ITEM 11.C.

ORDINANCE NO. 355

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA, ADOPTING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOORPARK AND ESSEX PORTFOLIO LIMITED PARTNERSHIP (L.P.) FOR 19.41 ACRES SOUTH OF CASEY ROAD AND WEST OF WALNUT CANYON ROAD AND MOORPARK AVENUE

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, Essex Portfolio, L.P., the owner of the land with an application for General Plan Amendment No. 2004-05, Zone Change No. 2004-04, and Residential Planned Development Permit No. 2004-06, has applied to the City of Moorpark to seek a Development Agreement (No. 2004-03) with the City pursuant to Chapter 15.40 of the Moorpark Municipal Code; and

WHEREAS, the Planning Commission of the City of Moorpark on June 26, 2007, adopted Resolution No. PC 2007-518 recommending to the City Council approval of Development Agreement No. 2004-03, proposed in conjunction with the 200-unit apartment complex project initiated by Essex Portfolio, L.P., also consisting of applications for General Plan Amendment No. 2004-05, Zone Change No. 2004-04, and Residential Planned Development Permit No. 2004-06; and

WHEREAS, the City Council on July 18, 2007, adopted the Mitigated Negative Declaration for the Essex Portfolio, L.P. project, as having been completed in accordance with the California Environmental Quality Act, (CEQA), the CEQA Guidelines and the City's CEQA procedures; and

WHEREAS, a duly noticed public hearing was conducted by the City Council on July 18, 2007 to consider the Development Agreement and to accept public testimony related thereto; and

WHEREAS, the City Council has considered all points of public testimony relevant to the Development Agreement and has given careful consideration to the content of the Development Agreement, 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. The Development Agreement is consistent with the General Plan as amended by General Plan Amendment No. 2004-05.

B. The Development Agreement and the assurances that said agreement places upon the project are consistent with the intent and provisions of the Mitigated Negative Declaration.

C. The Development Agreement is necessary to ensure the public health, safety and welfare.

SECTION 2. The City Council hereby adopts Development Agreement No. 2004-03 (attached hereto) between the City of Moorpark, a municipal corporation, and Essex Portfolio L. P., and the City Clerk is hereby directed to cause one copy of the signed, adopted agreement to be recorded with the County Recorder no later than ten (10) days after the City enters into the development agreement pursuant to the requirements of Government Code Section 65868.5.

SECTION 3. 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 Agreement.

SECTION 4. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

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

SECTION 6. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, 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 1st day of August, 2007.

_____
Patrick Hunter, Mayor

ATTEST:

_____
Deborah S. Traffenstedt, City Clerk

Attachment:
EXHIBIT A - Development Agreement No. 2004-03

EXHIBIT A

Recording Requested By
And When Recorded Return to:

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

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF MOORPARK
AND
ESSEX PORTFOLIO, L.P.

THIS AGREEMENT SHALL BE RECORDED WITHIN TEN DAYS
OF EXECUTION BY ALL PARTIES HERETO PURSUANT TO

THE REQUIREMENTS OF GOVERNMENT CODE §65868.84

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on _____, 2007 by and between the CITY OF MOORPARK, a municipal corporation, (referred to hereinafter as "City") and Essex Portfolio, L.P., the owner of real property within the City of Moorpark generally referred to as Residential Planned Development Permit 2004-06 (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 section 1.3 of this Agreement, the City Council of City ("the City Council") approved General Plan Amendment No. 2004-05 ("GPA 2004-05"), for approximately 10.57 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. 2004-04 ("ZC 2004-04").

   1.3. GPA 2004-05, ZC 2004-04, and Residential Planned Development Permit No. 2004-06 (RPD 2004-06) [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 2004-05.

1.7. On June 20, 2007, the Planning Commission commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on June 20, 2007 recommended approval of the Agreement.

1.8. On July 18, 2007, the City Council commenced a duly noticed public hearing on this Agreement, and following the conclusion of the hearing approved the Agreement by adoption of Ordinance No. 355 ("the Enabling Ordinance") on August 1, 2007.

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 section 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 building 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 section, 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 section 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 Subsequent Approval 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 Subsequent 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 Subsequent 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 shall be unreasonably withheld or delayed from Developer. In addition, no Final Building Permit final inspection or certificate of occupancy will be unreasonably withheld or delayed 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 Final 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 section 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. Developer agrees not to apply for any institutional uses on the Property. The clubhouse and leasing offices are not considered to be institutional uses.

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 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. The amount of the Development Fee shall be Ten-Thousand Eight-Hundred Seventy-Four Dollars ($10,874.00) per residential unit. 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 Index 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 building permit for each residential 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. The amount of the Citywide Traffic Fee shall be Five Thousand Seventy-Five Hundred Dollars ($5,075.00) per residential unit. Commencing on July 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 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. [THIS SECTION INTENTIONALLY LEFT BLANK.]

6.6. 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.

6.7. 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). The amount of the Park Fee shall be Four-Thousand Nine-Hundred Eighty-One Dollars ($4,981.00) for each residential dwelling unit within the Property. The fee shall be adjusted annually commencing July 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 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 Park Fee shall remain at its then current amount until such time as the next subsequent annual indexing which results in an increase.

Developer agrees that the above-described payments shall be deemed to satisfy the parkland dedication requirement set forth at California Government Code Section 66477 et seq. for the Property.

6.8. Provided that prior to the approval by City of the utility plans for RPD 2004-06, , 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 RPD 2004-06, 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 adjacent to the Project , and any other public and commonly owned landscaping and recreation areas constructed by Developer as part of the Project Approvals. 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 of the Project, and the recycled water shall be in use prior to the first occupancy approval for each City approved phase of the Project. Developer shall install dual water meters and services for all locations in the Project 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 that densities vested and incentives and concessions received in the Project Approvals include all densities available as density bonuses and all incentives and concessions to which Developer is entitled under the Moorpark Municipal Code and Government Code Sections 65915 through 65917.5; Developer shall not be entitled to further density bonuses or incentives or concessions and further agrees, in consideration for the density bonus obtained through the Project

Approvals that is greater than would otherwise be available to guarantee the affordability of forty (40) rental units (16 for very low income households and 24 for low income households) for the life of the Project. These forty (40) affordable units shall be rented to eligible tenants as shown in the table below. If City-Issued bonds are issued by City, at its sole discretion, through an "Inducement Resolution" and after a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing and used by Developer for the Project, then Developer will be deemed to have a "City Issued Bond Financed Project," in which case, in addition to the aforementioned forty (40) units Developer shall provide ten (10) additional units for moderate income households for the life of the Project as provided in the table below.

