

**MOORPARK CITY COUNCIL  
AGENDA REPORT**

**TO:** Honorable City Council

**FROM:** Barry K. Hogan, Community Development Director *JKH*  
Prepared by: Joseph Fiss, Principal Planner

**DATE:** June 13, 2007 (CC Meeting of 06/20/2007)

**SUBJECT:** Consider Ordinance Approving Amendment No. 1 to Development Agreement No. 2004-01 with Toll Land XX Limited Partnership in Connection with Residential Planned Development Permit No. 2003-04, General Plan Amendment No. 2003-04, Zone Change No. 2003-03, and Tentative Map No. 5463 for Forty-Nine (49) Single-family Homes on 43.04 Acres North of Championship Drive and East of Grimes Canyon Road

**BACKGROUND**

Ordinance No. 346, adopting Development Agreement No. 2004-01 with Toll Land XX Limited Partnership, was approved by the City Council on December 6, 2006 for the development of forty-nine (49) single-family homes on 43.04 acres north of Championship Drive and east of Grimes Canyon Road. The developer has since requested amendments to this Agreement related to the timing of the required Grimes Canyon Road improvements and the timing and manner of achieving the open space and affordable housing requirements of the Development Agreement. On June 12, 2007, the Planning Commission adopted a resolution (unsigned copy attached) recommending approval of Amendment No. 1 to Development Agreement No. 2004-01.

**DISCUSSION**

Government Code Section 65864 and City of Moorpark Municipal Code Section 15.40 provide for Development Agreements between the City and property owners in connection with proposed plans of development for specific properties. Development Agreements are designed to strengthen the planning process, to provide developers some certainty in the development process and to assure development in accordance with the terms and conditions of the agreement. A Development Agreement (DA) may be amended or terminated, in whole or in part, by mutual consent of the parties to the agreement, and would be accomplished in the same manner as for a new Development Agreement, by

ordinance of the city council after public hearings by the Planning Commission and City Council.

Toll Land XX Limited Partnership (Toll) is requesting the following amendments to the Development Agreement for this project:

**1. Grimes Canyon Road Improvements**

Toll has expressed concern with the timing specified in the Development Agreement for improving Grimes Canyon Road in two respects:

First, Section 5.4 of the DA provides for expiration of the Tentative Map and allows changing the land use designations on the underlying land two years after Map approval unless the developer has acquired title to a specified parcel of land required for widening of Grimes Canyon Road. Toll is currently in escrow for the purchase of this parcel subject to the approval of this DA modification and therefore, requests an amendment, making this acquisition a condition precedent to any of the developer's obligations under the DA and/or the Map. To address this first issue, Toll requests the following language be inserted at the end of the second paragraph of Section 5.4:

However, in recognition of the importance of the Acquisition Parcel to the feasibility of the Project, none of Developer's obligations contained in this Development Agreement or in the Project Approvals shall be effective until Developer has acquired legal title to the Acquisition Parcel.

Second, Section 6.22 of the Development Agreement requires that specific improvements to Grimes Canyon Road commence prior to issuance of the first residential building permit and be completed prior to issuance of the tenth permit. The Section also requires that the improvements be completed within ninety (90) days of either obtaining the necessary property or obtaining the necessary permits for the improvements. Since the County has plans to realign Grimes Canyon Road as a means of repairing a recent washout and Toll has agreed to provide the additional right of way required by the realignment at no cost to the County, the County will improve the new alignment to full width as their repair of storm damage. This work is funded and scheduled to start September 2007. There are no overhead utilities in this portion of Grimes Canyon Road, and therefore no obligation to underground utilities. Toll's obligation to improve Grimes Canyon Road will be satisfied by the County's pending activity. Toll requests a further DA amendment, extending the 90-day performance period to 180 days from the date that all necessary permits have been obtained or the first building permit is issued. To address this second issue, the following changes to Section 6.22 are proposed:

6.22 In the event the County does not improve the remaining unimproved portion of Grimes Canyon Road to the City boundary, then The Developer shall improve both sides of Grimes Canyon Road to its ultimate right-of-way from Championship Drive north to the northern City limits, with the same section as the improvements previously made to the portion of Grimes Canyon Road north of Championship Drive in connection with Tract 4928; provided, however, that Developer shall have no responsibility for repair or reconstruction of any portion of Grimes Canyon Road

~~which was damaged by flood waters or other conditions prior to the date hereof ("Road Repair Work"). ; including undergrounding of all utilities including all electrical lines of 66kv or less. Transition paving shall be provided north of the City limits on both sides of the streets. Developer~~ The developer shall pay all City costs for acquisition of the properties needed for construction of these improvements, including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. Such improvement With regard to improvement of the easterly half of Grimes Canyon Road, the required work shall commence prior to issuance of a building permit for the first dwelling unit in the Project, and the improvements shall be completed within ninety (90) one-hundred eighty (180) days ~~of after the later of issuance of a building permit for the first dwelling unit in the Project obtaining the real property needed for said improvement or receipt of all permits required for construction of the improvements.~~ Developer shall have no obligation with respect to improvement of the westerly half of Grimes Canyon Road unless and until the County has completed the Road Repair Work. Developer shall commence work on improvements to the westerly half of Grimes Canyon Road within thirty (30) days following completion by the County of the Road Repair Work, and the improvements shall be completed within one-hundred eighty (180) days after the later of completion of such work by the County or receipt of all permits required for construction of the improvements. Such improvements must start prior to issuance of a building permit for the first (1<sup>st</sup>) dwelling unit, and shall be completed prior to the issuance of the building permit for the tenth (10th) dwelling unit for the Project.

## **2. Open Space Mitigation**

Section 6.23 of the DA requires Toll to either dedicate 72 acres of open space to the City or pay the City \$2.68 million in fees in lieu of the dedication, at the City's discretion. Toll requests an amendment to this section of the DA as follows, eliminating the land dedication option and extending the due date of the first fee payment to the date of recording of the first final tract map.

- 6.23 Pursuant to approved MND and MMRP, prior to recordation of the first Final Tract Map for the Property, initiation of rough grading or issuance of any subsequent permits, the applicant, shall is required to purchase and dedicate fee title for seventy-two (72) acres of open space in lieu of providing on-site open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. Prior to purchase and dedication, the City Council shall approve the location of the proposed open space land. At The City's accepts that, sole discretion in lieu of the purchase of the seventy-two (72) acres of open space, that Developer shall pay two million six hundred eighty thousand dollars (\$2,680,000.00) to City to be used in its sole and unfettered discretion for open space preservation purposes. Six hundred seventy thousand dollars (\$670,000.00) shall be paid to the City no later than one

~~year from the operative date of this Agreement or upon~~ the recordation of the Final Map, ~~whichever occurs first~~. Subsequent annual payments of six hundred seventy thousand dollars (\$670,000.00) shall be made for three years ~~on~~ ~~from~~ the annual anniversary of the first payment. The fee shall be adjusted annually, commencing January 1, 2008, by the larger increase of a), b), or c) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).
- b) The annual adjustment shall be determined by any increase in the median price of the single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index) for the previous twelve (12) month period.
- c) The annual percentage amount paid to City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) calendar quarters divided by four (4).

In the event there is a decrease in all of the referenced Indices for any annual indexing, the Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

### **3. Affordable Housing**

Toll is in the process of acquiring the property at 436 Charles Street for the purpose of obtaining additional affordable unit credits. Toll's expectation is that they will receive three (3) affordable unit credits. Toll is also requesting that the time to provide the remaining four (4) units be moved to a later date commensurate with the units being provided up front instead of at grading permit, with changes to the opening paragraphs of Section 6.9 of the Development Agreement as follows:

- 6.9 Developer agrees to provide a total of twelve (12) affordable housing units; eight (8) units for Tract 5463 (four (4) low and four (4) very low) and four (4) units per the Development Agreement for Tract 5464 (two (2) low and two (2) very low) as further described in this subsection 6.9.

To partially meet this obligation, the Developer agrees to transfer clear title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as

indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, consisting of (three (3) low income and two (2) very low income units) toward the total required by this Agreement and the Development Agreement for Tract 5464. In the event Developer obtains clear title to the approximately 0.34 acre parcel known as 436 Charles Street in further partial fulfillment of the requirements for affordable housing, City will credit Developer three (3) additional affordable units, consisting of one (1) very low income and two (2) low income units toward the total required by this Agreement and the Development Agreement for Tract 5463. Prior to the issuance of a grading permit for either Tract or upon receipt of clear title for both properties, whichever is earlier, Developer shall transfer the property or properties described above to the City free and clear of any and all encumbrances and structures. Should the grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) or eight (8) (depending on whether Developer has acquired clear title to the 436 Charles Street property) affordable units shall be applied to Tract 5463. Should the grading permit for Tract 5464 precede the grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining ~~(fifth (5<sup>th</sup>) to eighth (8<sup>th</sup>))~~ affordable unit(s) may be applied toward the fulfillment of one (1) to four (4) affordable housing unit(s) for Tract 5463.

To meet its obligation for the remaining ~~seven (7)~~ affordable units, the Developer shall also provide three (3) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meet the criteria for low income (80 percent or less of median income),; and four (4) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meets the criteria for very low income (50 percent or less of median income). All single-family detached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18') feet measured from the back of sidewalk, meet minimum setback requirements of the City RPD zone, include concrete roof tiles, and other amenities typically found in moderate priced housing in the City (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The duplex type units in Tracts 3481, 3070-2, 3070-3, 3070-4, 4170, and 5133 are considered to be single-family detached units for the purpose of this subsection 6.9.

Subject to City's sole discretion, this obligation, in whole or part, may be met by providing attached for sale units in lieu of single-family detached units at the ratio of one and one-half (1-1/2) attached for sale unit for each single-family detached unit. In the event such substitution results in any fraction of a unit, then the requirement shall be rounded up to the next higher whole number (e.g. the requirement of 3 single-family detached units are met by 4-1/2 attached for sale units, then 5 attached for sale units are required). Each of the substituted units shall be at the

income level of the units for which they are being substituted and shall contain at least 1,200 square feet, three bedrooms and attached or assigned parking for two parking spaces. The approval of such substituted units may require refurbishment or replacement of carpeting, flooring, cabinets, windows, appliances and other items to bring the units up to standards as determined by the Community Development Director at his or her own sole discretion. Should the Developer acquire the attached units within four (4) ~~two (2)~~ years from the December 31, 2006 ~~operative date of this Agreement~~, and offer them for sale to the City as provided for in this subsection 6.9, the attached for sale units in lieu of single-family detached units shall be at a ratio of one and one-quarter (1 1/4) attached for sale unit for each single-family detached unit.

