

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Jessica Sandifer, Program Manager 

DATE: June 6, 2016 (City Council Meeting of 6/15/16)

SUBJECT: Consider First Amendment to Disposition and Development Agreement and First Amendment to Affordable Housing Agreement Between the City of Moorpark and the Area Housing Authority of the County of Ventura for the Walnut Street Apartments Project

BACKGROUND

The former Redevelopment Agency of the City of Moorpark ("Agency") assembled a 1.2 acre site, located at 782 Moorpark Avenue, 798 Moorpark Avenue, 81 Charles Street, and 765 Walnut Street ("Property"), at a cost of \$1,518,777.00 (includes relocation and demolition expenses). The Agency has demolished a portion of the improvements on site; however, the buildings along Moorpark Avenue have remained for visual aesthetics and interim uses.

With the elimination of redevelopment agencies in California, cities automatically assumed the role as the housing successor agency to their redevelopment agency unless they elected to not serve. The City of Moorpark ("City") assumed the housing functions of the Agency and took control of the housing assets, excluding amounts in the MRA Low/Mod Income Housing Fund, along with related rights, powers, liabilities, duties and obligations thereby becoming a successor housing agency of the Agency.

On August 27, 2012, the Department of Finance approved the transfer of the housing assets to the City, which started the five (5) year requirement to develop the properties for affordable housing purposes (August 27, 2017). The City is approaching the end of year number four (4) on this requirement. One five (5) year extension is allowed to develop the housing properties of the former Agency (August 27, 2022).

On June 17, 2015, the City Council approved the Disposition and Development Agreement (DDA) and Affordable Housing Agreement (AHA) with the Area Housing Authority of the County of Ventura ("Authority") for the Walnut Street Apartments Project. The DDA and AHA allow construction of a twenty-four (24) unit, 100% affordable, for rent, residential project, having a mixture of two (2) and three (3)

bedroom units ("Project"). The Project consists of nineteen (19) 2-bedroom units and five (5) 3-bedroom units. Each unit includes one (1) bathroom and a private balcony, patio, or small yard (townhome units).

All of the units will be affordable to and rented by very-low and low-income households. Of the twenty-four (24) units, five (5) will be restricted to lease at an affordable housing cost to low-income households and nineteen (19) units will be restricted to lease at an affordable housing cost to very-low income households. One (1) of the low-income two (2) bedroom units located above the community room, which is a low-income unit under the current DDA, will be utilized by a low-income onsite manager.

The Project includes a number of common amenities, including a tot lot, community garden, passive open space, community room, common laundry room for the apartments, and in-house laundry facilities in the townhomes. An elevator provides access to the second and third floors of Building A.

The DDA provides the Authority a purchase money loan of \$1,830,000 and a permanent loan of \$2,000,000 dollars with expected loan terms of 32 years and 15 years, respectively, however the Authority thought that both loans would have been paid off much sooner than that.

Since the original approval of the DDA and the AHA, the Authority has submitted the project for approval in one tax credit financing round. They were not successful at securing the tax credits.

DISCUSSION

After the unsuccessful tax credit round, the Authority had to brainstorm about how to submit a successful application. Some of the changes they made are outlined below:

- **Financing:** Initially, the Authority was trying to construct the project without any type of conventional financing, however, they were unable to make the project work financially without it. The addition of the outside financing, requires the City to subordinate its loans to the conventional financing for slightly longer repayment terms.
- **Project Based Section 8:** The Authority converted the project to a "Project Based Section 8" property. The Area Housing Authority's commitment of 100% Project-based Section 8 for 20 years will increase the permanent conventional financing by almost \$1.5 million. Since project-based section 8 is considered a public subsidy it will substantially increase the tiebreaker score and thus competitiveness for 9% low-income housing tax credits.

- Partnership: The Authority will be entering into a partnership with Many Mansions. The addition of Many Mansions to the development team provides the Authority with additional experienced staff to assist with the application for the tax credits, as well as, the development and management of the project after it's put in service. The DDA and the AHA are proposed to be assigned to the partnership entity, Walnut24, LP.