Unit Type	**1 Bedroom 1 Bath**	**2 Bedroom 1 Bath**	**2 Bedroom 2 Bath**	**3 Bedroom**
Moderate **(for a City Issued City-Issued Bond Financed Project only)**		1	4	5
Low	11	4	8	1
Very Low	8	2	5	1
TOTAL	**19**	**6**	**13**	**2**
TOTAL (for a City Issued Bond Financed Project)	**19**	**7**	**17**	**7**

Four (4) of the nineteen (19) one-bedroom one bath affordable Low and Very Low Income units shall be handicap accessible and shall be reserved for and occupied by persons eligible for such accommodations, to the extent there is a qualified handicapped affordable person ready to occupy such unit. Should there be a qualified low or very low income prospective tenant desiring to rent such units but all such units are rented, Developer shall add such prospective tenant to the waiting list for such affordable handicap accessible units. At the earliest possible time a

low or very low income non-handicap affordable unit becomes available, the non-handicapped affordable tenant who occupies the affordable handicap unit shall be relocated to another affordable unit in order to allow the qualified handicap tenant to occupy the handicap accessible unit. Developer shall include a provision in the non-handicap affordable lease that the non-handicap affordable tenant agrees to be relocated, at Developer cost, as soon as a non-handicap unit becomes available.

Low income households shall meet the criteria of sixty percent (60%) or less of median income for Ventura County. Very low income households shall meet the criteria of 50 percent (50%) or less of median income for Ventura County. For a City Issued Bond Financed Project, households for moderate income units shall meet the criteria of one hundred twenty percent (120%) or less of median income, low sixty percent (60%) and/or very low income fifty percent (50%) or less of median income. The aforementioned forty (40) units (fifty units if it's a City Issued Bond Financed Project, including the additional ten units to be for moderate income tenants) are collectively referred to as the affordable housing units or affordable units. The household income limit, affordability thresholds and the affordable rent for very low income and low income affordable units (and moderate income affordable units in the event of a City Issued Bond Financed Project), may, if required by the issuer of any such bonds, be based on an income equal to or less than (but in no event greater than) the amounts stated in this paragraph, in accordance with the provisions of the Affordable Housing Agreement executed for the Project.

Developer further agrees that no grading permit shall be issued and no TEFRA hearing shall be scheduled until the Affordable Housing Agreement is executed by City and Developer. The Affordable Housing Agreement shall include, but not be limited to all terms addressed in this section 6.9.

In addition to the units referenced above, Developer agrees, at Developer's option, to either provide four (4) additional low income units during the term of the Affordable Housing Agreement, or to pay an in-lieu fee for any years during which the additional four (4) low income units are not continuously provided. The in-lieu fee shall be used by the City for any purposes, in the City's sole discretion.

The in-lieu fee shall be Twenty Three Thousand Four Hundred Dollars ($23,400.00) if paid in calendar year 2008. ("Initial In-lieu Fee Amount") The annual in-lieu payment shall increase by two percent (2%) each year above the prior year amount. In no event shall there be a decrease in the amount paid in any year compared to the prior year.

Payments shall be made on March 10 of each year beginning March 10, 2008, or the first March 10 of any year in which the Project is occupied with one or more residential units, whichever is later. If March 10 falls on a Saturday, Sunday, or City Holiday, then payment shall be due on the City's next business day. A late payment penalty equal to 10% of the payment due shall be added to payments received three (3) days or more after the due date as stated herein or when a deficient check has been given for payment. Payments received more then ten (10) days after the due date shall, in addition to the 10% penalty, accrue interest at a rate of 12% from the due date through and including the date the payment is received by the City.

In the event of a sale, transfer, assignment of any type or any portion of the Project or Property by Developer to any other entity not owned in whole or in part by Developer, the fee amount referenced above shall be increased based on the new value of the Property as if it had been reassessed by the Ventura County Assessor and not exempt from the payment of new property taxes. The calculation shall provide the City 0.08% (equivalent to $800.00 per $1 million of assessed value) of the assessed value or such higher percentage of the total new property taxes if the City portion has been increased by action of the State of California or by a statewide initiative or referendum. (For example, if the sale results in a value of $36,000,000.00 then the annual fee to the City would be $36,000,000.00 X .0008 = $28,800.00, or if the City portion of the property taxes has been increased to 0.09% by the State of California on a statewide initiative or referendum then the amount would be $32,400.00). In the event the payment to the City under this calculation would be less than the Initial In-lieu Fee Amount, inclusive of any 2% adjustments applied as of the date of sale, transfer or assignment, then such adjusted Initial In-lieu Fee Amount shall continue until such time as the calculation in this paragraph would yield a higher annual fee.

Developer agrees not to convert the Project to for-sale condominiums, community apartments, planned development, stock cooperative, or other common interest development, hotel/motel, or as congregate care or assisted living facility for the life of the Project. Developer further agrees it shall not permit any of the units (affordable and market rate) to be used on a transient basis and shall not rent any unit for a period of less than monthly.

Developer agrees that the units used to house the qualified low and very low income tenants (and ten (10) units for qualified moderate income tenants if it's a City Issued Bond Financed Project) shall at all times and in all manner be the same as the market rate units including, but not limited to the quality and maintenance of flooring, window covers,

appliances, HVAC, storage space and type, and the number and location of required parking spaces.

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

At no time shall any of the affordable units be rented to an employee, agent, officer, contractor, subcontractor, affiliated company or subsidiary of Developer.

Developer shall pay an annual fee to City of Ten Thousand Dollars ($10,000.00) to administer the affordability provisions and other requirements of the Affordable Housing Agreement. The fee shall be paid on or before February 1 of each year commencing after the first residential occupancy for the Project and adjusted annually commencing each subsequent January 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 of October over the prior October.

b. 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).