The proposed amendments to the Development Agreement would continue to allow the City to achieve its goals with respect to road widening, acquisition of open space, and provision of affordable housing as part of the proposed development albeit within a slightly longer time frame. No other aspects of the project would be affected by the proposed amendments

#### **PROCESSING TIME LIMITS**

As legislative action of the City Council, this request for an amendment to the Development Agreement is exempt from the time limits under the Permit Streamlining Act (Government Code Title 7, Division 1, Chapter 4.5), the Subdivision Map Act (Government Code Title 7, Division 2), and the California Environmental Quality Act Statutes and Guidelines (Public Resources Code Division 13, and California Code of Regulations, Title 14, Chapter 3).

#### **ENVIRONMENTAL DETERMINATION**

In accordance with the City's environmental review procedures adopted by resolution, the Community Development Director determines the level of review necessary for a project to comply with the California Environmental Quality Act (CEQA). Some projects may be exempt from review based upon a specific category listed in CEQA. Other projects may be exempt under a general rule that environmental review is not necessary where it can be determined that there would be no possibility of significant effect upon the environment. A project which does not qualify for an exemption requires the preparation of an Initial Study to assess the level of potential environmental impacts.

Based upon the results of an Initial Study, the Director may determine that a project will not have a significant effect upon the environment. In such a case, a Notice of Intent to Adopt a Negative Declaration or a Mitigated Negative Declaration is prepared. For many projects, a Negative Declaration or Mitigated Negative Declaration will prove to be sufficient environmental documentation. If the Director determines that a project has the potential for significant adverse impacts and adequate mitigation can not be readily identified, an Environmental Impact Report (EIR) is prepared.

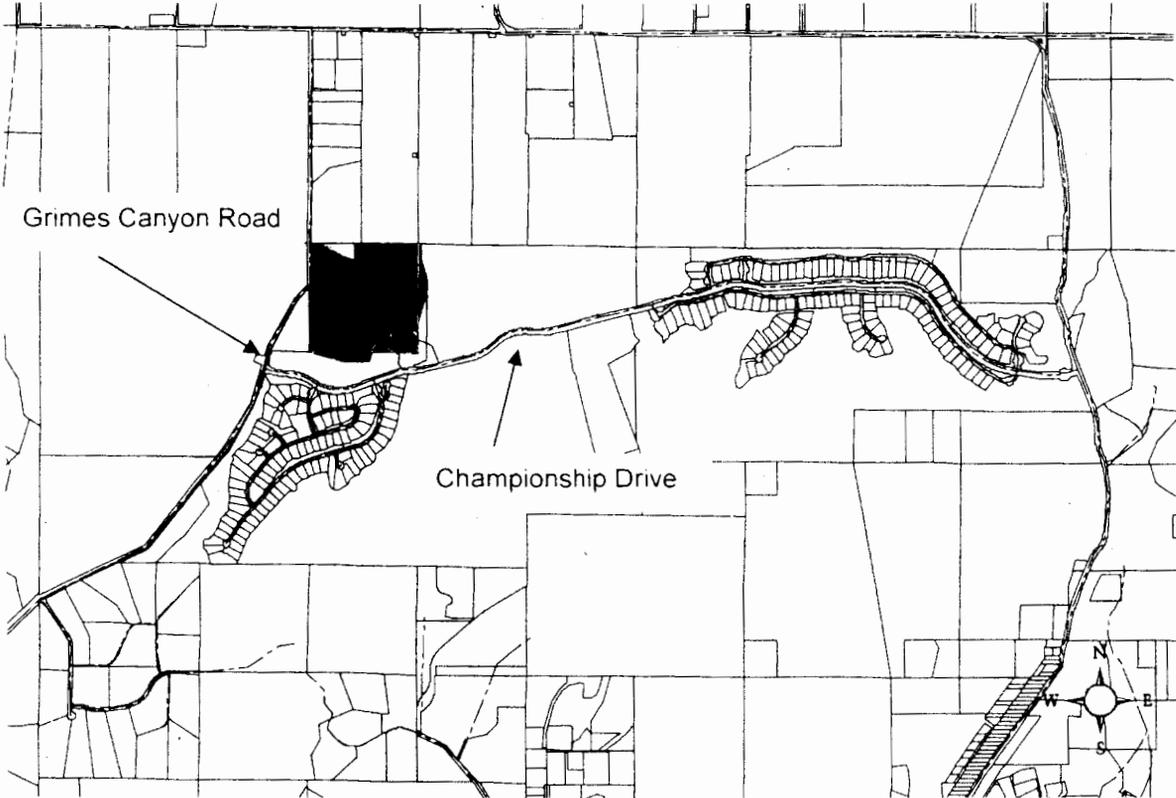
A Mitigated Negative Declaration was adopted for this project. The proposed amendments would not require any changes to the Initial Study or Mitigated Negative Declaration previously prepared. Therefore, no further environmental review is necessary.

**STAFF RECOMMENDATION**

1. Open the public hearing, accept public testimony and close the public hearing.
2. Adopt Ordinance No. \_\_\_\_\_ approving Amendment No. 1 to Development Agreement No. 2004-01.

**ATTACHMENTS:**

1. Location Map
2. Planning Commission Resolution No., 2007-517
3. Development Agreement with proposed changes (in legislative format)
4. Draft Ordinance No. \_\_\_\_\_



**North Side of Championship Drive,  
East of Grimes Canyon Road**

**LOCATION MAP**

**CC ATTACHMENT 1**

RESOLUTION NO. PC-2007-517

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MOORPARK, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 2004-01 BETWEEN THE CITY OF MOORPARK AND TOLL LAND XX LIMITED PARTNERSHIP FOR FORTY-NINE (49) SINGLE-FAMILY HOMES ON 43.04 ACRES NORTH OF CHAMPIONSHIP DRIVE AND EAST OF GRIMES CANYON ROAD

WHEREAS, Section 65864, Article 2.5, Chapter 4, Division 1, Title 7 of the State Planning and Zoning Law provides that cities may enter into and amend contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, the Planning Commission concurs with the Community Development Director's determination that the Mitigated Negative Declaration adopted in conjunction with General Plan Amendment No. 2003-04, Zone Change No. 2003-03, Residential Planned Development Permit No. 2003-04, Tentative Tract Map No.5463, and Development Agreement No. 2004-01 for Forty-nine (49) Single-family homes on 43.04 Acres North of Championship Drive and East of Grimes Canyon Road is sufficient environmental documentation for this Amendment No 1 to Development Agreement No. 2004-01 and no further environmental documentation is needed; and

WHEREAS, a duly noticed public hearing was conducted by the Planning Commission on June 12, 2007, to consider Amendment No. 1 to Development Agreement 2004-01 and to accept public testimony related thereto; and

WHEREAS, the Planning Commission has considered all points of public testimony relevant to the Development Agreement Amendment and has given careful consideration to the content of the Development Agreement Amendment.

NOW, THEREFORE, THE PLANNING COMMISSION OF THE CITY OF MOORPARK, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. RECOMMENDATION: The Planning Commission recommends that the City Council approve Amendment No. 1 to Development Agreement No. 2004-01 as presented to the Planning Commission on June 12, 2007.

SECTION 2. DOCUMENTS TO CITY COUNCIL: A copy of this resolution, documents furnished by the public, and minutes of the public hearing shall be furnished to the City Council.

SECTION 3. FILING OF RESOLUTION: The Community Development Director shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 12th day of June, 2007.

AYES: Commissioners Di Cecco and Hamous, Vice Chair Peskay  
and Chair Taillon

NOES:

ABSTAINED: Commissioner Landis

ABSENT:

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Mark Taillon, Chair

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Barry K. Hogan,  
Community Development Director

Recording Requested By  
And When Recorded Return to:

CITY CLERK  
CITY OF MOORPARK  
799 Moorpark Avenue  
Moorpark, California 93021  
EXEMPT FROM RECORDER'S FEES  
Pursuant to Government Code  
§ 6103

DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
THE CITY OF MOORPARK  
AND

TOLL LAND XX LIMITED PARTNERSHIP

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

## DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on \_\_\_\_\_, by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Toll Land XX Limited Partnership, the owner of real property within the City of Moorpark generally referred to as Vesting Tentative Tract Map 5463 (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." In consideration of the mutual covenants and agreements contained in this Agreement, City and Developer agree as follows:

1. Recitals. This Agreement is made with respect to the following facts and for the following purposes, each of which is acknowledged as true and correct by the Parties:
  - 1.1. Pursuant to Government Code Section 65864 et seq. and Moorpark Municipal Code chapter 15.40, City is authorized to enter into a binding contractual agreement with any person having a legal or equitable interest in real property within its boundaries for the development of such property in order to establish certainty in the development process.
  - 1.2. Prior to approval of this Agreement, but after the approval of the Mitigated Negative Declaration (MND), Mitigation Measures, and Mitigation Monitoring and Reporting Program ("the MMRP") for the Project Approvals as defined in subsection 1.3 of this Agreement, the City Council of City ("the City Council") approved General Plan Amendment No. 2003-04 ("GPA 2003-04"), for approximately 43.04 acres of land within the City ("the Property"), as more specifically described in Exhibit "A" attached hereto and incorporated herein, and changed the zoning of the Property pursuant to Zone Change No. 2003-03 ("ZC 2003-03").
  - 1.3. GPA 2003-04, ZC 2003-03, Vesting Tentative Tract Map 5463 (Tract 5463) and Residential Planned Development Permit No. 2003-04 (RPD2003-04) [collectively "the Project Approvals"; individually "a Project Approval"] provide for the development of the Property and the construction of certain off-site improvements in connection therewith ("the Project").
  - 1.4. By this Agreement, City desires to obtain the binding agreement of Developer to develop the Property in accordance with the Project Approvals and this Agreement. In consideration thereof, City agrees to limit the future exercise of certain of its governmental and proprietary powers to the extent specified in this Agreement.
  - 1.5. By this Agreement, Developer desires to obtain the binding agreement of City to permit the development of the Property in accordance with the Project Approvals and this Agreement. Developer anticipates developing

the Property over a minimum of three (3) years. In consideration thereof, Developer agrees to waive its rights to legally challenge the limitations and conditions imposed upon the development of the Property pursuant to the Project Approvals and this Agreement and to provide the public benefits and improvements specified in this Agreement.