Permanent Loan Amount Change and Fee Waivers

When the Authority approached staff about the changes to the project, staff realized that the balance of the City's Affordable Housing Fund could no longer support a \$2,000,000 permanent loan to the project, especially with a longer repayment term. The offer of the \$2,000,000 loan was predicated on the sale of certain other housing properties that have not happened. The City has had to reduce its permanent loan to \$1,250,000. The loss of \$750,000 in subsidy, would negatively impact the Authority's tiebreaker score for the tax credit application. To mitigate this negative impact on the tax credit application, staff is recommending a corresponding amount of development impact fee waivers for the project. The development impact fees that the City is assessing the project, total \$1,155,167.20. The Authority is requesting waiver of \$750,000 of the fees with the remaining fee amounts to be paid at the completion of the project, rather than before, as is customary:

Parks	\$266,616.00
Library	\$14,325.84
Police	\$24,648.00
TSM	\$29,520.00
Citywide	\$394,545.36
LAAOC	\$212,712.00
Art in Public Places	\$120,000.00
Crossing Guard	\$92,800.00
TOTAL:	\$1,155,167.20

Other Requested Changes

- Restricted Manager's Unit: The current version of the document provides for a manager's unit that is restricted to a person who qualifies as low income. The Authority has requested that the manager's unit be un-restricted, which allows them to hire, and pay for a qualified, on-site manager for the project. Staff has no objection to this change, as quality on-site management is important to the operation of the project.
- Changes to live/work preference and City placement option: Under the current DDA, the City has asked that the authority provide preferences to placement of

Moorpark residents for the first 30-days. Under current law, preferences must be extended to not only those residents that live in the City, but those that work here. Language has been added to reflect current law. There is also an option for the City to place residents that have been displaced by City activities or from other affordable housing properties to be placed in the project. However, due to the change to a Section 8 project based voucher, the Authority cannot offer this option as they cannot put other people ahead of the those already on the Section 8 waiting list. Language regarding the placement option has been removed from the Agreement.

- Request to waive annual administrative fees and compliance monitoring fees: The Authority has asked the City to waive the annual administrative and compliance monitoring fees. The initial cost of these fees is \$22,000. Staff concurs with the request to waive these fees due to the fact that Section 8 programs are heavily audited and monitored by the federal Department of Housing and Urban Development (HUD). However, language has been inserted into the amendments that allows the City to charge applicable staff time, plus an administrative fee, if a complaint or HUD audit requires the City to spend staff time to resolve or assist with the issue.
- There are other minor language clean-ups and updates on the schedule of performance to reflect the longer than expected time period to move the project forward.

The attached amendments to the DDA and the AHA, incorporate the requested changes to the DDA which are summarized as follows:

- Assignment of the DDA and AHA to the partnership entity, Walnut24, LP.
- Change of the permanent loan amount from \$2,000,000 to \$1,250,000 and increase of loan term from 15 years to 17 years.
- Increase of loan term on the \$1,830,000 purchase loan from 30 years to 32 years
- Waiver of \$750,000 in development impact fees, with deferral of the remaining amount owed to project completion.
- Agreement to subordinate the DDA and the AHA to conventional loan financing, if required
- Changing the on-site manager's unit from restricted to un-restricted.

It should also be noted that there will only be two more opportunities for the Authority to obtain tax credits for this project. The Tax Credit Allocation Committee will be making changes to the application and tiebreaker process that will put greater emphasis on creating projects with a higher number of units. Projects with 77 units or more will receive higher points than those projects with less than 77 units. While beneficial to the production of affordable housing generally, these changes to the tax credit scoring will

impact projects that the Authority does in Moorpark, which are typically small family projects under 30 units per project.

FISCAL IMPACT

The City will make a Purchase Loan to the Developer in the amount of \$1,830,000.00 and a \$1,250,000.00 Permanent Loan. The interest on the loans is 2.25% and 3.75%, respectively. Payments will be made out of residual receipts, if available. However, payment on the Purchase Loan will begin after the Permanent Loan has been retired. Under the Amendment, the Developer anticipates minimal repayment out of residual receipts with a balloon repayment of the Permanent Loan, plus interest at year 17. The City will earn approximately \$436,000 in interest on the permanent loan during the loan term. No money will exchange hands for the Purchase Loan. The Purchase Loan, plus interest will be repaid in 32 years in a balloon payment. The City will earn approximately \$756,000 in interest over the loan term. Funds needed for the Permanent Loan will come from the City Affordable Housing Fund (2201), which is funded by in-lieu fees paid by developers. The projected balance for the City Affordable Housing Fund at June 30, 2016 is \$2,681,287. Disbursement of the funds for the permanent loan to the Authority, will take approximately 45% of our City affordable housing funding. The funds do not have to be available until after the tax credits have been approved. Staff will return to City Council with a budget amendment at that time.

Staff is currently working on a Disposition and Development Agreement (DDA) for several properties owned by the City to be developed for affordable housing purposes. If an agreement is reached, the City expects to receive over \$2,300,000.00 for the purchase of City owned property. These funds would be used to replenish the City Affordable Housing Fund (2201).

STAFF RECOMMENDATION (ROLL CALL VOTE)

1. Approve Amendment No.1 to the Disposition and Development Agreement with the Area Housing Authority of the County of Ventura and the City of Moorpark, subject to final language approval of the City Manager and City Attorney; and
2. Approve Amendment No. 1 to the Affordable Housing Agreement with the Area Housing Authority of the County of Ventura and the City of Moorpark, subject to final language approval for the City Manager and City Attorney.