Developer agrees City may at any time assign or transfer or substitute the Moorpark Redevelopment Agency for City relative to affordable housing matters, including the issuance of City-Issued Bonds.

Developer agrees to the greatest extent permitted by state and federal law to grant priority to eligible Moorpark residents for the life of the Project to the extent it does not (i) jeopardize Developer's rights pursuant to this Agreement or the Project Approvals, or (ii) jeopardize or materially affect any City-Issued Bond Financing desired by Developer. In the event Developer obtains a legal opinion letter from bond counsel which confirms that granting priority to Moorpark residents may be in violation of

any state or federal laws, Developer shall not grant priority to Moorpark residents.

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 the Moorpark Redevelopment Agency's affordable housing goals. None of the affordable units required by this Agreement shall duplicate or substitute for the affordable housing requirement of any other developer or development project. All Subsequent Approvals required of City under this section 6.9 shall be made at City's sole discretion. If any conflict exists between this Agreement and the Affordable Housing Agreement or the conditions of approval for RPD No. 2004-06 or state and federal laws and regulations, then the provision providing the City the most favorable language for assisting eligible renters who meet the qualification of low and very low income (and moderate income for the ten [10] units in the event City-Issued Bond Financing is used) shall prevail.

Developer must submit its request, in writing, to City for approval and processing of City Issued Bond Financing for the Project. If City concurs with Developer's request and Developer proceeds with City Issued Bond Financing, then City approval and processing of all documents, agreements, hearings and anything else required specifically for a City Issued Bond Financed Project shall not be unreasonably withheld or delayed.

For a City Issued Bond Financed Project, Developer agrees that City may at its sole discretion select the bond counsel, underwriter, financial advisor and other professional service providers that City deems necessary to effectuate City Issued Bond Financing. Developer further agrees to fund all costs actually incurred by City in connection with such City Issued Bond Financing by providing City with deposits for all such bond financing related costs not contingent on the sale of City-Issued bonds. In addition, Developer will pay for all city attorney and city staff time at applicable rates. With the exception of city staff costs all other costs including, but not limited to out of pocket and professional services costs shall have City overhead expense of fifteen percent (15%) added to said costs.

In the event of a City Issued Bond Financed Project, Developer shall also pay an initial issuer fee to City of Forty Thousand Dollars ($40,000.00). The fee shall be paid upon funding of the City Issued Bond Financing.

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.

The Air Quality Fee shall be Nine-Hundred Twenty-Nine ($929.00) per residential unit to be paid prior to the issuance of each building permit for the first residential building in RPD 2004-06. Commencing on July 1, 2008, 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.

6.11. 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.

6.12. 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.

6.13. Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee of Three-Thousand Seven-Hundred Sixty Dollars ($3,760.00) for each residential unit prior to the issuance of a building permit for each residential building within the Project.

6.14. 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.

6.15. Developer agrees that any fees and payments pursuant to this Agreement and for RPD 2004-06 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 section 6.3 of this Agreement are not public improvement fees collected pursuant to Government Code Section 66006 and statutes amendatory or supplementary thereto.

6.16. 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.

6.17. Developer agrees that the Art in Public Places Fee shall not apply to this Project since negotiations for the Development Agreement were begun prior to the effective date of the ordinance adopting the Fee. .

6.18. 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.

6.19 Developer agrees that in the case of failure to comply with the terms and conditions of the early grading agreement after the expiration of all cure periods provided for in the early grading agreement, the City Council may by resolution declare its surety forfeited.

6.20 In the event either or both of the "CPI" referred to in sections 6.3, 6.5, 6.7, 6.9, and 6.10, above, the "referenced Index and/or LAIF" referred to in section 6.4, above and LAIF referred to in section 6.9 are discontinued or revised, such successor index with which the "CPI" and or "referenced Index and/or LAIF" 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.

6.21 Prior to the issuance of the final building permit for the last residential building in the Project Developer agrees to sell City an approximate 8.84 acre site (hereinafter referred to as City Site) as shown in Exhibit B pursuant to the Purchase and Sale Agreement attached hereto as Exhibit C (the "Purchase and Sale Agreement") for the amount of One Million Two Hundred Thirty-Eight Thousand Six Hundred Dollars ($1,238,600.00). Developer shall pay all escrow and related costs for the sale of the City Site to City. Developer further agrees that prior to the Final Building Permit for the last residential building, to return the City Site ground elevation to the same elevation that was in place at the time of issuance of a grading permit for the Project. Verification of the elevation shall be determined by the City Engineer in his/her sole discretion.

6.22 Developer agrees to enclose the flood control channel located on the eastern portion of the Project as shown on the approved Project Site Plan and City Site to the satisfaction of the City Engineer and the Ventura County Watershed Protection District. Developer shall be responsible for any aesthetic or landscape improvements over and around the channel as required by Ventura County Watershed Protection District and as part of the Project Approvals.

6.23 Developer agrees, prior to issuance of the final building permit for the first residential building, within the Project to improve High Street within its existing right-of-way from its intersection with Moorpark Avenue up to the point of the temporary fire access to the extent required by Ventura County Fire Department, and the City Engineer in accordance with the approved Site Plan for the Project, for emergency secondary access to the Project.

6.24 The Developer agrees, at its sole cost and expense to relocate the existing 66 KV overhead power lines within the Project and City Site and connect to the Civic Center adjacent to the City Site in accordance with the map attached hereto as Exhibit D. Said relocation shall be completed prior to the first residential occupancy of the Project.

6.25 Developer agrees to provide one parking space in a (i) garage or "gang garage" as provided in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.13 parking spaces per unit. At least two parking spaces per unit shall be designated for each

unit, guest parking shall be designated and there shall be no extra charges for required parking for the affordable units.