- 1.6. City and Developer acknowledge and agree that the consideration that is to be exchanged pursuant to this Agreement is fair, just and reasonable and that this Agreement is consistent with the General Plan of City, as amended by GPA 2003-04.
  - 1.7. On June 28, 2005, the Planning Commission of City commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing recommended approval of the Agreement.
  - 1.8. On July 19, 2006, the City Council commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on November 15, 2006, approved the Agreement by Ordinance No. 347 ("the Enabling Ordinance").
2. Property Subject To This Agreement. All of the Property shall be subject to this Agreement. The Property may also be referred to hereinafter as "the site" or "the Project".
  3. Binding Effect. The burdens of this Agreement are binding upon, and the benefits of the Agreement inure to, each Party and each successive successor in interest thereto and constitute covenants that run with the Property. Whenever the terms "City" and "Developer" are used herein, such terms shall include every successive successor in interest thereto, except that the term "Developer" shall not include the purchaser or transferee of any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement.
    - 3.1. Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property except any lot within the Project that has been fully developed in accordance with the Project Approvals and this Agreement shall be, conclusively deemed to have consented and agreed to be bound by this Agreement, whether or not any reference to the Agreement is contained in the instrument by which such person acquired such right, title or interest.
    - 3.2. Release Upon Transfer. Upon the sale or transfer of any of Developer's interest in any portion of the Property, that Developer shall be released from its obligations with respect to the portion so sold or transferred subsequent to the operative date of the sale or transfer, provided that the Developer (i) was not in breach of this Agreement at the time of the sale or transfer and (ii) prior to the sale or transfer, delivered to City a written assumption agreement, duly executed by the purchaser or transferee and

notarized by a notary public, whereby the purchaser or transferee expressly assumes the obligations of Developer under this Agreement with respect to the sold or transferred portion of the Property. Failure to provide a written assumption agreement hereunder shall not negate, modify or otherwise affect the liability of the purchaser or transferee pursuant to this Agreement. Nothing contained herein shall be deemed to grant to City discretion to approve or deny any such sale or transfer, except as otherwise expressly provided in this Agreement.

3.3. In the event of a partial assignment or transfer, the assumption agreement referenced in subsection 3.2 shall include provisions acceptable to the City to ensure that the phased construction of affordable housing units contemplated by Section 6.9 is achieved, regardless of the identity or number of developers of the Project.

4. Development of the Property. The following provisions shall govern the subdivision, development and use of the Property.

4.1. Permitted Uses. The permitted and conditionally permitted uses of the Property shall be limited to those that are allowed by the Project Approvals and this Agreement.

4.2. Development Standards. All design and development standards, including but not limited to density or intensity of use and maximum height and size of buildings, that shall be applicable to the Property are set forth in the Project Approvals and this Agreement.

4.3. Building Standards. All construction on the Property shall adhere to the Uniform Building Code, including the Fire Resistive Design Manual, the National Electrical Code, the Uniform Plumbing Code, the Uniform Mechanical Code, the Uniform Housing Code, the Uniform Code for the Abatement of Dangerous Buildings, the Uniform Code for Building Conservation and the Uniform Administrative Code in effect at the time the plan check or permit is approved and to any federal or state building requirements that are then in effect (collectively "the Building Codes").

4.4. Reservations and Dedications. All reservations and dedications of land for public purposes that are applicable to the Property are set forth in the Project Approvals and this Agreement.

5. Vesting of Development Rights.

- 5.1. Timing of Development. In Pardee Construction Co. v. City of Camarillo, 37 Cal.3d 465 (1984), the California Supreme Court held that the failure of the parties therein to provide for the timing or rate of development resulted in a later-adopted initiative restricting the rate of development to prevail against the parties' agreement. City and Developer intend to avoid the result in Pardee by acknowledging and providing that Developer shall have the right, without obligation, to develop the Property in such order and at such rate and times as Developer deems appropriate within the exercise of its subjective business judgment.

In furtherance of the Parties intent, as set forth in this subsection, no future amendment of any existing City ordinance or resolution, or future adoption of any ordinance, resolution or other action, that purports to limit the rate or timing of development over time or alter the sequencing of development phases, whether adopted or imposed by the City Council or through the initiative or referendum process, shall apply to the Property provided the Property is developed in accordance with the Project Approvals and this Agreement. Nothing in this subsection shall be construed to limit City's right to insure that Developer timely provides all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement.

- 5.2. Amendment of Project Approvals. No amendment of any of the Project Approvals, whether adopted or approved by the City Council or through the initiative or referendum process, shall apply to any portion of the Property, unless the Developer has agreed in writing to the amendment.
- 5.3. Issuance of Subsequent Approvals. Applications for land use approvals, entitlements and permits, including without limitation subdivision maps (e.g. tentative, vesting tentative, parcel, vesting parcel, and final maps), subdivision improvement agreements and other agreements relating to the Project, lot line adjustments, preliminary and final planned development permits, use permits, design review approvals (e.g. site plans, architectural plans and landscaping plans), encroachment permits, and sewer and water connections that are necessary to or desirable for the development of the Project (collectively "the Subsequent Approvals"; individually "a Subsequent Approval") shall be consistent with the Project Approvals and this Agreement. For purposes of this Agreement, Subsequent Approvals do not include building permits.

Subsequent Approvals shall be governed by the Project Approvals and by the applicable provisions of the Moorpark General Plan, the Moorpark Municipal Code and other City ordinances, resolutions, rules, regulations, policies, standards and requirements as most recently adopted or approved by the City Council or through the initiative or referendum

process and in effect at the time that the application for the Subsequent Approval is deemed complete by City (collectively "City Laws"), except City Laws that:

- (a) change any permitted or conditionally permitted uses of the Property from what is allowed by the Project Approvals;
- (b) limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the number of proposed buildings or other improvements from what is allowed by the Project Approvals.
- (c) limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner, provided that all infrastructure required by the Project Approvals to serve the portion of the Property covered by the Subsequent Approval is in place or is scheduled to be in place prior to completion of construction;
- (d) are not uniformly applied on a City-wide basis to all substantially similar types of development projects or to all properties with similar land use designations;
- (e) control residential rents;
- (f) prohibit or regulate development on slopes with grades greater than 20 percent, including without limitation Moorpark Municipal Code Chapter 17.38 or any successor thereto, within the Property; or
- (g) modify the land use from what is permitted by the City's General Plan Land Use Element at the operative date of this Agreement or that prohibits or restricts the establishment or expansion of urban services including but not limited to community sewer systems to the Project.

5.4. Term of Subsequent Approvals. The term of any tentative map for the Property, or any portion thereof, shall expire ten (10) years after its approval or conditional approval or upon the expiration or earlier termination of this Agreement, whichever occurs first, notwithstanding the provisions of Government Code Section 66452.6(a) or the fact that the final map may be filed in phases. Developer hereby waives any right that it may have under the Subdivision Map Act, Government Code Section 66410 et seq., or any successor thereto, to apply for an extension of the time at which the tentative map expires pursuant to this subsection. No portion of the Property for which a final map or parcel map has been recorded shall be reverted to acreage at the initiative of City during the term of this Agreement.

Notwithstanding the foregoing, in the event that Developer has not acquired the 4.84 ± acres of land, APN 502014003 (the "Acquisition Parcel") prior to the second anniversary of the approval date of the Vesting Tentative Map, the Vesting Tentative Map shall expire, unless developer applies for an additional one year extension to such map, the granting of which shall be subject to the City Council's discretion, based, in part, on Developer's demonstration of good faith efforts to acquire the Acquisition Parcel. Should the Council decide not to extend the map, or if extended, should developer fail to acquire the Acquisition Parcel prior to the extended period, the map shall expire, and this Agreement shall terminate. Thereafter, Developer waives any and all claims or causes of action for, and the right to challenge, a rezoning and general plan land use redesignation of the Property by the City to the zoning and land use designation that existed on the Property prior to the Project Approvals. This waiver provision shall survive the termination of the Agreement. However, in recognition of the importance of the Acquisition Parcel to the feasibility of the Project, none of Developer's obligations contained in this Development Agreement or in the Project Approvals shall be effective until Developer has acquired legal title to the Acquisition Parcel.

The term of any Subsequent Approval, except a tentative map or subdivision improvement or other agreements relating to the Project, shall be one year; provided that the term may be extended by the decision maker for two (2) additional one (1) year periods upon application of the Developer holding the Subsequent Approval filed with City's Community Development Department prior to the expiration of that Approval. Each such Subsequent Approval shall be deemed inaugurated, and no extension shall be necessary, if a building permit was issued and the foundation received final inspection by City's Building Inspector prior to the expiration of that Approval.

It is understood by City and Developer that certain Subsequent Approvals may not remain valid for the term of this Agreement. Accordingly, throughout the term of this Agreement, any Developer shall have the right, at its election, to apply for a new permit to replace a permit that has expired or is about to expire.

- 5.5. Modification of Approvals. Throughout the term of this Agreement, Developer shall have the right, at its election and without risk to or waiver of any right that is vested in it pursuant to this section, to apply to City for modifications to Project Approvals and Subsequent Approvals. The approval or conditional approval of any such modification shall not require an amendment to this Agreement, provided that, in addition to any other findings that may be required in order to approve or conditionally approve

the modification, a finding is made that the modification is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.

5.6. Issuance of Building Permits. No building permit, final inspection or certificate of occupancy will be unreasonably withheld from Developer if all infrastructure required by the Project Approvals, Subsequent Approvals, and this Agreement to serve the portion of the Property covered by the building permit is in place or is scheduled to be in place prior to completion of construction and all of the other relevant provisions of the Project Approvals, Subsequent Approvals and this Agreement have been satisfied. Consistent with subsection 5.1 of this Agreement, in no event shall building permits be allocated on any annual numerical basis or on any arbitrary allocation basis.

5.7. Moratorium on Development. Nothing in this Agreement shall prevent City, whether by the City Council or through the initiative or referendum process, from adopting or imposing a moratorium on the processing and issuance of Subsequent Approvals and building permits and on the finalizing of building permits by means of a final inspection or certificate of occupancy, provided that the moratorium is adopted or imposed (i) on a City-wide basis to all substantially similar types of development projects and properties with similar land use designations and (ii) as a result of a utility shortage or a reasonably foreseeable utility shortage, including without limitation a shortage of water, sewer treatment capacity, electricity or natural gas.

6. Developer Agreements.

6.1. Developer shall comply with (i) this Agreement, (ii) the Project Approvals, (iii) all Subsequent Approvals for which it was the applicant or a successor in interest to the applicant and (iv) the MMRP of the MND and any subsequent or supplemental environmental actions.

6.2. All lands and interests in land dedicated to City shall be free and clear of liens and encumbrances other than easements or restrictions that do not preclude or interfere with use of the land or interest for its intended purpose, as reasonably determined by City.

