

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jessica Sandifer, Senior Management Analyst

DATE: December 7, 2015 (CC Meeting of 12/16/2015)

SUBJECT: Consider Purchase of 61 High Street and Resolution Authorizing the Acceptance of the Grant Deed for Recordation; and Amending Fiscal Year 2015/16 Budget to Fund the Transaction

BACKGROUND & DISCUSSION

The property at 61 High Street consists of a 7,500 square foot lot improved with a 2,500 square foot single tenant commercial building. The property is currently rented by the Moorpark Foundation for the Arts (MFA). The facility allows the MFA to supplement their theater offerings at the High Street Arts Center by providing additional rehearsal space for main stage productions, space to conduct youth theater and other acting workshops, and provides critical prop storage. Staff feels that the purchase of the property will allow the City to enhance cultural amenities in the City. Staff has negotiated the purchase price for the property. The owner has accepted the City's offer of \$880,000 and escrow has been opened.

The MFA currently rents the facility for \$3,400/month, however, the rent is set to increase by \$200 each year of the term. Staff is proposing to purchase the property and rent it back to the MFA for a set rent of \$3,000/month.

Staff has had a Phase I Environmental Site Assessment (ESA) performed on the property. The results of the Phase I ESA recommend a Phase II ESA be performed due to a dry cleaning operation that was previously located on the site and due to the sites close proximity to a former gasoline station site on Walnut Street. The Purchase and Sale Agreement contains language that allows the City to cancel the transaction or renegotiate the deal, should the Phase II ESA return unfavorable results.

Pursuant to Government Code Section 65402, on November 24, 2015, the Planning Commission found that the acquisition of the property is in accordance with the General Plan. Pursuant to Government Code Section 27281, the Certificate of Acceptance required for the City to acquire the Property needs to include a resolution number of the City Council's approval. Attached to the staff report is Resolution No. 2015 - _____

which authorizes the purchase of the Property, directs the City Clerk to accept and consent to the recordation of any deed; and amends the Fiscal Year 2015/16 budget to fund the property purchase.

FISCAL IMPACT

Funds were not budgeted in the Fiscal Year 2015/16 budget for this purchase. Staff is requesting a budget amendment from the Endowment Fund (2800) for \$880,000 plus \$5,000 in escrow fees for a total amendment of \$885,000 to fund the purchase of the property.

STAFF RECOMMENDATION (ROLL CALL VOTE)

1. Authorize purchase and sale agreement; and
2. Adopt Resolution No. 2015-_____ authorizing the purchase of property at 61 High Street, acceptance of the Grant Deed by the City Clerk for recordation; and authorizing the City Manager to sign all documents relevant to the transaction; and amending the Fiscal Year 2015-16 budget to purchase the property.

Attachment

1. Purchase and Sale Agreement
2. Resolution No. 2015-_____

ATTACHMENT 1

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE OF PROPERTY AND JOINT ESCROW INSTRUCTIONS ("Agreement") is dated as of _____, 2015 ("Effective Date") and is entered into by and between Kirk Douglas Aiken, an individual ("Seller"), and City of Moorpark, a municipal corporation ("Buyer").

RECITALS

A. Seller owns the land ("Land") in the County of Ventura, State of California, as more particularly described in Exhibit "A" attached hereto.

B. The Land, all improvements on the Land and all rights (including water and mineral rights), privileges, easements, tenements, rights of way and appurtenances ("Appurtenances") which belong to or appertain to the Land or improvements are hereinafter collectively referred to as the "Property."

C. Buyer desires to acquire the Property in order to enhance cultural amenities in the City for the benefit of the public.

D. The escrow holder for the sale of the Property by Seller to Buyer shall be Glenoaks Escrow, 6100 San Fernando Road, Glendale, CA 91201, Attn: Eric Rustigian ("Escrow Holder"), and Chicago Title Company, 500 N. Brand Blvd., 2nd Floor, Glendale, CA 91203 (800/880-9124) ("Title Company").

1. SALE OF PROPERTY.

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller, upon the terms and conditions herein set forth. Subject to the terms of Section 16.17 below, Buyer also agrees to participate in the Seller's 1031 Exchange at no cost to Buyer.