6.26 Developer agrees that if "cable services" (as defined by the federal Cable Act) or their equivalent (including, but not limited to, "video services" as defined in Public Utilities Code 5800 et seq., programming provided over a wireless or satellite system contained within the Project, including Satellite Master Antenna Television) are provided to the Project other than by a City Cable Franchisee or a State Video Services Franchisee, the apartment management entity shall pay monthly to City a fee of the highest of (1) five percent (5%) of the gross revenue generated by the provision of those services, (2) the highest franchise fee required from any City Cable Franchise or (3) the highest franchise fee required by any State Video Franchisee. In that event, except as otherwise provided herein, Developer also agrees to comply with all other requirements applicable to state video franchisees, including, but not limited to, customer service, PEG access, and PEG fees. "Gross revenue" as used herein is defined in Chapter 5.06 of the Moorpark Municipal Code and any successor amendment or supplementary provision thereto. Developer further agrees that if cable services or their equivalent are provided to the Project by any means other than by a City Cable Franchisee or a State Video Services Franchisee. Developer will add this language to any Regulatory Agreement as part of the sale of any bonds issued by the City for Project and the Affordable Housing Agreement.

6.27 Developer shall, prior to the issuance of the final building permit for the last building within the Project restore the City Site to a reasonable condition, free of construction debris, piles of construction related dirt and other construction (including construction landscape) material to the satisfaction of the City Engineer and Community Development Director.

6.28 Developer agrees for the life of the Project to cast affirmative ballots for the increase of any assessments for existing assessment districts for the maintenance of parkway and median landscaping, street lighting, and parks conferring special benefits, and for the formation of any new assessment district for the purposes listed above in order to supplement then existing assessments upon properties within the Project. Developer also agrees to add this language to any Regulatory Agreement as part of the sale of any bonds issued by the City for this Project and to the Affordable Housing Agreement.

7. <u>City Agreements</u>.

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

Project Approvals and all Subsequent Approvals and Building Permits for the Project area and if requested in writing by Developer 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. City shall also commit reasonable time and resources of City staff to work with the Ventura County Water Protection District for the processing and permitting of the plans for the undergrounding of the channel.

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 after City Council approval of all Project Approvals. Said early grading agreement shall be consistent with the conditions of approval for RPD 2004-06 and contingent on City Engineer and Director of Community Development 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.

7.4 City agrees that whenever possible as determined by City in its sole discretion to process concurrently all land use entitlements for the Project so long as the application for such entitlements are "deemed complete" in compliance with the requirements of Chapter 4.5 Review and approval of Development Projects (Permit Streamlining Act) of the California Government Code.

7.5 City agrees that the Park Fee required under section 6.7 of this Agreement meets all of Developer's obligation for park land dedication provisions of state law and City codes.

7.6 The City agrees to appoint an affordable housing staff person to oversee the implementation of the affordable housing requirements for the Project required herein for the duration such units are required to be maintained as affordable consistent with the provisions of section 6.9 of this Agreement.

7.7. 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 and at City's discretion may include provisions requiring such reimbursement to Developer for the same in such other development project conditions of approval.

7.8. City agrees that the Los Angeles Avenue Area of Contribution (AOC) fee shall be Three-Thousand Seven-Hundred Sixty Dollars ($3,760.00) per residential unit.

7.9. City shall acquire the City Site for One Million Two Hundred Thirty-Eight Thousand Six Hundred Dollars ($1,238,600.00) prior to issuance of the final building permit for the last residential building in the Project.

7.10. City will allow the use of the City Site for the staging for the construction of the Project.

7.11. City will allow one parking space in a (i) garage or "gang garage" as provided in the podium designed buildings, or (ii) within the thirty parking spaces covered by a carport, for each of the two hundred (200) units, with the remaining parking uncovered. The parking ratio provided on-site shall in no case be less than 2.13 parking spaces per unit. At least two parking spaces per unit shall be designated for each unit, guest parking shall be designated and there shall be no extra charges for required parking for the affordable units.

7.12. City agrees that the Art in Public Places Fee shall not apply to this Project since negotiations for this Development Agreement were begun prior to the effective date of the ordinance adopting the Fee.

7.13. City acknowledges Developer may want to use City-Issued Bond Financing for the Project. If City, at its sole and unfettered discretion, authorizes such bond financing, then City agrees to use all good faith best efforts to accommodate any request by Developer for an inducement resolution allowing the use by Developer of City Issued Bond Financing for the Project.

7.14. City agrees that payment of the Development Fee required under section 6.3 of this Agreement also meets Developers' Casey Road/Gabbert Road Area of Contribution obligation.

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 written 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; (f) damage to work in progress by reason of fire, flood, earthquake or other casualty; (g) 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; (h) delay caused by a delay by other third party entities which are required to approve plans or documents for Developer to construct the Project, or restrictions imposed or mandated by such other third party entities or governmental entities other than City, (including but not limited to, Ventura County Watershed Protection District); or (i) 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 Project.

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 within five (5) days of receipt of written notice from City that the same is due and payable; or

(c) breaches any of the provisions of the Agreement and fails to cure the same within five (5) days of receipt of written notice from City of such breach (or, if the breach is not able to be cured within such five (5) day period, fails to start to cure the same with five (5) days of receipt of written notice from City of such breach).

11.2. Default by City. City shall be deemed in breach of this Agreement if it breaches any of the provisions of this Agreement.

11.3. Content of Notice of Violation. Every notice of violation shall state with specificity that it is given pursuant to this section of this 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 section. Prior to pursuing the remedies set forth herein, notice and an opportunity to cure shall be provided as required by this Agreement.

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. In addition, if the breach is of sections 6.9, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16, 6.17, 6.21, 6.26, or section 6.28 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 section 11.3 hereof until the date that the breach is cured as provided in the notice of violation. If the violation is of section 6.9, injunctive relief, specific performance and/or monetary damages shall be available.

Nothing in this section 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; provided, however, Financier and such owner shall not be responsible for any matters that occurred prior to their acquisition of the Project.

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 ten (10) 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 written 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 or Subsequent Approvals 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 or Subsequent 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 seven (7) years commencing on the operative date or until one year after the issuance of the final building permit for occupancy of the last building of the Project 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 or Building Permit or Final Building Permit that has been granted or any right or obligation arising independently from such Project Approval or Subsequent Approval or Building Permit or Final Building Permit.

    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 "E" 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 Purchase and Sale Agreement, the Project Approvals or the Subsequent Approvals, the provision of this Agreement 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, Essex Portfolio, L.P., and City of Moorpark have executed this Development Agreement on the date first above written.

CITY OF MOORPARK

_____
Patrick Hunter
Mayor

OWNER/DEVELOPER
Essex Portfolio, L.P.