6.3. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a development fee as described herein (the "Development Fee"). The Development Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Development Fee shall be Nine-Thousand Five-Hundred Dollars (\$9,500.00) per residential unit and Forty-Two-Thousand Seven-

Hundred Fifty Dollars (\$42,750.00) per gross acre of institutional land on which the use is located. The fee shall be adjusted annually commencing July 1, 2008 by the larger increase of a) or b) as follows:

- a) The Consumer Price Index (CPI) increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.
- b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Indices for any annual indexing, the Development Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.4. As a condition of the issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a traffic mitigation fee as described herein ("Citywide Traffic Fee"). The Citywide Traffic Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Citywide Traffic Fee shall be Six-Thousand Six-Hundred Dollars (\$6,600.00) per residential unit, and Twenty-Nine-Thousand, Seven-Hundred Dollars (\$29,700.00) per acre of institutional land on which the institutional use is located. Commencing on January 1, 2008, and annually thereafter, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.
- 6.5. As a condition of issuance of a building permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a community services fee as described herein (Community Services Fee). The Community Services Fee may be expended by City in its sole and unfettered discretion. The amount of the Community Services Fee shall be Two-Thousand, Four-Hundred Dollars (\$2,400.00) per residential unit, and Ten-Thousand Eight-Hundred Dollars (\$10,800.00) per gross acre of institutional land on which the institutional

use is located. The fee shall be adjusted annually commencing on January 1, 2008, by the larger increase of a) or b) as follows:

- a) The Consumer Price Index (CPI) increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.
- b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Indices for any annual indexing, the Community Services Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.6. As a condition of the issuance of a grading permit for each residential or institutional use within the boundaries of the Property, Developer shall pay City a Public Facilities fee as described herein (the "Public Facilities Fee"). The Public Facilities Fee may be expended by City in its sole and unfettered discretion. On the operative date of this Agreement, the amount of the Public Facilities Fee shall be Twelve-Thousand Dollars (\$12,000.00) per residential unit and Fifty-Four-Thousand Dollars (\$54,000) per gross acre of institutional land on which the institutional land is located, and shall be fully paid for the entire project or institutional use prior to the issuance of the grading permit. The fee shall be adjusted annually commencing January 1, 2008 by the larger increase of a) or b) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).
- b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction

Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Indices for any annual indexing, the Public Facilities Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

6.7. Prior to the issuance of the building permit for each residential dwelling unit within the Property, Developer shall pay a fee in lieu of the dedication of parkland and related improvements (Park Fee). On the operative date of this Agreement, the amount of the Park Fee shall be Twenty-Four-Thousand Dollars (\$24,000.00) for each residential dwelling unit and Fifty Cents (\$0.50) per square foot of each building used for institutional purposes within the Property. The fee shall be adjusted annually commencing January 1, 2008 by the larger increase of a) or b) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).
- b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

In the event there is a decrease in both of the referenced Indices for any annual indexing, the Public Facilities Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

6.8. Provided that prior to recordation of the first final map for Tract 5463 or March 31, 2008, whichever is later, Ventura County Waterworks District No. 1 or any successor entity confirms that it has sufficient recycled water to serve the public and community owned landscaped areas within Tract 5463, then Developer shall construct appropriately sized water lines, pumping facilities, and storage facilities for recycled water consistent with the requirements of the City, Waterworks District No. 1 and Calleguas Water District. Said lines shall be installed prior to the final cap being placed on all streets. Developer shall provide service including payment

of any connection and meter charges and shall use recycled water for medians and parkways for all public streets, and any other public and commonly owned landscaping and recreation areas. The amount of recycled water needed and areas to be irrigated by recycled water shall be determined by City at its sole discretion. The recycled water line(s) shall be installed for each City approved phase of development and the recycled water shall be in use prior to the first occupancy approval for each City approved phase of development if such recycled water is available within one-half mile of the Property. Developer shall install dual water meters and services for all locations determined necessary by City at its sole discretion to insure that both potable and recycled water are available where restroom and drinking fountains are planned.

- 6.9. Developer agrees to provide a total of twelve (12) affordable housing units; eight (8) units for Tract 5463 (four (4) low and four (4) very low) and four (4) units per the Development Agreement for Tract 5464 (two (2) low and two (2) very low) as further described in this subsection 6.9.

To partially meet this obligation, ~~the~~ Developer agrees to transfer clear title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, consisting of (three (3) low income and two (2) very low income units) toward the total required by this Agreement and the Development Agreement for Tract 5464. In the event Developer obtains clear title to the approximately 0.34 acre parcel known as 436 Charles Street in further partial fulfillment of the requirements for affordable housing, City will credit Developer three (3) additional affordable units, consisting of one (1) very low income and two (2) low income units toward the total required by this Agreement and the Development Agreement for Tract 5463. Prior to the issuance of a grading permit for either Tract or upon receipt of clear title, whichever is earlier, Developer shall transfer the property or properties described above to the City free and clear of any and all encumbrances and structures. Should the grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) or eight (8) (depending on whether Developer has acquired clear title to the 436 Charles Street property) affordable units shall be applied to Tract 5463. Should the grading permit for Tract 5464 precede the grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining (fifth (5<sup>th</sup>) to eighth (8<sup>th</sup>)) affordable unit(s) may be applied toward the fulfillment of one (1) to four (4) affordable housing unit(s) for Tract 5463.

To meet its obligation for the remaining ~~seven (7)~~ affordable units, the Developer shall also provide three (3) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meet the criteria for low income (80 percent or less of median income),; and four (4) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meets the criteria for very low income (50 percent or less of median income). All single-family detached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18') feet measured from the back of sidewalk, meet minimum setback requirements of the City RPD zone, include concrete roof tiles, and other amenities typically found in moderate priced housing in the City (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The duplex type units in Tracts 3481, 3070-2, 3070-3, 3070-4, 4170, and 5133 are considered to be single-family detached units for the purpose of this subsection 6.9.

Subject to City's sole discretion, this obligation, in whole or part, may be met by providing attached for sale units in lieu of single-family detached units at the ratio of one and one-half (1-1/2) attached for sale unit for each single-family detached unit. In the event such substitution results in any fraction of a unit, then the requirement shall be rounded up to the next higher whole number (e.g. the requirement of 3 single-family detached units are met by 4-1/2 attached for sale units, then 5 attached for sale units are required). Each of the substituted units shall be at the income level of the units for which they are being substituted and shall contain at least 1,200 square feet, three bedrooms and attached or assigned parking for two parking spaces. The approval of such substituted units may require refurbishment or replacement of carpeting, flooring, cabinets, windows, appliances and other items to bring the units up to standards as determined by the Community Development Director at his or her own sole discretion. Should the Developer acquire the attached units within four (4) ~~two (2)~~ years from December 31, 2006~~the operative date of this Agreement~~, and offer them for sale to the City as provided for in this subsection 6.9, the attached for sale units in lieu of single-family detached units shall be at a ratio of one and one-quarter (1 1/4) attached for sale unit for each single-family detached unit.

The attached for sale units shall be a minimum of three bedrooms and a minimum of 1200 square feet of floor area.

Prior to acquiring any housing unit to meet the obligations of this subsection 6.9, Developer must first receive the written approval of City

Manager or his/her authorized representative that the unit meets the requirements of this Development Agreement and any applicable Affordable Housing Agreement for Tract 5463. Developer agrees that lack of a written response from City as specified in subsection 7.7 of this Agreement is deemed a rejection of the Developer's request.

Developer may construct rather than purchase the housing units required of it pursuant to this subsection 6.9 so long as Developer meets all requirements of this Agreement and the proposed project and property on which the units are proposed to be constructed conform to the City's General Plan, Zoning Codes, and the Moorpark Municipal Code. Nothing in this Agreement requires City to consider a General Plan Land Use Amendment, Zone Change, or any other land use entitlement to allow or permit said proposed construction.

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

Prior to recordation of the Final Map for this Project, the City Council in its sole and unfettered discretion shall approve an Affordable Housing Implementation and Resale Restriction Plan (Plan) that provides policies and guidelines to ensure that all of the required affordable housing units are provided consistent with this Agreement and applicable State laws and remains affordable for the longest feasible time. The Plan shall include but not be limited to the following items: Initial Purchase Price, market value, buyer eligibility, affordability and resale covenants and restrictions, equity share and second trust deed provisions, respective role of City and Developer, the responsibility of providing the affordable units by each developer in the event of successors and/or assigns to this Agreement, the final number of single family detached and single family attached units that shall be provided to meet Developer's affordable housing obligation, quality of and responsibility for selection of amenities and applicability of home warranties in the event Developer constructs housing units or purchases newly constructed units from other developers/builders to meet all or a portion of its obligation and any other items determined necessary by the City. The Developer and City shall, prior to the occupancy of the first residential unit for the Project, execute an Affordable Housing Agreement that incorporates the Plan in total and is consistent with this Agreement. Developer shall pay the City's direct costs for preparation and review of the Affordable Housing Implementation and Resale Restriction Plan and the Affordable Housing Agreement up to a maximum of Ten-Thousand Dollars (\$10,000.00).

The three (3) low income units and four (4) very low income units shall be provided by Developer and occupied by qualified buyers (or at City's sole discretion sold to City) prior to occupancy of the 25<sup>th</sup> residential unit in Tract 5463 and the 18<sup>th</sup> residential unit in Tract No. 5464, or the 39<sup>th</sup> unit of the combined Tracts, whichever first occurs.

All units shall meet the criteria of all applicable State laws to qualify as newly affordable to low income and very low income persons (in the quantity as specified in this Agreement) to satisfy a portion of the City's RHNA obligation and if within the Moorpark Redevelopment Agency project area to satisfy a portion of the Agency's affordable housing goals. None of the affordable units required by this Agreement shall duplicate or substitute for the affordable housing requirement of any other developer or development project. All subsequent approvals required of City under this subsection 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and any Affordable Housing Agreement required by this Agreement or the conditions of approval for Vesting Tentative Tract Map No. 5463 and/or RPD No.2003-04, then the Affordable Housing Agreement shall prevail.

All affordable housing units provided under this subsection 6.9 that received a final inspection prior to January 1, 2007, must conform to the Uniform Building Code in effect as of July 1, 1983. Developer shall pay at its sole cost and expense for a city selected contractor to perform a home inspection and/or occupancy inspection by the City Building Official, and Developer at its sole cost and expense shall make any needed corrections to conform to inspection reports and current building codes. At Developer's sole cost and expense, the roof shall be inspected by a city selected contractor and if necessary as determined by City at its sole discretion repaired or replaced by a city selected licensed roofing contractor and certified to have no less than a 20-year life. Developer at its sole cost and expense shall purchase a standard home warranty policy for a three-year period commencing on the date the unit is first sold to a qualified low or very low income household and shall include but not be limited to coverage of heating and air conditioning systems, automatic garage door opener, and all built-in appliances and include a deductible/service call amount of no more than One Hundred Dollars (\$100.00) per service request. For these units, City may approve a composition shingle roof in lieu of a concrete tile roof if all other provisions of this subsection 6.9 are met. In no event shall a wood shake or shingle roof be approved.