2. PURCHASE PRICE; DEPOSIT.

The total purchase price ("Purchase Price") for the Property shall be EIGHT HUNDRED EIGHTY THOUSAND DOLLARS (\$880,000.00).

Buyer shall give a good faith deposit in the amount of three percent (3%) of Purchase Price or TWENTY-SIX THOUSAND FOUR HUNDRED DOLLARS (\$26,400.00) ("Deposit"), made payable to Escrow Holder within five (5) business days after escrow has been opened under Section 3.1 below. The Deposit, together with any interest earned thereon, shall be applied as a credit against the Purchase Price at closing and, except as may otherwise be provided in this Agreement, shall be returned to Buyer upon any cancellation or termination of this Agreement.

3. ESCROW.

3.1 Opening of Escrow.

Within three (3) business days following the date of execution hereof, Buyer and Seller shall open Escrow with escrow ("Escrow") by delivering copy of this executed Agreement to Escrow Holder. Escrow Holder shall notify Buyer and Seller, in writing, of the date Escrow is opened and the scheduled Closing Date. In addition, Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental escrow instructions of Escrow Holder or other instruments as may reasonably be required by Escrow Holder in order to consummate the transaction contemplated by this Agreement. Any such supplemental instructions shall not conflict with, amend or supersede any portions of this Agreement. If there is any inconsistency between such supplemental instructions and this Agreement, this Agreement shall control.

3.2 Close of Escrow.

For purposes of this Agreement, the Close of Escrow or Closing shall be defined as the date the Grant Deed conveying the Property to Buyer is recorded in the Official Records of Ventura County, California. The closing date shall be 45-days after opening of escrow, unless, upon 72 hours' notice, otherwise subsequently agreed to in writing signed by the City Manager of Buyer and Seller.

(a) Buyer does not intend to occupy the property as Buyer's primary residence.

(b) Seller is to provide copies of all current leases on the property, along with Tenant Estoppel Certificates for rents paid and/or owed and security deposits Seller has in trust.

(c) Possession to be delivered to Buyer at 2:00 p.m. on the date of close of Escrow, but no later than two (2) days after close of Escrow, in all events free from all claims to possession or title by third parties.

(d) Seller will deliver keys to Buyer's office upon delivery of possession.

4. INVESTIGATIONS.

4.1 Title Review.

(a) Promptly following the full execution of this Agreement, Escrow Holder shall cause Title Company to issue to Buyer (with a copy to Seller) a preliminary title report for a Standard Form CLTA (or if requested by Buyer, ALTA) Owner's Policy of Title Insurance for the Property, setting forth all liens, encumbrances, easements, restrictions, conditions, pending litigation, judgments, administrative proceedings, and other matters affecting Seller's title to the Property ("Preliminary

Report”), together with copies of all documents relating to title exceptions referred to in the Preliminary Report (“Title Exception Documents”). Buyer shall approve or disapprove each exception shown in the Preliminary Report and each encroachment, overlap, or boundary line dispute, or any other matter that affects title to the Property or that violates any law, rule, or regulation reflected therein (each an “Exception”) within thirty (30) days following the receipt of the Preliminary Report and all Title Exception Documents (“Title Approval Period”). Buyer’s failure to disapprove within the Title Approval Period shall be deemed approval of the Exceptions. If any Exception is disapproved (each a “Disapproved Exception”), Seller shall, within twenty-one (21) days following receipt of Buyer’s disapproval (“Cure Period”), use its best efforts to cause each Disapproved Exception to be discharged, satisfied, released, or terminated, as the case may be, of record, and in a form that is reasonably satisfactory to Buyer and Escrow Holder, all at Seller’s sole cost and expense. Upon Seller’s written request and with Buyer’s approval, Escrow Holder will be authorized to disburse from the cash portion of the Purchase Price and any proceeds otherwise disburseable to Seller upon Closing the sum sufficient to discharge or endorse over any Disapproved Exception that may be discharged or endorsed over only by the payment of money. If Seller is unable to obtain a discharge, satisfaction, release, or termination within the Cure Period specified above, Buyer shall have the right, by written notice given within ten (10) days following the expiration of the Cure Period, to:

- (i) waive the Disapproved Exception(s) and proceed with Closing, accepting title to the Property subject to the Disapproved Exception(s), or
- (ii) terminate this Agreement and receive the return of the Deposit, whereupon Seller and Buyer shall be released from all further liability and obligation under this Agreement, except for such as has accrued prior to the date of termination.