Attachments:

1. Amendment #1 to Disposition and Development Agreement
2. Amendment #1 to Affordable Housing Agreement

ATTACHMENT 1

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

No fee for recording pursuant to
Government Code Section 27383

**AMENDMENT NO. 1 AND ASSIGNMENT OF
DISPOSITION AND DEVELOPMENT AGREEMENT**

This AMENDMENT AND ASSIGNMENT OF DISPOSITION AND DEVELOPMENT AGREEMENT (this "**Amendment**") is dated as of _____, 2016 and is entered into by and among the CITY OF MOORPARK, a California municipal corporation (the "**City**"), AREA HOUSING AUTHORITY OF THE COUNTY OF VENTURA, a public body, corporate and politic (the "**Developer**") and WALNUT24 LP, a California limited partnership (the "**Partnership**"). The City, the Partnership and the Developer shall collectively be referred to herein as the "Parties".

RECITALS

A. The City and Developer entered into that certain Disposition and Development Agreement dated as of June 25, 2015 (the "**DDA**") and recorded on July 17, 2015 as Instrument No. 20150717-00109257 in the Official Records of Ventura County (the "**Official Records**") in connection with the acquisition and development of the land more particularly described on Exhibit A attached hereto (the "**Property**"). All capitalized terms used but not defined in this Amendment have the meanings set forth in the DDA.

B. Concurrently with the City's approval of the DDA, the City agreed to provide a Purchase Loan and a Permanent Loan (hereinafter collectively referred to as the "**Loans**") to the Developer pursuant to the terms and conditions of the DDA.

C. Per the DDA, Developer has agreed to acquire the Property and develop the Property as a residential apartment complex containing twenty-four (24) units for "Low" or "Lower Income Households", plus one restricted manager's Unit (the "**Development**"). Developer has further arranged for construction financing that shall be senior to the Loans per the terms of the DDA.

D. On May 04, 2016, Developer and Many Mansions, a California nonprofit public benefit corporation, entered into a Joint Development Agreement and agreed to form Walnut24 LP, a California limited partnership, that will assume the role of Developer of the Development. The Developer and Many Mansions intend to admit

Many Mansions or its affiliate as an administrative general partner of the Partnership. The City has agreed to the assignment of the DDA and the AHA to the Partnership and to the transfer of a general partner interest in the Partnership to Many Mansions or its affiliate.

E. In connection with the additional financing of the Property and the assignment of the development obligations to the Partnership, the Parties desire to modify and assign the DDA to the Partnership, to extend the terms of the Loans, to subordinate the Loans to senior construction and permanent financing, and to make additional modifications to the document.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment of DDA to Partnership.
 - a) Developer hereby assigns and delegates to the Partnership and the Partnership hereby accepts from Developer all of Developer's right, title and interest in and obligations under the DDA. The Partnership hereby accepts the above assignment and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Developer pursuant to the DDA. Any reference to Developer in the DDA shall be deemed a reference to the Partnership.
 - b) The following sentence is hereby appended to Section 2.3 of the DDA :

"City has agreed to the assignment of the DDA to the Partnership and hereby approves a transfer of any general partner interest in the Partnership to Developer, Many Mansions, any affiliate of Developer or Many Mansions, or any entity jointly controlled by the Developer and Many Mansions."
 - c) Consent. City consents to the assignment of the DDA from Developer to the Partnership and per Section 2.3 of the DDA releases Developer from all obligations imposed on Developer under the DDA.
2. Notice. The following addresses are hereby added to Section 9.1 of the DDA for notification to the Developer:

"If to Developer: Many Mansions
 1259 E. Thousand Oaks Blvd.
 Thousand Oaks, CA 91362
 Email: rick@manymansions.org

With a copy to: Goldfarb & Lipman LLP
 Attn: Amy DeVaudreuil
 1300 Clay Street, 11th Floor

Oakland, CA 94612
Email: adevaudreuil@goldfarbblipman.com
Phone: (510) 836-6336

3. Manager's Unit. The last two sentences of Recital A of the DDA are hereby replaced with the following:

"One (1) of the units will be utilized by an onsite manager. The manager's unit will be an unrestricted unit."

4. Closing Date. The definition of "Closing Date" under Section 1.2 of the DDA is hereby amended to delete "December 31, 2016" and replace it with "March 31, 2018."

5. Residual Receipts. The definition of "Residual Receipts" under Section 1.2 of the DDA is hereby amended to add a new subsection (a)(iv):

"All investor-approved and required fees."

6. Transfers. Section 2.3 of the DDA is hereby amended to add the following paragraph:

"The City hereby approves the future transfer of the limited partner interest of the Partnership to a tax credit investor and any transfers pursuant to the Partnership's Amended and Restated Limited Partnership Agreement."