For housing units constructed by Developer to meet its obligation under this subsection 6.9 or acquired by Developer that were not previously occupied (i.e. built after the Operative Date of this Agreement and either

not previously occupied or occupied by a bona fide buyer for less than twelve months), Developer agrees to provide the same home warranties associated with other units in the same project as the constructed or purchased unit, or the maximum time required by State law, whichever is longer, but in no event less than ten (10) years. Developer agrees that all such warranties shall inure to the benefit of and be enforceable by the ultimate occupants of the low income and very low income units, and that all warranties by subcontractors and suppliers shall inure to the benefit of and be enforceable by such occupants. The qualified buyer (or City in lieu of a qualified buyer at its sole discretion) shall have the same choices of finish options as purchasers of other units in the project and final walk-through approval of condition of unit before close of sale. Any options provided to buyers of units shall be provided to buyer(s) of the required units including but not limited to color and style choices for carpeting and other floor coverings. Flooring selections shall be made within 10 days of Developer's request for selection.

In the event the monthly HOA fees exceed \$100.00, Developer shall deposit \$120.00 for each dollar or portion thereof of the monthly HOA fees that are in excess of \$100.00 into a City administered trust to assist with future HOA fees for each affected unit.

The Affordable Sales Price for the low-income buyers shall not exceed affordable housing cost, as defined in Sec. 50052.5(b) (2) of California Health and Safety Code. As provided in Section 50052.5(h) of the California Health and Safety Code, a household of five (5) is considered appropriate for a four bedroom unit, so pricing is based on a household of five (5) no matter what size household actually purchases the unit. The monthly "affordable housing cost" would be 30% times 70% of \$85,900, the current median income for a household of five (5) in Ventura County, divided by twelve (12). This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below. (See Section 50052.5(c) of the Health and Safety Code.) The Affordable Sales Price for a low income household would be \$171,000 under current market conditions, based upon the following assumptions:

**Low Income Buyer**

<b>Item</b>	<b>Detail</b>	<b>Amount</b>
Affordable Sales Price		\$171,000
Down Payment	5% of Affordable Sales Price	\$8,550
Loan Amount	Affordable Sales Price less down payment	\$162,450

Interest Rate	6.25%	
Property Tax	1.25% of Initial Purchase Price	\$178/mo.
HOA		\$100/mo.
Fire Insurance		\$20/mo.
Maintenance		\$20/mo.
Utilities		\$209/mo.

The assumptions associated with the above purchase price figures for low income households include a 5% down payment, based on Affordable Sales Price of \$171,000, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$20 per month, and utilities of \$209 per month.

The Affordable Sales Price for the very low-income buyers shall not exceed affordable housing cost, as defined in Section 50052.5(b)(2) of California Health and Safety Code. As provided in Section 50052.5(h) of the California Health and Safety Code, a family of five is considered appropriate for a four bedroom unit, so pricing is based on a household of 5, no matter what size household actually purchases the unit. The monthly "affordable housing cost" would be 30% times 50% of \$85,900, the current median income for a household of five (5) in Ventura County, divided by twelve (12). This monthly amount includes the components identified in Section 6920 of Title 25 of the California Code of Regulations shown below. (See Section 50052.5(c) of the Health and Safety Code.) The Affordable Sales Price for a very low income household of 5 would be \$107,000 under current market conditions, based upon the following assumptions:

#### **Very Low Income Buyer**

<b>Item</b>	<b>Detail</b>	<b>Amount</b>
Affordable Sales Price		\$107,000
Down Payment	3% of Affordable Sales Price	\$5,350
Loan Amount	Affordable Sales Price less down payment	\$101,650
Interest Rate	6.25%	
Property Tax	1.25% of Affordable Sales Price	\$111/mo.
HOA		\$100/mo.
Fire Insurance		\$20/mo.

Maintenance		\$20/mo.
Utilities		\$209/mo.

The assumptions associated with the above purchase price figures for very low income households include a 5% down payment, based on Affordable Sales Price of \$107,000, mortgage interest rate of 6.25%, no mortgage insurance, property tax rate of 1.25%, based on Affordable Sales Price, homeowners' association dues of \$100 per month, fire insurance of \$20 per month, maintenance costs of \$20 per month, and utilities of \$209 per month.

Developer acknowledges that changes in market conditions may result in changes to the Affordable Sales Price, down payment amounts, mortgage interest rates, and other factors for both low income and very low income buyers. Furthermore, if "affordable housing cost", as defined in Section 50052.5 of California Health and Safety Code, should change in the future, the above guidelines will be modified. The Affordable Housing Implementation and Resale Restriction Plan shall address this potential change.

In the event the City, at its sole discretion purchases one or more of the units from Developer in lieu of a qualified buyer, the Affordable Sales Price shall be based on a household size of four (4) persons, and consistent with all requirements of this subsection 6.9. Developer agrees that prior to and upon the sale of a required unit to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City may at its sole discretion take any actions and impose any conditions on said sale or subsequent sale of the unit to ensure ongoing affordability to low and very low income households and related matters. After the sale of a housing unit by Developer to a qualified buyer (or City in lieu of a qualified buyer as determined by City at its sole discretion), City, not Developer, shall have sole responsibility for approving any subsequent sale of that housing unit.

Developer shall pay closing costs for each unit, not to exceed six thousand three hundred dollars (\$6,300.00). Beginning July 1, 2008, and on July 1<sup>st</sup> for each of fifteen subsequent years, the maximum \$6,300.00 to be paid for closing costs shall be increased annually by any percentage increase in the Consumer Price Index (CPI) for All Urban Consumers for Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the amount due shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase. The referenced Developer funded closing costs shall be for the benefit of qualified buyers (or City in lieu of

qualified buyers as determined by City at its sole discretion for one or more of the required units) in their acquisition of a unit from Developer not Developer's acquisition of a unit from one or more third parties. The Developer's escrow cost shall not exceed the then applicable maximum amount per unit regardless of the number of escrows that may be opened on a specific unit.

- 6.10. Developer agrees that the Mitigation Measures included in the City Council approved MND and MMRP, or subsequent environmental clearance document approved by the Council, set forth the mitigation requirements for air quality impacts. Developer agrees to pay to City an air quality mitigation fee, as described herein (Air Quality Fee), in satisfaction of the Transportation Demand Management Fund mitigation requirement for the Project. The Air Quality Fee may be expended by City in its sole discretion for reduction of regional air pollution emissions and to mitigate residual Project air quality impacts.

At the time the Fee is due, City may at its sole discretion require Developer to purchase equipment, vehicles, or other items, contract and pay for services, or make improvements for which Developer shall receive equivalent credit against Air Quality Fee payments or refund of previous payments.

The Air Quality Fee shall be One Thousand Eight-Hundred Dollars (\$1,800.00) per residential unit to be paid prior to the issuance of each building permit for the first residential unit in Tract 5463. Commencing on January 1, 2007, and annually thereafter the Air Quality Fee shall be adjusted by any increase in the Consumer Price Index (CPI) until all fees have been paid. The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of December over the prior month of December. In the event there is a decrease in the CPI for any annual indexing, the fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

For institutional uses, the Air Quality Fee shall be calculated by the Community Development Director consistent with the then applicable Ventura County Air Quality Management District URBEMIS Model prior to the first occupancy approval for each institutional use.

- 6.11. Developer hereby waives any right that it may have under California Government Code Section 65915 et. seq., or any successor thereto, or any other provision of Federal, State, or City laws or regulations for application or use of any density bonus that would increase the number of dwelling units approved to be constructed on the Property.

- 6.12. Developer agrees to cast affirmative ballots for the formation of one or more assessment districts and levying of assessments, for the maintenance of parkway and median landscaping, street lighting, including but not limited to all water and electricity costs, and if requested by the City Council, parks for the provision of special benefits conferred by same upon properties within the Project. Developer further agrees to form one or more property owner associations and to obligate said associations to provide for maintenance of parkway and median landscaping, street lighting, and if requested by the City Council, parks in the event the aforementioned assessment district is dissolved or altered in any way or assessments are reduced or limited in any way by a ballot election of property owners, or if the assessment district is invalidated by court action. Prior to recordation of the first final map for the Property, if required by City at its sole discretion, Developer shall also form one or more property owner associations to assume ownership and maintenance of open space land, trails, storm water detention and/or debris basins and related drainage facilities, landscaping, and other amenities, and to comply with the National Pollutant Discharge Elimination System (NPDES) requirements of the Project. The obligation of said property owner associations shall be more specifically defined in the conditions of approval of Tract 5463 and RPD2003-04.
- 6.13. In addition to fees specifically mentioned in this Agreement, Developer agrees to pay all City capital improvement, development, and processing fees at the rate and amount in effect at the time the fee is required to be paid. Said fees include but are not limited to Library Facilities Fees, Police Facilities Fees, Fire Facilities Fees, drainage, entitlement processing fees, and plan check and permit fees for buildings and public improvements. Developer further agrees that unless specifically exempted by this Agreement, it is subject to all fees imposed by City at the operative date of this Agreement and such future fees imposed as determined by City in its sole discretion so long as said fee is imposed on similarly situated properties.
- 6.14. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee for each residential lot and institutional use prior to the issuance of a building permit for each lot or use. The AOC fee shall be the dollar amount in effect at the time of issuance of the building permit for each residential lot and institutional use.
- 6.15. The street improvements for all streets scheduled for dedication to the City shall be designed and constructed by Developer to provide for a 50-year life as determined by the City Engineer.
- 6.16. Developer agrees that any fees and payments pursuant to this Agreement shall be made without reservation, and Developer expressly waives the right to payment of any such fees under protest pursuant to

California Government Code Section 66020 and statutes amendatory or supplementary thereto. Developer further agrees that the fees it has agreed to pay pursuant to subsections 6.3, 6.5, 6.6, 6.9, 6.22, and 6.23 of this Agreement are not public improvement fees collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto.

6.17. Developer agrees to comply with Section 15.40.150 of the Moorpark Municipal Code and any provision amendatory or supplementary thereto for annual review of this Agreement and further agrees that the annual review shall include evaluation of its compliance with the approved MND and MMRP.

6.18. Developer agrees to provide City with cash deposits as City may require at its sole discretion to pay all City and related costs for the proceedings and related services for possible formation of a District as referenced in subsection 7.6 of this Agreement, which may be required to be paid prior to formation of a District, or in the event a District is not formed, after the commencement of proceedings related thereto. Said costs may include but are not limited to attorney fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out of pocket and professional service costs.

