Escrow Holder will use the proceeds deposited in Escrow by Bennett to obtain a partial reconveyance or subordination of any monetary liens or deeds of trust encumbering the City Sale Property so that Bennett's fee interest in the approximate 10,850 square foot area described on Exhibit "A" and depicted on Exhibit "C" to Attachment 2 is free and clear of monetary liens and encumbrances at the Close of Escrow. Escrow Holder will provide the City and Bennett written confirmation of the funds required to clear the monetary encumbrances prior to disbursing any such proceeds to the holder(s) of the monetary liens encumbering the City Sale Property, including but not limited to any bond demands and delinquent taxes due in any year except the year in which this escrow closes, together with penalties and interest thereon, and/or delinquent and unpaid non-delinquent assessments which have become a lien at the Close of Escrow.

c. *Recording.* Escrow Holder shall cause the City Deed, the Bennett Deed, the Bennett Grant of Temporary Construction Easement and any other documents that the Parties may mutually direct to be recorded pursuant to applicable law in the Official Records of the County of Ventura, California, and obtain conformed copies thereof for distribution to City and Bennett.

d. *Disburse Funds.* Escrow Holder shall debit or credit (as provided herein) all City's Costs, Bennett's Costs and General Expenses and disburse funds, if any, to the party entitled thereto.

e. *Documents to City.* Escrow Holder shall deliver to City the original Bennett FIRPTA Certificate and Bennett Withholding, and conformed copies of the Bennett Grant Deed, the Bennett Grant of Temporary Construction Easement and the City Deed.

f. *Documents to Bennett.* Escrow Holder shall deliver to Bennett the original City FIRPTA Certificate and City Withholding, and conformed copies of the Bennett Grant Deed, the Bennett Grant of Temporary Construction Easement and the City Deed.

g. *Title Policies.* Escrow Holder shall cause the Title Company to issue City's Title Policy to City and Bennett's Title Policy to Bennett.

h. *Closing Statement.* Escrow Holder shall forward to both City and Bennett a separate accounting of all funds received and disbursed for each party in connection with the Close of Escrow.

i. *Informational Reports.* Escrow Holder shall file any information reports required by Internal Revenue Code Section 6045(e), as amended.

17. Representations and Warranties.

a. *City's Representations and Warranties.* In consideration of Bennett entering into this Agreement and as an inducement to Bennett to acquire the City Property, City makes the following representations and warranties as of the date this Agreement is fully executed by the Parties and at and as of the Close of Escrow, each of which is material and is being relied upon by Bennett.

i. *Power.* City has the legal power, right and authority to enter into this Agreement and the instruments attached hereto and referenced herein, and to consummate the transaction contemplated hereby.

ii. *Requisite Action.* All requisite action has been taken by City in connection with entering into this Agreement and the instruments referenced herein; and, by the Close of Escrow, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Close of Escrow no additional consent of any administrative body, governmental authority or other party shall be required for City to consummate the transaction contemplated by this Agreement.

iii. *Individual Authority.* The individuals executing this Agreement and the instruments referenced herein on behalf of City have the legal power, right and actual authority to bind City to the terms and conditions hereof and thereof.

iv. *No Conflict.* Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which any of the City is a party or that affect the City Sale Property.

v. *Property Documents.* All of the copies of the City Sale Property Documents delivered to Bennett are true and complete copies of their respective originals.

vi. Compliance with Laws and Codes. City has not received any written notice of any current alleged violations of any law, statute or regulation at or about the City Sale Property.

vii. Environmental. Except as described in the City Sale Property Documents, or as otherwise disclosed in writing to Bennett prior to the end of the Due Diligence Period, to City's actual knowledge, City has received no written notice of any Hazardous Materials (as defined below in Section 22) located on or under the City Sale Property.

viii. No Defaults. City has received no written notice of default under any of the City Sale Property Documents or City Title Matters, nor has City received written notice of any event that with notice or the passage of time, or both, would constitute a default thereunder.

ix. No Liens or Prior Transfers. Except for the Settlement Agreement described in Recital A., City has not previously assigned, transferred, conveyed or encumbered (or entered into any agreement to do any of the foregoing) any or all of its right, title or interest in or to the City Sale Property.

x. No Tax or Economic Advice. City has not received or relied on any tax or economic advice from Bennett or Bennett's Counsel with respect to the transactions contemplated by this Agreement or to the economic advisability or feasibility of such transactions.

b. Bennett's Representations and Warranties. In consideration of City entering into this Agreement and as an inducement to City to acquire the Bennett Sale Properties, Bennett makes the following representations and warranties as of the Execution Date and at and as of the Close of Escrow, each of which is material and is being relied upon by City.

i. Power. Bennett has the legal power, right and authority to enter into this Agreement and the instruments attached hereto and referenced herein, and to consummate the transaction contemplated hereby.

ii. Requisite Action. All requisite action has been taken by Bennett in connection with entering into this Agreement and the instruments referenced herein; and, by the Close of Escrow, all such necessary action will have been taken to authorize the consummation of the transaction contemplated hereby. By the Close of Escrow no additional consent of any individual, director, shareholder, partner, member, manager, trustee, trustor, beneficiary, creditor, investor, judicial or administrative body, governmental authority or other party shall be required for Bennett to consummate the transaction contemplated by this Agreement.

iii. Individual Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Bennett have the legal

power, right and actual authority to bind Bennett to the terms and conditions hereof and thereof.

iv. No Conflict. Neither the execution or delivery of this Agreement or the documents or instruments referenced herein, nor incurring the obligations set forth herein, nor the consummation of the transaction contemplated herein, nor compliance with the terms of this Agreement or the documents or instruments referenced herein or therein conflict with or result in the material breach of any terms, conditions or provisions of, or constitute a default under, any bond, note or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan, lease or other agreement or instrument to which Bennett is a party or that affect the Bennett Property.

v. No Bankruptcy. No bankruptcy or other insolvency proceeding has been filed or threatened by or against Bennett.

vi. Property Documents. All of the copies of the Bennett Sale Properties Documents delivered to City are true and complete copies of their respective originals.

vii. Compliance With Laws and Codes. Bennett has not received any written notice of any current alleged violations of any law, statute or regulation at or about the Bennett Sale Properties.

viii. Environmental. Except as described in the Bennett Property Documents, or as otherwise disclosed in writing to City prior to the end of the City Due Diligence Period, to Bennett's actual knowledge, Bennett has received no written notice of any Hazardous Materials located on or under the Bennett Sale Properties.

ix. No Defaults. Bennett has received no written notice of default under any of the Bennett Property Documents or the Bennett Title Matters, nor has Bennett received written notice of any event that with notice or the passage of time, or both, would constitute a default thereunder.

x. No Liens or Prior Transfers. Bennett has not previously assigned, transferred, conveyed or encumbered (or entered into any agreement to do any of the foregoing) any or all of its right, title or interest in or to the Bennett Sale Properties.

xi. No Leases. Bennett warrants that there are no oral or written leases on all or any portion of the Bennett Sale Properties. Bennett agrees to hold the City harmless and reimburse City for any and all of its losses and expenses, including, but not limited to reasonable attorney's fees, incurred by City in connection with any claims made or litigation filed against the City in connection with any such lease.

xii. No Tax or Economic Advice. Bennett has not received or relied on any tax or economic advice from City or City's Counsel with respect to the transactions contemplated by this Agreement or to the economic advisability or feasibility of such transactions.

18. Indemnification. City shall defend, indemnify, and hold Bennett harmless from any and all claims, damages, costs, judgments, or liability caused by City or its officers, employees or agents specifically arising from the City construction of the Project and restoration work in the areas comprising the temporary construction easements described on Exhibit "B" to Attachment 2 and Exhibit "B" to Attachment 3 to this Agreement during the term of the temporary construction easements set forth in this Agreement, the Bennett Grant of Temporary Construction Easement and in the reservation set forth in the City Grant Deed. Bennett agrees and acknowledges, however, that Bennett has expressly authorized the City to complete the work and improvements described in the Bennett Grant of Temporary Construction Easement and the reservation in the City Grant Deed.

19. As-Is Conveyance/City Sale Property. BENNETT ACKNOWLEDGES AND AGREES THAT BENNETT WILL BE CONCLUDING THE ACQUISITION OF THE CITY SALE BASED SOLELY UPON BENNETT'S INSPECTION AND INVESTIGATION OF THE CITY SALE PROPERTY, AND, THAT BENNETT WILL BE ACQUIRING THE CITY SALE PROPERTY ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS, LATENT AND PATENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BENNETT ACKNOWLEDGES AND AGREES THAT CITY HAS NOT MADE, IS NOT HEREBY MAKING AND CITY HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, EXCEPT THOSE EXPRESSLY CONTAINED IN SECTION 17.a OF THIS AGREEMENT, ON WHICH BENNETT IS RELYING AS TO ANY MATTER CONCERNING THE CITY SALE PROPERTY, INCLUDING, WITHOUT LIMITATION, MATTERS RELATING TO THE ZONING, LAND-USE OR OTHER ENTITLEMENTS, THE ENVIRONMENTAL CONDITION OF THE CITY SALE PROPERTY (INCLUDING, WITHOUT LIMITATION, THE EXISTING ENVIRONMENTAL CONDITION), AND/OR SOILS, SEISMIC, GEOTECHNICAL AND/OR OTHER MATTERS RELATING TO THE CONDITION OF THE CITY SALE PROPERTY. BENNETT ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE CITY SALE PROPERTY BY OR ON BEHALF OF CITY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL REPORTS AND THE OTHER DOCUMENTS AND INSTRUMENTS TO BE DELIVERED TO, OR OTHERWISE MADE AVAILABLE TO, BENNETT WAS OBTAINED FROM A VARIETY OF SOURCES, THAT CITY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, THAT ALL SUCH INFORMATION HAS BEEN AND SHALL BE PROVIDED SOLELY AS AN ACCOMMODATION TO BENNETT, THAT CITY MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. AS PART OF BENNETT'S AGREEMENT TO ACQUIRE AND ACCEPT THE CITY SALE PROPERTY

"AS-IS, WHERE-IS," AND "WITH ALL FAULTS", AND NOT AS A LIMITATION ON SUCH AGREEMENT, BENNETT HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS AGAINST THE CITY PARTIES (AS HEREINAFTER DEFINED) ARISING OUT OF THE INACCURACY OR INCOMPLETENESS OF ANY MATERIALS SO FURNISHED, ARISING OUT OF OR IN CONNECTION WITH THE ENVIRONMENTAL CONDITION OF THE CITY SALE PROPERTY AND ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS BENNETT MIGHT HAVE REGARDING ANY FORM OF REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE CITY SALE PROPERTY OTHER THAN IN CONNECTION WITH THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN SECTION 17.a. OF THIS AGREEMENT. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY. SUCH WAIVER INCLUDES, BUT IS NOT LIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS, AND CLAIMS, LIABILITIES, DEMANDS OR CAUSES OF ACTION OF EVERY KIND AND TYPE, WHETHER STATUTORY, CONTRACTUAL OR UNDER TORT PRINCIPLES, AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH MIGHT HAVE BEEN DISCOVERABLE, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, ALL OTHER EXISTING OR LATER CREATED OR CONCEIVED STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS, AND ANY AND ALL CLAIMS RELATING TO THE ENVIRONMENTAL CONDITION OF THE CITY SALE PROPERTY. EFFECTIVE UPON THE CLOSE OF ESCROW, AND TO THE FULLEST EXTENT PERMITTED BY LAW, BENNETT HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS CITY AND EVERY ENTITY AFFILIATED WITH CITY AND ALL OF ITS AND THEIR RESPECTIVE PARTNERS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS AND INDEPENDENT CONTRACTORS AND THE SUCCESSOR OF EACH AND EVERY ONE OF THEM (COLLECTIVELY, THE "CITY PARTIES") FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES WHICH BENNETT MAY SUFFER OR INCUR RELATING TO THE CITY SALE PROPERTY. SPECIFICALLY, AND NOT BY WAY OF LIMITATION, BENNETT HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS THE CITY PARTIES FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES ARISING OUT OF OR OTHERWISE RELATING TO THE ENVIRONMENTAL CONDITION OF THE CITY SALE PROPERTY. AS PART OF THE PROVISIONS OF THIS SECTION, BUT NOT AS A LIMITATION THEREON, BENNETT HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND BENNETT HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAWS, RULES OR

REGULATIONS, INCLUDING WITHOUT LIMITATION, SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA OR ANY SIMILAR STATUTE, LAW, RULE OR REGULATION OF ANY OTHER STATE. BENNETT ACKNOWLEDGES THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES AS FOLLOWS:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

IN THIS CONNECTION AND TO THE FULLEST EXTENT PERMITTED BY LAW, BENNETT HEREBY AGREES, REPRESENTS AND WARRANTS THAT BENNETT REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO BENNETT MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND BENNETT FURTHER AGREES, REPRESENTS AND WARRANTS THAT THE WAIVERS AND RELEASES HEREIN HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT BENNETT NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT THE CITY PARTIES FROM ANY SUCH UNKNOWN CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH MIGHT IN ANY WAY BE INCLUDED IN THE WAIVERS AND MATTERS RELEASED AS SET FORTH IN THIS SECTION. THE PROVISIONS OF THIS SECTION ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO CITY BY BENNETT IN EXCHANGE FOR CITY'S PERFORMANCE HEREUNDER. CITY HAS GIVEN BENNETT MATERIAL CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR BENNETT AGREEING TO THE PROVISIONS OF THIS SECTION. CITY AND BENNETT HAVE EACH INITIALED THIS SECTION TO FURTHER INDICATE THEIR AWARENESS AND ACCEPTANCE OF EACH AND EVERY PROVISION HEREOF.