7. Purchase Price. Section 3.2 of the DDA is hereby replaced in its entirety with the following sentence:

"The purchase price which City agrees to accept and Developer agrees to pay for the Site is One Million Eight Hundred Thirty Thousand and No/100 Dollars (\$1,830,000.00) or the fair market value based on a City approved appraisal, if greater ("Purchase Price")."

8. Timeline to Secure Financing. Replace Section 5.1.1 of the DDA in its entirety with the following paragraph:

"Developer shall have four (4) Tax Credit Allocation Committee funding rounds to secure tax credit financing for the Project from the date of the first amendment to this Agreement. If tax credits have not been secured within four (4) funding rounds or December 31, 2017, whichever occurs first, the City may, at its sole discretion, terminate this Agreement."

9. Title Company. The Parties hereby agree that the Title Company and Escrow Agent shall be Chicago Title Company.

10. City Assistance.

- a) The following subsections are hereby added to Section 6.4 of the DDA:

"6.4.3 Subordination. The City shall agree to subordinate the Purchase Loan and the Permanent Loan to deeds of trust and any other documents necessary to secure a lien, encumbrance or regulatory agreement to a conventional lender (bank) or federal or state program (including tax-exempt bonds and Tranche B financing) (collectively the "**Senior Financing**") that is providing financing for the Project where such subordination is required by the conventional lender or by federal or state programs in order to obtain the financing needed for the Project. Any such subordination shall be pursuant to the terms of the subordination agreements and/or other intercreditor agreements that may be entered into by the City. The City shall have the right to review and approve the terms of any such Senior Financing, which approval shall not be unreasonably withheld. The City shall have the right to record a request that the City receive notice of any default by the Developer under the Senior Financing, and any other alternative financing that may be obtained by the Developer with respect to the Development. To implement any such subordination authorized under this paragraph, the City agrees to cooperate with the Developer, and the City Manager of the City shall have the authority to execute such subordination agreements and/or intercreditor agreements that may be reasonably required, in the form and content approved by City's counsel."

"6.4.4 Impact Fees. The City agrees to waive at least \$750,000 in development impact fees (e.g. Community Development Fees, Public Facilities, LA Ave AOC Fee, etc.) for the Development. Payment of any remaining development impact fees will be deferred until a certificate of occupancy is issued for the Development."

- b) Purchase Loan Term.

- i) The first sentence of Section 6.4.1 of the DDA is hereby replaced with the following:

"Concurrently with the approval of this Agreement, the City approves a purchase loan to Developer in the amount of the Purchase Price to be used to purchase the Site from the City ("Purchase Loan")."

- ii) The following sentence is hereby appended to Section 6.4.1 of the DDA:

"The term of the Purchase Loan under Section 6.4.1 is thirty-two (32) years."

c) Permanent Loan Term.

- i) The first sentence of Section 6.4.2 of the DDA is hereby replaced with the following:

"Concurrently with the approval of this Agreement, the City approves a One Million Two Hundred Fifty Thousand Dollar (\$1,250,000) permanent loan to be used to retire a portion of the construction loan and serve as permanent financing ("Permanent Loan")."

- ii) The term of the Permanent Loan in Section 6.4.2 of the DDA is hereby amended to be seventeen (17) years.

11. Live/Work Preference.

- a) Section 7.5 of the DDA is hereby replaced in its entirety with the following paragraph:

"Moorpark Live/Work Priority. The Developer, to the fullest extent allowed by law, agrees to give priority to eligible City residents and individuals employed or hired by businesses located in the City to occupy the Units during the initial occupancy of the Project. Said priority shall include, at a minimum, a thirty (30) day initial lease period exclusive to City residents and individuals employed or hired by businesses located in the City."

- b) The last sentence of Section 2.3 of the AHA is hereby replaced in its entirety with the following sentence:

"Owner agrees to the extent permitted by applicable state and federal law, that priority shall be granted to eligible City residents and individuals employed or hired by businesses located in the City exclusively for the first thirty (30) days of project lease up."

- c) Section 2.2.2 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following paragraph:

"Preference Policies. No preference or priority of rental of the Affordable Units shall be given to otherwise eligible Very Low or Low Income employees of Owner, or the management company, or any other Affiliates thereof, including, but not limited to agents, contractors, subcontractors or subsidiaries, with the exception of the first thirty (30) days of the initial rental period when City residents and individuals employed or hired by businesses located in the City are given priority status. To the extent permitted by applicable state and federal law, priority shall be granted to eligible

City residents and individuals employed or hired by businesses located in the City for the Term of the Agreement. A waiting list for the Affordable Units shall be maintained from which vacancies shall be filled. The waiting list shall be established through a fair process for the selection of the next eligible households to fill the vacancies allowing for priority of City residents and individuals employed or hired by businesses located in the City. Details of this process shall be submitted in writing to the City for review and approval prior to the issuance of the first building permit for this Project."