(b) Disapproved Exceptions. It is understood and agreed that, whether or not Buyer gives its disapproval of any title exceptions, any encumbrances, security interests, liens, deeds of trust and/or mortgages which secure, in whole or in part, any monetary indebtedness not arising by, through or under Buyer shall be deemed to be Disapproved Exceptions and shall be paid off, satisfied, released and/or discharged by Seller at or prior to Closing.

(c) Title Policy. Seller shall cause the Title Company to issue its Standard CTLA Owner’s form Policy of Title Insurance (“Title Policy”) in the amount of the Purchase Price showing good and marketable title to the Property vested in Buyer subject only to the exceptions to title approved by Buyer. Buyer may, at Buyer’s option, elect to cause the Title Company to issue an ALTA form Title Policy with such extended coverage protection and other endorsements as Buyer may request of Title Company. All additional cost and expense of such ALTA Title Policy, endorsements and extended coverage protection shall be borne by Buyer, including the cost of any survey of the Property that may be required to obtain such coverage.

4.2 Physical Condition.

(a) Inspection. Buyer shall have the right to enter the Property and perform inspections and tests (including, without limitation, a Phase I environmental review and, if recommended by the Phase I review, a Phase II environmental review, which may include soils and groundwater testing) until the date that is thirty-five (35) days after the date of this Agreement, and if Buyer disapproves the condition of the Property, Buyer may terminate this Agreement by written notice to Seller give prior to the Close of Escrow.

(b) Indemnity. Buyer shall defend, indemnify and hold Seller harmless from and against any claims, liabilities, losses, damages, costs and expenses caused by Buyer's inspections.

(c) Existing Tenant. Subject to clause (a) above, Buyer shall use good faith efforts not to disturb the existing tenant (Moorpark Foundation).

(d) No Seller Obligations. Seller shall not have any obligation to agree to make any repairs or alterations.

5. SELLER'S DELIVERIES.

5.1 Prior to the Close of Escrow, Seller shall deposit or cause to be deposited into Escrow for delivery to Buyer at Closing the following:

(a) A duly executed and acknowledged Grant Deed in the Title Company's usual form;

(b) A Certificate of Non-Foreign Status required under Section 1445(b) of the Internal Revenue Code;

(c) A Certificate pursuant to California Revenue and Taxation Code Section 18662 pertaining to Seller's status as a resident of California or as having a corporate permanent place of business in California;

(d) A notice in the form attached hereto as Exhibit "B", duly executed by Seller ("Tenant Notice").

(e) Any other document provided for herein or reasonably required by Escrow Holder;

(f) Real Estate Transfer Disclosure; and

(g) Natural Hazard Disclosure.

6. BUYER'S DELIVERIES.

Prior to the Close of Escrow, Buyer shall deposit or cause to be deposited into Escrow, to be delivered to Seller upon the Closing, the following:

(a) The Purchase Price, less the Deposit, in accordance with Section 2;

(b) A Certificate of Acceptance for the Grant Deed, duly executed and acknowledged;

(c) A counterpart of the Tenant Notice, duly executed by Buyer.

(d) Funds in addition to the Purchase Price less Deposit that are necessary to pay costs; and

(e) Any other document provided for herein or reasonably required by Escrow Holder.

7. COSTS. Buyer shall pay all title policy costs and up to \$1800 of escrow fees and costs. This transaction should be exempt from recording fees and documentary transfer taxes.