CITY

BENNETT

20. As-Is Conveyance/Bennett Sale Properties. CITY ACKNOWLEDGES AND AGREES THAT CITY WILL BE CONCLUDING THE PURCHASE OF THE BENNETT SALE PROPERTIES BASED SOLELY UPON CITY'S INSPECTION AND INVESTIGATION OF THE BENNETT SALE PROPERTIES, AND THAT CITY WILL BE ACQUIRING THE BENNETT SALE PROPERTIES ON AN "AS IS, WHERE IS" BASIS, WITH ALL FAULTS, LATENT AND PATENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, CITY ACKNOWLEDGES AND AGREES THAT BENNETT HAS NOT MADE, IS NOT HEREBY MAKING AND BENNETT HEREBY EXPRESSLY DISCLAIMS AND NEGATES ANY REPRESENTATIONS OR WARRANTIES OF ANY

KIND WHATSOEVER, EITHER EXPRESS OR IMPLIED, EXCEPT THOSE EXPRESSLY CONTAINED IN SECTION 17.b. OF THIS AGREEMENT, ON WHICH CITY IS RELYING AS TO ANY MATTER CONCERNING THE BENNETT SALE PROPERTIES, INCLUDING, WITHOUT LIMITATION, MATTERS RELATING TO THE ZONING, LAND-USE OR OTHER ENTITLEMENTS, THE ENVIRONMENTAL CONDITION OF THE BENNETT SALE PROPERTIES (INCLUDING, WITHOUT LIMITATION, THE EXISTING ENVIRONMENTAL CONDITION), AND/OR SOILS, SEISMIC, GEOTECHNICAL AND/OR OTHER MATTERS RELATING TO THE CONDITION OF THE BENNETT SALE PROPERTIES. CITY ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE BENNETT SALE PROPERTIES BY OR ON BEHALF OF BENNETT, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL REPORTS AND THE OTHER DOCUMENTS AND INSTRUMENTS TO BE DELIVERED TO, OR OTHERWISE MADE AVAILABLE TO, CITY WAS OBTAINED FROM A VARIETY OF SOURCES, THAT BENNETT HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION, THAT ALL SUCH INFORMATION HAS BEEN AND SHALL BE PROVIDED SOLELY AS AN ACCOMMODATION TO CITY, THAT BENNETT MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF SUCH INFORMATION. AS PART OF CITY'S AGREEMENT TO ACQUIRE AND ACCEPT THE BENNETT SALE PROPERTIES "AS-IS, WHERE-IS," AND "WITH ALL FAULTS", AND NOT AS A LIMITATION ON SUCH AGREEMENT, CITY HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS AGAINST THE BENNETT PARTIES (AS HEREINAFTER DEFINED) ARISING OUT OF THE INACCURACY OR INCOMPLETENESS OF ANY MATERIALS SO FURNISHED, ARISING OUT OF OR IN CONNECTION WITH THE ENVIRONMENTAL CONDITION OF THE BENNETT SALE PROPERTIES AND ANY AND ALL ACTUAL OR POTENTIAL CLAIMS OR RIGHTS CITY MIGHT HAVE REGARDING ANY FORM OF REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, RELATING TO THE BENNETT SALE PROPERTIES OTHER THAN IN CONNECTION WITH THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN SECTION 17.b. OF THIS AGREEMENT. SUCH WAIVER IS ABSOLUTE, COMPLETE, TOTAL AND UNLIMITED IN ANY WAY. SUCH WAIVER INCLUDES, BUT IS NOT LIMITED TO, A WAIVER OF EXPRESS WARRANTIES, IMPLIED WARRANTIES, WARRANTIES OF FITNESS FOR A PARTICULAR USE, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF HABITABILITY, STRICT LIABILITY RIGHTS, AND CLAIMS, LIABILITIES, DEMANDS OR CAUSES OF ACTION OF EVERY KIND AND TYPE, WHETHER STATUTORY, CONTRACTUAL OR UNDER TORT PRINCIPLES, AT LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, CLAIMS REGARDING DEFECTS WHICH MIGHT HAVE BEEN DISCOVERABLE, CLAIMS REGARDING DEFECTS WHICH WERE NOT OR ARE NOT DISCOVERABLE, PRODUCT LIABILITY CLAIMS, PRODUCT LIABILITY TYPE CLAIMS, ALL OTHER EXISTING OR LATER CREATED OR CONCEIVED STRICT LIABILITY OR STRICT LIABILITY TYPE CLAIMS AND RIGHTS, AND ANY AND ALL CLAIMS RELATING TO THE ENVIRONMENTAL CONDITION OF THE BENNETT

SALE PROPERTIES. EFFECTIVE UPON THE CLOSE OF ESCROW, AND TO THE FULLEST EXTENT PERMITTED BY LAW, CITY HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS BENNETT AND EVERY ENTITY AFFILIATED WITH BENNETT AND ALL OF ITS AND THEIR RESPECTIVE PARTNERS, MEMBERS, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES, AGENTS, ATTORNEYS AND INDEPENDENT CONTRACTORS AND THE SUCCESSOR OF EACH AND EVERY ONE OF THEM (COLLECTIVELY, THE "BENNETT PARTIES") FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES WHICH CITY MAY SUFFER OR INCUR RELATING TO THE BENNETT SALE PROPERTIES. SPECIFICALLY, AND NOT BY WAY OF LIMITATION, CITY HEREBY RELEASES, DISCHARGES AND FOREVER ACQUITS THE BENNETT PARTIES FROM ALL DEMANDS, CLAIMS, LIABILITIES, OBLIGATIONS, COSTS AND EXPENSES ARISING OUT OF OR OTHERWISE RELATING TO THE ENVIRONMENTAL CONDITION OF THE BENNETT SALE PROPERTIES. AS PART OF THE PROVISIONS OF THIS SECTION, BUT NOT AS A LIMITATION THEREON, CITY HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND CITY HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAWS, RULES OR REGULATIONS, INCLUDING WITHOUT LIMITATION, SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA OR ANY SIMILAR STATUTE, LAW, RULE OR REGULATION OF ANY OTHER STATE. CITY ACKNOWLEDGES THAT SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTION OF THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

IN THIS CONNECTION AND TO THE FULLEST EXTENT PERMITTED BY LAW, CITY HEREBY AGREES, REPRESENTS AND WARRANTS THAT CITY REALIZES AND ACKNOWLEDGES THAT FACTUAL MATTERS NOW UNKNOWN TO CITY MAY HAVE GIVEN OR MAY HEREAFTER GIVE RISE TO CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH ARE PRESENTLY UNKNOWN, UNANTICIPATED AND UNSUSPECTED, AND CITY FURTHER AGREES, REPRESENTS AND WARRANTS THAT THE WAIVERS AND RELEASES HEREIN HAVE BEEN NEGOTIATED AND AGREED UPON IN LIGHT OF THAT REALIZATION AND THAT CITY NEVERTHELESS HEREBY INTENDS TO RELEASE, DISCHARGE AND ACQUIT THE BENNETT PARTIES FROM ANY SUCH UNKNOWN CAUSES OF ACTION, CLAIMS, DEMANDS, DEBTS, CONTROVERSIES, DAMAGES, COSTS, LOSSES AND EXPENSES WHICH MIGHT IN ANY WAY BE INCLUDED IN THE WAIVERS AND MATTERS RELEASED AS SET FORTH IN THIS SECTION. THE

PROVISIONS OF THIS SECTION ARE MATERIAL AND INCLUDED AS A MATERIAL PORTION OF THE CONSIDERATION GIVEN TO BENNETT BY CITY IN EXCHANGE FOR BENNETT'S PERFORMANCE HEREUNDER. BENNETT HAS GIVEN CITY MATERIAL CONCESSIONS REGARDING THIS TRANSACTION IN EXCHANGE FOR CITY AGREEING TO THE PROVISIONS OF THIS SECTION. BENNETT AND CITY HAVE EACH INITIALED THIS SECTION TO FURTHER INDICATE THEIR AWARENESS AND ACCEPTANCE OF EACH AND EVERY PROVISION HEREOF.

BENNETT

CITY

21. Relocation Assistance and Loss of Goodwill.

a. It is understood and agreed between Bennett and the City that the conveyance of the City Sale Property to Bennett and consideration set forth in this Agreement and in the Settlement Agreement, represents an all-inclusive settlement and is full and complete payment of compensation for the City's acquisition of the Bennett Sale Properties and includes and satisfies any and all other payments, if any, that the law may require the City to pay to Bennett arising out of the City's acquisition of the Bennett Sale Properties, including without limitation relocation assistance and benefits, claims for severance and other damages, attorney's fees, interest, expenses of litigation, expert's fees, precondemnation damages, inverse condemnation, loss of business goodwill under the Eminent Domain Law, Code of Civil Procedure Section 1263.510, and all costs and expenses whatever in connection therewith.

b. It is further understood that based on the acknowledgment of the consideration described in this Agreement, Bennett covenants and agrees to take full responsibility for promptly moving all of its personal property, if any, from the Bennett Sale Properties.

c. It is further understood that the City will have no further obligation to Bennett under any federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Subject Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*), or the Relocation Assistance and Real Subject Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations).

22. Hazardous Materials. For the purposes of this Agreement, "Hazardous Materials" shall mean any substance, material or waste which is or becomes, regulated by any local governmental authority, the State of California or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "acutely hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section

25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 *et seq.*), (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sections 9601 *et seq.*), (xii) Methyl-Tertiary Butyl Ether, or (xiii) any other substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any Governmental Requirements either requires special handling in its use, transportation, generation, collection, storage, handling, treatment or disposal, or is defined as "hazardous" or harmful to the environment.

23. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested or by Federal Express. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (b) one business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
Attention: Kevin Ennis, City Attorney
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101

BENNETT: The Bennett Partnership
Attention: Michael R. Bennett, Partner
2419 Palma Drive
Ventura, California 93003

**ESCROW
HOLDER:** Camarillo Escrow Company
445 Rosewood Avenue, Suite L
Camarillo, California, 93010

24. Further Documents. Each party will, wherever and as often as it shall be requested by the other party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents, including further escrow instructions, as may reasonably be necessary in order to complete the sale, conveyance, and transfer herein provided and to do any and all other acts and to execute, acknowledge, and deliver any and all documents as may be requested in order to carry out the intent and purpose of this Agreement.

25. Miscellaneous.

a. *Authority to Bind Parties and Execute Agreement.* The City and Bennett represent and warrant to one another that this Agreement constitutes a binding obligation on each of them and that the person executing this Agreement is authorized to execute the Agreement on behalf of the respective party and to bind it.

b. *Brokers.* Each of the Parties hereby represents and warrants to the other that it has dealt with no broker or finder in connection with this transaction. Each party hereto agrees to indemnify, defend and hold harmless the other party from and against any and all losses, liens, claims, judgments, liabilities, costs, expense or damages (including reasonable attorneys' fees and court costs) of any kind and character arising out of or resulting from any agreement, arrangement or understanding alleged to have been made by such party or on its behalf with any broker or finder in connection with this Agreement or the transactions contemplated by this Agreement. The foregoing indemnity will survive the Close of Escrow or the termination of this Agreement and shall not be limited by any provision of this Agreement.

c. *Governing Law.* This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

d. *Amendment or Modification.* This may be modified or amended only by a writing executed by all Parties to this Agreement.

e. *Partial Invalidity/Severability.* Each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement or the application of such provision to any person or circumstance is, to any extent, deemed to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or

unenforceability, unless such provision or such application of such provision is essential to this Agreement.

f. *Legal Representation.* The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed the Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters which are the subject of this Agreement

g. *Counterparts, Facsimile & Electronic Signatures.* This Agreement may be executed in whole or in counterparts which together shall constitute the entire Agreement. Facsimile or electronic signatures/counterparts to this Agreement shall be effective as if the original signed counterpart were delivered.

h. *Fees and Costs.* Each of the Parties shall bear its own attorneys' fees and costs, including, but not limited to expert fees, incurred in connection with negotiating the matters described in this Agreement.

i. *Settlement Agreement.* Except for the modifications to the Settlement Agreement set forth in this Agreement, this Agreement is not intended to supersede the Settlement Agreement. The Parties are responsible for any outstanding obligations set forth in the Settlement Agreement.

j. *Successors and Assigns.* This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

k. *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

l. *Attorneys' Fees.* If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party its reasonable attorney's fees and other costs incurred in connection with such action.

The provisions of the Agreement shall survive the granting and recordation of the interests described herein. No obligation other than those set forth herein and in the Settlement Agreement will be recognized.

Dated: _____

Dated: _____

THE BENNETT PARTNERSHIP,
a general partnership

CITY OF MOORPARK,
a municipal corporation

By: _____
Michael R. Bennett, Partner

By: _____
Steven Kueny, City Manager

ATTEST:

By: _____
Maureen Benson, City Clerk

Approved as to form:

Richards, Watson & Gershon

By: _____
Kevin Ennis, City Attorney

ATTACHMENT 1

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (this "Agreement") is made and entered into as of the 25 day of OCTOBER 2006, by and between the CITY OF MOORPARK, CALIFORNIA, a general law city ("City"), and MARK ASADURIAN, JR. ("Asadurian") with reference to the following facts and circumstances and is effective as of the date set forth above. City and Asadurian may hereinafter be referred to individually as "Party" and collectively as "Parties."

RECITALS

A. Asadurian is the fee simple owner of Assessor's Parcel Nos. 513002201 and 513004010 consisting of approximately 20,037.6 square feet (0.46 acres) and 76,709.2 square feet (1.76 acres) respectively, located on the south side of Princeton Avenue approximately 3,000 feet west of the intersection of Princeton Avenue and Spring Road commonly known as 14110 Princeton Avenue ("Property") as shown on Exhibit 1.

B. The City desires to:

1. Construct a street widening and improvement project along Princeton Avenue ("Project"), including the Princeton Avenue frontage of the Property;
2. Obtain from Asadurian certain street right-of-way generally described as Parcels D-1 and D-2 as shown on Exhibit 1, the south line of Parcel D-2 which will become the new south right-of-way line of Princeton Avenue ("South R-O-W Line");
3. Construct a retaining wall ("Retaining Wall") adjacent to or south of and parallel to the South R-O-W Line required as a part of the Project;
4. Construct certain modifications and improvements to the Property driveway to improve sight visibility and traffic safety;
5. Obtain Temporary Construction Easements ("Temporary Construction Easements") over that portion of the Property generally shown on Exhibit 1.