12. Schedule of Performance (Attachment No. 3 to the DDA)

- a) Opening of Escrow for Site. The date for opening of escrow in Paragraph 8 of Attachment No. 3 to the DDA is hereby amended to _____.
- b) Close of Escrow. The date for close of escrow in Paragraph 10 of Attachment No. 3 to the DDA is hereby extended to March 31, 2018.
- c) Completion of Construction of Improvements. The term for completion of construction of Improvements in Paragraph 12 of Attachment No. 3 to the DDA is hereby extended to 14 months.

13. Grant Deed (Attachment No. 4 to the DDA). Paragraph 3 of Attachment No. 4 to the DDA is hereby replaced in its entirety with the following:

" 3. The Site is conveyed in accordance with and subject to the Disposition and Development Agreement entered into between City and Developer dated June 25, 2015 (the "DDA"), a copy of which is on file with the City at its offices as a public record and which is incorporated herein by reference. The DDA generally requires the Developer to construct a 24-unit, for rent, residential apartment complex ("Project"). The Project will consist of one 1-bedroom unit, fifteen 2-bedroom units and eight 3-bedroom units. Each unit will include one bathroom and a private balcony, patio, or yard.

With the exception of the manager's unit, the units shall be affordable to and rented by very-low and low-income households. Of the 24 units, four (4) will be restricted to lease at an affordable housing cost to low income households, nineteen (19) will be restricted to lease at an affordable housing cost to very low income households. One (1) of the twenty-four (24) Units will be unrestricted and utilized by an onsite manager.

The Project includes a number of common on-site amenities, including a tot lot, community garden, passive open space, community room, and common laundry room for the apartments. An elevator provides access to the second and third floors of the apartment building.

Developer will maintain 100% ownership of the Property and continue to utilize the Property for affordable housing purposes pursuant to the approved Planned Development Permit No. 2015-01.

All terms used herein shall have the same meaning as those used in the DDA."

14. Scope of Development (Attachment No. 5 to the DDA). Attachment No. 5 to the DDA is hereby replaced in its entirety with the following:

"The Developer shall construct a 24 unit, for rent, residential project having a mixture of one, two and three bedroom units ("Project"). The Project will consist of one (1) 1-bedroom unit, fifteen (15) 2-bedroom units and eight (8) 3-bedroom units. Each unit will include one bathroom and a private balcony, patio, or small yard (townhome units).

All of the units shall be affordable to and rented by very-low and low-income households. Of the twenty-four (24) units, four (4) will be restricted to lease at an affordable housing cost to low income households, nineteen (19) will be restricted to lease at an affordable housing cost to very low income households, and one (1) of the twenty-four (24) Units will be unrestricted and utilized by an onsite manager.

The Project includes a number of common amenities, including a tot lot, community garden, passive open space, community room, and common laundry room for the apartments. An elevator provides access to the second and third floors of building A.

All development of the Project shall be in accordance with approved City of Moorpark Planned Development Permit No. 2015-01 and all permits and fees required by the City, County of Ventura and other governmental agencies with jurisdiction over the Improvements, including the State General Construction Storm Water Permit's Storm Water Pollution Prevention Plan requirements and any other requirements therein."

15. Income Limits (Attachment No. 8). The Income Limits chart shall be amended to include a column for 2-person households and shall be updated with the relevant income limits.
16. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California. If any court of competent jurisdiction determines any provision of this Amendment or the DDA to be invalid, illegal or unenforceable, then that provision shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable provision had never been a part hereof or of the DDA.

17. Binding Effect. The DDA, as amended herein, shall be binding upon, and inure to the benefit of the Developer and the City and their respective successors and assigns.
18. Severability. If any term of this Amendment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.
19. Counterparts. This Amendment may be executed in any number of counterparts, each of which when executed and delivered to the City shall be deemed to be an original, and all of which, taken together, will be deemed to be one and the same instrument.
20. Conflict. To the extent that the terms of this Amendment conflict with those of the DDA, this Amendment shall prevail.
21. Successors and Assigns. This Amendment shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the Parties.
22. Effective Date. This Amendment shall be effective as of the date first set forth above.
23. Full Force and Effect. Except as set forth in this Amendment, the DDA has not been amended and is in full force and effect.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment as of the day and year first above written.