8. AUTHORIZATION TO RECORD DOCUMENTS AND DISBURSE FUNDS.

Escrow Holder is hereby authorized and directed to deliver the Tenant Notice to the tenant described therein (by Federal Express), and record the documents and disburse the funds and documents called for hereunder pursuant to the written closing instructions, if any, of Buyer and Seller delivered prior to Closing, provided each of the following conditions have been or will concurrently with the Close of Escrow be fulfilled:

(a) Title Company has committed to issue to Buyer the Title Policy with liability equal to the Purchase Price, in accordance with Section 4 above;

(b) Seller shall have deposited in Escrow the documents and instruments required under Section 5.1; and

(c) Buyer shall have deposited into Escrow the funds, documents and instruments required of it under Section 6.

Escrow Holder is authorized to record any instrument delivered through this Escrow, if necessary or proper, for the issuance of the Title Policy referred to above.

9. COSTS AND EXPENSES.

The Buyer shall pay the Escrow Holder's Escrow fee and the premium for the Title Policy equal to the cost of a CLTA standard coverage title policy in the amount of the Purchase Price, plus the cost of any endorsements obtained in connection with

Disapproved Exceptions. Any additional Title Policy costs, including the cost of an ALTA policy or any endorsements requested by the Buyer, shall be borne by the Buyer. Buyer agrees to pay all other usual fees, charges, and costs which arise from Escrow.

10. PRORATIONS/CREDITS.

The following proration shall be made between Buyer and Seller by Escrow Holder at the Close of Escrow, computed as of the closing date:

10.1 Assessments and Special Taxes.

Assessments and any special taxes for which Buyer is not exempt shall be prorated as of the Close of Escrow based upon the latest available tax information. Seller shall be responsible for all special taxes and assessments accrued against the Property to and including the day prior to the Close of Escrow based upon payment of such assessments in installments to the greatest extent permitted. Unless any special tax or assessment payment or installment specifies the time period for which such payment is owed, it shall be presumed that such payment is for the full year immediately preceding the day upon which such payment is due.

10.2 Property Taxes. Buyer's exempt from property taxes; consequently, property taxes shall not be pro-rated. Seller may apply for a refund of any overpayment of property taxes by Seller, and Buyer shall cooperate therewith. This Section shall survive the Close of Escrow.

10.3 Security Deposit(s). Buyer shall receive a credit against the Purchase Price for any security deposit or prepaid rent held by or paid to Seller under any existing leases or similar contracts.

11. WAIVER BY SELLER.

Seller knowingly and voluntarily waives the following rights: the right to seek any compensation for the acquisition of the property in any amount greater than that set forth in Section 2 herein; the right to claim relocation benefits or assistance; the right to claim damage or injury to business goodwill; the right to claim loss of rent; the right to claim severance damages; the right to claim fixtures and equipment; or any similar right or claim arising out of the acquisition of the Property.

12. "AS-IS" SALE; SELLER'S REPRESENTATIONS.

Subject to Buyer's approval of Buyer's inspections under Section 4.2 and the following Seller representations, Buyer acknowledges and agrees that Buyer is acquiring the Property in its current "AS-IS" condition. In consideration of Buyer entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following representations, each of which (i) is a condition to Close of Escrow, (ii) is true as of the Effective Date and will be true as of the Closing, and (iii) is material and is being relied upon by Buyer.

12.1 Authority.

Seller has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein without obtaining the consent or approval of any other person, entity or governmental authority. The persons whose names are set forth below hereby personally represent and warrant that they have full power and authority to sign the name of Seller to this Agreement and to cause this Agreement to be a binding obligation of Seller.

12.2 Litigation.

There is no litigation, bankruptcy or receivership proceeding or any other proceeding pending, or, to Seller's knowledge, threatened against, relating to, or involving Seller's interest in the Property, nor does Seller know or have any reasonable ground to know of any basis for any such action. No consents or waivers of or by any third party are necessary to permit the consummation by Seller of the transactions contemplated pursuant to this Agreement.

12.3 Compliance With Laws.

Seller has received no notice and has no actual knowledge of any violation of applicable law, ordinance, rule, regulation or requirement of any governmental agency, body or subdivision affecting or relating to the Property, including, without limitation, any subdivision, building, use or environmental law, ordinance, rule, requirement, or regulation.

12.4 Governmental Notices.

Seller shall deliver to Buyer each and every notice or communication Seller receives from any governmental body relating to the Property or any portion thereof upon Seller's receipt of the same.