C. It is the desire of Asadurian to:

1. Obtain approval of an Industrial Planned Development Permit (IPD) for the Property which will establish the development and use rights for future uses and requirements for development of the Property;
2. Obtain exclusive use rights or acquire from the City that portion of La Falda Avenue generally described as Parcel B as shown on Exhibit 1;
3. Acquire from City that real property generally described as Parcel A as shown on Exhibit 1.

IN CONSIDERATION of the foregoing and the provisions set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in lieu of the City undertaking acquisition via eminent domain of the property interests the City requires, the Parties agree as follows:

1. ASADURIAN AGREED TO MATTERS

- a. To sell Parcels D-1 and D-2 to City free and clear of any liens and encumbrances. Sale price shall be based on an appraisal report from an appraiser selected by the City (to be the same appraiser used for the other Princeton Avenue properties affected by the widening project). Asadurian agrees to complete the sale of Parcels D-1 and D-2 within thirty (30) days of City providing Asadurian with a copy of such appraisal report.
- b. To provide City an irrevocable offer to dedicate to City a Landscape Easement across and over Parcel C as shown in Exhibit 1. Asadurian agrees that improvement and maintenance of any landscaping and related improvements of Parcel C shall be its obligation and shall be a condition of approval for any IPD for Parcel A and the Property.
- c. To grant City an Access & Maintenance Easement in a form approved by City for Parcels D-1 and D-2 for the following purposes:
 - 1) To maintain, repair, restore or reconstruct all or any part of the roadway shoulder for Princeton Avenue;
 - 2) To maintain, repair, restore or reconstruct all or any part of the Retaining Wall that is to be constructed by City for the interim improvements of Princeton Avenue;
- d. To grant City Temporary Construction Easement(s) in a form approved by City. Said easement(s) shall become effective on the date a contract for the construction of any part of Project affecting Property is awarded by City. Said easement(s) shall terminate on the date the Notice of Completion is recorded for that construction contract which completes all of Project improvements affecting the Property.
- e. To pay an annual license fee of one dollar (\$1) for the exclusive use of Parcel B and to utilize Parcel B in the manner approved through the IPD, if approved. Annual License fee shall be due and payable on the effective date of this Agreement and annually thereafter on the anniversary date of said effective date until or unless the right-of-way (Parcel B) is vacated by City pursuant to paragraph 2.g. of this Agreement.
- f. To pay a lump sum of One Hundred Thirty Thousand Sixty-Three Dollars and Eighty-Five Cents (\$130,063.85) for back rent on Parcel A due upon execution of this Agreement. Pay monthly rent of \$0.075 per square foot due and payable on the first day of each month for the next succeeding month until such time as Parcel A is sold to Asadurian as

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provided for in this Agreement. The first rental payment shall be calculated beginning on October 1, 2006. On the first anniversary of the effective date of this Agreement and each successive annual anniversary the amount of monthly rent shall be increased by six percent (6%) of the prior amount. The lease shall terminate upon the purchase of Parcel A and full payment of the lease agreement. Should Parcel A not be purchased by Asadurian, the lease shall terminate six (6) months from the effective date of this Agreement.

- g. To pay or cause to be paid a business registration, within thirty (30) days from the effective date of this Agreement, for all uses on Property that City has determined to be legal and authorized to be on Property. Within one year of the effective date of this Agreement or any approval of an Industrial Planned Development Permit ("IPD") for the Property and Parcel A, whichever occurs first, remove and cease all outdoor storage, unless outdoor storage is approved for a use in accordance with the requirements of the Zoning Ordinance.
- h. To file, within sixty (60) days of the effective date of this Agreement, an IPD application with all accompanying plans and documents to City and diligently pursue the application to completeness under the Permit Streamlining Act.
- i. To complete construction and implementation of the conditions of the IPD, if approved, within three years of the date of City approval of said IPD. Non-compliance with the terms of this subsection is an agreement to remove all uses from the Property within sixty (60) days of non-compliance.
- j. To construct a minimum eight (8) foot high decorative masonry wall on top of the retaining wall. Construction of the wall shall be conditioned as part of the IPD prior to the issuance of a certificate of occupancy.
- k. To acknowledge that the ultimate street construction if implemented by City for the Project as defined in Section B.1., shall include, but not be limited to curb, gutter, sidewalk and street paving of Princeton Avenue all constructed to City standards. Further that these improvements will be constructed on Parcel D-2, beyond those improvements provided as part of the City's Project shall be the responsibility of Asadurian and shall be set forth as a condition of approval of any IPD.
- l. Asadurian agrees that it will be subject to all standard conditions of approval typically applied to similar IPDs and to special conditions of approval unique to the Property consistent with applicable state laws and City regulations, standards, policies and codes.
- m. Asadurian acknowledges that all or a portion of the Property and Parcels A, B, C, E and F shown on Exhibit 1, may be in the floodplain and otherwise limited for development pursuant to applicable federal, state, county and city laws and regulations and that City makes no representation as to the development potential of the Properties or said Parcels.

- n. Asadurian acknowledges that Parcel A will be encumbered with a slope easement to allow construction of the driveway access on Parcel F, as referenced in Section 2.h. of this Agreement and as such may affect its ultimate use of Parcel A.
- o. Asadurian agrees to process a Lot Line Adjustment within sixty (60) days of the execution of this Agreement to correct the property line between the Property and the National Ready Mix property to the west known as APN 512-016-075.
- p. Asadurian, for itself and its contractors, hereby expressly agrees that the City has satisfied its obligations under the Prevailing Wage Laws to identify projects as being subject to the Prevailing Wage Laws and any other obligations imposed upon the City under California Labor Code Sections 1726 and/or 1781 that are owed to or may be actionable by Asadurian and its contractors. Asadurian, for itself and its contractors, hereby expressly waives any right of action against the City created under California Labor Code Sections 1726 and/or 1781, whether known or unknown, foreseen or unforeseen relating to the Project and/or any public improvement. Furthermore, Asadurian agrees to defend and indemnify the City, and its agents, employees and assigns, against any and all claims, fines, suits or penalties arising out of any failure to comply with the requirements of California Labor Code Section 1771 and related sections, including, without limitation, suits brought by subcontractors.
- q. Prior to the conveyance of title to Parcel A to Asadurian, representatives of Asadurian shall have the right of access to and entry at all reasonable times, for the purpose of inspecting the condition of the Parcel A and obtaining data and making surveys and tests necessary to carry out this Agreement. Asadurian shall defend, indemnify and hold the City and any and all of its employees, officials and agents harmless from any claims, costs, damages or liabilities pertaining to or arising from the performance of any such tests and inspections by Asadurian or any such activities of Asadurian on the Property. If Asadurian fails to accept title to the Parcel A, then Asadurian shall repair all damage to Parcel A caused by entry of Asadurian onto Parcel A and tests performed thereon by Asadurian.
- r. Prior to close of escrow for Parcel A, Asadurian shall perform such tests and investigations it deems necessary in order to determine if contaminated materials and toxic and hazardous waste are present on Parcel A. The expense of the investigation shall be paid by Asadurian. Upon conveyance of Parcel A to Asadurian, any obligations of the City with respect to the investigation and remediation of any such contaminated materials and/or toxic and hazardous waste shall terminate and be fully discharged. Asadurian shall thereafter be solely responsible for the demolition or removal of any improvements or subsurface structures and underground storage tanks and removal or remediation of any contaminated materials or toxic or hazardous waste

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as required by law, whether or not any such material was present on Parcel A at the time of conveyance.

- s. Asadurian acknowledges, represents and warrants that it is sophisticated and knowledgeable with regard to evaluating, buying, selling and developing real property in the area and that prior to the close of escrow, pursuant to this Agreement, will have had sufficient opportunity to enter Parcel A to perform such tests and investigations it deems necessary in order to determine if contaminated materials and toxic and hazardous waste are present on Parcel A and make any and all tests and inspections as Asadurian deems necessary to satisfy itself as to the physical condition of the Parcel A and its suitability for the uses set forth in this Agreement. Asadurian acknowledges and agrees that, except as expressly set forth in this Agreement, the City has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guaranties of any kind or nature whatsoever with respect to Parcel A, including, without limitation, value, suitability for the uses contemplated by this Agreement, the nature, quality or condition of Parcel A, compliance of or by Parcel A or its operation with any laws, rules, or regulations of any applicable governmental authority or body or with any environmental protections, pollution or land use laws, rules or regulations. Escrow on Parcel A shall close no later than six (6) months from the operative date of this Agreement unless extended by mutual consent of both parties.

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES IMPLIED IN THE DELIVERY OF A GRANT DEED CONVEYING PARCEL A TO ASADURIAN AND AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ASADURIAN IS ACQUIRING THE PROPERTY "AS IS" AND "WITH ALL FAULTS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, AS TO ITS PHYSICAL OR ENVIRONMENTAL CONDITION (LATENT, PATENT, OR OTHERWISE), SUITABILITY FOR USE BY THE ASADURIAN, ANY MATTERS WHICH WOULD BE DISCLOSED BY AN INSPECTION OF THE PROPERTY, OR ANY OTHER MATTERS CONCERNING THE PROPERTY (WHETHER OR NOT OF PUBLIC RECORD).

- t. Asadurian and the City shall execute escrow instructions for the conveyance of Parcel A, with fees to be split evenly between City and Asadurian, except as otherwise set forth herein.
- u. To purchase Parcel A consistent with Section 2.a. of this Agreement and if Parcel A is not purchased within the time specified in Section 2.a. then

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the rental provision of Section 1.f. of this Agreement is terminated and Asadurian agrees to immediately vacate Parcel A.

- v. Asadurian further agrees to accept and perform any necessary actions to effectuate the purchase of Parcel A including, but not limited to those items referenced in Section 2 of this Agreement.

2. CITY AGREED TO MATTERS

- a. To sell Parcel A to Asadurian. Such sale shall be for development of the site, consistent with any City approved IPD. Upon payment of the Rent as provided for in Section 1.f. above, sale price shall be based on an appraisal report from an appraiser selected by the City (to be the same as provided for in Section 1.a. above). City agrees to complete the sale of Parcel A within thirty (30) days of City providing Asadurian with a copy of such appraisal report.
- b. Property sale shall occur within thirty (30) days from the effective date of this Agreement unless extended by mutual consent of both parties. In the event that the property is not purchased by Asadurian the use and lease of Parcel A shall terminate immediately.
- c. It is understood and agreed that the above-referenced purchase price is or exceeds the "fair market price" for such Property, as that term is used in California Labor Code Section 1720(b)(3), based upon an appraisal completed by a state-certified appraiser, and that the parties herein believe the Project is not subject to the prevailing wage laws (California Labor Code Section 1720 *et seq.*) (the "**Prevailing Wage Laws**") as a result. If any public improvements are required as a part of the Project and the Agency and/or the City will be reimbursing Asadurian all or a part of the cost thereof, then the parties intend that the safe harbor provisions provided in California Labor Code Section 1720(c)(2) shall apply, such that only work performed on the public improvements is subject to the requirements of California Labor Code Section 1771. Notwithstanding the foregoing, should any portion of the Project be deemed to be subject to the requirements of California Labor Code Section 1771 and related sections, Asadurian agrees to comply with the requirements therein.
- d. Asadurian and the City shall execute escrow instructions for the conveyance of Parcel A with fees to be split evenly between City and Asadurian, except as otherwise set forth herein.
- e. The City agrees to convey marketable fee simple title to Parcel A by grant deed. Title conveyed shall be free and clear of all recorded and unrecorded liens, encumbrances, assessments, easements, leases and taxes EXCEPT such items as may be agreed upon between the parties pursuant to Sections 2.e below.
- f. As soon as practicable following the opening of escrow for the sale of Parcel A, the City shall obtain a preliminary title report (a "**Preliminary Title Report**") for Parcel A and shall deliver to Asadurian a copy of the

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Preliminary Title Report. Asadurian shall have ten (10) business days after the receipt of the Preliminary Title Report to approve or disapprove the same and all items therein. Asadurian shall be deemed to have approved the Preliminary Title Report unless it delivers to the City written notice of its disapproval within the ten (10) -day period specified. A written notice of disapproval from Asadurian shall specify the specific items on the Preliminary Title Report which it disapproves. If Asadurian disapproves the Preliminary Title Report, then the City (at its option) will have thirty (30) days following the date of delivery to the City of Asadurian's disapproval of the Preliminary Title Report within which to agree to remove or insure over any item on the Preliminary Report to which Asadurian objected in its notice of disapproval and notify Asadurian of its election. The City shall be deemed to have elected not to agree to remove or insure over such item(s) unless it delivers to Asadurian written notice within the thirty (30) -day period specified. If the City elects not to agree to remove or insure over any such item, then Asadurian shall, within thirty (30) days after receipt of notice of the City's election or deemed election, elect either to (i) terminate this Agreement without financial recourse against any Party, (ii) seek to remove the item(s) itself or (iii) waive its previous objection and accept the title with the items.