CITY:

CITY OF MOORPARK

DEVELOPER:

AREA HOUSING AUTHORITY OF THE COUNTY OF VENTURA,
a public body, corporate and politic

By: _____
Steven Kueny, City Manager

By: _____
Michael Nigh, Executive Director

ATTEST:

By: _____
Maureen Benson, City Clerk

PARTNERSHIP:

WALNUT24 LP,
a California limited partnership

By: _____

Name: _____

Title: _____

[ALL SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

<u>Address</u>	<u>APN</u>
765 Walnut Street	512-0-062-110
782 Moorpark Avenue	512-0-062-020
798 Moorpark Avenue	512-0-062-120
81 Charles Street	512-0-062-070

ATTACHMENT 2

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City of Moorpark
799 Moorpark Avenue
Moorpark, CA 93021

No fee for recording pursuant to
Government Code Section 27383

**AMENDMENT NO. 1 AND ASSIGNMENT OF
AFFORDABLE HOUSING AGREEMENT**

This AMENDMENT NO. 1 AND ASSIGNMENT OF AFFORDABLE HOUSING AGREEMENT (this "**Amendment**") is dated as of _____, 2016 and is entered into by and among the CITY OF MOORPARK, a California municipal corporation (the "**City**"), AREA HOUSING AUTHORITY OF THE COUNTY OF VENTURA, a public body, corporate and politic (the "**Developer**") and WALNUT24 LP, a California limited partnership (the "**Partnership**"). The City, the Partnership and the Developer shall collectively be referred to herein as the "Parties".

RECITALS

A. The City and Developer entered into that certain Disposition and Development Agreement dated as of June 25, 2015 (the "**DDA**") and recorded on July 17, 2015 as Instrument No. 20150717-00109257 in the Official Records of Ventura County (the "**Official Records**") in connection with the acquisition and development of the land more particularly described on Exhibit A attached hereto (the "**Property**"). All capitalized terms used but not defined in this Amendment have the meanings set forth in the DDA.

B. The City and Developer entered into that certain Affordable Housing Agreement dated as of June 25, 2015 (the "**AHA**") and recorded July 17, 2015 as Instrument No. 20150717-00109256 in the Official Records in connection with the DDA.

C. Per the DDA, Developer has agreed to acquire the Property and develop the Property as a residential apartment complex containing twenty-four (24) units for "Low" or "Lower Income Households", plus one restricted manager's Unit (the "**Development**"). Developer has further arranged for construction financing that shall be senior to the Loans per the terms of the DDA.

D. On May 04, 2016, Developer and Many Mansions, a California nonprofit public benefit corporation, entered into a Joint Development Agreement and agreed to

form Walnut24 LP, a California limited partnership, that will assume the role of Developer of the Development. The Developer and Many Mansions intend to admit Many Mansions or its affiliate as an administrative general partner of the Partnership. The City has agreed to the assignment of the DDA and the AHA to the Partnership and to the transfer of a general partner interest in the Partnership to Many Mansions or its affiliate.

E. In connection with the additional financing of the Property and the assignment of the development obligations to the Partnership, the Parties desire to modify and assign the AHA to the Partnership, and to make additional modifications to the documents.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements hereinafter set forth, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Assignment of AHA to Partnership.

a) Developer hereby assigns and delegates to the Partnership and the Partnership hereby accepts from Developer all of Developer's right, title and interest in and obligations under the AHA. The Partnership hereby accepts the above assignment and hereby assumes, agrees, and undertakes to perform all of the obligations, covenants, and agreements of Developer pursuant to the AHA. Any reference to Developer in the DDA and the AHA shall be deemed a reference to the Partnership.

b) The following sentence is hereby appended to Section 5.15 of the AHA:

"City has agreed to the assignment of the AHA to the Partnership and hereby approves a transfer of any general partner interest in the Partnership to Developer, Many Mansions, any affiliate of Developer or Many Mansions, or any entity jointly controlled by the Developer and Many Mansions."

c) Consent. City consents to the assignment of the AHA from Developer to the Partnership and releases Developer from all obligations imposed on Developer under the AHA.

2. Notice. The following addresses are hereby added to Section 5.1 of the AHA for notification to the Developer:

"If to Developer:	Many Mansions 1259 E. Thousand Oaks Blvd. Thousand Oaks, California 91362 Email: rick@manymansions.org
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With a copy to: Goldfarb & Lipman LLP
Attn: Amy DeVaudreuil
1300 Clay Street, 11th Floor
Oakland, California 94612
Email: adevaudreuil@goldfarblipman.com
Phone: (510) 836-6336

3. Live/Work Preference.

- a) The last sentence of Section 2.3 of the AHA is hereby replaced in its entirety with the following sentence:

"Owner agrees to the extent permitted by applicable state and federal law, that priority shall be granted to eligible City residents and individuals employed or hired by businesses located in the City exclusively for the first thirty (30) days of project lease up."