12.5 Leases.

Other than the existing lease with the Moorpark Foundation for the Arts, a complete copy of which has been delivered to Buyer, there are no leases or other agreements (either oral or written) affecting or relating to the right of any party with respect to the possession of the Property, or any portion thereof.

12.6 Future Action.

From and after the date hereof, without the prior written consent of Buyer, Seller shall not execute nor consent to the execution of any lease of any portion of the Property or any other instrument which may result in an alteration of the condition of title.

12.7 Hazardous Materials.

To the best of Seller's actual knowledge (i) there are no Hazardous Materials in existence on or below the surface of the Property, including, without limitation, contamination of the soil, subsoil or ground water, which constitute a violation or any law, rule or regulation of any government entity having jurisdiction thereof or which expose Buyer to liability to third parties, and (ii) Seller has not used, nor permitted use of, the Property for the generation, treatment, storage or disposal of Hazardous Materials, or other condition or use that could result in or cause a discharge of any Hazardous Materials on or below the Property. "Hazardous Materials" as used herein means hazardous, toxic or radioactive substances or materials, as the same are defined or described by applicable federal laws or regulations (including, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., and the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., and any regulations adopted and publications promulgated pursuant to said laws), California laws or regulations (including, without limitation, those substances defined as "Hazardous Substances" in Section 25316 of the California Health & Safety Code, and any regulations adopted and publications promulgated pursuant to said laws). Further, Seller has received no notification, warning or citation within the last five (5) years regarding any violation, or potential or pending violation, of any Hazardous Materials regulations or laws or any other law, statutory provision or regulation regarding the use, condition or status of the Property and Seller has no knowledge of any condition or activity on the Property which, if unremedied prior to the Close of Escrow, will or could, upon passage of time, constitute a violation.

12.8 Environmental Violations.

Seller has no knowledge of any condition or use of the Property that constitutes, or if unremedied prior to the Close of Escrow, with the passage of time would constitute, a violation of (i) Section 404 of the Federal Clean Water Act (33 U.S.C. Section 2344, et seq.); (ii) the Federal Clean Air Act (33 U.S.C. Section 7401, et seq.); (iii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251, et seq.); (iv) any California law of similar substance or nature controlling or regulating the use or condition of land, water or air (including the California Environmental Quality Act); or (v) any federal or California laws or regulations relating to use of or conservation of wetlands or other natural topographical conditions. Further, Seller has received no notification, warning or citation within the last five (5) years regarding any violation or potential or pending violation, of any of such laws or regulations.

12.9 Work and Materials Furnished.

All bills for work done and materials furnished with respect to the Property have been paid in full by Seller or will be discharged and paid in full by Seller by the date of Closing.

12.10 Not a Foreign Person.

Seller is not, and never has been, a "foreign person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1954, as amended, or California Revenue and Taxation Code Section 18662, and Seller will furnish to Buyer, prior to the Closing, an affidavit in form satisfactory to Buyer confirming the same.

12.11 Declaration, Covenants, Restrictions.

Other than as identified in the Title Report, there are no declarations, covenants or restrictions affecting the use of the Property; and there is no association which has been formed for the purpose of managing any portion of the Property.

12.12 Contracts.

Except as may be disclosed by the Title Documents, there are no contracts or agreements relating to the operation, development, management or ownership of the Property or any portion thereof.

12.13 Truthfulness at Closing.

Except as expressly herein otherwise provided, the representations and warranties of Seller set forth in this Agreement shall be true on and as of the close of Escrow as if those representations and warranties were made on and as of such time.

13. BUYER'S REPRESENTATIONS.

In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, each of which is material and is being relied upon by Seller:

13.1 Authority.

Buyer has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein without obtaining the consent or approval of any other person, entity or governmental authority. The person(s) whose name(s) are set forth below hereby personally represent and warrant that they have full power and authority to sign the name of Buyer to this Agreement and to cause this Agreement to be a binding obligation of Buyer.

13.2 Truthfulness at Closing.

The representations of Buyer set forth in this Agreement shall be true on and as of the close of Escrow as if those representations and warranties were made on and as of such time.