By: Essex Property Trust, Inc.,
Its General Partner

By: _____
Its: _____

EXHIBIT "A"

LEGAL DESCRIPTION

PARCEL 2B

PARCEL 2A TOGETHER WITH THAT PORTION OF PARCEL 4A OF LOT LINE ADJUSTMENT NO. 2005-03 IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS RECORDED IN DOCUMENT NO. 20050503-0108315 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A PORTION OF LOT "T" OF TRACT NO. "L" OF RANCHO SIMI, AS PER MAP RECORDED IN BOOK 5, PAGE 5 OF MISCELLANEOUS RECORDS (MAPS) IN SAID OFFICE OF THE COUNTY RECORDER AND A PORTION OF LOT 4, TRACT NO. 3 PER MAP ENTITLED "MAP OF M.L. WICKS SUBDIVISION OF PART OF TRACT U AND ADDITION TO MOORPARK, IN THE RANCHO SIMI, VENTURA COUNTY, CALIFORNIA" IN SAID CITY, COUNTY AND STATE AS SHOWN ON MAP RECORDED IN BOOK 5, PAGE 37 OF SAID MISCELLANEOUS RECORDS (MAPS), LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

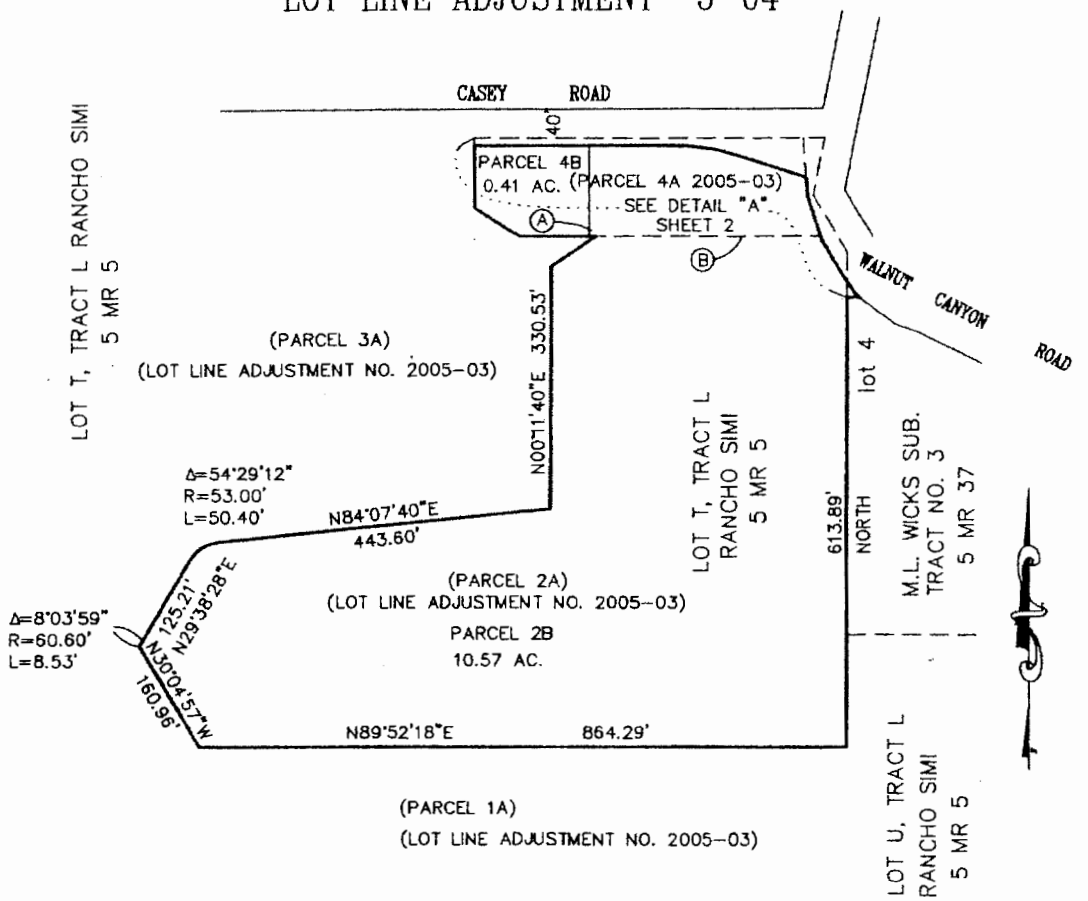
BEGINNING AT A POINT IN THE SOUTHERLY LINE OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 89°52'00" EAST 401.10 FEET IN THE SOUTHERLY LINE OF SAID PARCEL 4A, SAID POINT BEING DISTANT THEREON NORTH 89°52'00" EAST 91.73 FEET FROM THE WESTERLY TERMINUS THEREOF; THENCE

1ST: NORTH 0°07'53" WEST 124.14 FEET TO THE NORTHERLY LINE OF SAID PARCEL 4A.

CONTAINING: 10.57 ACRES, MORE OR LESS.

LOT LINE ADJUSTMENT 5-04

SCALE 1" = 200'



PARCEL	OLD AREA	NEW AREA
2B	9.80 AC.	10.57 AC.
4B	1.18 AC.	0.41 AC.