Developer further agrees that City may at its sole discretion select the bond counsel, underwriter, financial advisor and any other professional service provider City deems necessary to process the possible formation of a District.

6.19. Developer agrees that any election to acquire property by eminent domain shall be at City's sole discretion, and only after compliance with all legally required procedures including but not limited to a hearing on a proposed resolution of necessity.

6.20. On the operative date of this Agreement, Developer shall pay all outstanding City processing costs related to preparation of this Agreement, Project Approvals, and MND.

6.21. In the event any of the "referenced Index" or "CPI" referred to in any portion of Section 6 above, are discontinued or revised, such successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the "CPI" and "referenced Index" had not been discontinued or revised.

6.22. In the event the County does not improve the remaining unimproved portion of Grimes Canyon Road to the City boundary, then The Developer shall improve both sides of Grimes Canyon Road to its

ultimate right-of-way from Championship Drive north to the northern City limits, with the same section as the improvements previously made to the portion of Grimes Canyon Road north of Championship Drive in connection with Tract 4928; provided, however, that Developer shall have no responsibility for repair or reconstruction of any portion of Grimes Canyon Road which was damaged by flood waters or other conditions prior to the date hereof ("Road Repair Work"). ;including undergrounding of all utilities including all electrical lines of 66kv or less. Transition paving shall be provided north of the City limits on both sides of the streets. Developer The developer shall pay all City costs for acquisition of the properties needed for construction of these improvements, including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. Such improvement With regard to improvement of the easterly half of Grimes Canyon Road, the required work shall commence prior to issuance of a building permit for the first dwelling unit in the Project, and the improvements shall be completed within ninety (90) one-hundred eighty (180) days of after the later of issuance of a building permit for the first dwelling unit in the Project obtaining the real property needed for said improvement or receipt of all permits required for construction of the improvements. Developer shall have no obligation with respect to improvement of the westerly half of Grimes Canyon Road unless and until the County has completed the Road Repair Work. Developer shall commence work on improvements to the westerly half of Grimes Canyon Road within thirty (30) days following completion by the County of the Road Repair Work, and the improvements shall be completed within one-hundred eighty (180) days after the later of completion of such work by the County or receipt of all permits required for construction of the improvements. Such improvements must start prior to issuance of a building permit for the first (1<sup>st</sup>) dwelling unit, and shall be completed prior to the issuance of the building permit for the tenth (10th) dwelling unit for the Project.

- 6.23. Pursuant to approved MND and MMRP, prior to recordation of the first Final Tract Map for the Property, initiation of rough grading or issuance of any subsequent permits, the applicant, shall is required to purchase and dedicate fee title for seventy-two (72) acres of open space in lieu of providing on-site open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. Prior to purchase and dedication, the City Council shall approve the location of the proposed open space land. At The City's accepts that, sole discretion in lieu of the purchase of the seventy-two (72) acres of open space, that Developer shall pay two million six hundred eighty thousand dollars (\$2,680,000.00) to City to be used in its sole and unfettered discretion for open space preservation purposes. Six hundred seventy thousand dollars (\$670,000.00) shall be

paid to the City no later than ~~one year from the operative date of this Agreement or upon~~ the recordation of the Final Map, ~~whichever occurs first~~. Subsequent annual payments of six hundred seventy thousand dollars (\$670,000.00) shall be made for three years ~~on from~~ the annual anniversary of the first payment. The fee shall be adjusted annually, commencing January 1, 2008, by the larger increase of a), b), or c) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).
- b) The annual adjustment shall be determined by any increase in the median price of the single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index) for the previous twelve (12) month period.
- c) The annual percentage amount paid to City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) calendar quarters divided by four (4).

In the event there is a decrease in all of the referenced Indices for any annual indexing, the Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

- 6.24. Prior to the occupancy of the ~~51<sup>st</sup>~~ 49<sup>th</sup> unit Developer shall pay City the cost installing of a minimum two (two) inch rubberized asphalt overlay of Championship Drive from Grimes Canyon Road to Walnut Canyon Road. Cost of said rubberized overlay shall include the cost of the overlay, any remedial work and the estimated work to perform the overlay and shall be subject to the approval of the City Engineer. The cash payment shall be in an amount equivalent to the work described above, plus fifteen percent (15%). If Tract 5464 has made the payment for this purpose then the obligation is considered to be satisfied.
- 6.25. Concurrent with the recordation of the Final Map a Conservation Easement, granted pursuant to California Civil Code Section 815 et seq. to preserve the natural, scenic and open space character of the property in an undeveloped condition; said easements shall run with the property and be binding upon grantors and their successors and assigns; and all

development rights are dedicated to the city of Moorpark for those portions of the site zoned Open Space. The conservation easement is granted and conveyed to the city of Moorpark for permanent conservation, landscape and open space easements over all lots zoned Open Space, and no agriculture, extraction of subsurface mineral resources, excavation, drilling, pumping, mining, or similar activity shall be allowed in any portion of the conservation landscape and open space easements or on any property zoned Open Space. Said Conservation Easement shall be recorded on the Final Map or by separate instrument as determined by the City Manager.

- 6.26. Developer shall provide an easement to the City for a City Welcome Sign on the Project site at a location satisfactory to the Community Development Director. The easement shall provide for the location and maintenance of the sign. Developer agrees to pay Twenty-Five Thousand Dollars (\$25,000.00) to the City for the construction and erection of the sign. The funds may be expended by City in its sole and unfettered discretion. The fee shall be paid prior to occupancy of the first residential unit. Developer agrees that design of the sign, including the lighting, shall be at the City's sole discretion. The maintenance of the sign shall be through the landscape maintenance district.
- 6.27. All major construction traffic, heavy equipment, and commercial vehicles shall enter and exit the Project from Grimes Canyon Road.
- 6.28. Developer agrees, within six (6) months of the operative date of this Agreement, the control and maintenance of both entry monuments at the intersection of Grimes Canyon Road and Championship Drive, and both entry monuments at the intersection of Walnut Canyon Road and Championship Drive, shall be transferred to the master Homeowner's Association for Country Club Estates (Tract 4928). Such transfer shall be either in the form of an easement, in fee simple, or other form acceptable to City. Notification shall be provided by Developer to the Community Development Director upon completion of the transfer.
- 6.29. Developer agrees to provide agricultural buffer fencing along the joint property line between the existing Moorpark Country Club Estates and the adjacent agricultural uses immediately to the north. Developer also agrees to provide agricultural buffer fencing along the joint property line between Tract 5463 and Tract 5464 and the adjacent agricultural uses. The location, type, and installation of said fencing and landscaping shall be subject to review and approval of the Community Development Director. Any fencing shall be placed on the adjacent agricultural property and shall be maintained in a good state of repair by the agricultural property owner. The developer shall pay for and obtain any necessary permits from the County of Ventura prior to initiation of

any work. Copies of such permits shall be provided to the Community Development Director prior to the commencement of work.

7. City Agreements.

- 7.1. City shall commit reasonable time and resources of City staff to work with Developer on the expedited and parallel processing of applications for Subsequent Approvals for the Project area and shall use overtime and independent contractors whenever possible. Developer shall assume any risk related to, and shall pay the additional costs incurred by City for, the expedited and parallel processing.
- 7.2. If requested in writing by Developer and limited to City's legal authority, City at its sole discretion shall proceed to acquire, at Developer's sole cost and expense, easements or fee title to land in which Developer does not have title or interest in order to allow construction of public improvements required of Developer including any land which is outside City's legal boundaries. The process shall generally follow Government Code Section 66462.5 et seq. and shall include the obligation of Developer to enter into an agreement with City, guaranteed by cash deposits and other security as the City may require, to pay all City costs including but not limited to, acquisition of the interest, attorney fees, appraisal fees, engineering fees, City staff costs, and City overhead expenses of fifteen percent (15%) on all out-of-pocket costs.
- 7.3. The City Manager is authorized to sign an early grading agreement on behalf of City to allow rough grading of the Project prior to City Council approval of a final subdivision map. Said early grading agreement shall be consistent with the conditions of approval for Tract 5463 and RPD 2003-04 and contingent on City Engineer and Community Development Director acceptance of a Performance Bond in a form and amount satisfactory to them to guarantee implementation of the erosion control plan and completion of the rough grading and construction of on-site and off-site improvements. In the case of failure to comply with the terms and conditions of the early grading agreement, the City Council may by resolution declare the surety forfeited.
- 7.4. City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the same property so long as said entitlements are deemed complete.
- 7.5. City agrees that the Park Fee required under subsection 6.7 of this Agreement meets Developer's obligation for park land dedication provisions of state law and City codes.
- 7.6. City agrees that upon receipt of a landowners' petition by Developer and Developer's payment of a fee, as prescribed in California Government

Code Section 53318, as well as payment for costs described in subsection 6.18 of this Agreement, City shall commence proceedings to form a Mello-Roos Community Facilities District ("District") and to incur bonded indebtedness to finance all or portions of the public facilities, infrastructure and services that are required by the Project and that may be provided pursuant to the Mello-Roos Community Facilities Act of 1982 (the "Act"); provided, however, the City Council, in its sole and unfettered discretion, may abandon establishment of the District upon the conclusion of the public hearing required by California Government Code Section 53321 and/or deem it unnecessary to incur bonded indebtedness at the conclusion of the hearing required by California Government Code Section 53345.

The purpose of any such District may also include fees for funding public facilities, infrastructure and services that are required by the Project to the extent permitted by the Act as determined by bond counsel for the District's bond indebtedness financing. City may select and retain bond counsel, engineers, underwriters, financial advisors and any other professional service providers it deems necessary at its sole discretion to conduct proceedings and related services for possible formation of a District. City further agrees that, to the extent permitted by the Act as determined by bond counsel, Developer may be reimbursed for costs advanced by Developer for formation and related proceedings.

In the event that a District is formed, the special tax levied against any residential lot or residence thereon shall afford the buyer the option to prepay the special tax in full prior to the close of escrow on the initial sale of the developed lot by the builder of the residence.

- 7.7. The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Property required herein for the duration such units are required to be maintained as affordable consistent with the provisions of subsection 6.9 of this Agreement and the Purchase and Sale Agreement.

City agrees that upon receipt of Developer's written request to acquire a housing unit to meet its obligation under subsection 6.9 of this Agreement, the City Manager, or his/her authorized representative, shall respond within thirty (30) calendar days accepting or rejecting the housing unit. Failure to respond within the specified time shall be deemed as rejection of said unit.

City further agrees Developer may construct rather than purchase the housing units required by subsection 6.9 of the Agreement so long as Developer meets all requirements of this Agreement and the proposed project. The property on which the units are proposed to be constructed

must be consistent with the City's General Plan, Zoning Codes, and the Moorpark Municipal Code.