14. DEFAULT.

14.1 Seller's Default.

In the event that Seller shall fail to perform Seller's obligations hereunder, Buyer shall have the option to: (i) extend the Closing for such time as Buyer chooses to allow Seller to remedy such default, (ii) waive such default in writing, or (iii) pursue all legal or equitable remedies available to it, including, without limitation, terminating this Agreement by written notice to Seller prior to cure of the default. In the event of termination of this Agreement pursuant to this Section 14.2 or otherwise as a result of Seller's default, the parties shall be discharged from any further obligation and liabilities hereunder, and the Deposit shall be immediately released to Buyer.

15. MISCELLANEOUS.

15.1 Risk of Loss.

The risk of loss or damage to the Property until the Closing is assumed by Seller. If any damage occurs to the Property prior to Closing, Seller shall promptly give Buyer written notice of the occurrence thereof and of the amount of any insurance proceeds available for the repair of such damage. Buyer at its sole option may terminate this Agreement by written notice given to Seller within thirty (30) days of Buyer's receipt of such notice, in which case the Deposit and any other monies and documents deposited with Escrow Holder shall be returned to Buyer and this Agreement shall be null and void. If Buyer does not give such notice, or gives notice that it will nonetheless proceed with the Closing, then this Agreement will remain in full force and effect and Seller shall assign any available insurance proceeds to Buyer at or before the Closing.

15.2 Notices.

All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; sent by certified mail, postage prepaid, return receipt requested; or send by reputable overnight courier, and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business days after the date of posting by the United States Post Office, (iii) if sent by overnight courier, when delivered to the specified address.

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

To Seller: Kirk Douglas Aiken
2790 Redondo Avenue
Camarillo, California 93012

To Escrow Holder: Eric Rustigian
Glenoaks Escrow
6100 San Fernando Road
Glendale, California 91201

Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

15.3 Assignment.

Buyer may not assign, transfer or convey its rights or obligations under this Agreement without the prior written consent of Seller. However, Buyer shall in no event be released from its obligations hereunder by reason of any assignment. No assignment or transfer, if permitted, shall be effective unless each assignee or transferee expressly agrees in writing to be bound by the terms and conditions of this Agreement. Any purported assignment, transfer, or encumbrance in violation of the foregoing may, at the option of Seller, be deemed null and void or be a default hereunder.

15.4 Seller's Use of Property.

From and after the date of Seller's execution hereof, Seller shall maintain the Property in the same condition and state of repair as on the Effective Date, and Seller shall not grant or convey any easement, lease, license, permit, encumbrance, lien or any other legal or beneficial interest in or to the Property, improvements thereon, mineral or water rights appurtenant thereto, or any other property rights whatsoever without the prior written consent of Buyer, nor shall Seller violate, or allow the violation of any law, ordinance, rule or regulation affecting the Property. Seller shall do or cause to be done all things reasonably within its control to preserve intact and unimpaired any and all easements, grants, appurtenances, privileges and licenses in favor of or constituting any portion of the Property. Further, Seller agrees to pay, as and when due, all payments on any liens or encumbrances presently affecting the Property and any and all taxes, assessments and levies in respect of the Property through the close of Escrow.

15.5 Delivery of Materials.

Seller shall deliver to Buyer, at no expense to Buyer, within ten (10) days of Seller's execution hereof, copies of any and all contracts affecting the Property (including service and materials contracts), soils investigations and reports, water and sewer studies, topographic maps, photographs, mapping, platting and other materials, if any, concerning the Property, which are owned by Seller or are in Seller's possession (collectively, the "Materials").

15.6 Survival and Conditions Precedent.

Agreements, representations, covenants and warranties contained in this Agreement or any amendment or supplement hereto shall survive Closing and delivery of deed hereunder and shall not be merged thereby, and, in addition to any effect any of the same have in law or in equity, all of the same will be deemed to be conditions precedent to the Buyer's obligations hereunder, whether so expressed or not. Seller acknowledges that all of the conditions to this Agreement which are for the sole benefit of the Buyer may unilaterally be waived by the Buyer only in writing.