Ⓐ = NEW LOT LINE
Ⓑ = OLD LOT LINE

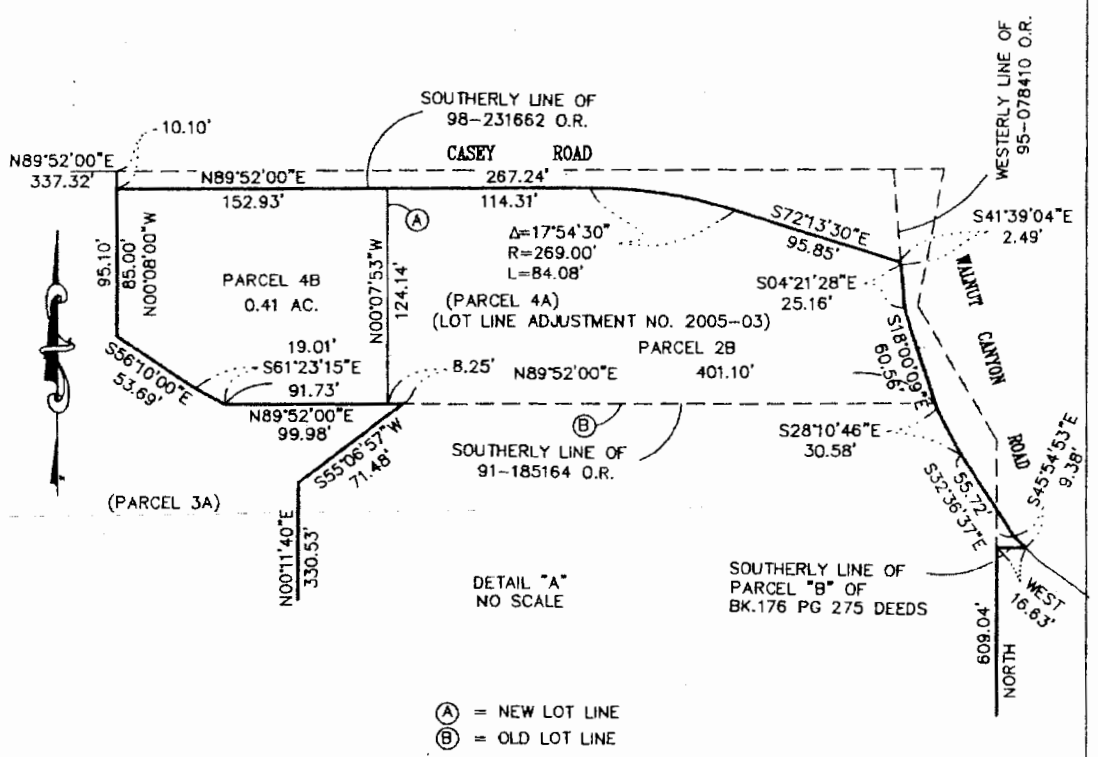
PROFESSIONAL LAND SURVEYOR
GORDON S. LEEDHOLM
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA

Keith Companies | TKC
310 N. Westlake Blvd, Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-8522
Fax No.: (805) 495-8502

6/30/05
LS No. PLS 4438 EXP. DATE 9/30/05

SHEET 1 OF 2

LOT LINE ADJUSTMENT 5-04



PROFESSIONAL LAND SURVEYOR
GORDON S. LEEDHOLM
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA

Keith Companies | TKC

310 N. Westlake Blvd. Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6502

6/30/05

LS NO. PLS 4438 EXP. DATE 9/30/05

SHEET 2 OF 2

EXHIBIT B

LEGAL DESCRIPTION OF CITY SITE

PARCEL 1A

PARCEL 1 TOGETHER WITH THAT PORTION OF PARCEL 3 OF LOT LINE ADJUSTMENT NO. 2005-01 IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS RECORDED IN DOCUMENT NO. 20050406-0083167 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BEING A PORTION OF LOT "T" OF TRACT NO. "L" OF RANCHO SIMI,, AS PER MAP RECORDED IN BOOK 5, PAGE 5 OF MISCELLANEOUS RECORDS (MAPS) IN SAID OFFICE OF THE COUNTY RECORDER, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE HAVING A BEARING AND LENGTH OF NORTH 30°04'57" WEST 157.82 FEET IN THE NORTHEASTERLY LINE OF SAID PARCEL 1; THENCE ALONG THE PROLONGATION OF SAID LINE

1ST: NORTH 30°04'57" WEST 3.14 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 60.60 FEET, TO WHICH A RADIAL LINE OF SAID CURVE BEARS SOUTH 52°17'33" EAST; THENCE; THENCE

2ND: WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 82°07'57" A DISTANCE OF 86.87 FEET; THENCE TANGENT TO SAID CURVE

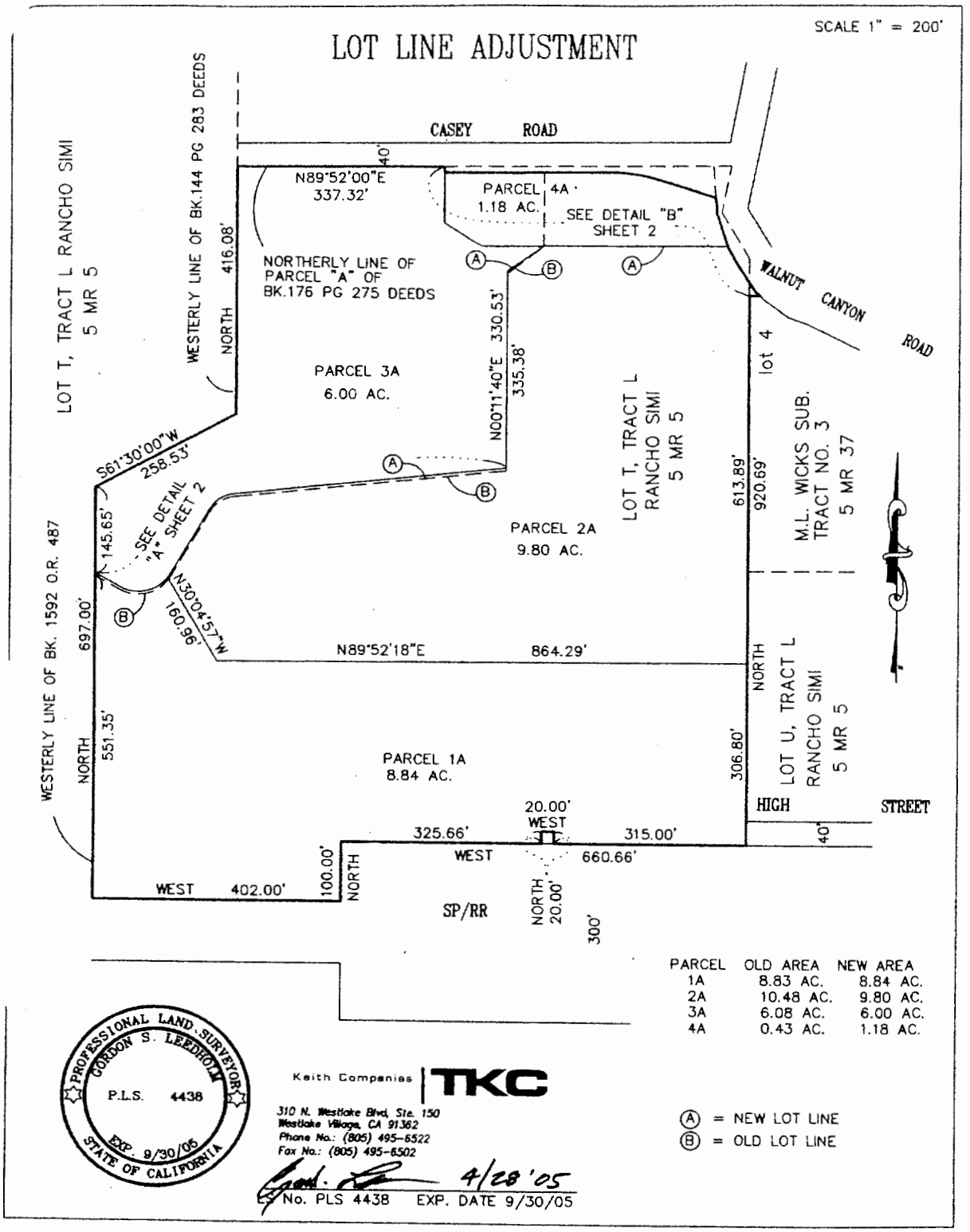
3RD: NORTH 60°09'36" WEST 45.65 FEET TO THE WESTERLY LINE OF SAID PARCEL 3; THENCE ALONG SAID BOUNDARY THE FOLLOWING THREE COURSES,