- g. The escrow agent shall, following recording of the deed to Asadurian provide Asadurian with a policy of title insurance (of the type requested by Asadurian) in the amount of the purchase price showing title to Parcel A vested in Asadurian, subject only to the exceptions agreed to by the parties. Asadurian shall pay the costs of such policy.
- h. If Asadurian can provide proof to the satisfaction of the City Engineer and the City Attorney that it is the beneficiary to the La Falda (Parcel B) right-of-way as it traverses its property, City shall, at Asadurian's sole cost and expense, commence proceedings to consider vacation of said right-of-way to Asadurian as shown on Exhibit 1 as Parcel B. The Parties hereto agree that should City, after any requisite public hearings for vacation elect, in its discretion, not to vacate La Falda, such election shall not constitute a default of this Agreement.
- i. To grant to Asadurian a License, in a form acceptable to the City Attorney, to use Parcel F, the City's Road Easement, connecting Parcel B to Los Angeles Avenue. The License shall be granted for a period of thirty years from the effective date of this Agreement.
- j. To prepare all legal descriptions and deed documents for all of the parcels and easements discussed herein, at no cost to Asadurian. To pay fair market value for Parcel D-1 and D-2 as shown on Exhibit 1. Fair market value shall be established by the same independent appraiser that values the City's interest in Parcel A.
- k. To provide for the construction of the Project, excluding that portion of the ultimate right-of-way of Princeton Avenue as provided in Section 1.k. of this Agreement at such time as determined by the City.

- l. To provide for the construction of the retaining wall, at the City's cost, as required by the Project.
- m. To provide a design of retaining wall so that it is constructed at the south line of Parcel C in order to facilitate the establishment of the Landscaped Area.
- n. At the City's sole cost and expense design and construct a new improved driveway access as part of the Project along Parcel F. If City elects to approve an IPD for the Property and the inauguration of use of said IPD occurs prior to the Project, Asadurian shall construct said driveway access as part of the development of the IPD. Prior to construction of said driveway by Asadurian, the parties shall mutually agree upon the cost of said driveway construction. City shall reimburse said cost to Asadurian upon completion of driveway to the satisfaction of the City Engineer.
- o. To reimburse or credit Asadurian for the cost of construction of the retaining wall parallel to Princeton Avenue required for the construction of the Princeton Avenue improvements if Asadurian constructs said wall prior to the construction of the Princeton Avenue widening project.

3. WAIVER. Asadurian hereby covenants not to bring any action against City to (a) attack, review, set aside, void, or otherwise annul the City processing of or action on any IPD or the Environmental Documentation for the Project or 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 IPD application or the Environmental Documentation for the Project or of this Agreement.

4. DEFENSE AND INDEMNITY. Asadurian agrees to indemnify, hold harmless and defend at its sole expense, with counsel reasonably acceptable to City, any action brought against it, the City to approve, extend or renew any IPD for the Property, related actions under CEQA, any subsequent permits to implement/construct the Project, this Agreement, or any transactions contemplated herein. Asadurian 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 their cost, but such participation shall not relieve Asadurian of its obligation under this Section.

5. MUTUAL RELEASES. Asadurian and City, and each of them, on behalf of themselves and their successors and assigns, partners, members, beneficiaries, representatives, heirs, executors, administrators, trustees, agents, attorney-in-fact, and anyone claiming an interest through or under such person, and on behalf of their predecessors and successors in interest regarding the subject matter hereof, do by this instrument fully and forever remise, release and discharge (the "Release") the other party and any parent, subsidiary, division, affiliated or related companies, and each of their respective partners, officers,

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directors, agents, employees, stockholders, beneficiaries, attorneys, representatives, successors, assigns and heirs, from any and all sums of money, accounts, claims, demands, contracts, actions, debts, controversies, agreements, liabilities, obligations, damages and causes of action whatsoever, of whatever kind or nature, whether known or unknown, fixed or contingent, or suspected or unsuspected by them which any of them now owns, holds, has or claims have against the others, including specifically, but not exclusively, and without limiting the generality of the foregoing, any and all claims, damages, demands and causes of action, know or unknown, suspected or unsuspected by reason of any matter or thing alleged or referred to, or directly or indirectly or in any way connected with or arising out of the processing of any IPD permit, the approval of same, this Agreement, or the environmental review done and action taken for the Project.

6. WARRANTY OF AUTHORIZED SIGNATURES. 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.

7. MISCELLANEOUS.

a. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto 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 breach of this Agreement, or contesting the validity or enforceability of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in such action, suit or other proceeding, including any and all appeals or petitions therefrom.

c. **Integrated Agreement.** This Agreement is an integrated Agreement and constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes any and all prior agreements, communications, representations, or warranties, whether oral or written, by any party or any agent, officer, partner, employee, or representative of any party.

d. **Amendments.** This Agreement may not be modified, altered, amended, or rescinded except by an instrument in writing, which is signed by all parties affected by any such modification, alteration, amendment or rescission.

e. **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

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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.

f. **Construction.** This Agreement is the product of negotiation, drafting and preparation by and among the parties hereto and their respective attorneys. The parties hereto expressly acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one party or another and its attorneys, and will be construed accordingly. Any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement.

g. **Good Faith Settlement.** The parties hereto acknowledge and agree that the settlement embodied in this Agreement is made in good faith.

h. **Default Provisions.**

i) **Default by Asadurian.** The Asadurian shall be deemed to have breached this Agreement if it:

(a) practices, or attempts to practice, any fraud or deceit upon City; or willfully violates any order, ruling or decision of any regulatory or judicial body having jurisdiction over the Property or the Project, provided that Asadurian may contest any such order, ruling or decision by appropriate proceedings conducted in good faith, in which event no breach of this Agreement shall be deemed to have occurred unless and until there is a final adjudication adverse to Asadurian; or

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

(c) materially breaches any of the provisions of the Agreement.

ii) **Default by City.** City shall be deemed in breach of this Agreement if it materially breaches any of the provisions of the Agreement.

iii) **Content of Notice of Violation.** Every notice of violation shall state with specificity that it is given pursuant to this subsection of the Agreement, the nature of the alleged breach, and the manner in which the breach may be satisfactorily cured. Every notice shall include a period to cure, which period of time shall not be less than ten (10) days from the date that the notice is deemed received, provided if the defaulting party cannot reasonably cure the breach within the time set forth in the notice

such party must commence to cure the breach within such time limit and diligently effect such cure thereafter. The notice shall be deemed given on the date that it is personally delivered or on the date that it is deposited in the United States mail, in accordance with Section 20 hereof.

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

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

The remedies for breach of the Agreement by Asadurian shall be injunctive relief and/or specific performance. In addition, if the breach is of subsections 1.a, 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j. of this Agreement, City shall have the right to withhold the issuance of building permits to Asadurian throughout the Project from the date that the notice of violation was given pursuant to subsection iii hereof until the date that the breach is cured as provided in the notice of violation.

Nothing in this subsection shall be deemed to preclude City from prosecuting a criminal action against any Asadurian who violates any City ordinance or state statute.

h. Notices. Unless specified elsewhere in this Agreement, all notices that are required to be delivered under this Agreement in writing and personally delivered, or sent by Federal Express, registered or certified mail, postage prepaid, or facsimile, addressed as follows:

To City: City of Moorpark
799 Moorpark Avenue
Moorpark, California 93021
Attention: Steven Kueny

With a copy to:

Burke, Williams, & Sorensen, LLP
611 West Sixth Street, Suite 2500

Los Angeles, California 90017-3102
Attention: Joseph M. Montes, Esq.

To Asadurian: Asadurian Investments
875 Los Angeles Avenue
Moorpark, CA 93021
Attention: *MANUEL ASADURIAN, JR.*

Such addresses may be changed from time to time by the addressee by serving notice as heretofore provided. Service of such notice or demand shall be deemed complete on the date of actual delivery as shown by the addressee's registry or certification receipt or at the expiration of the third day after the date of mailing (whether or not actually received by the addressee), whichever is earlier in time.

i. Governing Law and Venue. This Agreement is made, entered into, and executed in the County of Ventura, California, and the laws of the State of California shall govern its interpretation and enforcement. Any action, suit or proceeding related to, or arising from, this Agreement shall be filed in the appropriate court having jurisdiction in the County of Ventura.

j. Further Assurances. Each Party hereto shall from and after the date hereof execute, acknowledge and deliver such further instruments and perform such additional acts as any other Party may reasonably request to effectuate the intent of this Agreement.

k. Time of Essence. The Parties hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either Party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the Party so failing to perform.

l. No Third Party Beneficiaries. No term or provision of this Agreement or the exhibits hereto is intended to or shall be for the benefit of any person or entity not a party hereto, and no such other person or entity shall have any right or cause of action hereunder.

m. Assistance of Counsel. Asadurian and City each 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 hereto 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 or interpretation of this Agreement shall be made without reference to the party who drafted any portion

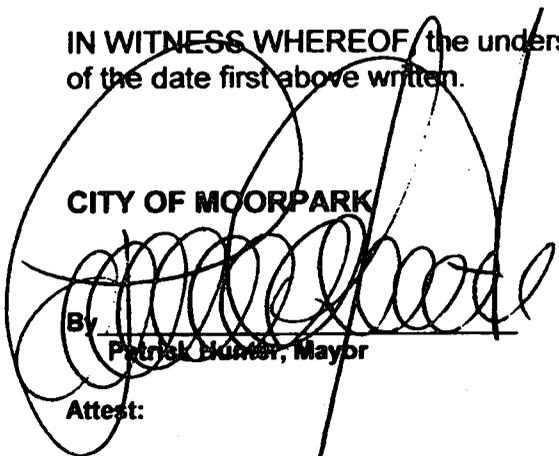
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or particular provision of this Agreement or the relative size and or bargaining power of the Parties.

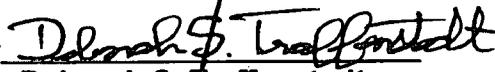
n. Recordation. City may, at its expense, record this Agreement upon title to the Property.

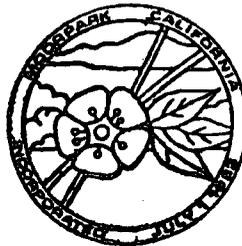
IN WITNESS WHEREOF the undersigned each has executed this Agreement as of the date first above written.

CITY OF MOORPARK

By 
Patrick Hunter, Mayor

Attest:

By 
Deborah S. Traffenstedt,
City Clerk



ASADURIAN INVESTMENTS

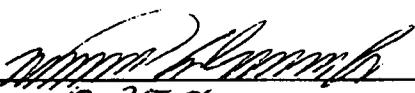
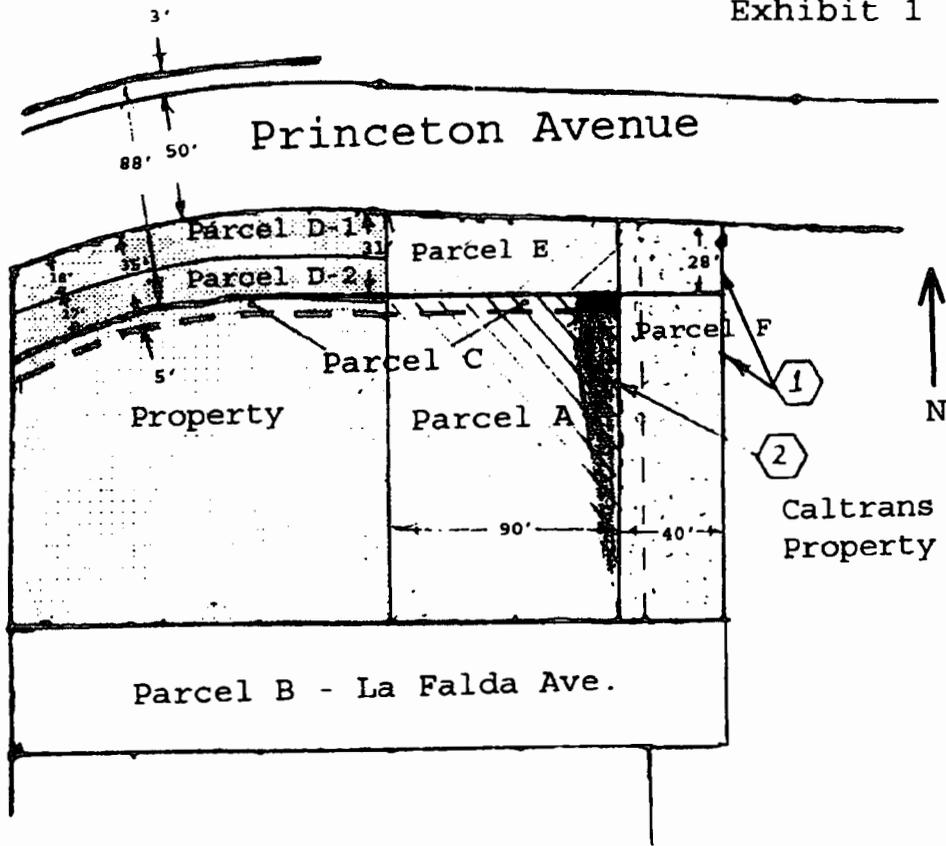
By 
10-25-06

Exhibit 1



Parcel Description

- A. Parcel to be sold to Asadurian 
- B. La Falda Street
- C. Five feet (5') Landscape Easement to be granted to City
- D-1 Street R-O-W to be purchased by City
- D-2 Future Street R-O-W
- E. City to Retain
- F. New Access Point

Notes:

- 1. Road Easement from Caltrans to be held by City 
- 2. Slope easement to be held by City 

ATTACHMENT 2

LEGAL DESCRIPTION OF CITY SALE PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

All that real property described in Document No. 93-075577 of Official Records, in the City of Moorpark, County of Ventura, State of California, recorded in the Office of the County Recorder of said County, lying southerly of a line that is parallel with and 40 feet southerly, measured at right angle, from the following described line:

Beginning at the westerly terminus of that certain course shown on the map recorded in Book 52, Pages 58 through 61, inclusive, of Records of Survey as "N87°17'49"E M & BASIS OF BEARINGS", being a point on the centerline of West Los Angeles Avenue as shown thereon, now known as Princeton Avenue; thence, along said centerline,

- 1st - North 87°46'51" East, 816.13 feet to an angle point thereon; thence, continuing along said centerline,
- 2nd - North 71°36'08" East, 397.26 feet; thence, leaving said centerline,
- 3rd - North 59°08'29" East, 234.22 feet to the beginning of a tangent curve concave northwesterly having a radius of 458.96 feet; thence, along said curve,
- 4th - Northeasterly through a central angle of 24°39'22" an arc length of 197.50 feet; thence,
- 5th - North 34°29'07" East, 178.96 feet to the beginning of a curve concave southeasterly, having a radius of 504.95 feet; thence, along said curve,
- 6th - Northeasterly through a central angle of 31°47'42" an arc length of 280.21 feet; thence,
- 7th - North 66°16'49" East, 500.42 feet to the beginning of a curve concave southerly, having a radius of 700.00 feet; thence, along said curve,
- 8th - Easterly through a central angle of 24°12'17" an arc length of 295.72 feet; thence,
- 9th - South 89°30'54" East, 289.02 feet.