- 7.8. City shall facilitate the reimbursement to Developer of any costs incurred by Developer that may be subject to partial reimbursement from other developers as a condition of approval of a tract map development permit or development agreement with one or more other developers.
- 7.9. City agrees that any payments by Developer to meet its obligations per section 6.23 of this Agreement also satisfies subsection 3.1.1-3 of the Mitigation Monitoring Program adopted for the Project and the City further agrees to use said payment for open space preservation purposes within the City, City's Area of Interest or property contiguous thereto.
8. Supersession of Agreement by Change of Law. In the event that any state or federal law or regulation enacted after the date the Enabling Ordinance was adopted by the City Council prevents or precludes compliance with any provision of the Agreement, such provision shall be deemed modified or suspended to comply with such state or federal law or regulation, as reasonably determined necessary by City.
9. Demonstration of Good Faith Compliance. In order to ascertain compliance by Developer with the provisions of this Agreement, the Agreement shall be reviewed annually in accordance with Moorpark Municipal Code Chapter 15.40. of City or any successor thereof then in effect. The failure of City to conduct any such annual review shall not, in any manner, constitute a breach of this Agreement by City, diminish, impede, or abrogate the obligations of Developer hereunder or render this Agreement invalid or void. At the same time as the referenced annual review, City shall also review Developer's compliance with the MMRP.
10. Authorized Delays. Performance by any Party of its obligations hereunder, other than payment of fees, shall be excused during any period of "Excusable Delay", as hereinafter defined, provided that the Party claiming the delay gives notice of the delay to the other Parties as soon as possible after the same has been ascertained. For purposes hereof, Excusable Delay shall mean delay that directly affects, and is beyond the reasonable control of, the Party claiming the delay, including without limitation: (a) act of God; (b) civil commotion; (c) riot; (d) strike, picketing or other labor dispute; (e) shortage of materials or supplies; (e) damage to work in progress by reason of fire, flood, earthquake or other casualty; (f) failure, delay or inability of City to provide adequate levels of public services, facilities or infrastructure to the Property including, by way of example only, the lack of water to serve any portion of the Property due to drought; (g) delay caused by a restriction imposed or mandated by a governmental entity other than City; or (h) litigation brought by a third party attacking the validity of this Agreement, a Project Approval, a Subsequent Approval or any other action necessary for development of the Property.
11. Default Provisions.

- 11.1. Default by Developer. The Developer 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 Developer 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 Developer; or
  - (b) fails to make any payments required under this Agreement; or
  - (c) materially breaches any of the provisions of the Agreement.
- 11.2. Default by City. City shall be deemed in breach of this Agreement if it materially breaches any of the provisions of the Agreement.
- 11.3. 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.
- 11.4. 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 11.3 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 Developer shall be injunctive relief and/or specific performance, including, in the case of a

failure to pay a fee required hereunder, to compel such payment. In addition, if the breach is of subsections 6.9, 6.10, 6.12, 6.13, 6.14, 6.16, 6.17, and 6.18 of this Agreement, City shall have the right to withhold the issuance of building permits to Developer throughout the Project from the date that the notice of violation was given pursuant to subsection 11.3 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 Developer who violates any City ordinance or state statute.

12. Mortgage Protection. At the same time that City gives notice to Developer of a breach, City shall send a copy of the notice to each holder of record of any deed of trust on the portion of the Property in which Developer has a legal interest ("Financier"), provided that the Financier has given prior written notice of its name and mailing address to City and the notice makes specific reference to this section. The copies shall be sent by United States mail, registered or certified, postage prepaid, return receipt requested, and shall be deemed received upon the third (3rd) day after deposit.

Each Financier that has given prior notice to City pursuant to this section shall have the right, at its option and insofar as the rights of City are concerned, to cure any such breach within fifteen (15) days after the receipt of the notice from City. If such breach cannot be cured within such time period, the Financier shall have such additional period as may be reasonably required to cure the same, provided that the Financier gives notice to City of its intention to cure and commences the cure within fifteen (15) days after receipt of the notice from City and thereafter diligently prosecutes the same to completion. City shall not commence legal action against Developer by reason of Developer's breach without allowing the Financier to cure the same as specified herein.

Notwithstanding any cure by Financier, this Agreement shall be binding and effective against the Financier and every owner of the Property, or part thereof, whose title thereto is acquired by foreclosure, trustee sale or otherwise.

13. Estoppel Certificate. At any time and from time to time, Developer may deliver written notice to City and City may deliver written notice to Developer requesting that such Party certify in writing that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended, or if amended, the identity of each amendment, and (iii) the requesting Party is not in breach of this Agreement, or if in breach, a description of each such breach. The Party receiving such a request shall execute and return the certificate within thirty (30) days following receipt of the notice. City acknowledges that a certificate may be relied upon by successors in interest to the Developer who requested the certificate and by holders of record of deeds of trust on the portion of the Property in which that Developer has a legal interest.

14. Administration of Agreement. Any decision by City staff concerning the interpretation and administration of this Agreement and development of the Property in accordance herewith may be appealed by the Developer to the City Council, provided that any such appeal shall be filed with the City Clerk of City within ten (10) days after the affected Developer receives notice of the staff decision. The City Council shall render its decision to affirm, reverse or modify the staff decision within thirty (30) days after the appeal was filed. The Developer shall not seek judicial review of any staff decision without first having exhausted its remedies pursuant to this section.
15. Amendment or Termination by Mutual Consent. In accordance with the provisions of Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect, this Agreement may be amended or terminated, in whole or in part, by mutual consent of City and the affected Developer.
  - 15.1. Exemption for Amendments of Project Approvals. No amendment to a Project Approval shall require an amendment to this Agreement and any such amendment shall be deemed to be incorporated into this Agreement at the time that the amendment becomes effective, provided that the amendment is consistent with this Agreement and does not alter the permitted uses, density, intensity, maximum height, size of buildings or reservations and dedications as contained in the Project Approvals.
16. Indemnification. Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any and all losses, liabilities, fines, penalties, costs, claims, demands, damages, injuries or judgments arising out of, or resulting in any way from, Developer's performance pursuant to this Agreement.

Developer shall indemnify, defend with counsel approved by City, and hold harmless City and its officers, employees and agents from and against any action or proceeding to attack, review, set aside, void or annul this Agreement, or any provision thereof, or any Project Approval or Subsequent Approval or modifications thereto, or any other subsequent entitlements for the project and including any related environmental approval.
17. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
18. Operative Date. This Agreement shall become operative on the date the Enabling Ordinance becomes effective pursuant to Government Code Section 36937.
19. Term. This Agreement shall remain in full force and effect for a term of twenty (20) years commencing on its operative date or until the close of escrow on the initial sale of the last Affordable Housing Unit required by subsection 6.9, whichever occurs last, unless said term is amended or the Agreement is sooner terminated as otherwise provided herein.

Expiration of the term or earlier termination of this Agreement shall not automatically affect any Project Approval or Subsequent Approval that has been granted or any right or obligation arising independently from such Project Approval or Subsequent Approval.

Upon expiration of the term or earlier termination of this Agreement, the Parties shall execute any document reasonably requested by any Party to remove this Agreement from the public records as to the Property, and every portion thereof, to the extent permitted by applicable laws.

20. Notices. All notices and other communications given pursuant to this Agreement shall be in writing and shall be deemed received when personally delivered or upon the third (3rd) day after deposit in the United States mail, registered or certified, postage prepaid, return receipt requested, to the Parties at the addresses set forth in Exhibit "B" attached hereto and incorporated herein.

Any Party may, from time to time, by written notice to the other, designate a different address which shall be substituted for the one above specified.

21. Entire Agreement. This Agreement and those exhibits and documents referenced herein contain the entire agreement between the Parties regarding the subject matter hereof, and all prior agreements or understandings, oral or written, are hereby merged herein. This Agreement shall not be amended, except as expressly provided herein.
22. Waiver. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, whether or not similar; nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding, unless it is executed in writing by a duly authorized representative of the Party against whom enforcement of the waiver is sought.
23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes of this Agreement.
24. Relationship of the Parties. Each Party acknowledges that, in entering into and performing under this Agreement, it is acting as an independent entity and not as an agent of any of the other Parties in any respect. Nothing contained herein or in any document executed in connection herewith shall be construed as creating the relationship of partners, joint ventures or any other association of any kind or nature between City and Developer, jointly or severally.
25. No Third Party Beneficiaries. This Agreement is made and entered into for the sole benefit of the Parties and their successors in interest. No other person shall have any right of action based upon any provision of this Agreement.

26. Recordation of Agreement and Amendments. This Agreement and any amendment thereof shall be recorded with the County Recorder of the County of Ventura by the City Clerk of City within the period required by Chapter 15.40 of the Moorpark Municipal Code of City or any successor thereof then in effect.
27. Cooperation Between City and Developer. City and Developer shall execute and deliver to the other all such other and further instruments and documents as may be necessary to carry out the purposes of this Agreement.
28. Rules of Construction. The captions and headings of the various sections and subsections of this Agreement are for convenience of reference only, and they shall not constitute a part of this Agreement for any other purpose or affect interpretation of the Agreement. Should any provision of this Agreement be found to be in conflict with any provision of the Project Approvals or the Subsequent Approvals, the provision of this Agreement shall prevail. Should any provision of the Implementation Plan be found to be in conflict with any provision of this Agreement, the provisions of the Implementation Plan shall prevail.
29. Joint Preparation. This Agreement shall be deemed to have been prepared jointly and equally by the Parties, and it shall not be construed against any Party on the ground that the Party prepared the Agreement or caused it to be prepared.
30. 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.
31. Attorneys' Fees. In the event any action, suit or proceeding is brought for the enforcement or declaration of any right or obligation pursuant to, or as a result of any alleged breach of, this Agreement, the prevailing Party shall be entitled to its reasonable attorneys' fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof.
32. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Developer and City of Moorpark have executed this Development Agreement on the date first above written.