4TH: SOUTH 4.85 FEET; THENCE

5TH : SOUTH 60°09'36" EAST 45.65 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 60.60 FEET; THENCE

6TH: EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 84°38'23" A DISTANCE OF 89.52 FEET TO THE POINT OF BEGINNING.

CONTAINING: 8.84 ACRES, MORE OR LESS.


LOT LINE ADJUSTMENT
SCALE 1" = 200'
CASEY ROAD
40'
N89°52'00"E
337.32'
PARCEL 4A
1.18 AC.
SEE DETAIL "B"
SHEET 2
WALNUT CANYON ROAD
NORTHERLY LINE OF
PARCEL "A" OF
BK.176 PG 275 DEEDS
WESTERLY LINE OF BK.144 PG 283 DEEDS
NORTH 416.08'
LOT T, TRACT L RANCHO SIMI
5 MR 5
PARCEL 3A
6.00 AC.
N00°11'40"E 330.53'
335.38'
LOT T, TRACT L
RANCHO SIMI
5 MR 5
lot 4
M.L. WICKS SUB.
TRACT NO. 3
5 MR 37
613.89'
920.69'
S61°30'00"W
258.53'
SEE DETAIL
"A" SHEET 2
145.65'
PARCEL 2A
9.80 AC.
N30°04'57"W
160.96'
697.00'
N89°52'18"E
864.29'
WESTERLY LINE OF BK. 1592 O.R. 487
NORTH 551.35'
PARCEL 1A
8.84 AC.
306.80'
NORTH
LOT U, TRACT L
RANCHO SIMI
5 MR 5
HIGH STREET
40'
20.00'
WEST
325.66'
315.00'
WEST
660.66'
100.00'
NORTH
WEST 402.00'
SP/RR
NORTH 20.00'
300'
PARCEL OLD AREA NEW AREA
1A 8.83 AC. 8.84 AC.
2A 10.48 AC. 9.80 AC.
3A 6.08 AC. 6.00 AC.
4A 0.43 AC. 1.18 AC.
PROFESSIONAL LAND SURVEYOR
GORDON S. LEEDHOLM
P.L.S. 4438
EXP. 9/30/05
STATE OF CALIFORNIA
Keith Companies
TKC
310 N. Westlake Blvd, Ste. 150
Westlake Village, CA 91362
Phone No.: (805) 495-6522
Fax No.: (805) 495-6502
4/28/'05
No. PLS 4438 EXP. DATE 9/30/05
(A) = NEW LOT LINE
(B) = OLD LOT LINE