- b) Section 2.2.2 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following paragraph:

"Preference Policies. No preference or priority of rental of the Affordable Units shall be given to otherwise eligible Very Low or Low Income employees of Owner, or the management company, or any other Affiliates thereof, including, but not limited to agents, contractors, subcontractors or subsidiaries, with the exception of the first thirty (30) days of the initial rental period when City residents and individuals employed or hired by businesses located in the City are given priority status. To the extent permitted by applicable state and federal law, priority shall be granted to eligible City residents and individuals employed or hired by businesses located in the City for the Term of the Agreement. A waiting list for the Affordable Units shall be maintained from which vacancies shall be filled. The waiting list shall be established through a fair process for the selection of the next eligible households to fill the vacancies allowing for priority of City residents and individuals employed or hired by businesses located in the City. Details of this process shall be submitted in writing to the City for review and approval prior to the issuance of the first building permit for this Project."

- c) Section 2.10 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following paragraph:

"2.10 Live/Work Priority. To the extent permitted by applicable state and federal law, priority shall be granted to eligible City residents and individuals employed or hired by businesses located in the City exclusively

for the first thirty (30) days of Project lease-up and should be a general rule for the Term of the Agreement."

4. Additional Amendments to AHA.

- a) Recording Information. The recording information for the DDA in the first paragraph of the AHA Recitals, in the Introduction to the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA and in the definition of "Disposition and Development Agreement" under Section 1.1 of the AHA are hereby amended to include that the DDA was recorded on July 17, 2015 as Instrument No. 20150717-00109257-0.
- b) Definitions. The definition of "Affordable Units" under Section 1.1 of the AHA and Section 1.1 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby amended to include twenty-three (23) rent-restricted units.
- c) Affordability Restrictions.
 - i) The quantity of "Low Income" units under Section 2.1 of the AHA and under Section 2.3.2 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby amended to include four (4) Low Income units.
 - ii) The "Unit Allocation" under Section 2.3.4 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby amended to include twenty-three (23) Units.
 - iii) Section 2.1 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following:

"2.1 Purpose of Restrictions. The City is required pursuant to the Project Approvals and California Health and Safety Code Section 33413(b) to impose certain income and affordability restrictions on a specified number of Units in the Project. The provisions of this Plan are intended to carry out those requirements. Specifically, this Plan provides for the availability of twenty-three (23) affordable units, all at affordable rent and occupancy as follows: nineteen (19) that are affordable to Very Low Income households; and four (4) that are affordable to Low Income households. One (1) of the Units will be occupied by an onsite management employee of the Owner as required by Tax Credit regulations."

- iv) Section 2.2.1 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following:

"2.2.1 Allocation of Affordable Units. During the Term of the Agreement, twenty-three (23) Units shall be leased at an Affordable Rent. At least seven (7) three-bedroom units and eleven (11) two-bedroom units and one (1) one-bedroom unit are to be occupied by Very Low Income households at an Affordable Rent, as provided herein. The remainder of the Units (three (3) two bedroom units and one three bedroom unit) shall be occupied by or held available for Low Income households at an Affordable Rent. The "Unit Allocation" is also described on Attachment "4". One (1) two-bedroom Unit will be utilized by an onsite manager. The manager's unit will be an unrestricted unit."

- v) Section 2.4 of the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following:

"2.4 Affordable Rent. Monthly rent shall be calculated in accordance with California Health and Safety Code Section 50053. "Family size appropriate to the Unit" as shown on Attachment D is defined in Section 50052.5(h) of the California Health and Safety Code to be two (2) persons for a one-bedroom Unit, three (3) persons for a two-bedroom Unit and four (4) persons for a three-bedroom Unit. Current monthly rent is calculated as:..."

d) Subordination.

- i) Section 4.2.1 of the AHA is hereby replaced in its entirety with the following:

"The City shall agree to subordinate this Agreement to deeds of trust and any other documents necessary to secure a lien, encumbrance or regulatory agreement to a conventional lender (bank) or federal or state program (including tax-exempt bonds and Tranche B financing) (collectively the "Senior Financing") that is providing financing for the Project where such subordination is required by the conventional lender or by federal or state programs in order to obtain the financing needed for the Project. Any such subordination shall be pursuant to the terms of the subordination agreements and/or other intercreditor agreements that may be entered into by the City. The City shall have the right to review and approve the terms of any such Senior Financing, which approval shall not be unreasonably withheld. The City shall have the right to record a request that the City receive notice of any default by the

Owner under the Senior Financing, and any other alternative financing that may be obtained by the Owner with respect to the Project. To implement any such subordination authorized under this paragraph, the City agrees to cooperate with the Owner, and the City Manager of the City shall have the authority to execute such subordination agreements and/or intercreditor agreements that may be reasonably required, in the form and content approved by City's counsel."