**CITY OF MOORPARK**

\_\_\_\_\_  
Patrick Hunter  
Mayor

**OWNER/DEVELOPER**

**Toll Land XX Limited Partnership**

By: \_\_\_\_\_

ALL SIGNATURES MUST BE NOTARIZED

**EXHIBIT A**

**LEGAL DESCRIPTION**

**Tentative Tract 5463**

**Being a portion of Lot 9, of the Vallete Tract, in the city of Moorpark, County of Ventura, State of California, as shown on the map filed in Book 3, Page 41 of Miscellaneous Records, (Maps) in the office of the County Recorder of the County of Ventura, State of California, and a portion of Lot 1, Tract 4928-3, in the city of Moorpark, County of Ventura, State of California, as shown on the map filed in Book 151, Pages 7 through 31, inclusive, of Miscellaneous Records in the office of the County Recorder of the County of Ventura, State of California.**

**EXHIBIT "B"**

ADDRESSES OF PARTIES

**To City:**

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

**To Developer:**

Toll Land XX Limited Partnership  
Toll Brothers Inc.  
Attn: Mark E. Forter, Regional Counsel  
725 Town & Country Road, Suite 500  
Orange, California 92868

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, APPROVING AMENDMENT NO. 1 TO DEVELOPMENT AGREEMENT NO. 2004-01, BETWEEN THE CITY OF MOORPARK AND TOLL LAND XX LIMITED PARTNERSHIP FOR 43.04 ACRES NORTH OF CHAMPIONSHIP DRIVE AND EAST OF GRIMES CANYON ROAD

WHEREAS, Section 65864, Article 2.5, Chapter 4, Division 1, Title 7 of the State Planning and Zoning Law provides that cities may enter into contractual obligations known as Development Agreements with persons having equitable interest in real property for development of that property; and

WHEREAS, on December 6, 2006, the City Council adopted Ordinance No. 346, approving Development Agreement No. 2004-01, in conjunction with Residential Planned Development Permit No. 2003-04, General Plan Amendment No. 2003-04, Zone Change No. 2003-03, Tentative Tract Map No. 5463 on the application of Toll Land XX Limited Partnership; and

WHEREAS, Toll Land XX Limited Partnership is now requesting Amendment No. 1 to Development Agreement No. 2004-01; and

WHEREAS, the Planning Commission of the City of Moorpark on June 12, 2007, adopted Resolution No. PC 2007-517, recommending to the City Council approval of Amendment No 1 to Development Agreement No. 2004-01; and

WHEREAS, a duly noticed public hearing was conducted by the City Council on June 20, 2007 to consider Amendment No. 1 to Development Agreement No. 2004-01 and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to Amendment No. 1 to Development Agreement No. 2004-01 and has given careful consideration to the content of Amendment No 1 to Development Agreement No. 2004-01, and has reached a decision on the matter.

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

SECTION 1. The City Council of the City of Moorpark does hereby find as follows:

- A. Development Agreement No. 2004-01, as amended by Amendment No. 1, is consistent with the General Plan and Chapter 15.40 of the Municipal Code.
- B. Development Agreement No. 2004-01, as amended by Amendment No. 1, is consistent with the intent and provisions of the Mitigated Negative Declaration previously adopted for this project.
- C. Development Agreement No. 2004-01, as amended by this ordinance is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby amends Development Agreement No. 2004-01 between the City of Moorpark, a municipal corporation, and Toll Land XX Limited Partnership as follows:

A. Section 5.4 is amended with the insertion of the following language at the end of the second paragraph:

However, in recognition of the importance of the Acquisition Parcel to the feasibility of the Project, none of Developer's obligations contained in this Development Agreement or in the Project Approvals shall be effective until Developer has acquired legal title to the Acquisition Parcel.

B. The first four paragraphs of Section 6.9 are amended to read as follows (the remainder of Section 6.9 is not amended):

Developer agrees to provide a total of twelve (12) affordable housing units; eight (8) units for Tract 5463 (four (4) low and four (4) very low) and four (4) units per the Development Agreement for Tract 5464 (two (2) low and two (2) very low) as further described in this subsection 6.9.

To partially meet this obligation, the Developer agrees to transfer clear title to the approximately 0.34 acre and approximately 0.16 acre parcels known as 396 Charles Street in partial fulfillment of the requirements for affordable housing as indicated in section 6.9 of this Agreement. City will credit Developer five (5) affordable units, consisting of three (3) low income and two (2) very low income units toward the total required by this Agreement and the Development Agreement for Tract 5464. In the event Developer obtains clear title to the approximately 0.34 acre parcel known as 436 Charles Street in further partial

fulfillment of the requirements for affordable housing, City will credit Developer three (3) additional affordable units, consisting of one (1) very low income and two (2) low income units toward the total required by this Agreement and the Development Agreement for Tract 5463. Prior to the issuance of a grading permit for either Tract or upon receipt of clear title, whichever is earlier, Developer shall transfer the property or properties described above to the City free and clear of any and all encumbrances and structures. Should the grading permit for Tract 5463 precede the grading permit for Tract 5464, the credit for the five (5) or eight (8) (depending on whether Developer has acquired clear title to the 436 Charles Street property) affordable units shall be applied to Tract 5463. Should the grading permit for Tract 5464 precede the grading permit for Tract 5463, the requirement for four (4) affordable units will be fulfilled. At the Developer's option, the credit for the remaining fifth (5<sup>th</sup>) to eighth (8<sup>th</sup>) affordable unit(s) may be applied toward the fulfillment of one (1) to four (4) affordable housing unit(s) for Tract 5463.

To meet its obligation for the remaining affordable units, Developer shall also provide three (3) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meet the criteria for low income (80 percent or less of median income), and four (4) (or two (2) if credits have been obtained for the 436 Charles Street property) four (4) bedroom and two (2) bath single-family detached units with a minimum of 1,200 square feet to be sold to buyers who meets the criteria for very low income (50 percent or less of median income). All single-family detached units shall include a standard size two-car garage with roll-up garage door and a minimum driveway length of eighteen (18') feet measured from the back of sidewalk, meet minimum setback requirements of the City RPD zone, include concrete roof tiles, and other amenities typically found in moderate priced housing in the City (e.g., air conditioning/central heating, washer/dryer hookups, garbage disposal, built-in dishwasher, concrete driveway, automatic garage door opener). The duplex type units in Tracts 3481, 3070-2, 3070-3, 3070-4, 4170, and 5133 are considered to be single-family detached units for the purpose of this subsection 6.9.

Subject to City's sole discretion, this obligation, in whole or part, may be met by providing attached for sale units in lieu of single-family detached units at the ratio of one and one-half (1-1/2) attached for sale unit for each single-family detached unit. In the event such substitution results in any fraction of a unit, then the requirement shall be rounded up to the next higher whole number (e.g. the requirement of 3 single-family detached units are met by 4-1/2 attached for sale units, then 5 attached for sale units are required). Each of the substituted units shall be at the income level of the units for which they are being substituted and shall contain at least 1,200 square feet, three bedrooms and attached or assigned parking for two parking spaces. The approval of such substituted units

may require refurbishment or replacement of carpeting, flooring, cabinets, windows, appliances and other items to bring the units up to standards as determined by the Community Development Director at his or her own sole discretion. Should the Developer acquire the attached units within four (4) ~~two~~ (2) years from December 31, 2006~~the operative date of this Agreement~~, and offer them for sale to the City as provided for in this subsection 6.9, the attached for sale units in lieu of single-family detached units shall be at a ratio of one and one quarter (1 1/4) attached for sale unit for each single-family detached unit.

C. Section 6.22 is amended to read as follows:

In the event the County does not improve the remaining unimproved portion of Grimes Canyon Road to the City boundary, then The Developer shall improve both sides of Grimes Canyon Road to its ultimate right-of-way from Championship Drive north to the northern City limits, with the same section as the improvements previously made to the portion of Grimes Canyon Road north of Championship Drive in connection with Tract 4928; provided, however, that Developer shall have no responsibility for repair or reconstruction of any portion of Grimes Canyon Road which was damaged by flood waters or other conditions prior to the date hereof ("Road Repair Work"). Developer shall pay all City costs for acquisition of the properties needed for construction of these improvements, including but not limited to legal, engineering, planning, and appraisal costs in addition to the costs for acquisition of properties. Fifteen percent (15%) shall be added to all City out-of-pocket expenses for the acquisition costs, excluding the actual cost of the properties. With regard to improvement of the easterly half of Grimes Canyon Road, the required work shall commence prior to issuance of a building permit for the first dwelling unit in the Project, and the improvements shall be completed within ~~ninety (90)~~ one-hundred eighty (180) days ~~of~~ after the later of issuance of a building permit for the first dwelling unit in the Project or receipt of all permits required for construction of the improvements. Developer shall have no obligation with respect to improvement of the westerly half of Grimes Canyon Road unless and until the County has completed the Road Repair Work. Developer shall commence work on improvements to the westerly half of Grimes Canyon Road within thirty (30) days following completion by the County of the Road Repair Work, and the improvements shall be completed within one-hundred eighty (180) days after the later of completion of such work by the County or receipt of all permits required for construction of the improvements.

D. Section 6.23 is amended to read as follows:

Pursuant to approved MND and MMRP, prior to recordation of the first Final Tract Map for the Property, initiation of rough grading or issuance of any subsequent permits, the applicant is required to purchase and dedicate fee title

for seventy-two (72) acres of open space in lieu of providing on-site open space dedication pursuant to Section 17.38.080 of the Hillside Management Ordinance. Prior to purchase and dedication, the City Council shall approve the location of the proposed open space land. City accepts that, in lieu of the purchase of the seventy-two (72) acres of open space, that Developer shall pay two million six hundred eighty thousand dollars (\$2,680,000.00) to City to be used in its sole and unfettered discretion for open space preservation purposes. Six hundred seventy thousand dollars (\$670,000.00) shall be paid to the City no later than the recordation of the Final Map. Subsequent annual payments of six hundred seventy thousand dollars (\$670,000.00) shall be made for three years on the anniversary of the first payment. The fee shall be adjusted annually, commencing January 1, 2008, by the larger increase of a), b), or c) as follows:

- a) The CPI increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles/Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month which is four (4) months prior to the month in which this Agreement became effective (e.g., if this Agreement became effective in October, then the month of June is used to calculate the increase).
- b) The annual adjustment shall be determined by any increase in the median price of the single-family detached for-sale housing in Ventura County as most recently published by Data Quick (Housing Index) for the previous twelve (12) month period.
- c) The annual percentage amount paid to City by the Local Agency Investment Fund (LAIF) calculated as follows: The sum of the quarterly effective yield amounts paid by LAIF for the City's Pooled Money Investment Account for the most recent four (4) calendar quarters divided by four (4).

In the event there is a decrease in all of the referenced Indices for any annual indexing, the Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

SECTION 3. The City Clerk is hereby directed to cause one copy of the amended, signed, and adopted development agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 4. Upon the effective date of this ordinance, the Community Development Director shall cause the property that is the subject of the Development

Agreement to be identified on the Zoning Map of the City by the designation "DA" followed by the dates of the term of said amended Agreement.

SECTION 5. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 6. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 7. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 20th day of June, 2007.

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Patrick Hunter, Mayor

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Deborah S. Traffenstedt, City Clerk