LOT LINE ADJUSTMENT

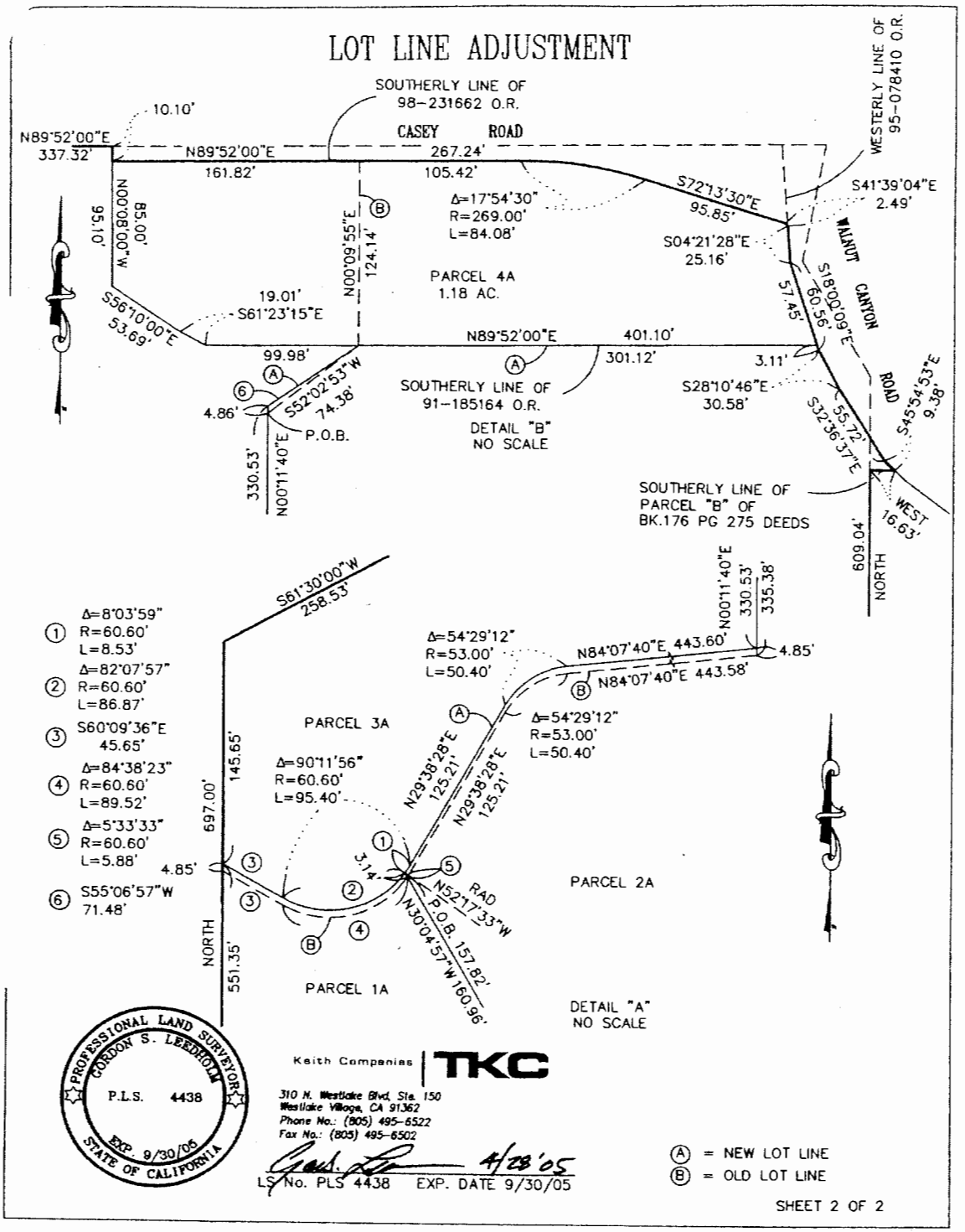


EXHIBIT C

MAP FOR RELOCATED POWER LINES

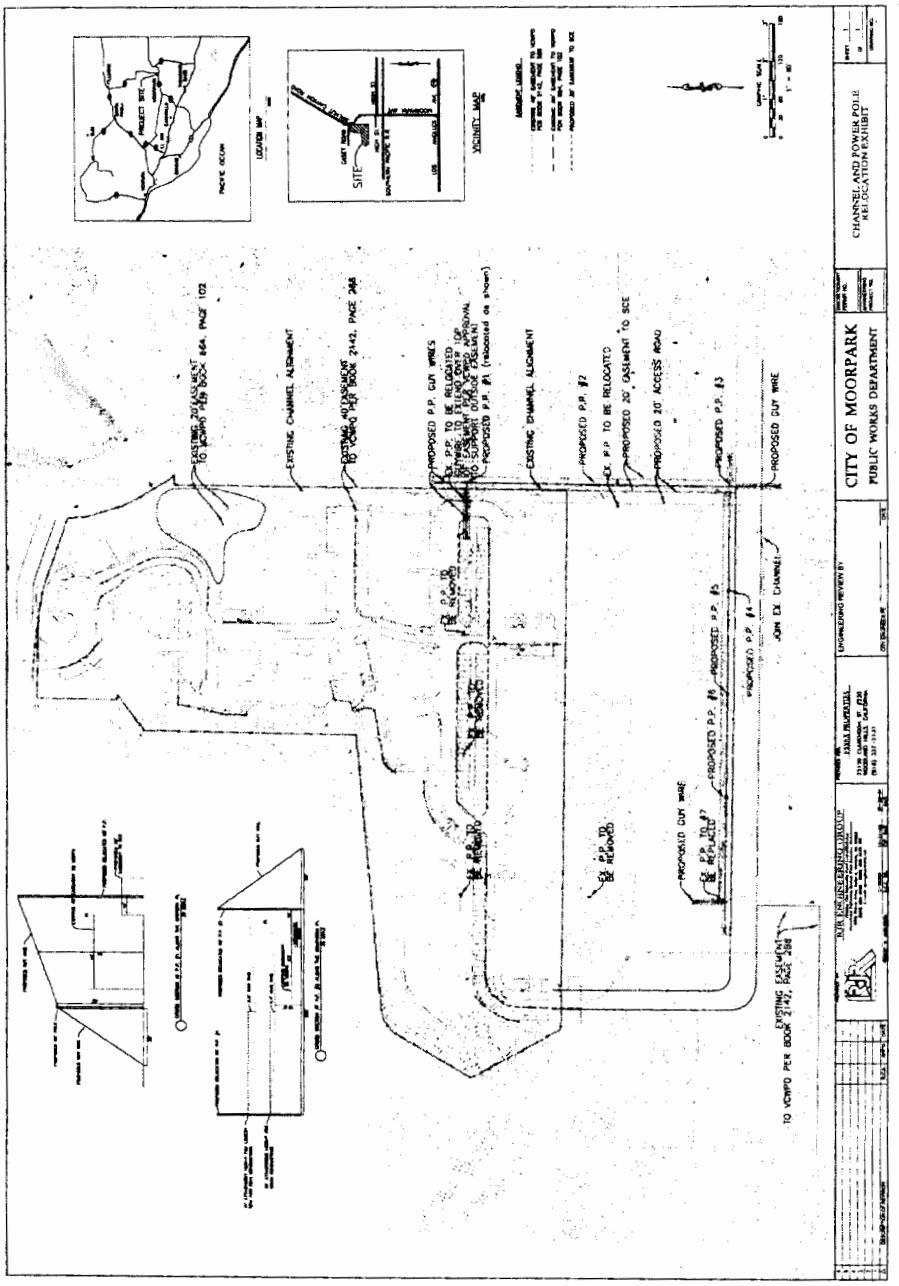


EXHIBIT D

ADDRESSES OF PARTIES

To City:

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

To Developer:

ESSEX PORTFOLIO, L.P.
Attention John D. Eudy
925 East Meadow Drive
Palo Alto, CA 94303

With a Copy To:

ESSEX PORTFOLIO, L.P.
Attention Jordan Ritter
925 East Meadow Drive
Palo Alto, CA 94303

And

ESSEX PORTFOLIO, L.P.
22120 Clarendon Street, Suite 200
Woodland Hills, CA 91367
Attention: Maura Lederer