16. GENERAL PROVISIONS.

16.1 Required actions of Buyer and Seller.

Buyer and Seller agree to execute such further instruments and documents and to consummate the purchase and sale herein contemplated, and to effectuate the intent of this Agreement.

16.2 Time of Essence.

Time is of the essence of each and every term, condition, obligation and provision hereof.

16.3 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

16.4 Captions.

Any captions to, or headings of, the paragraph or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

16.5 No Obligations to Third Parties.

Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties hereto, to any person or entity other than the parties hereto.

16.6 Exhibits.

Any Exhibits attached hereto are hereby incorporated herein by this reference.

16.7 Amendment to this Agreement.

The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

16.8 Waiver.

The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

16.9 Applicable Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

16.10 Fees and Other Expenses.

Except as otherwise provided herein, each of the parties shall pay its own attorneys', consultants' and other fees and expenses in connection with this Agreement.

16.11 Entire Agreement.

This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Buyer and Seller as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

16.12 Successors and Assigns.

Subject to any limitations on assignment contained herein, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

16.13 No Presumption.

Each provision of this Agreement has been independently and freely negotiated by both parties as if this Agreement were drafted by both parties. In the event of any ambiguity in this Agreement, the parties waive any presumption or rule requiring or permitting interpretation of said ambiguity against or in favor of either party.

16.14 Attorneys' Fees.

In the event that either party is required to commence any action or proceedings against the other in order to enforce the provisions hereof, or in order to obtain damages for the alleged breach of any of the provisions hereof, the prevailing

party (which shall be the party receiving the larger award or otherwise receiving the more significant relief) therein shall be entitled to recover, in addition to any amounts or relief otherwise awarded, incurred in connection therewith, including attorneys' fees.

16.15 Survival.

Except as otherwise provided herein, all covenants, agreements, representations and warranties set forth in this Agreement or in any certificate or instrument executed or delivered pursuant to this Agreement shall survive the Closing and shall not merge into any deed, assignment or other instrument executed or delivered pursuant hereto.

16.16 IRS Real Estate Sales Reporting.

Buyer and Seller hereby appoint Escrow Holder as, and Escrow Holder agrees to act as "the person responsible for closing" the transactions which are the subject of this Agreement, pursuant to Internal Revenue Code of 1986 Section 6045(e). Escrow Holder shall prepare and file the informational return (IRS Form 1099-S) required by and otherwise comply with the terms of IRS Section 6045(e).

16.17 Section 1031 Exchange.

Seller may elect to seek to structure its sale of the Property as a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended, and the treasury regulations promulgated thereunder ("1031 Exchange"), subject to the limitations set forth herein. Each party shall reasonably cooperate with the other, at no material cost to such cooperating party, in connection with the same, including, but not limited to, executing and delivering a consent of an assignment to a qualified exchange intermediary of rights (but not obligations) under this Agreement; provided that (i) Buyer shall not be required to incur any additional liabilities or financial obligations as a consequence of such cooperation, (ii) Seller shall not be relieved of its obligations, representations or warranties under this Agreement, (iii) any attempt to structure the sale of the Property as a 1031 Exchange shall not be a condition to, and shall not delay or extend, the Closing, and (iv) Buyer shall not be required to acquire title to any other property. Buyer agrees that performance by the intermediary designated by Seller will be treated as performance by Seller. Any risk that such a 1031 Exchange might not qualify as a tax-deferred transaction shall be borne solely by the Seller, and Seller acknowledges that Buyer has not provided, and will not provide, any tax, accounting, legal or other advice regarding the efficacy any attempt to structure the transaction as a 1031 Exchange. Seller agrees to save, protect, defend, indemnify and hold Buyer harmless from any and all losses, costs, claims, liabilities, penalties, and expenses, including, without limitation, attorneys' fees, fees of accountants and other experts, and costs of any judicial or administrative proceeding or alternative dispute resolution to which Buyer may be exposed, due to any attempt to structure the transaction as a 1031 Exchange.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

“BUYER”

CITY OF MOORPARK

By:

Steven Kueny
City Manager

ATTEST:

Maureen Benson
City Clerk

“SELLER”

By:

Kirk Douglas Aiken

EXHIBIT "A"

LEGAL DESCRIPTION

Assessor Parcel Number (APN): 512-0-091-070

Address: 61 E. High Street, Moorpark, California

Lot 3, in block "C" in the Townsite of Moorpark, in the County of Ventura, State of California, as per Map recorded in Book 5, Page 5, of maps, in the Office of the County Recorder of said County.