Containing an area of 10,850 square feet, more or less.

All bearings and distances described herein are based on the California Coordinate System of 1983 (CCS83), Zone 5, 2007.0 epoch. To obtain ground distances, multiply distances shown herein by 1.00006602.



EXHIBIT B

LEGAL DESCRIPTION

All that real property described in Document No. 93-075577 of Official Records, in the City of Moorpark, County of Ventura, State of California, recorded in the Office of the County Recorder of said County, more particularly described as follows:

Beginning at a point at the intersection of the westerly line of said Document No. 93-075577 with a line that is parallel with and 40 feet southerly, measured at right angle, from the following described line:

Beginning at the westerly terminus of that certain course shown on the map recorded in Book 52, Pages 58 through 61, inclusive, of Records of Survey as "N87°17'49"E M & BASIS OF BEARINGS", being a point on the centerline of West Los Angeles Avenue as shown thereon, now known as Princeton Avenue; thence, along said centerline, North 87°46'51" East, 816.13 feet to an angle point thereon; thence, continuing along said centerline, North 71°36'08" East, 397.26 feet; thence, leaving said centerline, North 59°08'29" East, 234.22 feet to the beginning of a tangent curve concave northwesterly having a radius of 458.96 feet; thence, along said curve, Northeasterly through a central angle of 24°39'22" an arc length of 197.50 feet; thence, North 34°29'07" East, 178.96 feet to the beginning of a curve concave southeasterly, having a radius of 504.95 feet; thence, along said curve, Northeasterly through a central angle of 31°47'42" an arc length of 280.21 feet; thence, North 66°16'49" East, 500.42 feet to the beginning of a curve concave southerly, having a radius of 700.00 feet; thence, along said curve, Easterly through a central angle of 24°12'17" an arc length of 295.72 feet; thence, South 89°30'54" East, 289.02 feet.

thence, along said westerly line,

- 1st - South 00°33'11" West 42.54 feet; thence, leaving said westerly line,
- 2nd - South 89°26'49" East 63.84 feet; thence,
- 3rd - South 13°46'53" East 78.40 feet to the southerly line of said Document No. 93-075577; thence, along said southerly line,
- 4th - South 89°25'50" East 6.75 feet to the southeasterly corner of said Document No. 93-075577; thence, along the easterly line of said Document No. 93-075577,
- 5th - North 00°33'11" East 121.18 feet to a point on said parallel line; thence, leaving said easterly line along said parallel line,
- 6th - North 89°30'54" West 31.75 feet to the beginning of a curve concave southerly, having a radius of 660.00 feet; thence, along said curve and continuing along said parallel line,
- 7th - Westerly through a central angle of 5°03'49" an arc length of 58.33 feet to the **Point of Beginning**.

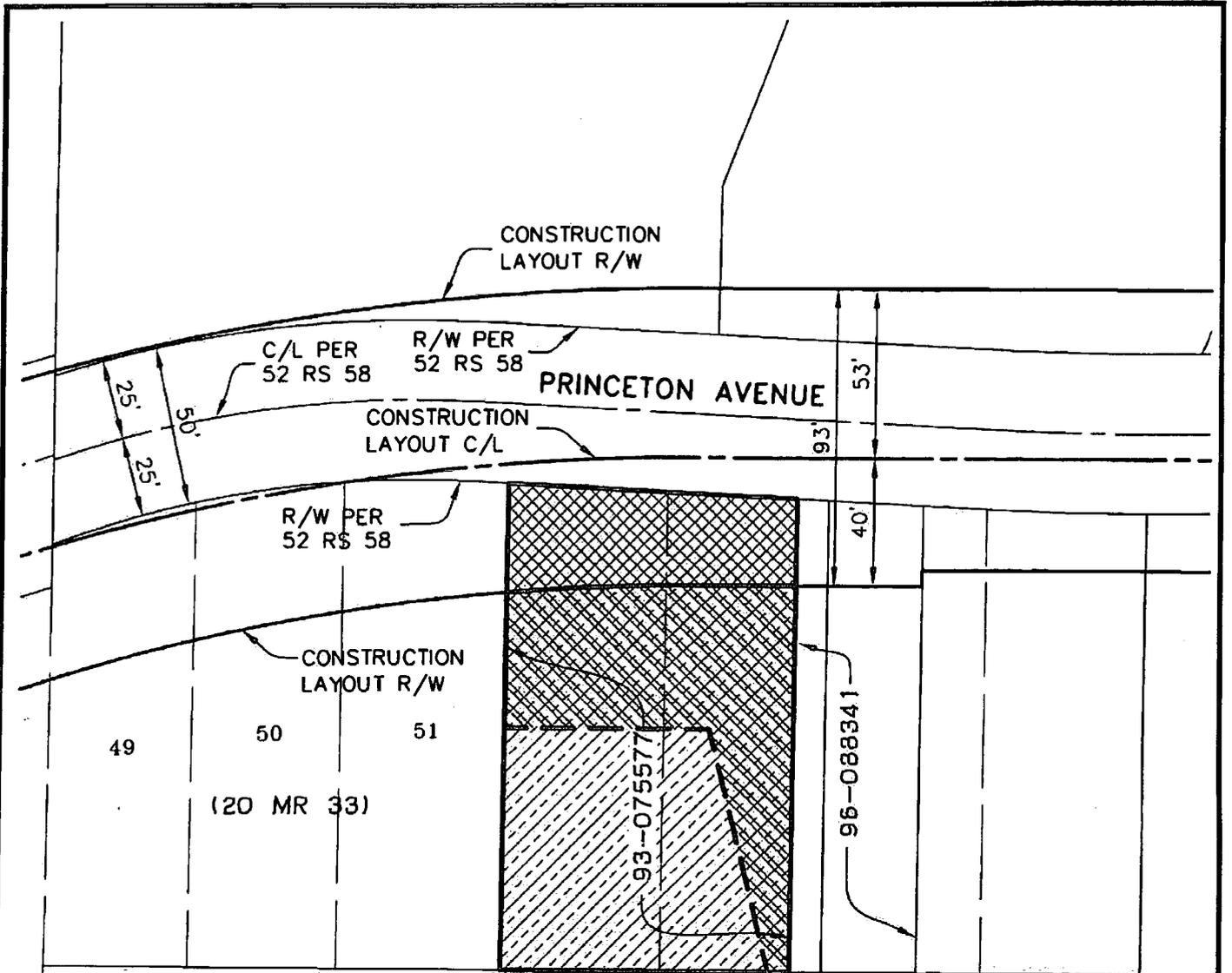
Containing an area of 5,265 square feet, more or less.

All bearings and distances described herein are based on the California Coordinate System of 1983 (CCS83), Zone 5, 2007.0 epoch. To obtain ground distances, multiply distances shown herein by 1.00006602.



Benjamin P. Hardin 11/17/2009

EXHIBIT C



LA FALDA AVENUE



Benjamin P. Hardin
 11/17/2009



SCALE: 1"=50'



 ROAD (2,697 SQ. FT.)

 TEMPORARY CONSTRUCTION EASEMENT (5,265 SQ. FT.)

 FEE (10,850 SQ. FT.)



Penfield & Smith
 Engineering · Surveying · Planning
 · Construction Management ·

11/17/2009

ATTACHMENT 3

LEGAL DESCRIPTION OF BENNETT SALE PROPERTY

EXHIBIT A

LEGAL DESCRIPTION

All that portion of Parcel B described in Document No. 2007-123849 of Official Records, in the City of Moorpark, County of Ventura, State of California, recorded in the Office of the County Recorder of said County, lying northerly of a line that is parallel with and 40 feet southerly, measured at right angle, from the following described line:

Beginning at the westerly terminus of that certain course shown on the map recorded in Book 52, Pages 58 through 61, inclusive, of Records of Survey as "N87°17'49"E M & BASIS OF BEARINGS", being a point on the centerline of West Los Angeles Avenue as shown thereon, now known as Princeton Avenue; thence, along said centerline,

- 1st - North 87°46'51" East, 816.13 feet to an angle point thereon; thence, continuing along said centerline,
- 2nd - North 71°36'08" East, 397.26 feet; thence, leaving said centerline,
- 3rd - North 59°08'29" East, 234.22 feet to the beginning of a tangent curve concave northwesterly having a radius of 458.96 feet; thence, along said curve,
- 4th - Northeasterly through a central angle of 24°39'22" an arc length of 197.50 feet; thence,
- 5th - North 34°29'07" East, 178.96 feet to the beginning of a curve concave southeasterly, having a radius of 504.95 feet; thence, along said curve,
- 6th - Northeasterly through a central angle of 31°47'42" an arc length of 280.21 feet; thence,
- 7th - North 66°16'49" East, 500.42 feet to the beginning of a curve concave southerly, having a radius of 700.00 feet; thence, along said curve,
- 8th - Easterly through a central angle of 24°12'17" an arc length of 295.72 feet; thence,
- 9th - South 89°30'54" East, 289.02 feet.

Containing an area of 7,146 square feet, more or less.

All bearings and distances described herein are based on the California Coordinate System of 1983 (CCS83), Zone 5, 2007.0 epoch. To obtain ground distances, multiply distances shown herein by 1.00006602.



Benjamin P. Hardin 11/17/2009

Legal: W:\WORK\18000-18999\18305\SURVEY\LEGALS\CID40C 513-0-022-015 ROW.DOCX
Exhibit: N:\ACAD\WORK\18305\Survey\Legal Exhibits\18305LEGL-50SCALE.dwg

BPH/tcw
11/13/09



EXHIBIT B

LEGAL DESCRIPTION

All that portion of Parcel B described in Document No. 2007-123849 of Official Records, in the City of Moorpark, County of Ventura, State of California, recorded in the Office of the County Recorder of said County, lying northerly of a line that is parallel with and 70 feet southerly, measured at right angle, from the following described line:

Beginning at the westerly terminus of that certain course shown on the map recorded in Book 52, Pages 58 through 61, inclusive, of Records of Survey as "N87°17'49"E M & BASIS OF BEARINGS", being a point on the centerline of West Los Angeles Avenue as shown thereon, now known as Princeton Avenue; thence, along said centerline,

- 1st - North 87°46'51" East, 816.13 feet to an angle point thereon; thence, continuing along said centerline,
- 2nd - North 71°36'08" East, 397.26 feet; thence, leaving said centerline,
- 3rd - North 59°08'29" East, 234.22 feet to the beginning of a tangent curve concave northwesterly having a radius of 458.96 feet; thence, along said curve,
- 4th - Northeasterly through a central angle of 24°39'22" an arc length of 197.50 feet; thence,
- 5th - North 34°29'07" East, 178.96 feet to the beginning of a curve concave southeasterly, having a radius of 504.95 feet; thence, along said curve,
- 6th - Northeasterly through a central angle of 31°47'42" an arc length of 280.21 feet; thence,
- 7th - North 66°16'49" East, 500.42 feet to the beginning of a curve concave southerly, having a radius of 700.00 feet; thence, along said curve,
- 8th - Easterly through a central angle of 24°12'17" an arc length of 295.72 feet; thence,
- 9th - South 89°30'54" East, 289.02 feet.

Except therefrom all that land lying northerly of a line that is parallel with and 40 feet southerly, measured at right angle, from the above described line.

Containing an area of 5,560 square feet, more or less.

All bearings and distances described herein are based on the California Coordinate System of 1983 (CCS83), Zone 5, 2007.0 epoch. To obtain ground distances, multiply distances shown herein by 1.00006602.