- ii) The first sentence of Section 4.2.2 of the AHA is hereby amended in its entirety with the following sentence:

"Owner shall pay and promptly discharge when due, at Owner's cost and expense, all liens, encumbrances and charges upon the Project or the Property, or any part thereof or interest therein (except the lien of any mortgage, deed of trust or other recorded instrument securing any construction or permanent financing of the Project), provided that the existence of any mechanic's, laborer's, materialman's, supplier's, or vendor's lien or right thereto shall not constitute a violation of this Section if payment is not yet due under the contract which is the foundation thereof and if such contract does not postpone payment for more than forty-five (45) days after the performance thereof."

- e) City Fees. Section 5.27 of the AHA is hereby deleted in its entirety and replaced with:

"Owner agrees to pay City's direct costs, plus a 15% administrative fee, if City staff needs to assist Owner with HUD compliance or other auditing relative to the affordability of the project."

- f) City Naming Rights. Section 5.28 of the AHA is hereby replaced in its entirety with the following:

"Owner acknowledges the council of the City ("City Council") shall have sole discretion for naming the Project. Owner also agrees not to change the name of the Project without written approval from the City Council. The City Council has approved renaming the Project to "Walnut Street Apartments"."

- g) City Development Fees. The following sentence is hereby appended to Section 5.32 of the AHA:

"The City agrees to waive at least \$750,000 in development impact fees (e.g. Community Development Fees, Public Facilities, LA Ave AOC Fee, etc.) for the Development. Payment of any remaining development impact fees will be deferred until a certificate of occupancy is issued for the Development."

h) Affordable Housing Implementation and Rental Restriction Plan (Exhibit 2). The following Sections are hereby deleted in their entirety from the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA:

- i) Section 2.7.2 (Eviction of Over-Income Tenants). Section 2.7.2 is hereby deleted in its entirety.
- ii) Section 2.9 (City's Option to Place Tenants). Section 2.9 is hereby deleted in its entirety.
- iii) Unit Mix (Exhibit 2, Attachment No. 4). The chart outlining the affordable unit mix, household size adjustment and utility allowance in Attachment No. 4 to the Affordable Housing Implementation and Rental Restriction Plan that is Exhibit 2 to the AHA is hereby replaced in its entirety with the following chart:

<u>Very-Low Income</u>	<u>Number of Units</u>	<u>Household Size Adjustment</u>	<u>Utility Allowance</u>
<u>Type of Unit</u>	1		\$ _____
1-br	11	2 persons	\$ _____
2-br	7	3 persons	\$ _____
3-br	19	4 persons	
Total			
<u>Low Income</u>	<u>Number of Units</u>	<u>Household Size Adjustment</u>	<u>Utility Allowance</u>
<u>Type of Unit</u>	0		\$ _____
1-br	3	2 persons	\$ _____
2-br	1	3 persons	\$ _____
3-br	4	4 persons	
Total			

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of California. If any court of competent jurisdiction determines any provision of this Amendment or the AHA to be invalid, illegal or unenforceable, then that provision shall be deemed severed from the rest, which shall remain in full force and effect as though the invalid, illegal or unenforceable provision had never been a part hereof or of the AHA.

6. **Binding Effect.** The AHA, as amended herein, shall be binding upon, and inure to the benefit of the Developer and the City and their respective successors and assigns.
7. **Severability.** If any term of this Amendment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions will continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.
8. **Counterparts.** This Amendment may be executed in any number of counterparts, each of which when executed and delivered to the City shall be deemed to be an original, and all of which, taken together, will be deemed to be one and the same instrument.
9. **Conflict.** To the extent that the terms of this Amendment conflict with those of the AHA, this Amendment shall prevail.
10. **Successors and Assigns.** This Amendment shall be binding on and inure to the benefit of the legal representatives, heirs, successors and assigns of the Parties.
11. **Effective Date.** This Amendment shall be effective as of the date first set forth above.
12. **Full Force and Effect.** Except as set forth in this Amendment, the AHA has not been amended and is in full force and effect.

IN WITNESS WHEREOF, the Parties have duly executed this Amendment as of the day and year first above written.

CITY:

CITY OF MOORPARK

By: _____

Steven Kueny, City Manager

DEVELOPER:

AREA HOUSING AUTHORITY OF THE
COUNTY OF VENTURA,
a public body, corporate and politic

By: _____

Michael Nigh, Executive Director

ATTEST:

By: _____

Maureen Benson, City Clerk

PARTNERSHIP:

WALNUT24 LP,
a California limited partnership

By:

—

Name:

—

Title:

—

[ALL SIGNATURES MUST BE NOTARIZED]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

<u>Address</u>	<u>APN</u>
765 Walnut Street	512-0-062-110
782 Moorpark Avenue	512-0-062-020
798 Moorpark Avenue	512-0-062-120
81 Charles Street	512-0-062-070