EXHIBIT "B"

FORM OF NOTICE TO EXISTING TENANT

(Attached.)

_____, 201__

Via Federal Express

Moorpark Foundation for the Arts
(dba High Street Arts Center)
P.O. Box 157
Moorpark, CA 93020

Re: Notice of Sale of Leased Property and Change of Landlord Address; Lease entitled "Commercial Real Estate Lease With Option to Purchase" dated May 15, 2013 between Moorpark Foundation for the Arts as tenant and Kirk and Elizabeth Aiken as landlord ("Lease")

Ladies and Gentlemen:

The City of Moorpark has purchased the property that is subject to the above-referenced Lease.

The City's address for notices as the new landlord under the Lease is as follows: City of Moorpark, 799 Moorpark Avenue, Moorpark, CA 93012, Attn: City Manager.

You are hereby directed to make all future payments under the Lease (including rent) to the City of Moorpark at the foregoing address.

We hereby request that you acknowledge your receipt of this notice by executing this notice in the space provided below and returning a copy by PDF/ mail to Steven Kueny, City Manager of the City, at the first address specified above (i.e., the City's address for notices).

Very truly yours,

BUYER/NEW LANDLORD:

CITY OF MOORPARK

By: _____

Steven Kueny,
City Manager

SELLER/OLD LANDLORD:

Kirk Douglas Aiken

Elizabeth Aiken

RECEIPT ACKNOWLEDGED BY TENANT:
MOORPARK FOUNDATION FOR THE ARTS

By: _____
Print Name: _____
Title: _____

cc: Moorpark Foundation for the Arts (61 E. High Street, Moorpark, CA 93021)

ATTACHMENT 2

RESOLUTION NO. 2015 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING ACQUISITION OF 61 HIGH STREET, ACCEPTANCE OF GRANT DEED, AND AUTHORIZING THE CITY MANAGER TO EXECUTE ALL DOCUMENTS NECESSARY TO EFFECTUATE THIS TRANSACTION AND AMENDING THE FISCAL YEAR 2015/16 BUDGET TO FUND THE PURCHASE

WHEREAS, on June 17, 2015, the City Council adopted the Operating and Capital Improvement Projects Budget for Fiscal Year 2015/16; and

WHEREAS, the City Council of the City of Moorpark desires to enhance cultural amenities in the City for the benefit of the public by providing a support facility for the High Street Arts Center; and

WHEREAS, a staff report has been presented to the City Council requesting approval of the purchase of the property at 61 High Street; and

WHEREAS, on November 24, 2015, the Planning Commission found that acquisition of the property at 61 High Street is in conformance with the Moorpark General Plan, as required by Section 65402 of the Government Code of the State of California; and

WHEREAS, the owner of the Property is willing to sell the Property to the City of Moorpark for a total purchase price of \$880,000.00, plus closing costs; and

WHEREAS, an aggregate budget amendment of \$880,000 plus \$5,000 in closing costs for a total of \$885,000 is requested to fund the purchase of the property from the Endowment Fund (2800); and

WHEREAS, Exhibit "A", attached hereto and made a part hereof, describes said budget amendment and the resultant impact to the budget line items.

WHEREAS, pursuant to Government Code Section 27281, the Certificate of Acceptance required for the City to acquire property shall include the resolution number of the City Council's approval of the acquisition.

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

SECTION 1. A budget amendment in the amount \$885,000 from the Endowment Fund (2800), as more particularly described in Exhibit "A", attached hereto, is hereby approved.

SECTION 2. The City Clerk shall accept and consent to the recordation of the grant deed.

SECTION 3. The City Manager shall execute all documents necessary to effectuate this transaction.

SECTION 4. 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 16th day of December, 2015.

Janice S. Parvin, Mayor

ATTEST:

Maureen Benson, City Clerk

Exhibit A – Budget Amendment