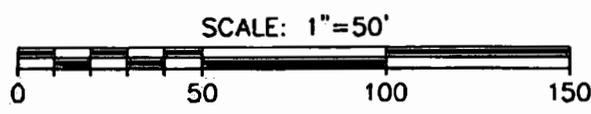
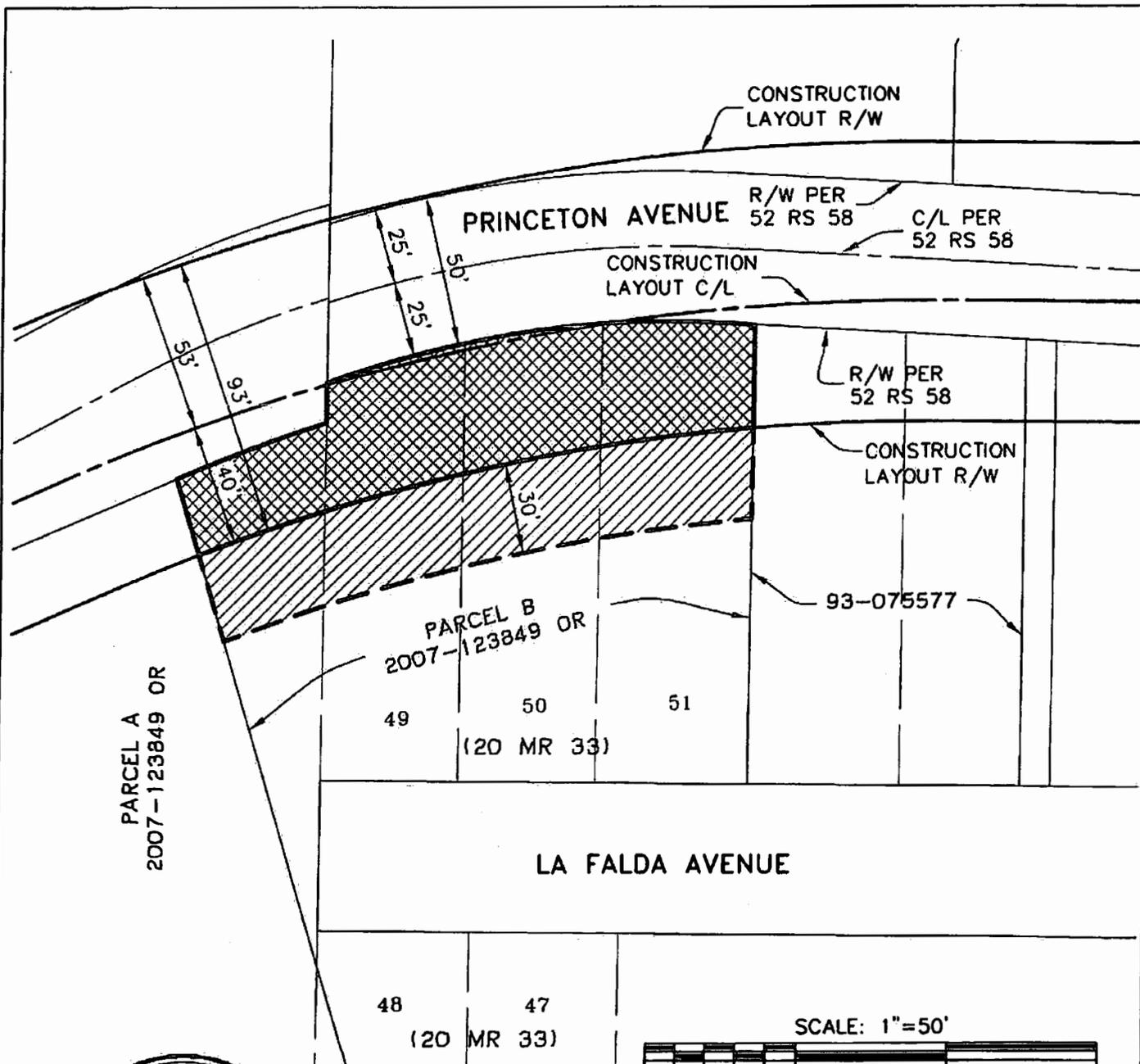
Benjamin P. Hardin, 11/17/2009

Legal: W:\WORK\18000-18999\18305\SURVEY\LEGAL\SICID40C 513-0-022-015 TCE.DOCX
Exhibit: N:\ACAD\WORK\18305\Survey\Legal Exhibits\18305LEGL-50SCALE dwg

BPH/tcw
11/13/09



EXHIBIT C



Benjamin P. Hardin 11/17/2009



-  ROAD (7,146 SQ. FT.)
-  TEMPORARY CONSTRUCTION EASEMENT (5,560 SQ. FT.)



Penfield & Smith
 Engineering · Surveying · Planning
 · Construction Management ·

11/17/2009

ATTACHMENT 4

Form of Grant Deed conveying to Bennett the approximate 10,850 square foot area in fee with a reservation in favor of the City

Recording requested by and when recorded, mail to:

Michael R. Bennett
The Bennett Partnership
2419 Palma Drive
Ventura, CA 93003

[Space Above for Recorder's Use Only]

Portion of APN: 513 0-022-105
Documentary Transfer Tax \$ _____

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, the CITY OF MOORPARK, a municipal corporation ("Grantor" or "City") hereby grants to THE BENNETT PARTNERSHIP, a General Partnership ("Grantee") in fee that approximate 10,850 square foot portion ("Property") of the City-owned real property located in the City of Moorpark, County of Ventura, State of California identified as Ventura County Assessor's Parcel Number 513-0-022-105, which is more particularly described on Exhibit A and depicted on Exhibit C, which are attached hereto and incorporated herein by this reference.

The City's Grant of the Property to Grantee is subject to the reservation in favor of the City of an approximate 5,265 square foot temporary construction easement in, on, over, under, along, and across the Property. The 5,265 square foot temporary construction easement that the City is reserving in its favor is described on Exhibit B and depicted on Exhibit C, which are attached hereto and incorporated herein by this reference ("Temporary Construction Easement"). The City reserves the Temporary Construction Easement in connection with the City's construction of a street widening and improvement project along Princeton Avenue ("Project"). The City's reservation of the Temporary Construction Easement includes the rights of the City to do the following in connection with the construction of the Project:

- Grade and construct the Project in the area of the Temporary Construction Easement;
- Right to use the Temporary Construction Easement to facilitate the construction of the Project;
- Right to access additional portions of the Property as required to facilitate the construction of the Project;

- Right to install landscaping and to make minor permanent physical changes in the slope and grade of the Temporary Construction Easement in connection with the Project; and
- Right to demolish the improvements located in the area of the Temporary Construction Easement, including the structure and two foundation pads.

The terms of the City's use of the Temporary Construction Easement are governed by that certain Exchange Agreement and Joint Escrow Instructions between the City and Grantee made and entered into on _____, 2015, which is incorporated herein by this reference. Pursuant to the Exchange Agreement, Grantee acknowledged that the area of the Temporary Construction Easement shall have permanent minor grading and topography changes in the after condition as a result of the City's construction of the Project.

The City's right to use the Temporary Construction Easement shall commence on the date the City awards the contract for the construction of any part of the Project affecting the Property and the other real properties impacted by the Project, which are identified as Ventura County Assessor's Parcel Numbers 513-0-022-125, and 513-0-022-095. The City shall provide Grantee with written notice regarding the City's award of the contract for the Project. The term of the Temporary Construction Easement shall terminate on the date the City records the Notice of Completion for that construction contract which completes the Project improvements affecting said parcels.

Executed this _____ day of _____, 2015.

GRANTOR:

THE CITY OF MOORPARK,
A municipal corporation

By: _____
Janice S. Parvin
Mayor

ATTEST:

By: _____
Maureen Benson, City Clerk

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSON

By: _____
Kevin Ennis, City Attorney

ATTACHMENT 5
Form of License Agreement

LICENSE AGREEMENT FOR USE OF CITY-OWNED PROPERTY FOR ACCESS

This License Agreement for Use of City-owned Property for Access ("License") is made between the CITY OF MOORPARK, a municipal corporation (the "City"), and THE BENNETT PARTNERSHIP, a general partnership ("Bennett") and is entered into as of this _____ day of _____, 2015. The City and Bennett are referred to below collectively as the "Parties".

RECITALS

A. The City is the record fee owner of that certain real property described on Exhibit A and depicted on Exhibit C hereto ("City-owned Property"). Exhibits A and C are incorporated herein by this reference.

B. The City owns a street easement over that certain real property commonly known as La Falda Avenue, which is described on Exhibit B and depicted on Exhibit D hereto ("La Falda Avenue"). Exhibits B and D are incorporated herein by this reference.

C. Concurrent with this License, the City and Bennett are entering into that certain Exchange Agreement and Joint Escrow Instructions ("Exchange Agreement"). Pursuant to the Exchange Agreement, the City is purchasing from Bennett in fee an approximate 7,146 square foot portion of that certain real property commonly known as 14110 Princeton Avenue, in the City of Moorpark, and identified as Assessor's Parcel 513-0-022-015 in connection with the widening and improvement of Princeton Avenue ("Project"). Pursuant to the Exchange Agreement, Bennett is purchasing in fee from the City an approximate 10,850 square foot portion of the real property commonly known as Lots 52 and 53 and identified as Assessor's Parcel Number 513-0-022-105 (referred to below as the "Adjacent Property").

D. Bennett wishes to use the City-owned Property and La Falda Avenue to access the Adjacent Property that it is purchasing from the City.

E. The Parties desire to enter into this License subject to the terms and conditions stated below.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants and conditions stated herein and the consideration, promises, covenants and conditions set forth in the Exchange Agreement, the City and Bennett agree to the following.

LICENSE AGREEMENT

1. Grant of License.

a. City hereby grants to Bennett a license to enter upon and use the City-owned Property and La Falda Avenue for the purpose of accessing the Adjacent

ATTACHMENT 5
Form of License Agreement

Property and other real property owned by Bennett, which is identified as Assessor's Parcel Numbers 513-0-022-015 and 513-0-040-105.

b. No legal title, leasehold or other interest in the City-owned Property or La Falda Avenue is created or vested in Bennett by the grant of this License.

c. This License is not coupled with an interest in the City-owned Property or La Falda Avenue and may be terminated by the City as described herein.

2. **Consideration.** In consideration for the License herein granted by the City to Bennett, Bennett shall pay to the City the sum of \$1.00 per year on October 25 of each year.

3. **Term.** The City hereby grants the License to Bennett for the City-owned Property and La Falda Avenue commencing on October 25, 2006 and continuing each year until (i) October 25, 2036; (ii) the date the City vacates the City-owned Property or La Falda Avenue; (iii) the date on which the City determines it needs the City-owned Property or La Falda for a public use; (iii) on Bennett's sale of the real property commonly known as 14110 Princeton Avenue, in the City of Moorpark, and identified as Assessor's Parcel Number 513-0-022-015 and 513-0-040-105, or (iv) until such time as the City exercises its rights to terminate the License as set forth below in Section 4, whichever occurs sooner.

4. **Termination.**

a. The City may terminate this License with or without cause pursuant to Section 3 above by providing 30-days written notice to Bennett regarding (i) the City's vacation of the City-owned Property or La Falda Avenue; (ii) the City's plans to use the City-owned Property or La Falda for a public use; or (iii) Bennett's default of any of the provisions of this License.

b. Bennett may terminate this License with or without cause by providing 30-days written notice to the City of the termination of this License.

5. **Bennett's Use of the City-owned Property and La Falda Avenue.**

a. Bennett agrees to use the City-owned Property and La Falda Avenue in the manner approved pursuant to an Industrial Planned Development Permit ("IPD") issued by the City.

b. If the City elects, in its sole discretion, to approve an IPD for the City-owned Property and La Falda Avenue and the inauguration of use of said IPD occurs prior to the City's construction of the Project, Bennett shall construct a new improved driveway access across the City-owned Property as part of the development under the IPD. If the City commences the construction of the Project prior to Bennett's obtaining an IPD for the City-owned Property and La Falda Avenue, the City shall construct said driveway access in connection with construction of the Project. City shall

ATTACHMENT 5
Form of License Agreement

be responsible for the costs of the driveway construction as mutually agreed to by the Parties pursuant to the Exchange Agreement and that certain Settlement Agreement dated October 25, 2006, between City and Bennett's predecessor-in-interest, Manuel Asadurian, Jr. ("Settlement Agreement") and the costs thereof shall be paid in accordance with the Settlement Agreement. Pursuant to the Settlement Agreement, if Bennett constructs the driveway before the City commences the construction of the Project, the City shall reimburse said construction costs to Bennett upon completion of the driveway in accordance with City standards and to the satisfaction of the City Engineer.

c. Bennett shall not make any alterations or improvements to the City-owned Property or La Falda Avenue without the prior written consent of the City, which consent may be granted or withheld in the City's sole and absolute discretion.

d. Bennett shall not commit any waste or any public or private nuisance on the City-owned Property or La Falda Avenue.

e. Bennett shall abide by any such rules and regulations as may be promulgated by the City regarding the use of the City-owned Property and La Falda Avenue.

f. Bennett shall maintain the City-owned Property and La Falda Avenue in a reasonably safe and clean manner, and shall be solely responsible for the cost of such maintenance.

g. Bennett shall not bring onto or use any hazardous substances on the City-owned Property and La Falda Avenue.

6. **Right of Entry.** The City and its authorized representatives shall have the right to enter the City-owned Property and La Falda Avenue at all reasonable times to inspect the City-owned Property and La Falda Avenue.

7. **Indemnification.** Bennett shall indemnify, defend (at Bennett's sole cost and expense) and hold the City, its officials, officers, employees, agents and attorneys (collectively "Indemnities") free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, injury to persons or damage to or taking of the City-owned Property or La Falda Avenue, in any manner arising out of or incident to any acts or omissions of Bennett, its employees, or its agents in connection with the performance of this License, including without limitation the payment of all consequential damages and reasonable attorneys' fees and other related costs and expenses, except for such loss or damage arising from the sole negligence or willful misconduct of the City. With respect to any and all such aforesaid suits, actions, or other legal proceedings of every kind that may be brought or instituted against Indemnitees, Bennett shall defend Indemnitees, at Bennett's own cost, expense, and risk, and shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnitees. Bennett shall reimburse the Indemnities for any and all legal

ATTACHMENT 5
Form of License Agreement

expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Bennett's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by Bennett or the Indemnitees. All duties of Bennett under this Section shall survive termination of this License.

8. **No Assumption of Responsibility or Damage by City.** The granting of this License Agreement by the City shall not constitute an assumption by the City of any responsibility for any consequential damage or taking. City shall not be an insurer or surety for the design or construction of the driveway and related improvements pursuant to any approved plans, nor shall any officer or employee thereof be liable or responsible for any accident, loss or damage happening or occurring during the driveway construction. City shall not have any responsibility for maintenance of the land or improvements on the City Property or La Falda Avenue other than construction (or payment of costs thereof) of the driveway in accordance with the Settlement Agreement.

9. **Surrender of City-owned Property and La Falda Avenue.** Upon the termination of this License, Bennett shall

a. Have no right to enter upon or use the City-owned Property or La Falda Avenue;

b. Surrender the City-owned Property and La Falda Avenue in as close to the condition of these properties as they existed as of October 25, 2006; and

c. Remove all of Bennett's personal property from the City-owned Property and La Falda Avenue.

10. **Insurance.**

a. Bennett shall follow the principles of a sound risk management program. Whenever possible, risk shall be avoided.

b. Bennett is responsible for securing and maintaining all insurance coverage required by applicable local, State of California or Federal law. Within five (5) business days of the date this License is fully executed by the Parties and before entering upon and using the City-owned Property and La Falda Avenue for the purposes described herein, Bennett shall obtain at its own cost the following insurance with limits in amounts approved by the City:

i. Insurance coverage as more particularly described in Exhibit E attached hereto.

ii. Fire and casualty insurance on all improvements, if any, located on the City-owned Property and La Falda Avenue. In the event any such improvements are damaged or destroyed by fire or other casualty, the proceeds of the policy shall be applied toward the repair, restoration, or replacement of those

ATTACHMENT 5
Form of License Agreement

improvements. It shall be the duty of Bennett to repair, replace, or restore the improvements and make them fit for use within six months of the date the damage or destruction occurred.

iii. All policies required by this Section shall name the City as an additional insured and shall not be modifiable or cancelable without thirty (30) days' advance written notice to the City.

iv. Bennett shall not commit any acts on the City-owned Property or La Falda Avenue, nor use City-owned Property or La Falda Avenue in any manner that will cause the cancellation of any fire, liability, or other insurance policy insuring the City-owned Property or La Falda Avenue or the improvements on the City-owned Property or La Falda Avenue.

11. **Assignment.** Bennett may not assign, transfer, or grant any interest in the License herein granted without obtaining the prior written consent of the City. The City may withhold its consent at its sole discretion. Any attempt by Bennett to assign, transfer or grant any interest in the License herein granted may result in a revocation of the License at the sole discretion of the City.

12. **Notices.** All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested or by Federal Express. Notices will be considered given upon the earlier of (a) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested or (b) one business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
Attention: Kevin Ennis, City Attorney
355 South Grand Avenue, 40th Floor
Los Angeles, California 90071-3101

BENNETT: The Bennett Partnership
Attention: Michael R. Bennett
2419 Palma Avenue
Ventura, California 93003

13. **Miscellaneous.**

a. *Authority to Bind Parties and Execute License.* The City and Bennett represent and warrant to one another that this License constitutes a binding

ATTACHMENT 5
Form of License Agreement

obligation on each of them and that the person executing this License is authorized to execute the License on behalf of the respective party and to bind it.

b. *Governing Law.* This License is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This License shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

c. *Amendment or Modification.* This License may be modified or amended only by a writing executed by all Parties to this License.

d. *Partial Invalidity/Severability.* Each provision of this License shall be valid and enforceable to the fullest extent permitted by law. If any provision of this License or the application of such provision to any person or circumstance is, to any extent, deemed to be invalid or unenforceable, the remainder of this License, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by such invalidity or unenforceability, unless such provision or such application of such provision is essential to this License.

e. *Legal Representation.* The Parties, and each of them, acknowledge that in connection with the negotiation and execution of this License, they have each been represented by independent counsel of their own choosing and the Parties executed the License after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this License, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters which are the subject of this License.

f. *Counterparts, Facsimile & Electronic Signatures.* This License may be executed in whole or in counterparts which together shall constitute the entire License. Facsimile or electronic signatures/counterparts to this License shall be effective as if the original signed counterpart were delivered.

g. *Fees and Costs.* Each of the Parties shall bear its own attorney's fees and costs incurred in connection with negotiating the matters described in this License.

h. *Remedies Not Exclusive and Waivers.* No remedy conferred by any of the specific provisions of this License is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every

ATTACHMENT 5
Form of License Agreement

other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

i. *License Agreement.* This License is intended to implement the terms of the Settlement. If any of the provisions of this License conflict with those of the Settlement Agreement as they relate to Bennett's use of the City-owned Property and La Falda Avenue, the terms of this License shall govern.

j. *Waiver.* No provision of this License may be waived unless in writing signed by all Parties. Waiver of any one provision shall not be deemed to be a waiver of any other provision.

k. *No Joint Venture.* Nothing contained herein shall be construed to render the Agency in any way or for any purpose a partner or joint venturer, or associated in any relationship with Bennett, nor shall this License be construed to authorize either Party to act as agent for the other.

l. *Attorneys' Fees.* If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this License, the prevailing Party in such litigation shall be entitled to have and recover from the losing Party its reasonable attorney's fees and other costs incurred in connection with such action.

IN WITNESS HEREOF, the Parties have executed this License as of the date and year first above written.

[Signatures on next page]

ATTACHMENT 5
Form of License Agreement

LICENSEE

THE BENNETT PARTNERSHIP,
A general partnership

By: _____
Name: Michael R. Bennett, Partner

LICENSOR

CITY OF MOORPARK,
a municipal corporation

By: _____
Janice S. Parvin, Mayor

ATTEST:

By: _____
Maureen Benson, City Clerk

Approved as to form:

Richards, Watson & Gershon

By: _____
Kevin Ennis, City Attorney

EXHIBIT A

LEGAL DESCRIPTION

All that real property described in Document No. 96-088341 of Official Records, in the City of Moorpark, County of Ventura, State of California, recorded in the Office of the County Recorder of said County, lying southerly of a line that is parallel with and 40 feet southerly, measured at right angle, from the following described line:

Beginning at the westerly terminus of that certain course shown on the map recorded in Book 52, Pages 58 through 61, inclusive, of Records of Survey as "N87°17'49"E M & BASIS OF BEARINGS", being a point on the centerline of West Los Angeles Avenue as shown thereon, now known as Princeton Avenue; thence, along said centerline,

- 1st - North 87°46'51" East, 816.13 feet to an angle point thereon; thence, continuing along said centerline,
- 2nd - North 71°36'08" East, 397.26 feet; thence, leaving said centerline,
- 3rd - North 59°08'29" East, 234.22 feet to the beginning of a tangent curve concave northwesterly having a radius of 458.96 feet; thence, along said curve,
- 4th - Northeasterly through a central angle of 24°39'22" an arc length of 197.50 feet; thence,
- 5th - North 34°29'07" East, 178.96 feet to the beginning of a curve concave southeasterly, having a radius of 504.95 feet; thence, along said curve,
- 6th - Northeasterly through a central angle of 31°47'42" an arc length of 280.21 feet; thence,
- 7th - North 66°16'49" East, 500.42 feet to the beginning of a curve concave southerly, having a radius of 700.00 feet; thence, along said curve,
- 8th - Easterly through a central angle of 24°12'17" an arc length of 295.72 feet; thence,
- 9th - South 89°30'54" East, 289.02 feet.

Containing an area of 4,848 square feet, more or less.

All bearings and distances described herein are based on the California Coordinate System of 1983 (CCS83), Zone 5, 2007.0 epoch. To obtain ground distances, multiply distances shown herein by 1.00006602.



Benjamin P. Hardin 1/5/10

EXHIBIT B

A PORTION OF LA FALDA AVENUE OF THE RESUBDIVISION OF THE COLONIA VIRGINIA TRACT, IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS SHOWN ON MAP RECORDED IN BOOK 20, PAGE 33 OF MISCELLANEOUS RECORDS (MAPS), IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWESTERLY CORNER OF LOT 49 AND THE NORTHWESTERLY CORNER OF SAID LA FALDA AVENUE, THENCE EASTERLY ALONG THE NORTHERLY LINE OF LA FALDA AVENUE,

- 1ST: EAST 272.17 FEET TO THE SOUTHEASTERLY CORNER OF THE STRIP OF LAND CONVEYED BY THE STATE OF CALIFORNIA BY DIRECTOR'S DEED NO. DD 45881-2, RECORDED JUNE 27, 1996 AS DOCUMENT NO. 96-088341 OF OFFICIAL RECORDS OF SAID COUNTY RECORDER TO THE CITY OF MOORPARK; THENCE AT RIGHT ANGLES,
- 2ND: SOUTH 50.00 FEET TO THE SOUTHERLY LINE OF SAID LA FALDA AVENUE; THENCE ALONG SAID SOUTHERLY LINE,
- 3RD: WEST 272.17 FEET TO THE WESTERLY LINE OF SAID LA FALDA AVENUE AND THE WESTERLY LINE OF SAID TRACT; THENCE NORTHERLY ALONG SAID WESTERLY LINE,
- 4TH: NORTH 50.00 FEET TO THE POINT OF BEGINNING.

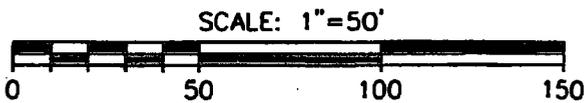
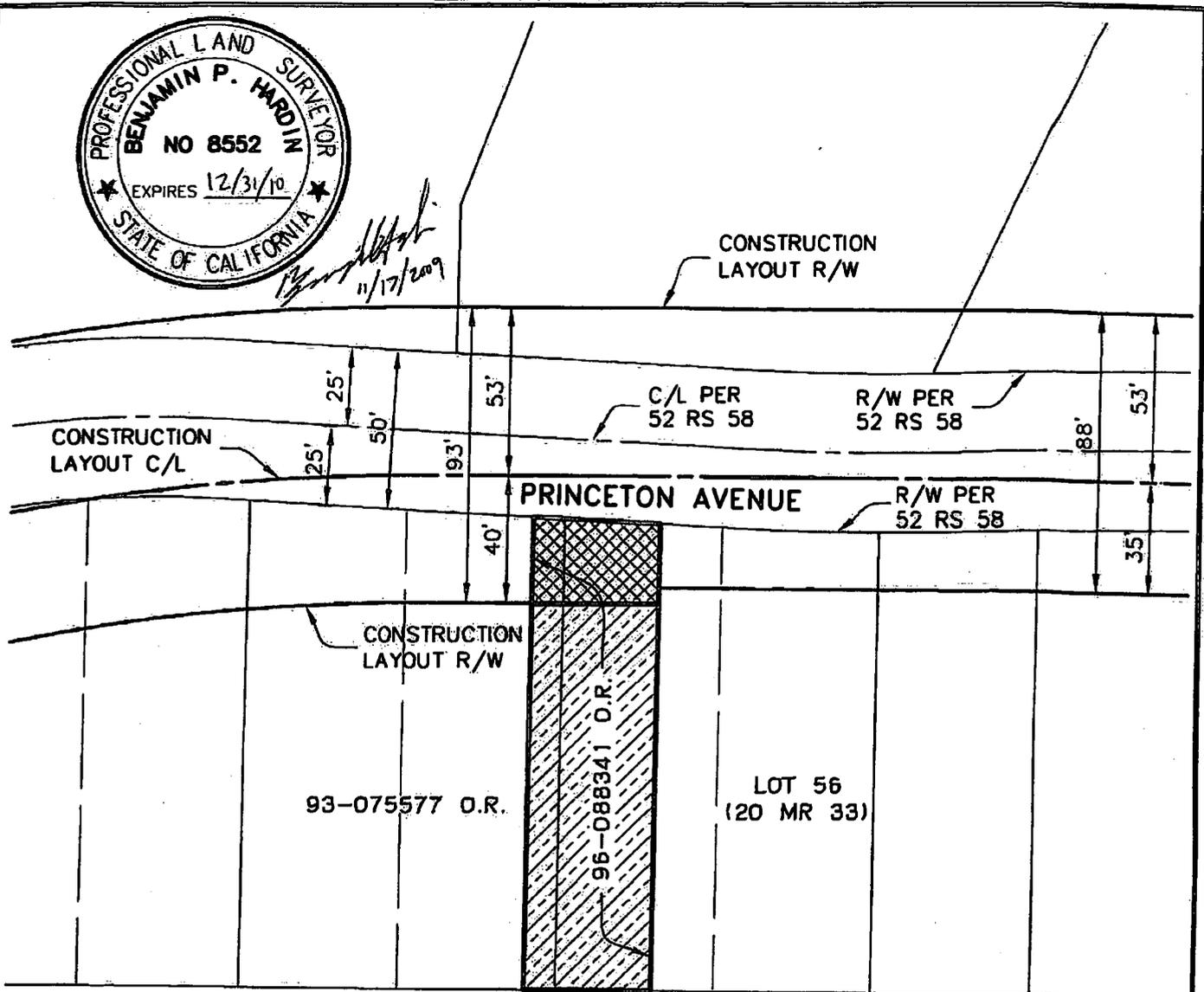
Area containing 0.31 acres

La Falda Avenue
29 August 2009



Alfonso A. Echano

EXHIBIT C



 ROAD (1,049 SQ. FT.)

 DRIVEWAY (4,848 SQ. FT.)



Penfield & Smith
 Engineering · Surveying · Planning
 · Construction Management ·

11/17/2009

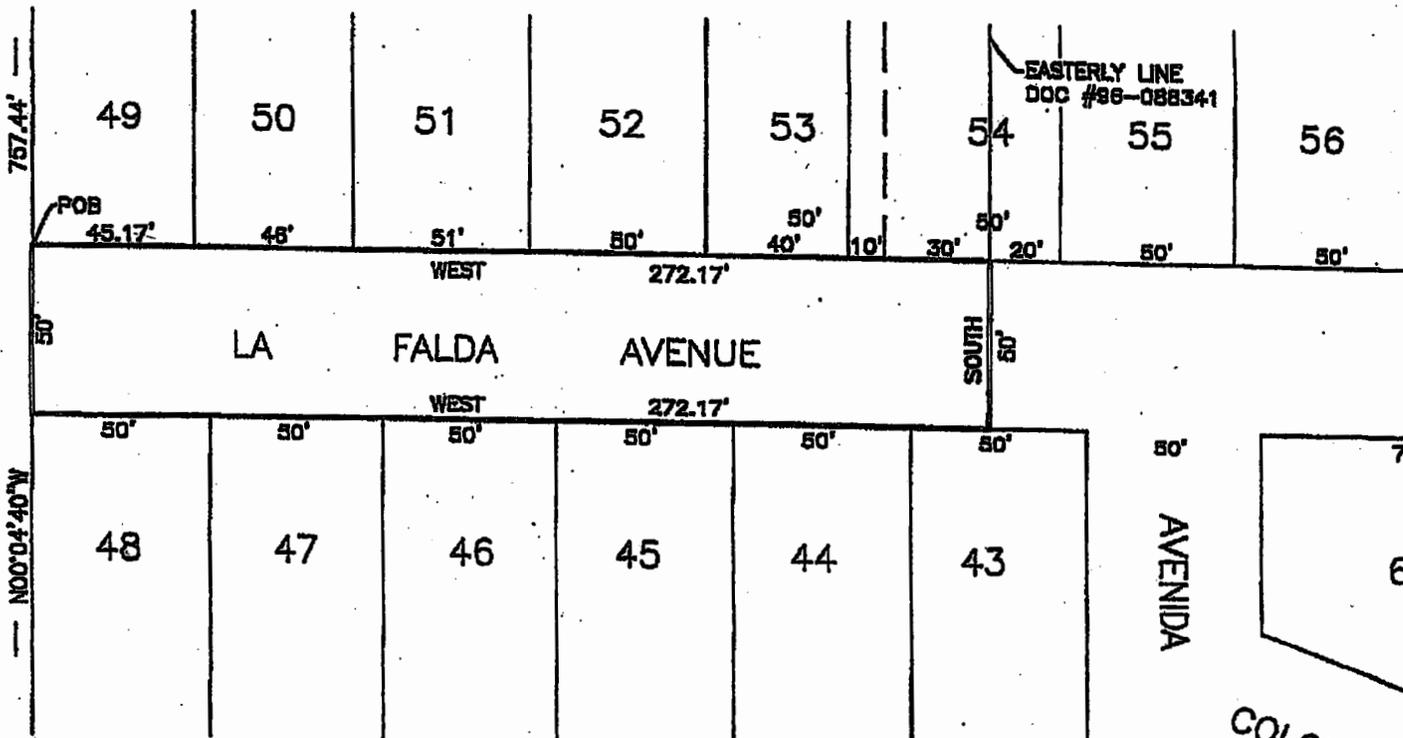
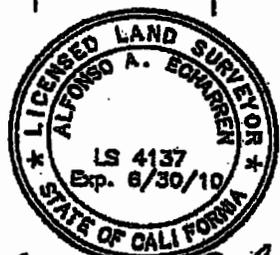


EXHIBIT D



Alfonso A. Echaverey

EXHIBIT

PORTION OF LA FANDA AVE
20 M.R. 33
MOORPARK, CALIFORNIA

DATE: 08-27-09	SCALE: -	SHEET 1
JVF		OF 1

Prepared By:



RJR ENGINEERING GROUP
 Planning • Civil Engineering • Flood Control/Hydrology
 Geotechnical Engineering • Geology • Water Resources • Environmental
 3800 Camino Ave, Suite 200, Concord, CA 95030
 (925) 488-3939 (925) 488-3847 FAX
 E-mail: rjr@rjrang.com

Exhibit E

INSURANCE REQUIREMENTS

Prior to the beginning of and throughout the duration of Work, Consultant will maintain insurance in conformance with the requirements set forth below. Consultant will use existing coverage to comply with these requirements. If that existing coverage does not meet requirements set forth here, Consultant agrees to amend, supplement or endorse the existing coverage to do so. Consultant acknowledges that the insurance coverage and policy limits set forth in this section constitute the minimum amount of coverage required. Any insurance proceeds available to the City in excess of the limits and coverage required in this Agreement and which is applicable to a given loss, will be available to the City.

Consultant shall provide the following types and amounts of insurance:

Commercial General Liability Insurance using Insurance Services Office (ISO) "Commercial General Liability" policy form CG 00 01 or the exact equivalent. Defense costs must be paid in addition to limits. There shall be no cross liability exclusion for claims or suits by one insured against another. Limits are subject to review but in no event less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

Business Auto Coverage on ISO Business Auto Coverage form CA 00 01 including symbol 1 (Any Auto) or the exact equivalent. Limits are subject to review, but in no event to be less than \$1,000,000 per accident. If Consultant owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the general liability policy described above. If Consultant or Consultant's employees will use personal autos in any way on this project, Consultant shall provide evidence of personal auto liability for each such person.

Workers' Compensation on a state-approved policy form providing statutory benefits as required by law with employer's liability limits no less than \$1,000,000 per accident or disease.

Excess or Umbrella Liability Insurance (Over Primary) if used to meet limit requirements, shall provide coverage at least as broad as specified for the underlying coverages. Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. Policy shall contain a provision obligating insurer at the time insured's liability is determined, not requiring actual payment by the insured first. There shall be no cross liability exclusion precluding coverage for claims or suits by one insured against another. Coverage shall be applicable to the City for injury to employees of Consultant, subconsultants or others involved in the Work. The scope of coverage provided is subject to approval by the City following receipt of proof of insurance as required herein. Limits are subject to review.

Insurance procured pursuant to these requirements shall be written by insurers that are admitted carriers in the State of California and with an A.M. Bests rating of A- or better and a minimum financial size of VII.

General conditions pertaining to provision of insurance coverage by Consultant. Consultant and the City agree to the following with respect to insurance provided by Consultant:

1. Consultant agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds the City, its officials, employees, and agents, using standard ISO endorsement CG 2010 with an edition prior to 2004. Consultant also agrees to require all contractors and subcontractors to do likewise.
2. No liability insurance coverage provided to comply with this Agreement shall prohibit Consultant, or Consultant's employees, or agents, from waiving the right to subrogation prior to a loss. Consultant agrees to waive subrogation rights against the City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.
3. All insurance coverage and limits provided by Contractor and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to the City or its operation limits the application of such insurance coverage.
4. None of the coverages required herein will be in compliance with these requirements if they include limiting endorsement of any kind that has not been first submitted to the City and approved in writing.
5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.
6. All coverage types and limits required are subject to approval, modification, and additional requirements by the City, as the need arises. Consultant shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect the City's protection without the City's prior written consent.
7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Consultant's general liability policy, shall be delivered to city at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled or reduced at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other Agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant, at the City's option.

8. Certificate(s) are to reflect that the insurer will provide 30 days notice to the City of any cancellation or reduction of coverage. Consultant agrees to require its insurer to modify such certificates to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation or reduction of coverage imposes no obligation, or that any party will "endeavor" (as opposed to being required) to comply with the requirements of the certificate.
9. It is acknowledged by the parties of this Agreement that all insurance coverage required to be provided by Consultant or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to the City.
10. Consultant agrees to ensure that subcontractors, and any other party involved with the Work who is brought onto or involved in the Work by Consultant, provide the same minimum insurance required of Consultant. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Consultant agrees that upon request, all agreements with subcontractors and others engaged in the Work will be submitted to the City for review.
11. Consultant agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer, or other entity or person in any way involved in the performance of Work contemplated by this Agreement to self-insure its obligations to the City. If Consultant's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time, the City shall review options with the Consultant, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.
12. The City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving the Consultant 90 days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City will negotiate additional compensation proportional to the increased benefit to the City.
13. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.
14. Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with an insurance requirement in no way imposes any additional obligations to the City nor does it waive any rights hereunder in this or any other regard.

15. Consultant will renew the required coverage annually as long as the City, or its employees or agents face an exposure from operations of any type pursuant to this Agreement. This obligation applies whether or not the Agreement is canceled or terminated for any reason. Termination of this obligation is not effective until the City executes a written statement to that effect.
16. Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. As coverage binder or letter from Consultant's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specification applicable to the renewing or new coverage must be provided to the City within five days of the expiration of coverage.
17. The provisions of any Workers' Compensation or similar act will not limit the obligations of Consultant under this Agreement. Consultant expressly agrees not to use any statutory immunity defenses under such laws with respect to the City, its employees, officials, and agents.
18. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits, or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.
19. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.
20. The requirements in this section supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts or impairs the provisions of this section.
21. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the Work reserves the right to charge the City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to the City. It is not the intent of the City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against the City for payment of premiums or other amounts with respect thereto.
22. Consultant agrees to provide immediate notice to City of any claim or loss against Consultant arising out of the work performed under this Agreement. The City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve the City.

ATTACHMENT 6

Recording requested by
and when recorded mail to:

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

[Space Above for Recorder's Use Only]

Portion of APN: 513-0-022-015
Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Moorpark and is exempt from Recording Fees (Government Code § 27383), Filing Fees (Government Code 6103), and Documentary Transfer Tax (Revenue & Taxation Code § 11922)

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, THE BENNETT PARTNERSHIP, a General Partnership ("Grantor") hereby grants to the CITY OF MOORPARK, a municipal corporation ("City") in fee the approximate 7,146 square foot portion of Grantor's real property commonly known as 14110 Princeton Avenue, located in the City Moorpark, County of Ventura, State of California and described as Ventura County Assessor's Parcel Number 513-0-022-015 in the City of Moorpark, County of Ventura, State of California described on Exhibit A hereto and depicted on Exhibit C hereto. Exhibits A and C are incorporated herein by this reference.

Executed this _____ day of _____ 2015.

GRANTOR:

THE BENNETT PARTNERSHIP,
A General Partnership

By: _____
Michael R. Bennett, Partner

ATTACHMENT 7

Recording requested by
and when recorded mail to:

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

[Space Above for Recorder's Use Only]

Portion of APN: 513-0-022-015
Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Moorpark and is exempt from Recording Fees (Government Code § 27383), Filing Fees (Government Code 6103), and Documentary Transfer Tax (Revenue & Taxation Code § 11922)

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

For a valuable consideration, receipt of which is hereby acknowledged, THE BENNETT PARTNERSHIP, a General Partnership ("Grantor") hereby grants to the CITY OF MOORPARK, a municipal corporation ("City") an approximate 5,560 square foot temporary construction easement on, over, under, along, and across that certain portion of Grantor's real property commonly known as 14110 Princeton Avenue, located in the City of Moorpark, County of Ventura, State of California and described as Ventura County Assessor's Parcel Number 513-0-022-015 ("Grantor's Property") in connection with the City's construction of a street widening and improvement project along Princeton Avenue, including related retaining walls, driveways, landscaping ("Project") and related improvements. The approximate 5,560 square foot temporary construction easement on Grantor's Property is described more particularly on Exhibit B and depicted on Exhibit C hereto (referred to below as the "Temporary Construction Easement"). Exhibits B and C are incorporated herein by this reference.

Grantor hereby grants to the City the Temporary Construction Easement, together with the right to access additional portions of Grantor's property as required in order to facilitate the construction of the Project. The terms of the City's use of the Temporary Construction Easement are governed by that certain Exchange Agreement and Joint Escrow Instructions between Grantor and the City made and entered into on _____, 2015, which is incorporated herein by this reference. Grantor hereby authorizes the City to use the Temporary Construction Easement to facilitate the construction of a retaining wall for the Project; to complete minor grading in the area of the Temporary Construction Easement; and to remove the existing driveway, fencing and pavement and related improvements located in the area of the Temporary Construction Easement. Grantor expressly agrees and acknowledges that the City will not replace the driveway, fencing and pavement and related improvements located in the area of the Temporary Construction Easement that are removed in connection with the Project. Grantor further expressly agrees and acknowledges that the grade and

ATTACHMENT 7

topography of the Temporary Construction Easement will be permanently changed after the construction of the Project. Grantor grants this Temporary Construction Easement on the condition that the City shall protect in place during the construction of the Project Grantor's mobilehome located in the area of the Temporary Construction Easement that Grantor utilizes as an office.

The City's right to use the Temporary Construction Easement shall commence on the date the City awards the contract for the construction of any part of the Project affecting Grantor's Property and the other real properties impacted by the Project, which are identified as Ventura County Assessor's Parcel Numbers 513-0-022-125, 513-0-022-105 and 513-0-022-095. The City shall provide Grantor with written notice regarding the City's award of the contract for the Project. The term of the Temporary Construction Easement shall terminate on the date the City records the Notice of Completion for that construction contract which completes the Project improvements affecting said parcels.

Executed this _____ day of _____ 2015.

GRANTOR:

THE BENNETT PARTNERSHIP,
A General Partnership

By: _____
Michael R. Bennett, Partner

ATTACHMENT 2

RESOLUTION NO. 2015 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING THE EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN THE CITY AND THE BENNETT PARTNERSHIP, AND AUTHORIZING THE EXECUTION OF THE EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS, AND THE EXECUTION OF A GRANT DEED, A LICENSE AGREEMENT AND A CERTIFICATE OF ACCEPTANCE IN CONNECTION THEREWITH

WHEREAS, on July 1, 2009, the City Council approved the conceptual design, and directed to proceed with the acquisition of the right of way and construction easements for the Princeton Avenue Widening Project; and

WHEREAS, the Princeton Avenue Widening Project requires the acquisition of right-of-way and a construction easement from the property located at 14110 Princeton Avenue; and

WHEREAS, on May 27, 2014, the Moorpark Planning Commission found that the acquisition of right of way for the Princeton Avenue Widening Project is consistent with the Moorpark General Plan pursuant to Government Code Section 65402; and

WHEREAS, an Exchange Agreement and Joint Escrow Instructions including the acquisition of right-of-way and a construction easement from the property located at 14110 Princeton Avenue has been presented to City Council; and

WHEREAS, the Exchange Agreement and Joint Escrow Instructions include a grant deed of City property and a license agreement for the use of City property.

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

SECTION 1. The May 27, 2014 finding of the Moorpark Planning Commission that the acquisition of right of way for the Princeton Avenue Widening Project is consistent with the Moorpark General Plan pursuant to Government Code Section 65402, is adopted.

SECTION 2. The Exchange Agreement and Joint Escrow Instructions between the City and the Bennett Partnership, for the acquisition of right-of-way and a construction easement from the property located at 14110 Princeton Avenue is approved.

SECTION 3. The City Manager is authorized to execute the Exchange Agreement and Joint Escrow Instructions between the City and the Bennett Partnership.

SECTION 4. The Mayor is authorized to execute a Grant Deed of City property to the Bennett Partnership, and a License Agreement for Bennett's use of City property.

SECTION 5. Accept a Grant Deed of Bennett Partnership property and a construction easement, and authorize the City Clerk to sign and record a certificate of acceptance for the said deed, easement and the attachments thereto in the office of the Ventura County Recorder.

SECTION 6. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED AND ADOPTED this 6th day of May, 2015.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk