

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 and § 27383



20170417-00050720-0 1/137

Ventura County Clerk and Recorder
MARK A. LUNN
04/17/2017 02:20:53 PM
1189866 \$.00 VA

DEVELOPMENT AGREEMENT

by and between the

CITY OF MOORPARK

and

ESSEX MOORPARK OWNER, L.P.

DEVELOPMENT AGREEMENT

This Development Agreement ("the Agreement") is made and entered into on April 17, 2017, by and between the CITY OF MOORPARK, a municipal corporation (referred to hereinafter as "City") and ESSEX MOORPARK OWNER, L.P., the owner of real property within the City of Moorpark generally referred to as Residential Planned Development Permit 2012-02 (referred to hereinafter individually as "Developer"). City and Developer are referred to hereinafter individually as "Party" and collectively as "Parties." Capitalized terms used in this Agreement but not defined herein shall have the meanings given such terms in the Affordable Housing Agreement (defined in Section 1.5 hereof). 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 Developer is the owner in fee simple of certain real property in the City of Moorpark, as more specifically described by the legal description set forth in Exhibit A, which exhibit is attached hereto and incorporated herein by this reference (the "Property").
 - 1.3 Prior to, and in connection with, the approval of this Agreement, the City Council reviewed the project to be developed pursuant to this Agreement as required by the California Environmental Quality Act ("CEQA.") The City Council found that the Mitigated Negative Declaration ("MND") and Mitigation Monitoring and Reporting Program ("the MMRP") adopted by Resolution No. 2007-2611 to be applicable to this Agreement and the Project Approvals as defined in Section 1.4 of this Agreement and that no changes or new information within the scope of State CEQA Guidelines Section 15162 requires the preparation of a new or subsequent environmental document in connection with the approval of this Agreement.
 - 1.4 General Plan Amendment No. 2004-05 ("GPA 2004-05"), Zone Change No. 2004-04 ("ZC 2004-04"), and Residential Planned Development Permit No. 2012-02 ("RPD 2012-02"), including all subsequently approved modifications and permit adjustments to RPD 2012-02 and all amendments thereto (collectively "the Project Approvals"; individually "a Project Approval") provide for the development of the Property with a 200-

unit residential apartment complex and the construction of certain off-site improvements in connection therewith ("the Project").

- 1.5 The Project shall include at least fifty (50) Affordable Units rented to individuals and families whose incomes do not exceed those specified by the Affordable Housing Agreement executed by the Developer in favor of the City contemporaneously with this Agreement (the "Affordable Housing Agreement") at rents no greater than those set forth in the Affordable Housing Agreement (the "Affordable Units"). The Project shall be restricted and encumbered by the Affordable Housing Agreement. The City and Developer acknowledge and agree that the Developer may apply for, qualify, develop and finance the Project in a manner that qualifies for tax exempt bond financing and federal low income housing tax credits. For that purpose, the Developer may seek City approval for an air rights subdivision of the Project into separate parcels so that the parcels containing the 16 Very Low Income Units and the 24 Low Income Units required by the Affordable Housing Agreement can be conveyed to and owned by one owner separate from the ownership of the other rental Units in the Project, but the Very Low Income Units and the Low Income Units cannot be sold to or owned by multiple owners (*i.e.*, the Very Low Income Units and the Low Income Units must be owned by a single owner at all times, except that the owner of market rate Units may also own ten (10) Moderate Income Units which will be rented as Low Income Units until the last to end of the Compliance Period and Extended Use Period or Qualified Project Period). It is anticipated that if tax exempt bond financing and low income housing tax credits are used in connection with the Project the Very Low Income Units, the Low Income Units and the Moderate Units will be rented and occupied in accordance with the restrictions set forth in the Affordable Housing Agreement.
- 1.6 City and Developer acknowledge and agree that the previous Development Agreement No. 2004-03 for the Property, approved by the City Council on July 18, 2007 by Ordinance No. 355, did not take effect and was not recorded because the Developer did not execute it. City and Developer also acknowledge and agree that by the enabling ordinance approving this new Agreement, the City's previous approval of Development Agreement No. 2004-03 pursuant to Ordinance No. 355 is rescinded and that rescission will take effect upon the date the enabling ordinance for this Agreement under Government Code Section 36937 ("Enabling Ordinance") becomes effective ("Operative Date").
- 1.7 City and Developer acknowledge and agree that the approval of Residential Planned Development Permit No. 2004-06 for the Property, approved by the City Council on July 18, 2007 by Resolution No. 2007-2612, expired due to lack of Project inauguration by Developer.

- 1.8 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.
 - 1.9 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. 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.
 - 1.10 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 currently amended.
 - 1.11 On June 4, 2013, the Planning Commission commenced a duly noticed public hearing on this Agreement, and at the conclusion of the hearing on June 4, 2013 recommended approval of this Agreement.
 - 1.12 On March 1, 2017, the City Council of City ("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. 443 ("the Enabling Ordinance") on March 15, 2017.
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 (subject to Section 3.4 below) 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.
 - 3.1 Constructive Notice and Acceptance. Every person who acquires any right, title or interest in or to any portion of the Property 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, subject to Section 3.4 below.
 - 3.2 Conveyance of Very Low Income Units and Low Income Units. Upon recordation of an approved final map under Section 7.1 below creating

legal air rights parcels for the Property and delivery of reasonable evidence to the City Manager showing that the transferee is partly owned (directly or indirectly) and is controlled (directly or indirectly) by Developer, Developer may convey the subdivided portion of the Property containing such Very Low Income and Low Income Units to a single entity so owned and so controlled by Developer (the "Affordable Housing Owner") subject to the Affordable Housing Agreement between City and Developer, and this Agreement shall inure to the benefit of and be binding upon the Affordable Housing Owner. Developer and Affordable Housing Owner shall not convey fee title to such Very Low Income Units or the Low Income Units to any other person or entity. Developer shall reimburse City within ten (10) days after written demand (with an explanation of the costs) for all costs incurred by City in evaluating the conveyance to the Affordable Housing Owner and any subsequent permitted conveyance by the Affordable Housing Owner.

- 3.3 No Other Separate Conveyance of Very Low Income Units and Low Income Units. After the initial conveyance by Developer to Affordable Housing Owner of Very Low Income Units and Low Income Units, Developer and the Affordable Housing Owner and their successors in interest shall not convey their respective portions of the Property separately, but shall only convey them concurrently and to the same purchaser, only to a purchaser reasonably approved in writing by City (which will consider the reputation and experience of the purchaser in owning and operating affordable rental units). As a condition to the initial conveyance by Developer to Affordable Housing Owner of Very Low Income Units and Low Income Units, Developer and Affordable Housing Owner shall execute, acknowledge and record (i) a separate agreement (i.e., a covenant and agreement to hold property as one parcel) imposing the foregoing restriction on the Property, which shall be subject to the written approval of City, and (ii) "conditions, covenants and restrictions" for the Affordable Units and the remainder of the Project ("CC&R's"), which shall also be subject to the written approval of City. Such separate agreement and CC&R's shall be senior to any and all deeds of trust and other liens (except property taxes and assessments not yet due).
- 3.4 Release Upon Subsequent Transfer. Upon the sale or transfer of Developer's and Affordable Housing Owner's interests in the Property to a single purchaser (or any such purchaser or subsequent purchaser's sale of the entire Property), Developer and Affordable Housing Owner, or any such subsequent purchaser (as applicable), shall be released from its obligations hereunder with respect to the Property subsequent to the effective date of the sale or transfer, provided that the seller or transferor (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 expressly assumes the obligations

under this Agreement with respect to 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 provided in this Agreement.

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 all City building codes in effect at the time the plan check or permit is approved per Title 15 of the Moorpark Municipal Code 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. Developer shall comply with the Schedule of Performance attached hereto as Schedule 1, subject to Excused Delays (as defined in Section 10) and as amended from time to time and approved in writing by the City Council.

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 ensure 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 [INTENTIONALLY OMITTED]

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.

6. Developer Agreements. Note: Certain fees payable by Development under this Section 6 are also set forth and cross-referenced on Schedule 2 attached hereto.

6.1 Development as a Residential Project. 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 non-residential uses on the Property. The clubhouse and leasing offices are considered to be part of the residential uses.

- 6.2 Condition of Dedicated or Conveyed Property. 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 Development Fee Per Unit. As a condition of the issuance of a building permit for each residential unit within the boundaries of the Property, Developer shall pay City a one-time 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 Eight Thousand Four Hundred Dollars (\$8,400.00) per residential unit. If not paid by January 1, 2019, the fee shall be adjusted annually commencing January 1, 2019 by the larger increase of a) or b) as follows:
- (a) The Consumer Price Index (CPI) increase shall be determined by using the information provided by the U.S. Department of Labor, Bureau of Labor Statistics, for all urban consumers within the Los Angeles /Riverside/Orange County metropolitan area during the prior year. The calculation shall be made using the month of October over the prior October.
 - (b) The calculation shall be made to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year.

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

- 6.4 Traffic Mitigation Fee. As a condition of the issuance of building permit for each residential use within the boundaries of the Property, Developer shall pay City a one-time 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 Eight Thousand Five Hundred Twenty-seven Dollars (\$8,527.00) per residential unit. If not paid by January 1, 2019, then on January 1, 2019, and annually thereafter until paid, the contribution amount shall be increased to reflect the change in the Caltrans Highway Bid Price Index for Selected California Construction Items for the twelve (12) month period available on December 31 of the preceding year ("annual indexing"). In the event there is a decrease in the referenced Index for any annual indexing, the current amount of the fee shall remain until such time as the next subsequent annual indexing which results in an increase.

- 6.5 [INTENTIONALLY OMITTED.]
- 6.6 Processing Fees. On the Operative Date (defined in Section 1.6 above), Developer shall pay all outstanding City processing costs related to preparation of this Agreement, the Project Approvals, the MND.
- 6.7 Park Fees. Prior to the issuance of the building permit for each residential dwelling unit within the Property, Developer shall pay a one-time fee in lieu of the dedication of parkland and related improvements ("Park Fee"). The amount of the Park Fee shall be Eight Thousand Four Hundred Dollars (\$8,400.00) for each residential dwelling unit within the Property. If the Park Fee is not paid by January 1, 2019, the Park Fee shall be adjusted annually commencing January 1, 2019 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. Developer also understands that because the above-described payments shall be deemed to satisfy applicable parkland dedication requirements, a public trail through the Property shall not be required.

- 6.8 [INTENTIONALLY OMITTED.]
- 6.9 Densities Allowed for Development. 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, Government Code Sections 65915 through 65917.5 or both; 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: (i) execute, acknowledge and record against the Property an Affordable Housing Agreement in the form attached hereto as Exhibit F substantially concurrently with the recording of this Agreement and ensure that the Affordable Housing Agreement is not subject or subordinate to any liens (except for property taxes and assessments not yet due); and (ii) comply with the terms thereof, which are incorporated herein by reference, during the term of this Agreement (after which the Affordable Housing Agreement shall remain in effect for its stated term). Residential Planned Development Permit No. 2012-02, including the special conditions that incorporate and include all of the requirements set forth in the Affordable Housing Agreement are part of the Project conditions of approval and not merely contractual in nature.

- 6.10 Affordable Unit Priority Leasing. Developer agrees to the greatest extent permitted by state and federal law to grant priority to the Affordable Units to eligible City of Moorpark residents 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 for the Project obtained by Developer.
- 6.11 Bond Issuance Costs. In the event City issues bonds to provide any financing for the Project, Developer shall pay an initial issuer fee to City of Fifty Thousand Dollars (\$50,000.00). The fee shall be paid upon funding of the City-issued bond financing. Developer agrees that City may at its sole discretion select the bond counsel, financial advisor and other professional service providers deemed necessary and appropriate by Developer 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 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. If the City does not act as the issuer of bonds, the City shall cooperate in good faith with the issuance of bonds for the Project by others, including, but not limited to, holding a TEFRA hearing at a time reasonably approved by the City Manager; however, Developer shall reimburse City within ten (10) business days after written demand for all costs actually incurred by City in connection therewith, including City staff and City attorney time, and the overhead markup described above for other costs. If the City does not act as the issuer of the bonds, Developer shall pay a fee of Fifty Thousand Dollars (\$50,000.00) to City for its cooperation with the issuance of Bonds for the Project by others, upon the funding of the bond financing; in addition, any costs incurred by City in

connection with such cooperation shall be reimbursed/paid by Developer in accordance with the preceding provisions of this paragraph.

- 6.12 Air Quality Fees. 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 a one-time (not annual) 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 One Thousand Two Hundred Thirty and No/100 Dollars (\$1,230.00) per residential unit to be paid prior to the issuance of the building permit for the first residential building in RPD 2012-02. If the Air Quality Fee is not paid by January 1, 2019, then commencing on January 1, 2019, 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.

- 6.13 Assessment Districts. Prior to issuance of a Zoning Clearance for the first building permit or the approval of any final map for the Project: (a) Developer shall pay the City a Five Thousand Dollar (\$5,000) Assessment District Formation Fee; and (b) either two Assessment Districts (one fully funded and a second "back-up" district) or one Assessment District containing two zones (one zone to be fully funded and the other to be a back up zone), as determined by the City at the City's discretion, shall be formed that includes the Property. The first District out of the two Districts or the first zone of the one District, whichever is applicable, shall be for the purposes of funding future costs for the maintenance landscaping and irrigation of the landscaped area above the retaining wall along the southern perimeter of the Property and the maintenance of the storm water quality basin and drainage improvements, including basin landscaping and irrigation. The second District or second zone of the District, whichever is applicable, shall be for the maintenance of parkway landscaping on Casey Road and Walnut Canyon Road and Project slopes adjacent to the Walnut Canyon School, the maintenance of the storm water basin access drive and the emergency access drive. It shall be the

intent of the City to approve the required assessment each year, but to only levy that portion of the assessment necessary to recover any past City costs or any anticipated City costs for the that fiscal year. The City shall administer the annual renewal of the Assessment District or Districts, and any costs related to such administration shall be charged to the fund established for such Assessment District revenues and expenses. Developer agrees to cast affirmative ballots for the establishment of both Assessment Districts, or both zones of the one District, as applicable, and for annual increases in the assessments thereunder, for the purposes specified in this subsection. Developer hereby waives any right it may have to contest or protest any such assessments or assessment increases. In the event that any such Assessment District has insufficient funds for its purposes, then Developer shall pay the funds required to the Assessment District within five (5) business days after written demand from the Assessment District from time to time. 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.

- 6.14 Other Development and Processing Fees. 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 such fees are imposed on projects similar to the Project or on property similar to the Property.
- 6.15 AOC Fees. If paid prior to January 1, 2020, Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee in effect at the time of project approval for each residential unit in a building prior to the issuance of the building permit for that residential building within the Project, consistent with City Resolution No. 2014-3336. If paid on or after January 1, 2020, Developer shall pay the Los Angeles Avenue Area of Contribution (AOC) fee in effect at the time of building permit issuance.

Developer shall pay the Gabbert Road/Casey Road Area of Contribution fees, if any, in effect at the time of building permit issuance for each residential unit in a building prior to the issuance of the building permit for that residential building within the Project.

- 6.16 Street Improvement Standards. 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.

- 6.17 Fee Protest Waiver. Developer agrees that any fees and payments pursuant to this Agreement and for RPD 2012-02 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.
- 6.18 Annual Review Procedures. 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.
- 6.19 Art in Public Places Fee. Developer agrees to pay the Art in Public Places Fee in effect at the time of building permit issuance for each building prior to the issuance of the building permit for that residential building within the Project consistent with City Resolution No. 2005-2408 (1.0 percent of total building valuations excluding land value and off-site improvement costs).
- 6.20 Eminent Domain. 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.
- 6.21 [INTENTIONALLY OMITTED]
- 6.22 CPI Indexes. In the event the "CPI" referred to in Sections 6.3, 6.7 or 6.12 above or Sections 6.24 or 7.18 below, or the "referenced Index" referred to in Section 6.4 above are discontinued or revised, a successor index with which the "CPI" and or "referenced Index" are replaced shall be used in order to obtain substantially the same result as would otherwise have been obtained if either or both the "CPI" and "referenced Index" had not been discontinued or revised.
- 6.23 Conveyance to City of City Site; Utility and Construction Easements. The Developer agrees to convey to City the site (hereinafter referred to as the "City Site") as shown in Exhibit "B" pursuant to the Purchase and Sale Agreement attached hereto as Exhibit "C" (the "Purchase and Sale Agreement") subject to the utility easement described in Exhibit "G". Developer shall execute and deliver the Purchase and Sale Agreement concurrently with its execution and delivery of this Agreement and upon delivery to Developer of a copy thereof executed by the City, Developer shall comply with the Purchase and Sale Agreement.

If at any time the City Manager determines that a construction easement for the City is necessary within the slope on the southerly fifteen (15) feet of the Property for purposes of improving the City Site and City Manager requests such an easement in writing, then Developer shall grant a construction easement to City which shall expire five (5) years after the last Certificate of Occupancy is issued (and the City Manager is hereby authorized to execute a Certificate of Acceptance for such easement).

- 6.24 Flood Control Channel Improvements and Property Line Improvements. Developer agrees to enclose the flood control channel located on the eastern portion of the Project as shown on the approved Project Site Plan to connect to the enclosed portion of the channel on the City Site to the satisfaction of the City Engineer/Public Works Director 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. Developer further agrees to construct retaining walls (made of slumpstone, not precision blocks) with a color approved by the Community Development Director in good faith and landscaping along the southerly property line as shown on the Project Site Plan as approved and conditioned by the City Council Resolution approving Residential Planned Development Permit No. 2012-02 to the satisfaction of the Community Development Director.
- 6.25 High Street Improvements. Developer agrees, prior to issuance of the first 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. In no event shall Developer be required to acquire any property in order to fulfill this obligation.
- 6.26 Power Pole Relocation Costs and Fees. Per the Real Property Acquisition Agreement between City and Essex approved by the City Council on March 18, 2009, City paid for a private utility consultant (BJ Palmer & Associates) to redesign (Revised Plan) the Edison 66kV Essex Pole Relocation Plan (Essex Plan) in order to plan for the relocation of the existing poles. The Real Property Acquisition Agreement also called for City to pay for installation of any poles or guy poles required in addition to those shown on the Essex Plan. Developer had agreed to pay for the relocation of the existing 66 KV overhead power lines as shown on the Essex Plan under the Real Property Acquisition Agreement. Developer now agrees that the relocation of the existing poles as shown in the Revised Plan contained in Exhibit "D" does not require any additional poles or guy poles from those shown on the Essex Plan, and that City is not obligated to pay any further costs under the Real Property Acquisition

Agreement. However, Developer further agrees to pay \$400,000 to City prior to issuance of the certificate of occupancy for the first residential building, to be used by City in its sole and unfettered discretion, due to the power poles in the Revised Plan limiting full utility and use of City property.

- 6.27 Required Tenant and Guest Parking. Developer agrees to provide a total of at least 2.00 parking spaces per unit on site. Two parking spaces shall be designated and reserved for each of the 2-bedroom and 3-bedroom units, and one space shall be designated and reserved for each of the 1-bedroom units, with the remainder of the spaces available for guest parking. At least one of the parking spaces designated and reserved for each of the units shall be in a garage or covered carport. There shall be no extra charges for required parking for any units (whether or not they are Affordable Units). Developer shall only be required to provide ninety-four (94) guest parking spaces.
- 6.28 [INTENTIONALLY OMITTED]
- 6.29 Restoration of City Site. Prior to the issuance of a grading permit by City for the Property, Developer shall provide reasonable evidence satisfactory to the City Engineer/Public Works Director and the Director of Community Development of the amount of stockpiled dirt placed onto the City Site prior to January 1, 2017; such amount shall be the maximum amount of dirt that may be removed from the City Site for placement on the Property. Developer shall, prior to the conveyance of the City Site to City and as a condition to issuance of the Certificate of Occupancy for the last building within the Project, and consistent with Section 7.10 of this Agreement, restore the City Site to a reasonable condition, free of Developer's construction debris, piles of construction related dirt and all other construction material deposited or stockpiled by Developer to the satisfaction of the City Engineer and Community Development Director. The elevation of the City Site must be restored to the level prior to the Developer's use of the City Site for Developer's stockpiling of construction dirt and material (except for graded access and the storm water quality basin, which shall be at the elevations required by the Project Approvals) to the satisfaction of the City Engineer/Public Works Director and the Community Development Director.
- 6.30 [INTENTIONALLY OMITTED]
- 6.31 Prior Development Agreement and Residential Planned Development Permit. Developer agrees that the previous Development Agreement No. 2004-03 for the Property, approved by the City Council on July 18, 2007 by Ordinance No. 355, did not take effect and was not recorded because the Developer did not execute it. Developer further agrees that by the enabling ordinance approving this new Agreement, the City's previous approval of Development Agreement No. 2004-03 pursuant to Ordinance

No. 355 is rescinded and that rescission will take effect upon the Operative Date. Developer further agrees that the approval of Residential Planned Development Permit No. 2004-06 for the Property, approved by the City Council on July 18, 2007 by Resolution No. 2007-2612, had expired due to lack of Project inauguration by Developer.

- 6.32 [INTENTIONALLY OMITTED]
- 6.33 [INTENTIONALLY OMITTED]
- 6.34 City Ability to Modify. Developer acknowledges the City's ability to modify the development standards and to change the General Plan designation and zoning of the Property upon the termination or expiration of this Agreement (if the Project has not been built), and Developer hereby waives any rights they might otherwise have to seek judicial review of such City actions to change the development standards, General Plan designation and zoning to those development standards and density of permitted development to that in existence prior to the approval of General Plan Amendment No. 2004-05 ("GPA 2004-05") and Zone Change No. 2004-04 ("ZC 2004-04").
- 6.35 Annual Community Services Fee. Commencing upon issuance of a Zoning Clearance by the City for occupancy of the first unit of the Project, and on each anniversary thereof, Affordable Housing Owner shall pay to City a community services fee equal to Eight Thousand Dollars (\$8,000.00) increased by two percent (2%) on each anniversary of the Operative Date. (This fee is the same fee as is included in the Affordable Housing Agreement.)
- 6.36 Indemnity. Developer will defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from any activity by Developer or its contractors on the City Site.
- 6.37 Storm Water/Flood Determination Basin Obligations. Developer shall fulfill its obligations under Section 7.18.
- 6.38 Status of Real Property Acquisition Agreement. Developer hereby stipulates and agrees that all of the obligations of the City under that certain Real Property Acquisition Agreement dated March 31, 2009 (the "Portfolio Agreement") between the City and Essex Portfolio, L.P. have been satisfied. Developer shall defend, indemnify and hold City harmless from and against any and all claims by Essex Portfolio, L.P.: (i) that the foregoing is not correct; or (ii) under or with respect to the Portfolio Agreement.
- 6.39 Well Site Deed. Concurrently with its execution and delivery to City of this Agreement, Developer shall execute, cause to be duly acknowledged and

deliver to City an original of a Grant Deed in the form attached hereto as Exhibit "I" conveying the so-called "well site" to City.

7. City Agreements.

- 7.1 Commitment of Resources. At Developer's expense, 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. City shall process an air rights subdivision separating the sixteen (16) Very Low Income Units and the twenty-four (24) Low Income Units required by the Affordable Housing Agreement so that they can be conveyed to the Affordable Housing Owner pursuant to the aforementioned map (but no other subdivision maps) upon receipt of a complete application from Developer. Developer shall assume any risk related to, and shall pay the additional costs incurred by City for, any 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 Easement Acquisitions. If requested in writing by Developer and limited to City's legal authority, City at its sole and absolute 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 [INTENTIONALLY OMITTED]
- 7.4 Concurrent Entitlement Processing. 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 Park Fees. 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 [INTENTIONALLY OMITTED]
- 7.7 Reimbursements from other Developments. 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 [INTENTIONALLY OMITTED]
- 7.9 Acquisition by City of City Site. Provided Developer shall have duly executed and delivered the Purchase and Sale Agreement to City, City shall enter into the Purchase and Sale Agreement to acquire the City Site.
- 7.10 Developer/City Use of City Site for Stockpiling Dirt. Developer may reasonably stockpile construction dirt and materials on the City Site during construction of the Project, subject to Section 6.29. Upon execution of the Purchase Agreement, Developer shall grant an easement to City pursuant to the Easement Agreement in the form and substance attached as Exhibit "C" to the Purchase Agreement pursuant to which City shall have access to the (approximately) two (2) acres of the City Site on the southeastern portion of the City Site, adjacent to the existing High Street improvements and otherwise at a location reasonably acceptable to City more particularly described in the Easement Agreement, on which the City may stockpile dirt prior to the conveyance of the City Site to the City, and in connection therewith, City shall comply with Section 2.2 of the Purchase and Sale Agreement and the Easement Agreement. The City agrees to fence the approximately two (2) acre site to separate it from the balance of the City Site. Prior to issuance of the first building permit for the Property, the portion of the City Site used by Developer under the first sentence of this Section 7.10 shall be restored by Developer to a reasonable condition, free of Developer's construction debris, piles of dirt and all other construction-related material deposited or stockpiled by Developer, and to its elevation level that existed prior to Developer's stockpiling of dirt and material, all to the satisfaction of the City Engineer/Public Works Director and Community Development Director.
- 7.11 Parking Requirements for Tenants and Guests. The parking requirements shall be as set forth in Section 6.27 above.
- 7.12 Art in Public Places Fee. City agrees that the Art in Public Places Fee required under Section 6.19 of this Agreement meets all of Developer's obligation for Art in Public Places provisions of City codes and resolutions.

- 7.13 Bond Financing. City acknowledges Developer may want to use City-issued bond financing for the Project. If City, at its sole and absolute discretion, authorizes such bond financing, then City agrees to use good faith efforts to accommodate any request by Developer for an inducement resolution allowing the use by Developer of City-issued bond financing for the Project. City shall also comply with its obligations under Section 6.11 above.
- 7.14 [INTENTIONALLY OMITTED]
- 7.15 Grant Funding Assistance. City shall use good faith efforts, at no cost to City, to assist Developer in obtaining public grants, loans, or other public assistance from public agencies other than the City, including, but not limited to Metrolink, but only if assisting Developer in obtaining such funds does not directly or indirectly financially burden City.
- 7.16 [INTENTIONALLY OMITTED]
- 7.17 Power Pole Relocation. City agrees to accept relocation of the Edison 66kV power poles on City Property consistent with the Revised Plan discussed in Section 6.26 and attached hereto as Exhibit "D".
- 7.18 Storm Water/Flood Detention Basin. City agrees that Developer may use the storm water/flood detention basin located on the City Property and depicted on Exhibit "H" for storm water/retention purposes for the Project, and City shall execute and deliver a revocable license agreement to Developer to that affect; however, City may elect by written notice to Developer to relocate said detention basin and any service road and secondary access road located on the City Property at any time, and Developer shall reimburse or pay City for the costs of such relocation within ten (10) business days after written demand from City from time to time describing such costs. Developer shall promptly provide a bond acceptable to City in the amount of such costs, as projected in good faith by City, to ensure payment of the costs, and every two (2) years the amount of the bond shall be increased (by amendment or by a replacement bond) by the percentage increase over the applicable two year period in the Caltrans Highway Bid Price Index for Selected California Construction Items, as determined in good faith by the City Manager.
- 7.19 Extension of High Street. City agrees that Developer shall not be required to make any improvements related to the extension of High Street except as necessary to meet Ventura County Fire Protection District requirements for the provision of secondary emergency access to the Property.
- 7.20 Prior Development Agreement and Residential Planned Development Permit. City agrees that the previous Development Agreement No. 2004-03 for the Property, approved by the City Council on July 18, 2007 by

Ordinance No. 355, never was executed, as Developer never had signed the previous Development Agreement No. 2004-03, and that the enabling ordinance for previous Development Agreement No. 2004-03 (Ordinance No. 355) is rescinded upon the Operative Date. City further agrees that the approval of Residential Planned Development Permit No. 2004-06 for the Property, approved by the City Council on July 18, 2007 by Resolution No. 2007-2612, had expired due to lack of Project inauguration by Developer.

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) business days after City gives written notice to Developer that the same is due and payable; or
- (c) breaches any of the other provisions of this Agreement and fails to cure the same within thirty (30) days after City gives written notice to Developer of such breach (or, if the breach is not able to be cured within such thirty (30) day period, Developer fails to start to cure the same within thirty (30) days after delivery of written notice by City of such breach or fails to thereafter diligently prosecute the cure to completion).

11.2 Default by City. City shall be in breach of this Agreement if it breaches any of the provisions of this Agreement and fails to cure the breach within thirty (30) days after Developer gives written notice to City of the breach (or, if the breach is not able to be cured within such thirty (30) day period, City fails to start to cure the same within thirty (30) days after delivery of written notice from Developer of such breach or fails to thereafter diligently prosecute the cure to completion).

11.3 Content of Notice of Violation. Every notice of breach 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 state the applicable period to cure. The notices shall be given in accordance with Section 20 hereof.

11.4 Remedies for Breach. Each party shall have any and all remedies for breach of this Agreement that may be available under applicable law. Additionally, the Parties acknowledge that remedies at law, including without limitation monetary 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 this Agreement has begun.

Consequently, the remedies for breach of this Agreement by either party shall include injunctive relief and/or specific performance.

In addition, if Developer is in default under this Agreement, City shall have the right to withhold the issuance of building permits to Developer 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.

12. Mortgage Protection. If 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 eighteen (18) days after the giving of the notice by 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 eighteen (18) days after giving of the notice by 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 consent or approval herein to be given by the City may be given by the City Manager provided it is express and is in writing. 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. Developer 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. As described in Section 1.6 above, This Agreement shall become operative on the Operative Date, being 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. Notwithstanding the foregoing, the following shall survive the expiration or earlier termination of this Agreement: (i) all obligations arising under this Agreement prior to the expiration or earlier termination of this Agreement; (ii) density, parking and other physical aspects of the Project construction in accordance with this Agreement, the Affordable Housing Agreement, and RPD 2012-02.

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 "D" 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.

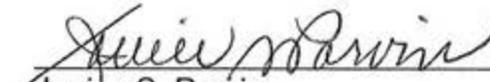
23. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall be effective to the extent the remaining provisions are not rendered impractical to perform, taking into consideration the purposes 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 Moorpark Owner, L.P., and City of Moorpark have executed this Development Agreement on the date first above written.

CITY OF MOORPARK


Janice S. Parvin
Mayor

ESSEX MOORPARK OWNER, L.P.,
a California limited partnership

By: Essex Moorpark GP, L.P.
a California limited partnership,
Its general partner

By: Essex Management Corporation
a California corporation,
its general partner

By: 
Title: Executive Vice President & Chief Investment Officer
Print Name: John Endy

ACKNOWLEDGMENT

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.

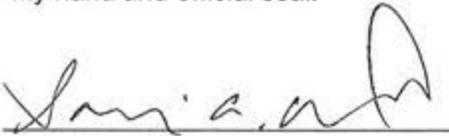
State of California
County of San Mateo)

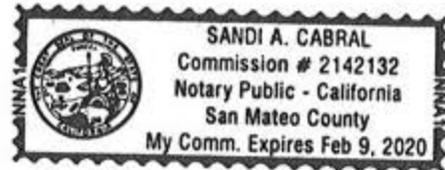
On April 11, 2017 before me, Sandi A. Cabral, Notary Public
(insert name and title of the officer)

personally appeared John Eudy
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)





CITY OF MOORPARK

799 Moorpark Avenue, Moorpark, California 93021 | Phone (805) 517-6200 | Fax (805) 532-2205

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.

PUBLIC AGENCY FORM OF ACKNOWLEDGMENT

STATE OF CALIFORNIA)
COUNTY OF VENTURA)
CITY OF MOORPARK) ss.

On this 17th day of April in the year 2017, before me, Maureen Benson, City Clerk of the City of Moorpark, personally appeared Janice S. Parvin, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and who is personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity as the Mayor of the City of Moorpark, and that by her signature on the instrument, acknowledged to me that the City 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

Maureen Benson
Maureen Benson
City Clerk



EXHIBIT "A"

LEGAL DESCRIPTION

ALL of Parcel 213 of in that certain Lot Line Adjustment No. 2005-04 in the City of Moorpark, County of Ventura, State of California, recorded July 21, 2005 as Document No. 200507210178764 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi, as per map filed in Book 5, Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder and a portion of Lot 4, Tract No. 3 as 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 filed in Book 5, Page 37 of said Miscellaneous Records (maps).

TOGETHER WITH that portion of Parcel IA of in that certain Lot Line Adjustment No. 200503 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder, lying northerly of the following described line;

BEGINNING at a point in east line of Parcel IA of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

1st Thence, departing said east line South 89°38'32"West 752.05 feet;

2nd Thence, South 27°20'34"West 36.75 feet;

3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

EXHIBIT "B"

LEGAL DESCRIPTION OF CITY SITE

All of Parcel 1A of in that certain Lot Line Adjustment No. 2005-03 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder.

EXCEPT THEREFROM that portion conveyed to the City of Moorpark by deed April 30, 2009 as Instrument No. 20090430-00069389 of Official Records of said County.

ALSO EXCEPT THEREFROM that portion lying northerly of the following described line;

BEGINNING at a point in east line of Parcel 1A of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

1st Thence, departing said east line South 89°38'32"West 752.05 feet;

2nd Thence, South 27°20'34"West 36.75 feet;

3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

EXHIBIT "C"

FORM OF REAL ESTATE PURCHASE AGREEMENT

(Attached.)

**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of _____, 2017, and is entered into by and between the **CITY OF MOORPARK** ("Buyer"), and **ESSEX MOORPARK OWNER, L.P.**, a California limited partnership ("Seller"). Upon execution of this Agreement by Buyer, Buyer shall promptly deliver a copy of this executed Agreement to Seller.

RECITALS

- A. Seller is the owner of the land described on Exhibit "A" and the improvements (if any) thereon (collectively, the "Property").
- B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer.
- C. Buyer and Seller are parties to the certain Development Agreement dated _____, 2017 (the "Development Agreement") and this Agreement is being executed as a condition of and in accordance with the Development Agreement.

NOW, THEREFORE, in consideration of the Independent Consideration set forth in Section 1.2.2 below, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **SALE AND PURCHASE PRICE.**

1.1 **Sale and Purchase.** Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property upon the terms and conditions hereafter set forth.

1.2 **Purchase Price.**

1.2.1 The purchase price ("Purchase Price") for the Property shall be One Dollar (\$1.00).

1.2.2 **Independent Consideration.** Notwithstanding anything in this Agreement to the contrary, upon execution of this Agreement by Buyer, One Hundred and No/100 Dollars (\$100.00) shall be delivered by Buyer to Escrow Agent for delivery to Seller as non-refundable independent contract consideration (the "**Independent Consideration**"), which is in addition to the Purchase Price, and which amount has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Buyer herein, including, without limitation, any and all rights granted to Buyer to terminate this Agreement during certain periods hereunder. If Buyer elects to terminate this Agreement for any reason other than Seller's default, Seller shall retain the Independent Consideration. The Independent Consideration shall not be applicable towards the Purchase Price.

2. TITLE.

2.1 General. Title to the Property shall be conveyed by a grant deed in the form attached hereto as Exhibit "B" and shall be evidenced by a CLTA Standard Coverage Form of Owner's Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Buyer elects such coverage as provided in Section 2.3 hereof) ("Title Policy"), and the extra cost of any such ALTA coverage shall be borne by Seller as described in Section 4.9 below. The Title Policy shall be issued by First American Title Company, 1737 North First Street, Suite 500, San Jose, CA 95112, Title Officer: Michael D. Hickey ("Title Company"), with liability in the full amount of the Purchase Price, insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters affecting title to the Property, except the utility easement described in Section 6.23 of the Development Agreement (the "Utility Easement") and other title exceptions which Buyer has approved in writing (which shall constitute "Approved Title Exceptions") except that real property taxes and assessments shall be prorated.

(Seller may claim a refund of property taxes in the event any property taxes paid are allocable to the period after the closing. Buyer, as a municipal corporation, is exempt from property taxes.)

2.2 Acts After Date of Agreement; City Access. During the period from the date of this Agreement through the Close of Escrow, except for the Utility Easement described in Section 2.1 above and the Access Easement described in this Section 2.2, Seller shall not record or permit to be recorded any document or instrument relating to the Property or physically alter the Property or permit or cause to be altered without the prior written consent of the Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

Notwithstanding the foregoing, after the date of this Agreement and ending upon the conveyance of the Property to Buyer pursuant to this Agreement, Seller may use the Property for the storage of construction debris, the storage of construction related materials and supplies, and the deposit of dirt excavated or otherwise removed from the construction site on the Seller's property to the extent permitted by Section 7.10 of the Development Agreement. The restoration of the Property by Seller prior to the Close of Escrow shall be governed by Sections 6.29 and 7.10 of the Development Agreement (and Seller shall comply therewith). Contemporaneously with the execution of this Agreement, Buyer and Seller shall enter into the Easement Agreement attached hereto as Exhibit "C" with respect to the portion of the Property more particularly described in the Easement Agreement pursuant to which Buyer may use the property described in the Easement Agreement for the uses described therein including installation of a fence and stockpiling dirt on the Property to the extent permitted therein and by Section 7.10 of the Development Agreement.

3. NO REPRESENTATIONS BY SELLER ("AS IS" SALE).

3.1 Buyer acknowledges that Seller is making no representations or warranties about the Property, express or implied; provided, however, that Buyer does not waive Seller's obligations under Section 2.2 and Buyer does not waive Seller's obligations under applicable law to disclose to Buyer all material facts known to Seller about the Property (including facts in the Natural Hazard Disclosure Statement described below, whether or not required under applicable

law). Subject to the foregoing and Section 2.2, upon the Close of Escrow, Buyer shall take title to the Property in its then current "AS IS" condition, subject to Seller's obligations under Section 6.29 of the Development Agreement. Notwithstanding California Civil Code Section 1103.1(a)(9), Seller shall deliver to Buyer, with reasonable diligence after the execution of this Agreement and at Seller's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2).

4. ESCROW.

4.1 Agreement to Constitute Escrow Instructions. This Agreement shall constitute escrow instructions and a copy hereof shall be deposited with the Escrow Holder for that purpose.

4.2 Escrow Holder. The escrow shall be opened with First American Title Insurance Company, 2901 North Ventura Road, Suite 175, Ventura, CA 93036 ("Escrow Holder"), within five (5) business days after the execution of this Agreement by Buyer and Seller depositing an executed copy or executed counterparts of this Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.3 Close of Escrow. For the purposes of this Agreement, "Close of Escrow" shall be the date on which a grant deed for the Property in favor of Buyer is recorded in the Official Records of the Ventura County Recorder's Office. Provided all of Seller's and Buyer's obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close on or before the date that is six (6) months after the date on which the final Certificate of Occupancy for the Project is issued ("Closing Date"). All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

4.4 Seller Required to Deliver. Before the Close of Escrow, Seller shall deposit into escrow the following:

4.4.1 Intentionally omitted

4.4.2 A grant deed conveying the Property to Buyer, in the form attached hereto as Exhibit "B", duly executed by Seller and acknowledged (the "Grant Deed");

4.4.3 A California 593 certificate and federal non-foreign affidavit (with respect to Seller);

4.4.4 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Buyer to carry out this escrow.

4.5 Buyer Required to Deliver. On or before the Close of Escrow, Buyer shall deposit into escrow the following (properly executed and acknowledged, if applicable):

4.5.1 An executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "B");

4.5.2 The Purchase Price; and

4.5.3 Any other documents reasonably required by Escrow Holder to be deposited by Buyer to carry out this escrow.

4.6 Conditions to the Close of Escrow. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally, Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

4.6.1 The Building Department of Buyer shall have issued a final Certificate of Occupancy for the Project described in the Development Agreement.

4.6.2 Seller shall have performed all agreements to be performed by Seller hereunder.

4.6.3 As of the Close of Escrow, the Property shall be in the a condition reasonably similar to the condition it was in when the parties executed the Development Agreement, subject to Section 6.29 of the Development Agreement; and

4.6.4 Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price, showing fee title to the Property to be vested in Buyer subject only to the Approved Title Exceptions.

If any of the conditions to Close of Escrow are not timely satisfied for a reason other than a default of Buyer or Seller under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all funds and documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.11 below).

4.7 Recordation of Grant Deed; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed to be recorded in the office of the County Recorder of Ventura County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges) to Seller, and Seller shall deliver possession of the Property to Buyer free and clear of all occupants.

4.8 Prorations. Property taxes shall not be prorated as Buyer is exempt from property taxes; Seller shall apply for a refund, if Seller has paid property taxes that are allocable to the period after the Close of Escrow. All property assessments shall be prorated between

Buyer and Seller as of the Close of Escrow based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year.

4.9 Costs of Escrow. Seller shall pay the premium for the Title Policy (including the cost of extended coverage and the cost of any survey obtained by Buyer in connection with such extended coverage, and Seller's reimbursement of survey costs shall be a condition to the Close of Escrow). The escrow fees, the recording costs (if any), and any other closing costs or charges not expressly provided for herein shall be shared equally by the parties.

4.10 Brokers. Buyer and Seller represent to one another that no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with such transaction. Each party covenants and agrees that any broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party. Each party agrees to defend, indemnify and hold harmless the other party and its respective employees, agents, representatives, council members, attorneys, successors and assigns, from and against all claims of any agent, broker, finder or other similar party arising from or in connection with its activities relating to the sale of the Property to Buyer.

4.11 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

5. ATTORNEYS' FEES. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

6. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Seller: Essex Moorpark Owner, L.P.
1100 Park Place, Suite 200
San Mateo, CA 94403
Attention: John Eudy and Jordan Ritter

And

Essex Moorpark Owner, L.P.
17541 Derian Avenue, Suite 110
Irvine, CA 92614
Attention: Bob Linder

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

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

7. ASSIGNMENT. Neither this Agreement nor any interest herein may be assigned by either party without the prior written consent of the other party.

8. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

9. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. EMAIL DELIVERY. This executed Agreement (and executed counterparts of this Agreement), may be delivered by email.

11. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

12. THIRD PARTIES. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

13. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten (10) business days after the party giving such notice becomes aware

of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

14. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

15. AUTHORITY OF CITY MANAGER. The City Manager of Buyer may give any and all notices, consents and terminations hereunder on behalf of Buyer provided they are in writing.

16. DUE AUTHORIZATION/EXECUTION. Upon execution hereof, each party shall promptly provide to the other party reasonable evidence of its due authorization of this Agreement.

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

SELLER:

ESSEX MOORPARK OWNER, L.P.,
a California limited partnership

By: Essex Moorpark GP, L.P.,
a California limited partnership,
its general partner

By: Essex Management Corporation,
a California corporation,
its general partner

By: _____

Print Name: _____

Title: _____

BUYER:

CITY OF MOORPARK

By: _____

Janice S. Parvin
Mayor

Attest:

Maureen Benson, City Clerk

APPROVED AS TO FORM:

Kevin G. Ennis, City Attorney

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

All of Parcel 1A of in that certain Lot Line Adjustment No. 2005-03 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder.

EXCEPT THEREFROM that portion conveyed to the City of Moorpark by deed April 30, 2009 as Instrument No. 20090430-00069389 of Official Records of said County.

ALSO EXCEPT THEREFROM that portion lying northerly of the following described line;

BEGINNING at a point in east line of Parcel 1A of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

1st Thence, departing said east line South 89°38'32"West 752.05 feet;

2nd Thence, South 27°20'34"West 36.75 feet;

3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

EXHIBIT "B"

FORM OF GRANT DEED

(Attached.)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City Of Moorpark
799 Moorpark Avenue
Moorpark, California 93012
Attention: City Clerk

APN: _____

[SPACE ABOVE FOR RECORDER'S USE ONLY]

GRANT DEED

THE UNDERSIGNED GRANTOR DECLARES AS FOLLOWS:

The undersigned declares that this Grant Deed is exempt from Recording Fees pursuant to California Government Code Section 27383.

Documentary Transfer Tax is \$0 (exempt; conveyance to a public entity).

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the **ESSEX MOORPARK OWNER, L.P.**, a California limited partnership ("Grantor") hereby grants to the **CITY OF MOORPARK** ("Grantee"), the land and located in the County of Ventura, State of California, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference and all improvements thereon (collectively, the "Property").

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

Dated: _____, 201_

GRANTOR:

ESSEX MOORPARK OWNER, L.P.,
a California limited partnership

By: Essex Moorpark GP, L.P.,
a California limited partnership,
its general partner

By: Essex Management Corporation,
a California corporation,
its general partner

By: _____

Print Name: _____

Title: _____

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 the document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____ 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: _____

(affix seal in above space)

Exhibit A
to Grant Deed

LEGAL DESCRIPTION

All of Parcel 1A of in that certain Lot Line Adjustment No. 2005-03 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder.

EXCEPT THEREFROM that portion conveyed to the City of Moorpark by deed April 30, 2009 as Instrument No. 20090430-00069389 of Official Records of said County.

ALSO EXCEPT THEREFROM that portion lying northerly of the following described line;

BEGINNING at a point in east line of Parcel 1A of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

- 1st Thence, departing said east line South 89°38'32"West 752.05 feet;
- 2nd Thence, South 27°20'34"West 36.75 feet;
- 3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

CERTIFICATE OF ACCEPTANCE

(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant Deed dated _____, 2017, from Essex Moorpark Owner, L.P. to the City of Moorpark, which is a political corporation, is hereby accepted by the undersigned officer on behalf of the City of Moorpark pursuant to the authority conferred by action of the City of Moorpark on _____, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2017

Steven Kueny,
City Manager

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, _____,
(insert name and title of the officer)

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 "C"

FORM OF EASEMENT

(Attached.)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Essex Moorpark Owner, L.P.
1100 Park Place, Suite 200
San Mateo, CA 94403
Attn: Legal

(Space Above For Recorder's Use)

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (the "Agreement") is entered into as of _____, 2017, by and between the City of Moorpark, a municipal corporation ("Grantee"), and Essex Moorpark Owner, L.P., a California limited partnership ("Grantor").

RECITALS

Grantor is the owner of the real property located in the City of Moorpark, County of Ventura, State of California, as more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Property").

Grantee and Grantor entered into a Development Agreement dated as of _____, 2017 (the "Development Agreement"), and an Agreement for Purchase and Sale and Escrow Instructions dated as of _____, 2017 (the "Purchase Agreement").

Grantee requires access to a certain area of the Property for itself, its employees, its contractors, and any and all permittees and invitees of Grantee and any and all of their respective permittees and invitees, including, without limitation, any third party developer and/or its agents, contractors and subcontractors, and all of their respective agents, employees and representatives (collectively, the "Grantee's Agents") prior to the closing of the purchase and sale and conveyance of the Property to Grantee in accordance with the Purchase Agreement for the purpose of stockpiling soil on the area shown on Exhibit "B" hereto (the "Stockpile Area").

Grantor desires to grant to Grantee a exclusive access easement for Grantee and Grantee's Agents to enter the Stockpile Area and an easement for the limited purpose of stockpiling soil thereon and fencing the Stockpile Area. Such soil shall be subject to removal pursuant to the terms of this Agreement.

In consideration of Grantee being granted access to the Property as described in this Agreement, Grantee and Grantor hereby agree as follows:

- **Incorporation of Recitals, Capitalized Terms.** The Recitals are incorporated herein as part of this Agreement. In addition, capitalized terms not otherwise defined herein or in the Recitals shall have the meaning set forth in the Development Agreement and Purchase Agreement.

- **Grant of Easement.** Grantor hereby grants to Grantee for the benefit of Grantee and Grantee's Agents, a non-assignable but exclusive easement (the "Easement") to enter the Stockpile Area and to use the Stockpile Area for the sole purpose of depositing and storing of clean, imported soil (including the right of access for all necessary personnel, equipment and materials but excluding any right to take any other action on, in, over, under, or around the Stockpile Area) and fencing the Stockpile Area and for no other uses or purposes. Grantee and Grantee's Agents shall not use any other portion of the Property in any manner which impedes, interferes with, disrupts, or increases the cost of any grading, construction access, construction, excavation, construction staging, the storage of construction materials and supplies, or the stockpiling of soil and other materials by Grantor on such other portion of the Property. If Grantor, in Grantor's reasonable judgment, determines that Grantee has breached the covenants in the preceding sentence, Grantor shall have the right to suspend Grantee's access to the Stockpile Area from the Property until the breach has been cured to Grantor's reasonable satisfaction.

- **Termination.** The Easement and this Agreement shall automatically terminate on the earliest of (i) the date which is six (6) months after the date on which the final certificate of occupancy is issued for the Property, if escrow closes pursuant to Section 4.3 of the Purchase Agreement, (ii) any earlier termination of Purchase Agreement unless resulting from default thereunder by Grantor, or (iii) the date which is twelve (12) months from the date on which the final certificate of occupancy is issued for the Property, if escrow does not close pursuant to Section 4.3 of the Purchase Agreement (collectively, the "Termination Date") unless escrow does not close due to a default by Grantor under the Purchase Agreement; provided, however, Grantee's indemnity and other obligations under this Agreement shall survive any such termination.

- **Removal Obligation.** Not later than the thirty (30) days following the Termination Date (unless terminated pursuant to subsection (3)(i) above), Grantee shall remove all equipment, materials, and stockpiled soil brought on to the Property, the Stockpile Area, or both, by or at the direction of Grantee. Grantee, at its sole cost and expense, shall promptly restore the Property, the Stockpile Area, or both, to the condition that existed thereon prior to Grantee's or Grantee's Agents entry on to the Property, the Stockpile Area, or both. In the event that Grantee fails, within the time required by this Section 4, to restore the Property, the Stockpile Area, or both, to the condition that existed thereon prior to Grantee's and Grantee's Agents entry on to the Property, the Stockpile Area, or both, Grantor may restore the Property, the Stockpile Area, or both to such condition and Grantee shall reimburse Grantor for all costs and expenses incurred by or on behalf of Grantor in connection therewith.

- **Hazardous Materials.** Grantee shall take all actions necessary and required to assure that any and all soil brought to the Property (whether by Grantee or Grantee's Agents) for placement in the Stockpile Area shall not contain or be affected by any "Hazardous Materials" (as defined below) such that (i) it cannot be lawfully placed for storage on the Property or (ii) it would adversely impact soil, groundwater or environmental conditions present on or under the Property or otherwise require response action by Grantor. The phrase "Hazardous Materials" as used herein shall mean any flammable explosives, radioactive materials, asbestos in any form which is friable or could become friable, hazardous waste, toxic substances or other related materials whether in the form of a chemical, element, compound, solution, mixture or otherwise.

For the purpose of this Agreement, Hazardous Materials shall include, but not be limited to, substances defined as "hazardous substances", "hazardous materials," "contaminants," "pollutants," "hazardous wastes" or "toxic substances" (a) in (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act 42 U.S.C. Section 9601 et seq., (ii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., (iii) the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., (iv) the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., (v) the Clean Air Act, 33 U.S.C. Section 7401 et seq., (vi) the Toxic Substances Control Act, 15 U.S.C. Section 2601 et. seq., (vii) the Safe Drinking Water Act, 42 U.S.C. Section 300f et seq., (viii) Sections 25117 and 25316 of the California Health & Safety Code, (ix) applicable state or local law, or (x) the rules, orders or regulations adopted or proposed or in the publications promulgated pursuant to said laws; or (b) in any reported decision of a state or federal court.

- **Grantee's Indemnity.** Grantee, to the fullest extent permitted by law, shall be solely responsible for and pay for any and all loss and/or damage (i) to the Property, the Stockpile Area, or both (and any property adjoining the Property, the Stockpile Property, or both), or (ii) arising out of or in connection with the use, storage or transport of Hazardous Materials on the Property and/or Stockpile Area, including but not limited to the cost of any remediation or third party claims related thereto, arising wholly or in part from or in connection with the use of the Property, the Stockpile Area, or both, pursuant to (or in violation of) this Agreement. Grantee shall keep the Property, the Stockpile Area, or both, free and clear of all environmental liens, mechanics' and materialmen's liens and claims for labor and/or materials arising out of any activity upon the Property, the Stockpile Area, or both by Grantee or Grantee's Agents. Grantee shall protect, defend, indemnify and hold Grantor and its members, managers, partners, agents, officers, directors, employees and affiliates ("Grantor Indemnified Parties") free and harmless against all claims, liens, actions, losses, liabilities, damages, costs and expenses (including but not limited to reasonable attorneys' fees and costs and including any claims arising in connection with the use, storage or transport of Hazardous Materials on the Property and/or Stockpile Area, including, but not limited to, the cost of any remediation or third party claims related thereto), collectively, "Claims") of whatever kind or nature, including, but not limited to, consequential damages, arising in connection with the rights granted under or any breach of Grantee's or Grantee's Agents covenants contained in this Easement except to the extent caused by Grantor's gross negligence or willful misconduct. The foregoing indemnification shall survive the termination of this Agreement.

- **Compliance with Laws.** Access to and use of the Property, the Stockpile Area, or both, by Grantee and Grantee's Agents and others shall be in strict compliance with all applicable laws, statutes, ordinances, rules and regulations, including, without limitation, those of the United States and the city, county and state in which the Property is located, and any agency of any of the foregoing (the "Laws"), and Grantee shall defend, indemnify and hold Grantor and its members, managers, partners, agents, officers, directors, employees and affiliates free and harmless against all penalties, charges and damages including, without limitation, consequential damages, costs and expenses (including, without limitation, attorneys' fees and expenses) of whatever kind or nature, imposed for any violation or alleged violation by Grantee or any Grantee Agent of any such Laws. Grantee shall be responsible for obtaining and complying with the conditions and requirements of all permits and approvals required under all

applicable Laws in connection with Grantee and Grantee's Agents' activities on the Property, the Stockpile Area, or both.

- **Insurance.** At its sole cost, Grantee shall either maintain its participation in the insurance program administered by the California JPIA (which includes liability coverage of \$1,000,000 per occurrence, with accrued aggregate limit of \$1,000,000) or maintain equivalent insurance, and will cause Seller to be named as additional insured thereunder, with respect to Grantee's entry on and use of the Property. At its sole cost, Grantee shall deliver to Grantor reasonable evidence of such insurance prior to entering the Property or the Stockpile Area.
- **No Representations or Warranties Hereunder.** Grantee understands that neither Grantor nor any Grantor Indemnified Parties have made or make any representation or warranty, express or implied, as to the suitability of the Property or the Stockpile Area for Grantee's use in connection with the License granted under this Agreement. All information provided by Grantor with respect to the Property or Stockpile Area has been provided as an accommodation and solely for Grantee's use in connection with its performance of this Agreement without any representation or warranty as to its accuracy or completeness. Neither Grantor, nor any Grantor Indemnified Parties or their respective attorneys or advisors or any other person will have any liability to Grantee or any of Grantee's Agents under this Agreement for information provided or the exercise by Grantee or Grantee's Agents of any rights granted either hereunder.
- **No Waiver.** It is understood and agreed that no failure or delay by Grantor in exercising any right, power or privilege hereunder shall operate as a waiver thereof or the exercise of any other right, power or privilege hereunder. The provisions of this Agreement may not be waived or amended except by the written agreement of Grantor.
- **Injunction.** Grantee further understands and agrees that in the event of any breach of this Agreement by Grantee or any of Grantee's Agents, Grantor would be irreparably and immediately harmed and could not be made whole by monetary damages. Accordingly, Grantee hereby agrees that Grantor, in addition to any other remedy which it may have at law or in equity, shall be entitled to injunctive relief to prevent breaches of this Agreement and/or specific performance to compel compliance with this Agreement.
- **Assignment.** This Agreement is binding on the successors and assigns of the parties hereto. Notwithstanding the foregoing, Grantee may not assign its rights hereunder without the prior written consent of Grantor in its sole discretion.
- **Miscellaneous.** This Agreement and any and all matters arising under, from or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the State of California without regard to choice of laws principles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. A facsimile, scanned or photocopy signature on this Agreement, any amendment or waiver hereto, or any notice delivered hereunder shall have the same legal effect as an original signature. This Agreement may not be amended or modified except in writing executed by the parties hereto.

[signature page follows]

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

GRANTOR:

ESSEX MOORPARK OWNER, L.P.,
a California limited partnership

By: Essex Moorpark GP, L.P.
a California limited partnership,
Its general partner

By: Essex Management Corporation
a California corporation,
its general partner

By: _____
Title: _____
Print Name: _____

Grantor Notice Information:

Essex Moorpark Owner, L.P.
c/o Essex Property Trust
1100 Park Place, Suite 200
San Mateo, Ca 94303
Attention: Legal Department

GRANTEE:

CITY OF MOORPARK,
a municipal corporation

By: _____
Janice S. Parvin,
Mayor

Grantee Notice Information:

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

EXHIBIT "A"

LEGAL DESCRIPTION
OF THE PROPERTY

All of Parcel 1A of in that certain Lot Line Adjustment No. 2005-03 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder.

EXCEPT THEREFROM that portion conveyed to the City of Moorpark by deed April 30, 2009 as Instrument No. 20090430-00069389 of Official Records of said County.

ALSO EXCEPT THEREFROM that portion lying northerly of the following described line;

BEGINNING at a point in east line of Parcel 1A of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

1st Thence, departing said east line South 89°38'32"West 752.05 feet;

2nd Thence, South 27°20'34"West 36.75 feet;

3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

EXHIBIT "B"

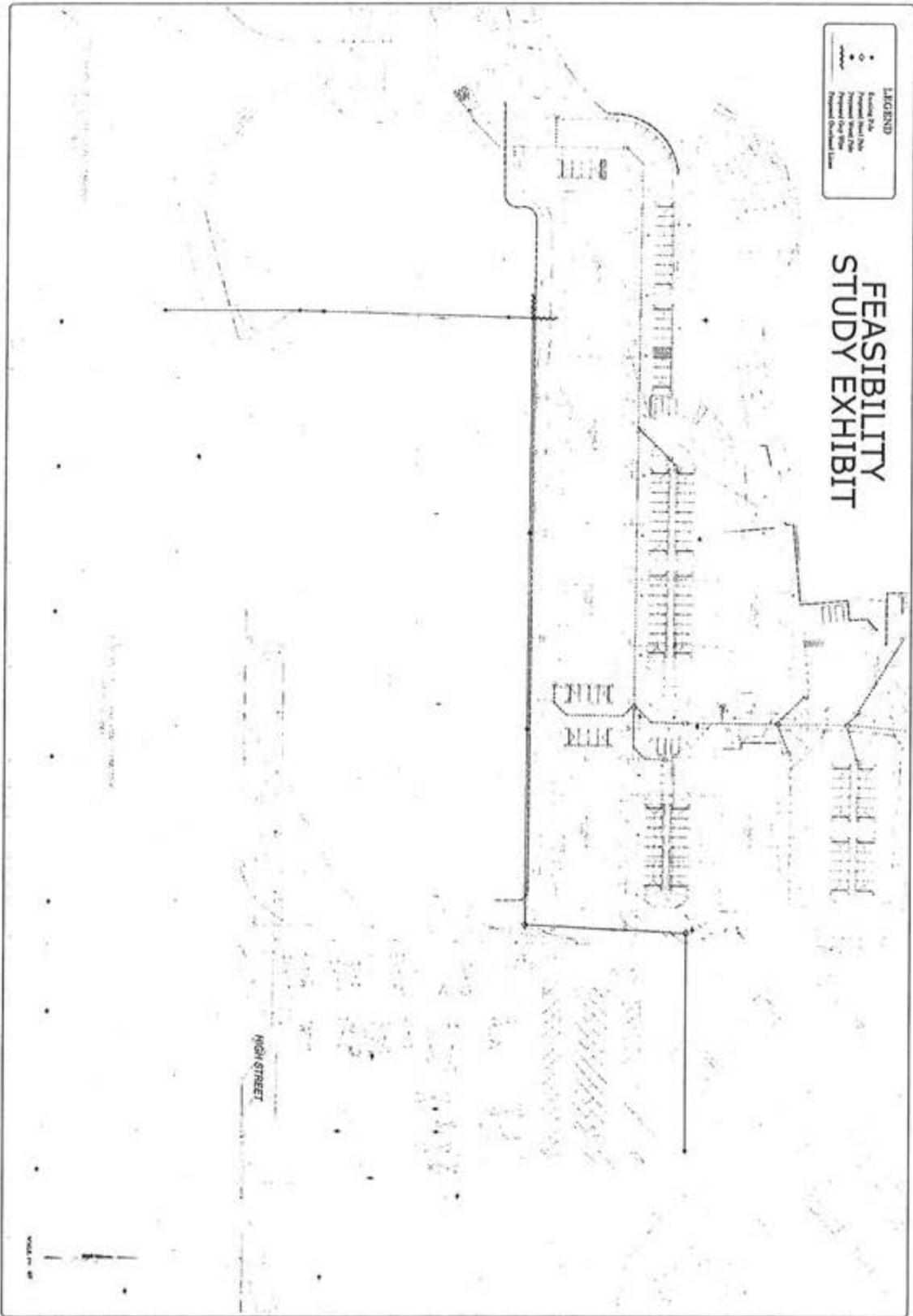
STOCKPILE AREA

(See attached diagram.)

EXHIBIT "D"

MAP FOR RELOCATED POWER LINES

(Attached.)



LEGEND

- Existing Pole
- Proposed Pole (No Pole)
- Proposed Pole (Pole)
- Proposed Pole (Pole)

FEASIBILITY STUDY EXHIBIT

1. ADJ. 1. ADJ. 1. ADJ.

DATE: 11/11/11

TRANSMISSION ROUTING EXHIBIT
 OPTION 1-B (OVERHEAD STEEL POLES)
 MOORPARK APARTMENTS
 CITY OF MOORPARK

CITY OF MOORPARK
 199 MOORPARK AVENUE
 MOORPARK, CA 93021

AT PULNER & ASSOCIATES, INC.
 1000 PULNER AVENUE
 SUITE 100
 MOORPARK, CA 93021
 TEL: (925) 461-1111
 FAX: (925) 461-1112
 WWW.PULNER.COM

EXHIBIT "E"

ADDRESSES OF PARTIES

To City:

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

To Developer:

ESSEX MOORPARK OWNER, L.P.
Attention: John D. Eudy
1100 Park Place, Suite 200
San Mateo, CA 94403

With required copies to:

ESSEX PORTFOLIO, L.P.
Attention: Jordan Ritter
1100 Park Place, Suite 200
San Mateo, CA 94403

and

ESSEX MOORPARK OWNER, L.P.
Attention: Bob Linder
17541 Derian Avenue, Suite 110
Irvine, CA 92614

EXHIBIT "F"

FORM OF AFFORDABLE HOUSING AGREEMENT

(Attached.)

Recording Requested By:

CITY OF MOORPARK
799 Moorpark Avenue
Moorpark, California 93021
Attention: City Clerk

OFFICIAL BUSINESS
Document entitled to free
recording per Government Code
Sections 6103 and 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

AFFORDABLE HOUSING AGREEMENT

by and between

CITY OF MOORPARK

and

ESSEX MOORPARK OWNER, L.P.

Dated as of _____, 2017

AFFORDABLE HOUSING AGREEMENT

THIS AFFORDABLE HOUSING AGREEMENT (this "Agreement") is to be effective as of _____, 2017, regardless of the date of actual execution hereof, and is by and between the CITY OF MOORPARK; a municipal corporation ("City"), ESSEX MOORPARK OWNER, L.P., a California limited partnership ("Owner").

RECITALS

A. The City and Owner have entered into a Development Agreement dated _____, recorded as Instrument No. _____ in the Official Records of the County of Ventura on _____ (the "Development Agreement") pursuant to which Owner will construct a residential development consisting of 200 apartments on approximately 10.57 acres (the "Property"), described more specifically on Exhibit No. 1 attached hereto and incorporated herein by reference, which is located within the City of Moorpark.

B. General Plan Amendment No. 2004-05 ("GPA 2004-05") Residential Planned Development Permit No. 2012-02 ("RPD"), and Zone Change No. 2004-04 ("ZC") provide for the development of the Property in such manner and the construction of certain off-site improvements in connection therewith (the "Project"). The GPA, ZC, RPD and Mitigation Monitoring Program, as amended, are collectively referred to as the "Project Approvals".

C. The RPD requires that the apartments described on Exhibit No. 2 attached hereto (located as described on such exhibit) be affordable and available to households with income that does not exceed specified levels, as described on Exhibit No. 2, for the Term (as defined in Article 1 below) of this Agreement.

D. The Development Agreement requires that Owner and Affordable Housing Owner maintain each and every one of the Affordable Units at all times in the same manner as the market rate units, including, but not limited to the quality and maintenance of flooring, window coverings, appliances, heating and air conditioning systems, storage space and type, and the number and location of required parking spaces.

E. The Development Agreement requires that this Affordable Housing Agreement be executed by Owner and delivered to City for recording, and that this Affordable Housing Agreement not be subordinate to any liens (except for property taxes and assessments not yet due).

F. As permitted by the Development Agreement, Owner may apply for approval of an air rights subdivision such that the Affordable Units may be conveyed to and separately owned by a single entity affiliated with Owner (as described in the Development Agreement) and used solely as affordable rental units in accordance with this Agreement. Such affiliated entity is referred to herein as the "Affordable Housing Owner".

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Owner hereby agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions. Capitalized terms used herein shall have the following meanings.

"Affordable Housing In Lieu Fee" shall mean the annual fee paid to the City in exchange for the Owner and Affordable Housing Owner not being obligated to provide four (4) additional Affordable Low Income Units in addition to the 50 Affordable Units required by this Agreement.

"Affordable Housing Owner" shall mean the single entity to which the sixteen (16) Very Low Income Units and twenty-four (24) Low Income Units are conveyed if tax exempt bond financing and low income housing tax credits are used with respect to the Project described in Section 2.1 below; however, until Owner conveys such Affordable Units to Affordable Housing Owner, and if Owner never conveys the Affordable Units to Affordable Housing Owner, and to the extent of its ownership of the ten (10) Units described in Section 2.1 and Exhibit No. 2, Owner shall be the "Affordable Housing Owner" as well as the "Owner".

"Affordable Rent" shall mean the rent described in Section 2.9, subject to Section 2.10.

"Affordable Units" shall mean the rent-restricted dwelling units for Low Income Households, Very Low Income Households and Moderate Income Households described in this Affordable Housing Agreement.

"Agreement" shall mean this Affordable Housing Agreement.

"City" shall mean the City of Moorpark, California, a municipal corporation.

"County" shall mean Ventura County.

"County Median Income" shall mean the Median Income adjusted by actual household size as published annually by the Department of Housing and Community Development (HCD) of the State of California for the County, which Median Income levels shall be adjusted concurrently with publication of adjustment of the same by HCD (or if HCD discontinues such publication, then such reasonable replacement publication as may be selected by City in good faith).

"Density Bonus" shall mean the density bonus granted by the City to Owner in connection with the Project pursuant to the Project Approvals, which requires the Developer to construct the Project, and also requires that at least twenty percent (20%) (i.e., 40 units) of the total dwelling units in the Project be rented at an Affordable Rent to Very Low Income households (i.e., 50% of County Median income) and Low Income

households (i.e., 80% of County Median Income) and an additional five percent (5%) (i.e. 10 Units) of the total dwelling units in the Project be rented at an Affordable Rent to Moderate Income households (i.e. 120% of County Median income).

"Development Agreement" shall mean that certain Development Agreement dated _____, 2017, recorded substantially concurrently herewith in the Official Records of the County of Ventura.

"HCD" shall mean the Department of Housing and Community Development (HCD) of the State of California.

"Initial Rent-Up" shall mean the period between the issuance of a certificate of occupancy for the first residential unit in the Project and "Stabilization" (as defined below).

"Low Income" or "Lower Income" shall mean a household income that does not exceed eighty percent (80%) of the County Median Income, adjusted for household size appropriate to the Unit. The household income amount for Lower Income households shall be based on the amount most recently published by HCD as the Household Income Limits for Ventura County ("HCD Income Limits") or such successor information in the event the referenced published information is no longer available.

"Low Income Household" or "Lower Income Household" or "Low Income Tenant" means individuals or households qualified on the basis of a "certification of tenant eligibility" as certified by such individual or household, who have a gross income which does not exceed Low Income, adjusted for household size.

"Low Income Units" means Units rented to Low Income Households.

"Moderate Income" shall mean a household income that does not exceed one hundred twenty percent (120%) of the County Median Income, adjusted for household size appropriate to the Unit. The household income amount for Moderate Income households for any year shall be based on the amount most recently published by HCD as the Household Income Limits for Ventura County ("HCD Income Limits") or such successor information in the event the referenced published information is no longer available.

"Moderate Income Household" means individuals or households qualified on the basis of a "certification of tenant eligibility" as certified by such individual or household, who have a gross income which does not exceed Moderate Income, adjusted for household size.

"Moderate Income Units" means Units rented to Moderate Income Households.

"Owner" shall mean Essex Moorpark Owner, L.P., and any permitted assignee of its rights, powers and responsibilities, or any successor in interest to any portion of or interest in the Project or Property.

"Project" is the residential development described in RPD 2012-02 consisting of up to 200 apartments located on the Property, together with structures, improvements, equipment, fixtures, and other personal property owned by Owner or Affordable Housing Owner and located on or used in connection with all such improvements and all functionally related and subordinate facilities, and all improvements required by the Project Approvals.

"Project Approvals" is defined in Recital B above.

"Property" shall mean that real property in the City of Moorpark, California described on Exhibit No. 1.

"Stabilization" shall mean the time at which the Project achieves ninety percent (90%) occupancy for ninety (90) consecutive days.

"Term" shall mean from the date of recordation of this Agreement until the later of: (i) the date that the Property is no longer zoned for any residential use and cannot be used for any residential use or purpose as a "non-conforming use" and has no residential occupancy; or (ii) fifty-five (55) years after the recordation of this Agreement.

"Units" shall mean residential dwelling units.

"Utility Allowance" shall mean the utility allowance set forth in the chart attached to this Agreement as Exhibit No. 2 and referred to in Section 2.9.

"Very Low Income" shall mean household income that does not exceed fifty percent (50%) of the County Median Income, adjusted for household size appropriate to the Unit. The household income amount for Very Low Income households shall be based on the amount most recently published by HCD as the Household Income Limits for Ventura County ("HCD Income Limits") or such successor information in the event the referenced published information is no longer available.

"Very Low Income Household" means individuals or households qualified on the basis of a "certification of tenant eligibility" as certified by such individual or household, who have a gross income which does not exceed Very Low Income, adjusted for household size.

"Very Low Income Units" means Units rented to Very Low Income Households.

1.2 Rules of Construction.

1.2.1 The singular form of any word used herein, including the terms defined herein shall include the plural and vice versa. The use herein of a word of any gender shall include correlative words of all genders.

1.2.2 The words "hereof," "herein," "hereunder," and words of similar import shall refer to this Agreement as a whole.

1.2.3 All of the terms and provisions hereof shall be construed to effectuate the purposes set forth in this Agreement and to sustain the validity hereof.

1.2.4 Headings or titles of the several articles and sections hereof and the table of contents appended to copies hereof shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of the provisions hereof.

1.2.5 In the event the Development Agreement and this Agreement conflict, the provision more beneficial to the City, as determined by the City Manager, shall govern.

ARTICLE 2 AFFORDABLE HOUSING IMPLEMENTATION AND RENTAL RESTRICTION PLAN AND USE OF PROPERTY

2.1 Purpose of Restrictions.

- A. The provisions of this Agreement are intended to impose affordability restrictions and household income restrictions on the Affordable Units in the Project, specifically there shall be sixteen (16) Very Low Income Units, twenty-four (24) Low Income Units, and ten (10) Moderate Income Units, all as more particularly set forth on Exhibit No. 2.
- B. However, Owner may obtain Federal low income housing tax credits and tax-exempt bonds (collectively, "Affordable Housing Financing") to finance the Project, which will require that forty (40) of the Affordable Units be restricted for rent to Very Low Income Households during the periods set forth in the Internal Revenue Code, as the same may be modified by law applicable to the low income housing tax credits (the "Compliance Period and Extend Use Period") and applicable to the tax exempt bonds (the "Qualified Project Period"). At the end of whichever is the last to expire of the Compliance Period and Extended Use Period and the Qualified Project Period, Owner shall rent the ten (10) Moderate Income Units to Low Income Households consistent with the requirements of this Agreement. Upon the the last to expire of the Compliance Period and Extended Use Period and the Qualified Project Period, the provisions of this Agreement shall be applicable and the number of Very Low Income Units, Low Income Units, and Moderate Income Units shall be consistent with Section 2.1.A. above and Exhibit No. 2.

At the time the Project is no longer required to comply with Affordable Housing Financing, the City, Owner and Affordable Housing Owner shall in good faith, and consistent with applicable law and this Agreement, prepare a plan to transition the Affordable

Units so that the number of Very Low Income Units, Low Income Units, and Moderate Income Units in the Project is as required by Section 2.1A above and Exhibit No. 2 and that there are Very Low Income Households, Low Income Households, and Moderate Income Households occupying the Affordable Units consistent with Section 2.1.A. above and Exhibit No. 2 in the shortest possible time.

2.2 Agreement to be Recorded; Priority. Owner and Affordable Housing Owner represent, warrant, and covenant that they will cause this Agreement to be recorded in the Office of the County Recorder of Ventura County, California, and that this Agreement shall be senior in priority to any lien, encumbrance or other matter of record except as expressly approved in writing by City. The Owner or Affordable Housing Owner shall pay all fees and charges in connection with any such recordation.

2.3 Use of the Property. Owner represents, warrants, and covenants to develop and operate the Project and Property as a multifamily residential rental property and uses incidental thereto and for no other purposes. Owner and Affordable Housing Owner agree that the Affordable Units shall have the same or better amenities (in type, quality and number) as the market-rate units in the Project (as determined by the Community Development Director) and shall be located as described on the site plan attached to Exhibit No. 2. Such amenities for the Affordable Units shall include, without limitation, air conditioning/heating, plumbing and electrical fixtures, garbage disposal, flooring, cabinets, counter tops, trim, built-in dishwasher, clothes washer and dryer, sinks, bathtub, solar or solar stub out, water heater, built-in oven, microwave, stove, bathroom fan (the most quiet model), garage door openers, doors and door hardware, and floor and window coverings (all to the same extent provided for the market rate units). Owner and Affordable Housing Owner shall promptly notify City in writing upon any relocation of an Affordable Unit under this Agreement (meaning change in the designated/intended household income level, not an actual change in the fixed locations of the Affordable Units, which constitute a separate subdivided parcel, and are fixed as shown at the end of Exhibit No. 2), and each such notice shall include the basis for such relocation and the location of such relocated Affordable Unit(s); however, the ten (10) Moderate Income Units to be owned by the Owner of the market-rate Units shall be randomly dispersed among its Units in the portion of the Project owned by the Owner consistent with Exhibit No. 2. Owner and Affordable Housing Owner further agree not to convert the Project or any part thereof to any type of common interest development, for-sale condominiums, community apartments, planned development, stock cooperative, hotel, motel, or any type of congregate care or assisted living facility (but the foregoing shall not prohibit the air rights subdivision and conveyance described in Recital F above). Owner and Affordable Housing Owner agree that they shall not knowingly permit any of the Units in the Project to be used on a transient basis and shall not rent any Unit for a period of less than thirty (30) days. At no time shall any of the Affordable Units be rented to an employee, agent, officer, contractor of any owner of any portion of the Property or Project or of any company affiliated with any such owner, or to any such affiliated company.

2.4 INTENTIONALLY OMITTED

2.5 Rules. In addition to the conditions and restrictions to be contained in leases or rental agreements as provided in this Agreement, ongoing operation of the Project will be subject to reasonable house rules, policies and regulations issued from time to time by Owner and Affordable Housing Owner and approved by City which approval shall not be unreasonably withheld, conditioned, or delayed ("Rules"). Owner and Affordable Housing Owner shall submit such Rules to City during the Initial Rent-Up for the City's approval, which will not be withheld, conditioned or delayed. Annually, Owner and Affordable Housing Owner shall submit any amendments, modifications or changes to such Rules to the City at least forty-five (45) days prior to their proposed effective date and all of such amendments, modifications and changes shall be subject to the City's prior written consent, which will not be withheld, conditioned or delayed. If City does not consent, City shall specify the reasons in writing so that Affordable Housing Owner can revise the amendment(s), modification(s) or change(s) and re-submit them for City approval, which will not be withheld, conditioned or delayed. In addition, Owner and Affordable Housing Owner shall submit to the City on an annual basis a certification that the Rules previously submitted to City, as amended, remain in effect (with a copy of the Rules and any amendments). If applicable, this Agreement shall be consistent with any Extended Use Agreement entered into between Owner or any affiliate of Owner and the California Tax Credit Allocation Committee.

2.6 Single Owner. Except for the ten (10) Moderate Income Units (which will be Low Income Units until the last to end of the Compliance Period and Extended Use Period and the Qualified Project Period, as set forth in Section 2.1.B. above, and will be owned by the owner of the market-rate Units), all of the Affordable Units shall be and remain owned by the Affordable Housing Owner (an affiliate of the Owner of the market-rate Units). Such ten (10) Units (Moderate, or Low Income until the last to end of the Compliance Period and Extended Use Period or the Qualified Project Period) may be owned by Owner but shall be subject to this Agreement. No Affordable Unit may be sold separately.

2.7 Affordable Units Generally.

2.7.1 Allocation/Dispersal of Affordable Units. As set forth on Exhibit No. 2, the Affordable Units shall be randomly dispersed throughout the Project, and as described in Section 2.3 above, Owner and Affordable Housing Owner shall promptly notify City in writing of any change in the designated income level of any Affordable Unit.

2.7.2 Accessible Compliant Units. Four (4) of the nineteen (19) one-bedroom one-bath affordable Low and Very Low Income units shall be compliant with all laws regarding disabled persons (including, without limitation, the Americans with Disabilities Act) and shall be reserved for and occupied by persons eligible for such accommodations, to the extent there is a qualified accessible Low or Very Low Income person ready to occupy such unit. Owner and Affordable Housing Owner shall maintain a waiting list for the affordable accessible-compliant units, shall promptly deliver a copy

thereof to City and shall thereafter deliver a copy of the revised list to City whenever the list changes. Should there be a qualified Low or Very Low Income prospective tenant desiring to rent such a unit but all such units are rented, Owner and Affordable Housing Owner shall add such prospective tenant to the waiting list for the affordable accessible-compliant units. At the earliest possible time a Low or Very Low Income non-accessible compliant affordable unit becomes available, the non-accessible Low or Very Low Income tenant who occupies the affordable accessible compliant unit shall be relocated to another affordable unit in order to allow the qualified disabled household to occupy the accessible compliant unit. Owner and Affordable Housing Owner shall include a provision in the non-accessible compliant affordable lease for any accessible-compliant affordable unit that the non-accessible Low or Very Low Income tenant agrees to be relocated, at Owner's or Affordable Housing Owner's cost, as soon as a non-accessible compliant unit becomes available. While any of the four (4) affordable accessible-compliant units are not being leased to disabled persons (due to unavailability of such persons to lease), the applicable Affordable Unit shall be leased in accordance with this Agreement.

At all times, Affordable Housing Owner shall keep City informed in writing of the income level applicable to each accessible compliant unit. The fixed locations of the Affordable Units shall be as shown on the site plan attached to Exhibit No. 2.

The accessible compliant units shall be consistent with accessibility design criteria established by the State of California, and Owner and Affordable Housing Owner shall promptly make any changes to such units required by new laws or changes in laws. Reasonable accommodation shall be made, as may be requested by specific Low or Very Low Income disabled tenants in such units, to provide features such as smoke alarms with flashing lights, for instance, if requested by hearing impaired Low or Very Low Income tenants in an accessible compliant unit.

2.7.3 Affordable Housing In Lieu Fee.

2.7.3.1 In addition to the Affordable Units herein described, Owner and Affordable Housing Owner shall pay (and be jointly and severally liable for) a single annual in lieu fee for having irrevocably elected not to provide four (4) additional Low Income units (the "Affordable Housing In Lieu Fee"). The modification of affordability levels for Affordable Housing Financing purposes (as described in Section 2.1, 2.12 and Exhibit No. 2), shall not affect the foregoing.

2.7.3.2 The Affordable Housing In Lieu fee shall initially be Forty Seven Thousand Five Hundred and No/100 Dollars (\$47,500.00) if paid on or before January 1, 2019. If the initial payment is not paid by January 1, 2019, it shall increase by two percent (2%) each year above the prior year amount. Similarly, all subsequent annual payments shall increase by two percent (2%) of the previous year's payment.

Payments shall be made on March 10 of the first calendar year in which one or more residential unit in the Project has theretofore been occupied, and on or before

March 10 of each subsequent calendar year. 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 charge (constituting liquidated damages) equal to ten percent (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, and the parties hereby stipulate and agree that it would be very difficult and impractical to determine the damages suffered by City, as a public entity, due to late payments. Payments received more than ten (10) days after the due date shall, in addition to the ten percent (10%) late charge, accrue interest at a rate of twelve percent (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 Owner or Affordable Housing Owner to any other entity not owned in whole or in part by Owner, 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 0.095% (equivalent to \$950.00 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 \$50,000,000.00 then the annual fee to the City would be $\$50,000,000.00 \times .00095 = \$47,500.00$, or if the City portion of the property taxes has been increased by the State of California on a statewide initiative or referendum then the amount would increase). In the event the payment to the City under this calculation would be less than the Initial Affordable Housing 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.

2.7.4 Preference Policies. To the extent permitted by applicable state and federal law, priority shall be granted to eligible City of Moorpark residents. 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 for City of Moorpark residents to the extent permitted by applicable state and federal law. 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. Additionally, Affordable Housing Owner shall submit to City an annual report, no later than January 30 of each calendar year for the previous calendar year, describing the vacancies filled from households on the list, total vacancies filled and the number of households on the list.

2.7.5 Occupancy Reporting. As specified in Section 2.12, Owner and Affordable Housing Owner will advise City on a quarterly basis in writing of the number of Affordable Units occupied by Very Low, Low and Moderate Income Tenants by delivery of a certificate in the form specified by the City, which is attached hereto as Exhibit No. 3, which shall include a statement as to whether or not the tenant was a City of Moorpark resident who on the waiting list and was given priority. Any reporting

schedule less frequent than quarterly must be expressly approved in writing by the City Manager.

2.7.6 Unit Classification. An Affordable Unit occupied by a Very Low Income Tenant, a Low Income Tenant, or a Moderate Income Tenant shall be deemed, upon termination of occupancy by such tenant (whether voluntarily or involuntarily), to be continuously occupied by a Very Low Income Tenant, a Low Income Tenant, or a Moderate Income Tenant, as applicable, until re-occupied other than for a temporary period (not to exceed 60 days), at which time the classification of the Unit shall be redetermined (provided that upon such reclassification, Affordable Housing Owner must remain in compliance with this Agreement). Owner and Affordable Housing Owner shall use commercially reasonable efforts to prevent such temporary periods from exceeding sixty (60) days. Owner and Affordable Housing Owner will also obtain and maintain on file such Certifications of Tenant Eligibility in the form of Exhibit No. 3 attached hereto, for each Very Low, Low and Moderate Income Tenant. Owner and Affordable Housing Owner shall make a good faith effort to verify that the income declared by an applicant in an income certification is accurate by reviewing any one or more of the following documents, which shall be provided by the applicant:

- (a) A pay stub for the most recent pay period;
- (b) An income tax return for the most recent tax year;
- (c) An income verification form from the applicant's current employer;
- (d) An income verification form from the Social Security Administration and/or the California Department of Social Services if the applicant receives assistance from either of those agencies; or
- (e) If the applicant is unemployed and has no tax return, another form of independent verification is needed.

In addition to the above-referenced income certification, eligible Very Low and Low Income applicants for the ADA compliant units shall submit a letter from a physician or other document acceptable to the City, Owner and Affordable Housing Owner which confirms the accessibility needs of the applicant.

2.7.7 Lease Provisions. The Owner and the Affordable Housing Owner shall include provisions in all signed leases or rental agreements for all Affordable Units which authorize the Owner or Affordable Housing Owner, as applicable, to immediately terminate the tenancy of any tenant occupying an Affordable Unit where one or more of such tenants have misrepresented any fact material to the qualification of such an individual or household as a Very Low, Low or Moderate Income Tenant and/or for qualification for occupancy of an Affordable Unit, and Affordable Housing Owner and Owner shall reasonably enforce such termination rights (i.e., Affordable Housing Owner or Owner, as applicable, shall exercise them and not waive them). Each lease or rental agreement for an Affordable Unit shall also provide that the tenants of such Affordable Unit shall be subject to annual certification or recertification of income, as required by

the City, and shall be subject to rental increases in accordance with Section 2.10 of this Agreement.

2.7.8 Management Diligence. Owner and Affordable Housing Owner shall use commercially reasonable efforts not to allow any rent-ready Affordable Unit to remain vacant.

2.7.9 Administration by City; Administrative Fee. City shall appoint a staff person to oversee the implementation of this Agreement, and shall notify Owner and Affordable Housing Owner in writing of the name and phone number of such staff person and any replacements. On or before the first day of February of each year during the Term of this Agreement, commencing after the first residential occupancy of the Project, Affordable Housing Owner and Owner shall pay to the City for the administration of this Agreement (and be jointly and severally liable for) an annual fee equal to twenty-five thousand dollars (\$25,000.00), subject to adjustment annually by the larger of (a) or (b) below:

(a) The percentage increase in the Consumer Price Index during the prior year, which shall be determined by using the Consumer Price Index by the U. S. Department of Labor, Bureau of Labor Statistics, for all urban consumers, all items, for the Los Angeles/Riverside/Orange County metropolitan area. The calculation shall be made by copying such CPI for the month of October to the CPI for the previous 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).

In the event the CPI or LAIF is discontinued or revised, such successor index with which they are replaced shall be used to achieve substantially the same result, or if there is no successor index, then another index shall be used to achieve substantially the same result.

2.7.10 Lease Provisions. The provisions relating to certification and recertification of income in the form of lease or rental agreement used by the Owner or the Affordable Housing Owner for the lease or rental of the Affordable Units shall be subject to review and approval by the City, the approval of which shall not be unreasonably withheld, conditioned, or delayed. If the lease or rental agreement provisions specified in this Section are not approved or disapproved within thirty (30) days after submittal to City, they shall be deemed approved.

2.8 Rent-Up Periods and Occupancy Procedures.

2.8.1 For initial rent-up only, for each ten (10) units rented in the Project (i.e., both Affordable Units and other units), at least two (2) must be Affordable Units which comply with this Agreement.

2.8.2 During the Initial Rent-Up, the Very Low Income Units occupied by Very Low Income households, plus those Units held available for occupancy by such tenants, shall be equal to or exceed sixteen (16) units (subject to Section 2.1 above).

2.8.3 During the Initial Rent-Up, the Low Income Units occupied by Low Income households, plus those Units held available for occupancy by such tenants, shall be equal to or exceed twenty-four (24) units (subject to Section 2.1 above).

2.8.4 During the Initial Rent-Up, the Moderate Income Units occupied by Moderate Income households, plus those Units held available for occupancy by such tenants, shall be equal to or exceed ten (10) units (subject to Section 2.1 above).

2.8.5 In connection with the Initial Lease-Up of the Project, Owner and Affordable Housing Owner will adopt outreach programs to locate qualified tenants for the Project and shall establish such procedures for occupancy, rental, and rent grievances as may be reasonably required by the City. Not later than ten (10) days prior to the commencement of marketing, Owner and Affordable Housing Owner shall prepare and submit to the City for reasonable approval a marketing and outreach program which shall contain, among other things, the following: how a potential tenant would apply to rent a Unit in the Project, including where to apply, applicable income limits and rent levels; support documentation needed such as pay stubs, tax returns, or confirmation of disability, if applicable, a description of procedures Owner and Affordable Housing Owner will follow to publicize vacancies in the Project, including notice in newspapers of general circulation, including at least one Spanish-language newspaper and mailing notices of vacancies to or contacting by telephone potential tenants on the waiting list maintained by Owner and Affordable Housing Owner. Notices shall also be given to organizations in Ventura County which provide referrals or other services to persons with disabilities.

2.8.6 In the event that any Affordable Unit is rendered unfit for occupancy (including by damage or destruction), then until the Affordable Unit is repaired/reconstructed (so that it is available for leasing in compliance with this Agreement), Owner or Affordable Housing Owner, as applicable, shall pay the City a single fee of \$10 (which shall increase by \$2 every five (5) years) per day until the Affordable Unit is placed back in service except that such fee shall not be payable for so long as Owner or Affordable Housing Owner is diligently attempting to repair or re-build the Affordable Unit in question, as shown by reasonable evidence provided to City.

2.9 Affordable Rent.

2.9.1 Monthly rent charged to Very Low Income households shall be no greater than thirty percent (30%) of fifty percent (50%) of County Median Income, adjusted for family size appropriate for the Unit, less the Utility Allowance. "Family size appropriate to the Unit", as shown on Exhibit No. 2 is defined in Section 50052.5(h) of the California Health and Safety Code to be 2 persons for a 1 bedroom unit, 3 persons for a 2 bedroom unit and 4 persons for a 3 bedroom unit.

2.9.2 Monthly rent charged to Low Income Tenants shall be no greater than thirty percent (30%) of sixty percent (60%) of County Median Income, adjusted for family size appropriate for the Unit, less the Utility Allowance. "Family size appropriate to the Unit", as shown on Exhibit No. 2 is defined in Section 50052.5(h) of the California Health and Safety Code to be 2 persons for a 1 bedroom unit, 3 persons for a 2 bedroom unit and 4 persons for a 3 bedroom unit.

2.9.3 Monthly rent charged to Moderate Income Tenants shall be no greater than thirty percent (30%) of one hundred and ten (110%) of County Median Income, adjusted for family size appropriate for the Unit, Less the Utility Allowance. "Family size appropriate to the Unit", as shown on Exhibit No. 2 is defined in Section 50052.5(h) of the California Health and Safety Code to be 2 persons for a 1 bedroom unit, 3 persons for a 2 bedroom unit and 4 persons for a 3 bedroom unit.

2.9.4 Utility Allowances will be adjusted annually using the most current "Allowances for Tenant Furnished Utilities and Other Services" (form HUD-52667) based on Apartment/Walk Up unit type as posted and updated annually by the Area Housing Authority of the County of Ventura based on the following appliances/utilities to be provided to the units:

Natural Gas – Heating, cooking, water heating

Water, Sewer, Trash, Other Electric allowance (for lights and other electric uses)

2.10 Alternative Affordable Rent Calculations. If the requirements or practices of the California Tax Credit Allocation Committee (CTAC), the California Debt Limit Allocation Committee (CDLAC), any lender as Bond owner, or other entity or entities similarly associated with anticipated financing of the construction of this project, or future prudent refinancing of this project, utilizes definitions, sources of information, etc., other than those which have been herein defined and utilized in calculating Affordable Rent, then the procedure or input which produces the lowest affordable rent, will prevail.

2.11 Income Recertification; Rent Increases.

2.11.1 Owner and Affordable Housing Owner shall cause the income of each Tenant of an Affordable Unit to be re-certified on an annual basis on the anniversary date of each such tenant's initial rental date. This recertification shall be submitted in writing to the City within thirty (30) days of such action.

2.11.2 Rents for the Affordable Units may be increased only once per calendar year, concurrently with or subsequent to any increase in the County Median Income when and as determined by HCD. The rents charged for the Affordable Units following such an increase, or upon a vacancy and new occupancy by a Very Low, Low or Moderate Income Tenant, as the case may be, shall not exceed the allowable rent calculated in compliance with Sections 2.9, 2.12.1, 2.12.2, and 2.12.3 below.

2.12 Increased Income of Occupying Households. Only after the last to expire of the Compliance Period and Extended Use Period or the Qualified Project Period with respect to the Very Low Income Units and the Low Income Units rented to Very Low Income Households, and at all times for the ten (10) Moderate Income Units regardless of whether they are rented to Moderate Income Households or rented to Low Income Households, the following shall apply:

2.12.1 If, upon income recertification, the Owner or Affordable Housing Owner, or both, as applicable, determines that the household income of a Very Low Income Tenant has increased above the maximum allowable household income level of a Very Low Income Tenant, but remains equal to or below that of a Low Income household, then, except as provided below in this Section 2.12, the Owner or Affordable Housing Owner, or both, as applicable, shall not be required to evict the Tenant and the monthly rent charged to such Tenant shall be not greater than one-twelfth (1/12) of thirty percent (30%) of sixty percent (60%) of the County Median Income for the size household appropriate to the unit (less the utility allowance), upon sixty (60) days written notice to the occupants thereof. In that event, the next available unit that was previously a Low Income Unit must be rented to (or held vacant and available for immediate occupancy by) a Very Low Income household.

2.12.2 If, upon income recertification, the Owner or Affordable Housing Owner, or both, as applicable, determines that the household income of a Very Low or Low Income Tenant has increased above the maximum allowable household income of a Low Income Tenant, to not more than Moderate Income, which is one hundred and twenty percent (120%) of median income, then the Owner or Affordable Housing Owner, or both, as applicable, shall not be required to evict the Tenant and the monthly rent charged to such Tenant shall be no more than one twelfth (1/12) of thirty percent (30%) of one hundred ten percent (110%) of the County Median Income for the size household appropriate to the unit, less the utility allowance. In this event, the next available unit that was previously a Moderate Income unit must be rented to or held vacant and available for immediate occupancy by a Very Low or Low Income household, as the case may be, at an affordable rent (1/12 of 30% of 50% of Median Income, in the case of a Very Low Income unit, or 1/12 of 30% of 60% of Median Income, in the case of a Low Income unit, both of which are net of the utility allowance).

2.12.3 If, upon income re-certification, the Owner or Affordable Housing Owner, or both, as applicable, determines that the income of a tenant occupying one of the Affordable Units has increased and now exceeds that of a Moderate Income household, the Tenant is no longer eligible to rent the unit, and the Owner or Affordable Housing Owner, or both, as applicable, shall not increase the rent but shall provide written notice to the Tenant to vacate the unit within six (6) months. If an appropriate unit is available to substitute for said unit, and the "substitute unit" has not been one of the Affordable Units, provided that said substitute unit is of the same configuration and size as the unit currently occupied by the now ineligible Tenant, the Affordable Housing Owner may request authorization from the City Manager or his/her designee to substitute the like unit for the Affordable Unit, and cause the rent on the substitute unit to be at the same level of affordability as the unit that was occupied by the formerly

eligible Tenant, and the City Manager shall use good faith efforts to respond within thirty (30) days.

Notwithstanding the foregoing, any such Tenant shall have the right to request a recertification of income (not later than sixty (60) days prior to the date they are supposed to vacate). If the recertification shows that income is not greater than the maximum allowable household income level due to a documented voluntary reduction of income, then the notice to vacate shall be withdrawn.

Until the last to end of the Compliance Period and Extended Use Period or the Qualified Project Period, the foregoing provisions shall not apply to the units rented to Very Low Income Households, but shall continue to apply to the ten (10) Moderate Units that are to be rented to Low Income Tenants during such period (and owned by the entity which also owns the market rate Units). Until the last to end of the Compliance Period and Extended Use Period or the Qualified Project Period, Owner and Affordable Housing Owner shall comply with laws and regulations, and any separate/additional recorded restrictions or "Regulatory Agreement" required by the Affordable Housing Financing.

Owner and Affordable Housing Owner shall promptly deliver to City copies of all Affordable Housing Financing regulatory agreements or similar agreements restricting Units in the Project, and shall notify City and all affected tenants in writing of the expiration of the Bond Period at least one (1) calendar year (but not more than fourteen (14) months) prior to expiration of the Compliance Period and Extended Use Period or Qualified Project Period, whichever expires later, of any effect on the affordability level of their Affordable Units.

Additionally, Owner and Affordable Housing Owner shall notify City in writing of any re-syndication or extension of tax credit financing and any defeasance or refinancing of bond financing as soon as they become reasonably likely.

2.13 Specific Enforcement of Affordability Restrictions.

2.13.1 Owner and Affordable Housing Owner hereby agree that specific enforcement of Owner's and Affordable Housing Owner's agreements to comply with the allowable rent and occupancy restrictions of this Agreement is one of the reasons for the City's issuing the Project Approvals and entering into the Development Agreement.

2.13.2 Owner and Affordable Housing Owner further agree that, in the event of any breach of such requirements, potential monetary damages to City, as well as prospective Very Low, Low and Moderate Income Tenants, would be difficult, if not impossible, to evaluate and quantify.

2.13.3 Therefore, in addition to any other relief or damages to which the City may be entitled as a consequence of the breach hereof, Owner and Affordable Housing Owner agree to the imposition of the remedy of specific performance against it in the case of any event of default by Affordable Housing Owner in complying with the

allowable rent, occupancy restrictions or any other provision of this Agreement. Nothing herein shall impair City's rights to liquidated damages under Section 6.4 below.

2.14 [INTENTIONALLY OMITTED]

2.15 Reporting Requirements.

2.15.1 From the commencement of construction until the end of the first quarter or the end of the calendar quarter in which construction of the Project was completed, whichever occurs later, Owner and Affordable Housing Owner shall prepare and submit to the City, on a quarterly basis, written reports, setting forth the rental activity for the previous month, and the current total number of Affordable Units occupied by tenants.

2.15.2 Commencing with the first full calendar quarter after the last period covered by monthly reports pursuant to Section 2.15.1, Owner and Affordable Housing Owner shall prepare and submit to the City, on a quarterly basis, not later than the 15th day of each calendar quarter, a Certificate of Continuing Program Compliance in a form substantially similar to Exhibit No. 4 attached hereto, stating: (a) the number and percentage of Affordable Units in the Project which were occupied by Very Low, Low and Moderate Income Tenants, or held vacant and available for occupancy by such Tenants during said period; and (b) that to the knowledge of the Affordable Housing Owner, no default has occurred under the provisions of this Agreement; and (c) such other information as may be requested in writing by the City Manager.

2.15.3 Owner and Affordable Housing Owner shall prepare and submit to the City, on an annual basis, a report in form and substance reasonably satisfactory to the City, not later than March 31st of each year for the preceding calendar year, summarizing the vacancy rate of the Affordable Units in the Project on a month-to-month basis for such calendar year.

2.15.4 Owner and Affordable Housing Owner shall also deliver to City from time to time any other information about the Affordable Units and the rental thereof as may be reasonably requested in writing by City within ten (10) days after any such written request.

ARTICLE 3 OPERATIONS

3.1 [INTENTIONALLY OMITTED]

3.2 Management Agent.

3.2.1 The Project shall at all times be managed by the Owner or the Affordable Housing Owner or a single third-party management agent with demonstrated ability to operate, and experience in operating, residential housing including restricted affordable housing, in a manner that will provide decent, safe and sanitary residential facilities to occupants thereof, including experience in complying with reporting requirements and occupancy restrictions similar to those imposed upon the Project by

the terms of this Agreement. (There may only be one manager for the entire Project at any one time.)

3.2.2 The Owner or the Affordable Housing Owner, directly or through an affiliate, may be the "manager" of the Project. The Owner and the Affordable Housing Owner may retain on-site personnel and other consultants and service providers to assist Owner and the Affordable Housing Owner to operate the Project effectively and in compliance with the provisions of this Agreement and state and federal law.

3.2.3 In the event that Owner or Affordable Housing Owner seeks to appoint a replacement management entity to manage the Project, they shall advise the City of the identity of any such qualified management agent not later than thirty (30) days prior to the effective date of such appointment. The Owner and the Affordable Housing Owner shall also submit such additional information about the background, experience and financial condition of any proposed management agent as is reasonably requested by the City.

3.2.4 Upon the City's written request, the Owner and the Affordable Housing Owner shall cooperate with the City in an annual review of the management practices and status of Project. The purpose of each annual review will be to enable the City to determine if the Project is being operated and managed in accordance with the requirements and standards of this Agreement.

3.3 Day-to-Day Management Responsibility. The following procedure shall be followed to ensure effective day-to-day operation of the Project and cooperation among the City, the Owner, the Affordable Housing Owner and the management agent:

3.3.1 Day-to-day operation of the Project will be under the direct supervision of an on-site management agent, or a resident manager who will report to the management agent.

3.3.2 There will be regular meetings as necessary between the Owner, the Affordable Housing Owner and the management agent for the purpose of reviewing policies, procedures, resident relations and budget control.

3.3.3 Owner shall notify the City in writing of the direct phone number and email address of the management agent (so that City may contact the management agent directly), and shall cause the management agent or its personnel to be available on a twenty-four hour a day basis to respond to City inquiries.

3.4 Staffing Arrangements. Owner and Affordable Housing Owner shall provide for adequate on-site staffing of management personnel to manage the Project in a prudent and businesslike manner. In addition, Owner and Affordable Housing Owner shall provide such security services as may be necessary or appropriate for the Project. All hiring of on-site personnel shall conform to applicable equal opportunity guidelines, without regard to race, religion, color, national origin or sex. All hiring materials will indicate that the Project is an "Equal Opportunity Employer." Employment grievances, terminations and promotions will be conducted according to personnel policies and

procedures which conform with equal opportunity laws. All personnel employed at the Project will receive training specific to Owner's policies and procedures.

3.5 City Ability to Modify. If the Project is not timely completed in accordance with the Schedule of Performance in the Development Agreement, the City may modify the development standards and to change the General Plan designation and zoning of the Property, and Owner and Affordable Housing Owner hereby waive any rights they might otherwise have to seek judicial review of such City actions to change the development standards, General Plan designation and zoning to those development standards and density of permitted development to that in existence prior to the approval of General Plan Amendment No. 2004-05 ("GPA 2004-05") and Zone Change No. 2004-04 ("ZC 2004-04").

3.6 Annual Community Services Fee. Upon the issuance of a Zoning Clearance by the City for occupancy of the first unit of the Project, and on each anniversary thereof, Owner and Affordable Housing Owner shall pay to City a single community services fee of Eight Thousand Dollars (\$8,000.00) increased by two percent (2%) on each anniversary of the Operative Date (as defined in Section 18 of the Development Agreement).

ARTICLE 4 MAINTENANCE

4.1 Maintenance, Repair, Alterations. Owner and Affordable Housing Owner shall maintain and preserve the Project and the Property in good condition and repair and in a prudent and businesslike manner. If any portion of the Project is damaged, restoration of the damaged improvements shall be made by Owner and Affordable Housing Owner to a condition as good as existed prior to the damage. Owner and Affordable Housing Owner shall complete promptly and in a good and workmanlike manner any improvements which may now or hereafter be constructed as part of the Project and pay when due all claims for labor performed and material furnished therefor. Owner and Affordable Housing Owner shall comply with all laws, ordinances, rules, regulations, covenants, conditions, restrictions, and orders of any governmental authority now or hereafter affecting the conduct or operation of the Project and of their businesses on the Project or any part thereof or requiring any alteration or improvement to be made thereon. Owner and Affordable Housing Owner shall maintain grounds, sidewalks, roads, parking, and landscaped areas in the Project (and on any adjacent areas owned by either of them) in good and neat order and repair. Owner and Affordable Housing Owner hereby agrees that City may conduct from time to time through representatives of its own choice who are properly identified as agents of the City, upon reasonable written notice and subject to reasonable security and safety procedures and rights of tenants in possession, on-site inspections and observation of such records of Owner and Affordable Housing Owner relating to the Project and the Property as City reasonably deems to be necessary or appropriate in order to monitor Owner's compliance with the provisions of this Agreement. Owner and the Affordable Housing Owner shall assure that each Affordable Unit receives the same level of maintenance and repair and upgrades or improvements as all other units in the Project.

The Owner and the Affordable Housing Owner shall conduct an ongoing maintenance program, which shall include the following:

a. Scheduled preventative maintenance and repair of installed equipment in accordance with manufacturers' recommendations.

b. Routine repairs to kitchen appliances, electrical, plumbing and heating equipment.

c. Preventative annual apartment inspections to regularly and consistently ascertain the condition of each apartment unit.

d. Preventative regular inspections of common areas and equipment as well as regular schedules (daily, weekly, monthly, quarterly, etc.) for maintaining the same. This will include maintenance of exterior areas to keep grounds free of graffiti, litter, trash and paper. Parking areas will be maintained in good repair and free from dirt and litter. Common areas such as hallways and laundry rooms will be swept and cleaned regularly and kept free of trash and other debris. Garbage removal will be provided through arrangements with a contractor, consistent with applicable City ordinances. The trash areas will be swept regularly and scrubbed with disinfectant when necessary. Extermination services will be contracted with to provide pest control consistent with high quality apartment management practices.

e. Contract with a landscape firm to maintain the landscaped areas in an attractive and healthy condition.

f. Interior painting and carpet cleaning or replacement in individual apartment units shall be based on need, substantiated by the annual physical inspection, or as occupancy changes, or as the Owner and Affordable Housing Owner or their management agent may otherwise deem necessary.

g. Owner and Affordable Housing Owner will employ a maintenance work order procedure in the Project to adequately document requests for work and promptness within which the work has been completed.

4.2 Disclaimer. Nothing in this Agreement shall make City responsible for making or completing capital repairs or replacements to the Project or the Property or require City to expend funds to make or complete the same.

ARTICLE 5 TERM

5.1 Term of Agreement. This Agreement shall remain in full force and effect for the Term.

ARTICLE 6 DEFAULT AND REMEDIES

6.1 An Event of Default. Each of the following shall constitute an "Event of Default" by the Owner hereunder:

6.1.1 Failure by the Owner or Affordable Housing Owner to duly perform, comply with and observe the conditions of Project approval, conditions, terms, or covenants of the Development Agreement or this Agreement, if such failure remains uncured thirty (30) days after written notice of such failure from the City in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Owner or Affordable Housing Owner fails to commence such cure within such thirty (30) day period or thereafter fails to diligently and continuously proceed with such cure to completion. In no event shall the City be precluded from exercising remedies if an Event of Default is not cured within ninety (90) days after the first notice of default is given or such longer period as may be agreed upon by both parties in writing. If a different period or notice requirement is specified under any other section of this Agreement, then the specific provision shall control.

6.1.2 Failure by Owner and the Affordable Housing Owner to cure any default under Section 2.15 within fifteen (15) business days after written notice of such default by City.

6.1.3 Any representation or warranty contained in this Agreement or in any application, financial statement, certificate, or report submitted to the City by Owner or Affordable Housing Owner proves to have been incorrect in any material respect when made, if such failure remains uncured thirty (30) days after written notice of such failure from City to Owner in the manner provided herein or, with respect to a default that cannot be cured within thirty (30) days, if the Owner and the Affordable Housing Owner fail to commence such cure within such thirty (30) day period or thereafter fail to diligently and continuously proceed with such cure to completion.

6.1.4 A court having jurisdiction shall have made or rendered a decree or order (a) adjudging Owner or Affordable Housing Owner to be bankrupt or insolvent; (b) approving as properly filed a petition seeking reorganization of Owner or Affordable Housing Owner or seeking any arrangement on behalf of the Owner under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or of any state or other jurisdiction which is not dismissed within sixty (60) days after filing; (c) appointing a receiver, trustee, liquidator, or assignee for the benefit of creditors of the Owner or Affordable Housing Owner in bankruptcy or insolvency or for any of its properties which (or who) is not discharged within sixty (60) days after its appointment; or (d) directing the winding up or liquidation of the Owner or Affordable Housing Owner, providing, however, that any such decree or order described in any of the foregoing subsections shall have continued unstayed or undischarged for a period of ninety (90) days.

6.1.5 The Owner or Affordable Housing Owner shall have assigned its assets for the benefit of its creditors or suffered a sequestration or attachment or execution on any substantial part of its property, unless the property so assigned, sequestered, attached, or executed upon shall have been returned or released within ninety (90) days after such event (unless a lesser time period is permitted for cure hereunder) or prior to sale pursuant to such sequestration, attachment, or execution. If the Owner or Affordable Housing Owner is diligently working to obtain a return or

release of the property and the City's interest hereunder is not imminently threatened in the City's reasonable business judgment, then the City shall not declare a default under this subsection.

6.1.6 The Owner or Affordable Housing Owner shall have voluntarily suspended its business for a period of thirty (30) consecutive days or dissolved and a subsequent owner has not assumed the obligations of Owner or Affordable Housing Owner (if applicable) in accordance with this Agreement.

6.1.7 Should any default be declared by any lender under any loan document or deed of trust relating to any loan made in connection with the Project or Property, which loan is secured by a deed of trust or other instrument of record, and is not cured within the applicable cure period, if any, granted in the applicable loan documents.

6.2 Liens.

6.2.1 This Agreement shall be senior in priority to any lien or encumbrance on the Property (other than the Development Agreement) and all liens and encumbrances shall be subordinate and subject to this Agreement, regardless of actual date of recordation. The City shall consider in good faith, reasonable modifications of this Agreement typically required by secured lenders and commonly known as "mortgagee protection" provisions; however, in no event shall any such modification shorten the term of this Agreement or contain or require any subordination of provisions of this Agreement.

6.2.2 Owner and Affordable Housing Owner shall pay and promptly discharge when due, at their cost and expense, all liens, encumbrances and charges upon their respective interests in 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 for the Project, which shall, in any event, be junior and subordinate to this Agreement), 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. Owner and Affordable Housing Owner shall have the right to contest in good faith the validity of any such lien, encumbrance or charge, provided that within ten (10) days after service of a stop notice or ninety (90) days after recording of a mechanic's lien, Owner or Affordable Housing Owner shall deposit with City a bond or other security reasonably satisfactory to City in such amounts as City shall reasonably require, but no more than the amount required to release the lien under California law and provided further that Owner or Affordable Housing Owner shall thereafter diligently proceed to cause such lien, encumbrance or charge to be removed and discharged, and shall, in any event, cause such lien, encumbrance or charge to be removed or discharged not later than sixty (60) days prior to any foreclosure sale. If Owner or Affordable Housing Owner shall fail either to remove and discharge any such lien, encumbrance or charge or to

deposit security in accordance with the preceding sentence, if applicable, then, in addition to any other right or remedy of City, City may, but shall not be obligated to, discharge the same, without inquiring into the validity of such lien, encumbrance or charge nor into the existence of any defense or offset thereto, either by paying the amount claimed to be due, or by procuring the discharge of such lien, encumbrance or charge by depositing in a court a bond or the amount or otherwise giving security for such claim, in such manner as is or may be prescribed by law. Owner and Affordable Housing Owner shall, immediately upon written demand thereof by City, pay to City an amount equal to all costs and expenses incurred by City in connection with the exercise by City of the foregoing right to discharge any such lien, encumbrance or charge. To the extent not paid, all costs and expenses paid by the City shall be a lien on the Property pursuant to Civil Code Section 2881.

6.3 Costs of Enforcement. If any Event of Default occurs, and is continuing, City may employ an attorney or attorneys to protect its rights hereunder. Subject to California Civil Code Section 1717, the non-prevailing party promises to pay to the prevailing party, on demand, the fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby including without limitation, recording fees, receiver's fees and expenses, and all other expenses of whatever kind or nature, incurred by the prevailing party in connection with the enforcement of this Agreement, whether or not such enforcement includes the filing of a lawsuit.

6.4 Enforcement of this Agreement; Remedies. Upon the occurrence of any Event of Default by Owner or Affordable Housing Owner, City shall be entitled to enforce performance of any obligation of Owner or Affordable Housing Owner arising under this Agreement and to exercise all rights and powers under this Agreement or any law now or hereafter in force. Additionally, without limiting any of City's other rights or remedies, upon any leasing of a particular Affordable Unit in violation of this Agreement, then Affordable Housing Owner shall pay the City a single fee of \$10 (which shall increase by \$2 every five (5) years) per day until the violation has been cured (it being understood that if the Affordable Unit is unavailable due to material damage or destruction, Section 2.8.6 above shall govern). Additionally, City shall be entitled to recover from Affordable Housing Owner and Owner, in addition to enforcement costs and any other damages to which City may be entitled, all rent charged by Owner in excess of the rental amounts permitted under this Agreement, with interest thereon from the date paid to Affordable Housing Owner until the date paid by Affordable Housing Owner to City at the lesser of eight percent (8%) per annum or the maximum rate permitted by law. Affordable Housing Owner and Owner stipulate, acknowledge and agree that the amounts described herein are reasonable estimates of the minimum damages incurred by the City and public as a result of violation(s), and that actual damage would be impractical or impossible to determine with accuracy. No remedy herein conferred upon or reserved to City is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this Agreement to the City may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the City, and the City may pursue inconsistent remedies. The

City shall have the right to mandamus or other suit, action or proceeding at law or in equity to require the Owner and the Affordable Housing Owner to perform its obligations and covenants under this Agreement or to enjoin acts or things which may be unlawful or in violation of the provisions hereof.

ARTICLE 7 GENERAL PROVISIONS

7.1 Notices. All notices, certificates or other communications required or permitted hereunder shall be in writing and shall be delivered by certified mail, postage prepaid, or by reputable overnight messenger service, addressed as follows:

If to the City:

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

If to the Owner or the Affordable Housing Owner:

ESSEX MOORPARK OWNER, L.P.
Attention: John D. Eudy
1100 Park Place, Suite 200
San Mateo, CA 94403

With required copies to:

ESSEX PORTFOLIO, L.P.
Attention: Jordan Ritter
1100 Park Place, Suite 200
San Mateo, CA 94403

and

ESSEX MOORPARK OWNER, L.P.
Attention: Bob Linder
17541 Derian Avenue, Suite 110
Irvine, CA 92614

Either party may change its address for notices by a written notice given in accordance with this Section. Notices shall be deemed given on the date of actual delivery or refusal to accept delivery as shown on the return receipt (if sent by certified mail), or one (1) business day after delivery to the messenger service (if sent by overnight messenger).

7.2 Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third persons, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between the City and the Owner or the City and the

Affordable Housing Owner, or the City and any agents, employees or contractors of the Owner or Affordable Housing Owner, and the Owner and the Affordable Housing Owner shall each at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it or its agents, or both, perform the services required of it by the terms of this Agreement for the operation of the Project. The Owner and the Affordable Housing Owner have and hereby retain the right to exercise full control of employment, direction, compensation and discharge of all persons assisting in the performance of services hereunder. In regards to the on-site operation of the Project, the Owner and the Affordable Housing Owner shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other laws and regulations governing such matters. The Owner and the Affordable Housing Owner each agrees to be solely responsible for its own acts and those of its agents and employees.

7.3 No Claims. Nothing contained in this Agreement shall create or justify any claim against the City by any person the Owner or the Affordable Housing Owner may have employed or with whom the Owner or the Affordable Housing Owner may have contracted relative to the purchase of materials, supplies or equipment, or the furnishing or the performance of any work or services with respect to the operation of the Project or the Property.

7.4 [INTENTIONALLY OMITTED]

7.5 Limitation of Liability.

7.5.1 No member, official, employee, agent or attorney of the City shall be personally liable to the Owner, or any successor in interest, or the Affordable Housing Owner, or any successor in interest, in the event of any default or breach by the City or for any amount which may become from the City or successor or on any City obligation under the terms of this Agreement. No member, official, employee, attorney, partner or consultant of the Owner or the Affordable Housing Owner shall be personally liable to City in the event of any default or breach by Owner or for any amount which may become due to City or its successor, or on any obligations under the terms of this Agreement or Development Agreement.

7.5.2 Notwithstanding any other provision or obligation to the contrary contained in this Agreement, (i) the liability of Owner and Affordable Housing Owner under this Agreement to any person or entity, including, but not limited to, City and its successors and assigns, is limited to their interests in the Project and the Property, and such persons and entities shall look exclusively thereto, or to such other security as may from time to time be given for the payment of obligations arising out of this Agreement or any other agreement securing the obligations of Owner or Affordable Housing Owner, under this Agreement, (ii) from and after the date of this Agreement, no deficiency or other personal judgment, nor any order or decree of specific performance (other than pertaining to this Agreement), shall be rendered against Owner or Affordable Housing Owner, or their assets (other than their interests in the Project, and this Agreement), in any action or proceeding arising out of this Agreement.

7.6 Force Majeure. Whenever a party required to perform an act under this Agreement by a certain time, said time shall be deemed extended so as to take into account events of force majeure. As used herein "force majeure" shall mean a delay in performance hereunder due to acts of God, fire, earthquake, flood, extreme weather conditions, explosions, war, invasion, insurrection, riot, mob violence, sabotage, acts of terrorism, vandalism, malicious mischief, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, third party litigation, requisition, governmental restrictions including, without limitation, inability or delay in obtaining government consents or permits, laws or orders of governmental, civil, military or naval authorities, or any other cause, whether similar or dissimilar to the foregoing, not within the party's control, other than lack of or inability to procure monies to fulfill its commitments or obligations under this Agreement.

7.7 Indemnification of City. Except with respect to claims that arise solely from negligence, fraud or willful misconduct by the City or its officers, employees or agents, Owner and the Affordable Housing Owner shall defend, indemnify and hold City harmless from and against any and all claims, losses, damages, liabilities, costs and expenses arising directly or indirectly from, or relating directly or indirectly to: (i) any failure by Owner or Affordable Housing Owner to comply with the terms of this condemnation Agreement; (ii) the construction, maintenance, alteration or operation of the Project; (iii) any negligence or willful misconduct by Owner, Affordable Housing Owner or any of their employees, agents, contractors, licensees, invitees or tenants on the Project or the Property.

7.8 Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise or failure to exercise one or more of such rights or remedies by either party shall not preclude the exercise by it, at the same time or different times, of any right or remedy for the same default or any other default by the other party. No waiver of any default or breach hereunder shall be implied from any omission to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver, and such waiver shall be operative only for the time and to the extent therein stated. Waivers of any covenant, term, or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the City to or of any act by the Owner or Affordable Housing Owner requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act. The exercise of any right, power, or remedy shall in no event constitute a cure or a waiver of any default under this Agreement, nor shall it invalidate any act done pursuant to notice of default, or prejudice the City in the exercise of any right, power, or remedy hereunder.

7.9 Enforcement; Waiver. The City may take whatever action at law or in equity as may be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the Owner or Affordable Housing Owner under this Agreement. No delay or omission to exercise any right or power accruing upon any

default shall impair any such right or power or shall be construed to be a waiver of such right or power, but any such right or power may be exercised from time to time and as often as City may deem expedient. In order to entitle the City to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required or required by law to be given.

7.10 Severability. If any term, provision, covenant or condition of this Agreement is held in a final disposition by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall 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.

7.11 Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees and costs incurred in such action (including, without limitation, all reasonable legal fees incurred in any appeal or in any action to enforce any resulting judgment).

7.12 Binding Upon Successors; Assignment by City. This Agreement, and the exhibits attached hereto, shall run with the land and be binding upon and inure to the benefit of the successors and assigns of each of the parties, and successors in interest to the Project or any portion thereof or interest therein. Any reference in this Agreement to Owner or Affordable Housing Owner shall be deemed to apply to any successor or assign or successor-in-interest of such party who has acquired any portion of or interest in the Project. Without limiting the foregoing, City may assign this Agreement to the Area Housing Authority of the County of Ventura or any other housing authority created by City or in which City is a member.

7.13 Binding Effect; Successors and Assigns. Owner and Affordable Housing Owner each covenant and agree for itself, and its successors and assigns and every successor in interest to any portion of or interest in the Project that it and its successors, assigns and successors in interest shall comply with all of the terms, provisions, easements, conditions, covenants, restrictions, liens, and servitudes set forth in this Agreement. This Agreement is intended to bind the Project and Property "run with the land".

7.14 Transfers. Owner shall provide the City with prompt notice of any conveyance of Affordable Units to the Affordable Housing Owner, with a copy of the applicable deed. Owner shall provide the City with at least thirty (30) days' prior written notice of any sale or transfer of the Project or the Property or any portion thereof. The Affordable Units shall at all times remain owned by a single entity. Written notice shall be given to the City of any transfer, but no consent of the City shall be required for any transfer of Affordable Units to an entity of which the Essex Portfolio, L.P. or any affiliate thereof, directly or indirectly, owns or controls the entity to which the transfer will be made, provided that the City is given a copy of the Assignment and Assumption

Agreement and organizational documents that prove the entity is such an affiliate of Essex Portfolio, L.P.

7.15 Time of the Essence. In all matters under this Agreement, time is of the essence.

7.16 Complete Understanding of the Parties. The Project Approvals and this Agreement constitute the entire understanding and agreement of the parties with respect to the matters described herein and therein.

7.17 Construction and Interpretation of Agreement. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, notwithstanding Civil Code Section 1654, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.

7.18 Controlling Law; Venue. This Agreement shall be deemed to be entered into in California and shall be controlled and interpreted by the internal laws of California, without regard to conflict of law provisions, except to the extent federal law applies. Venue for any action brought under this Agreement will be in the Superior Court for the County of Ventura, California or in the United States District Court for the Central District of California. Owner and Affordable Housing Owner each hereby accepts for itself and in respect to its property, generally and unconditionally, the non-exclusive jurisdiction of the foregoing courts. Owner and Affordable Housing Owner each irrevocably consents to the service of process in any action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Owner and Affordable Housing Owner at its address for notices pursuant to this Agreement. Nothing contained herein shall affect the right of the City to serve process in any other manner permitted by law.

7.19 Hazardous Materials.

7.19.1 Definitions. The following special definitions shall apply for the purposes of this Section:

(a) "Hazardous Materials" shall mean:

(1) any "hazardous substance" as defined in Section 101(14) of CERCLA (42 U.S.C. Section 9601(14)) or Section 25281(d) or 25316 of the California Health and Safety Code at such time;

(2) any "hazardous water," "infectious waste" or "hazardous material" as defined in Section 25117, 25117.5 or 25501(j) of the California Health and Safety Code at such time;

(3) any other waste, substance or material designated or regulated in any way as "toxic" or "hazardous" in the RCRA (42 U.S.C. Section 6901 et seq.), CERCLA Federal Water Pollution Control Act (33 U.S.C. Section 1521 et seq.), Safe Drinking Water Act (42 U.S.C. Section 3000 (f) et seq.), Clean Air Act (42 U.S.C. Section 7401 et seq.), California Health and Safety Code (Section 25100 et seq., Section 3900 et seq.), or California Water Code (Section 1300 et seq.) at such time; and

(4) Any additional wastes, substances or material which at such time are classified, considered or regulated as hazardous or toxic under any other present or future environmental or other similar laws relating to the Project or the Property.

(b) "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to Hazardous Materials, in, on or under the Project, the Property of any portion thereof.

7.19.2 Certain Hazardous Materials Covenants and Agreements. The Owner and Affordable Housing Owner hereby agree that:

(a) Neither shall knowingly permit the Project, the Property or any portion thereof to be a site for the use, generation, treatment, manufacture, storage, disposal or transportation of Hazardous Materials or otherwise knowingly permit the presence of Hazardous Materials in, on or under the Project or the Property. For the purposes of this Section only, the term "Hazardous Materials" shall not include: (1) construction materials, gardening materials, household products, office supply products, or janitorial supply products customarily used in the construction, ownership, operation, maintenance, or management of residential developments or associated buildings and grounds, or typically used in residential activities, in a manner typical of other residential developments which are comparable to the Project; or (2) certain substances which may contain chemicals listed by the State of California pursuant to Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Project, including (without limitation) alcoholic beverages, aspirin, tobacco products, and saccharine.

(b) Each shall keep and maintain its interest in Project and the Property and each portion thereof in compliance with, and shall not cause or permit its interest in the Project, the Property or any portion thereof to be in violation of, any Hazardous Materials Laws.

(c) Upon receiving actual knowledge of the same, the Owner or Affordable Housing Owner shall immediately advise the City in writing of: (1) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted,

completed or threatened against the Owner or the Project or the Property pursuant to any applicable Hazardous Materials Laws; (2) any and all claims made or threatened by any third party against the Owner or Affordable Housing Owner or the Project or the Property relating to damage, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in the foregoing clause (1) and this clause (2) are hereinafter referred to as "Hazardous Materials Claims"); (3) the presence of any Hazardous Materials in, on or under the Project or the Property; or (4) the Owner's or the Affordable Housing Owner's discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Project classified as "borderzone property" under the provisions of California Health and Safety Code, Section 25220 et seq., or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Project or the Property under any Hazardous Materials Laws.

7.19.3 Indemnity. Owner and Affordable Housing Owner hereby agree to indemnify, protect, hold harmless and defend (by counsel reasonably approved by the City) the City, and its City Council members, officers, employees, contractors, agents and attorneys from and against any and all claims, losses, damages, liabilities, fines, penalties, charges, administrative and judicial proceedings and orders, judgments, remedial action requirements, enforcement actions of any kind, and all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses (collectively, a "Loss"), arising directly or indirectly, in whole or in part, out of (1) the failure of the Owner or the Affordable Housing Owner, as applicable, or any other person or entity occupying or present on their respective interest in the Project or Property, to comply with any Hazardous Materials Law relating in any way whatsoever to the handling, treatment, presence, removal, storage, decontamination, cleanup, transportation or disposal of Hazardous Materials into, on, under or from the Project or the Property; (2) the presence in, on or under its interest in the Project or the Property of any Hazardous Materials or any releases or discharges of any Hazardous Materials into, on, under or from its interest in the Project or the Property; or (3) any activity carried on or undertaken on its interest in the Project or the Property during its ownership thereof, whether by the Owner or the Affordable Housing Owner or any employees, agents, contractors or subcontractors, or any third persons at any time occupying or present on the Project or the Property, in connection with the handling, treatment, removal, storage, decontamination, cleanup, transport or disposal of any Hazardous Materials at any time located or present on or under the Project or the Property. The foregoing indemnity shall further apply to any residual contamination on or under the Project or the Property, or affecting any natural resources, and to any contamination of any property or natural resources arising in connection with the generation, use, handling, treatment, storage, transport or disposal of any such Hazardous Materials on, under, or from the Project or the Property, and irrespective of whether any of such activities were or will be undertaken in accordance with Hazardous Materials Laws. However, the foregoing indemnity shall not extend to the portion of any Loss arising from the gross negligence, fraud or willful misconduct of the City or anyone for whose actions the City is legally liable. This Section shall survive termination of this Agreement.

7.19.4 No Limitation. Owner and Affordable Housing Owner hereby acknowledge and agree that their duties, obligations and liabilities under this Agreement are in no way limited or otherwise affected by any information the City may have concerning the Project or the Property and/or the presence within the Project or the Property of any Hazardous Materials, whether the City obtained such information from Owner or Affordable Housing Owner or from its own investigations.

7.20 Insurance Requirements.

7.20.1 Required Coverage. Owner and Affordable Housing Owner shall maintain and keep in force, at their sole cost and expense, the following insurance for their respective interests in the Project, provided, however, that a Contractor's liability policy may be used during construction provided it complies with all terms and conditions of this Section:

(a) Comprehensive general liability insurance with limits not less than two million dollars (\$2,000,000) for each occurrence, combined single limit for bodily injury and property damage, including coverages for contractual liability, personal injury, broad form property damage, products and completed operations. Beginning on the fifth anniversary date of the recordation of this Agreement, and thereafter every five (5) years, the policy limits shall be increased by ten percent (10%) of the then-current limit.

(b) Comprehensive automobile liability insurance with limits not less than \$2,000,000 for each occurrence, combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired vehicles. Beginning on the fifth anniversary date of the recordation of this Agreement, and thereafter every five (5) years, the policy limits shall be increased by ten percent (10%) of the then-current limit.

(c) Worker's compensation insurance, fidelity bonds and/or such other insurance coverage which is ordinarily and customarily maintained on like kind and sized apartment projects within the City.

(d) A policy or policies of insurance against loss or damage to the Project resulting from fire, windstorm, hail, lightning, vandalism, malicious mischief, and such other perils ordinarily included in extended coverage casualty insurance policies. In addition, if Owner or Affordable Housing Owner carries coverage voluntarily for additional causes (such as earthquake, riot, civil commotion or other), such coverage shall be treated in all respects as the policy or policies required to be kept under this paragraph (d) for so long as it continues to voluntarily carry such coverage. All insurance hereunder, except earthquake insurance, shall be maintained in an amount not less than one hundred percent (100%) of the Full Insurable Value of the Project as defined below (such value to include amounts spent for construction of the Project, architectural and engineering fees, and inspection and supervision). "Full Insurable Value of the Project" shall mean the actual replacement cost excluding the cost of excavation, foundation and footings below the ground level of the Project. To ascertain

the amount of coverage required, Owner and Affordable Housing Owner shall cause the Full Insurable Value to be determined from time to time, but in no event less often than once each five (5) years, by appraisal by the insurer or by any appraiser mutually acceptable to City, Owner and Affordable Housing Owner; except that no such appraisals shall be required if the policy is written on a "replacement cost" basis.

7.20.2 General Requirements. The insurance required by this Section shall be provided under an occurrence form, and Owner and Affordable Housing Owner shall maintain such coverage continuously so long as this Agreement is in force. Should any of the required insurance be provided under a form of coverage that includes an annual aggregate limit or provides that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be one and one-half times the occurrence limits specified above. All policies shall be with an insurance carrier licensed and admitted to do business in California and rated in Best's Insurance Guide, or any successor thereto (or if there be none, an organization having a national reputation) as having a "Best's Rating" of "A" and a "Financial Size Category" of at least "VII" or if such ratings are not then in effect, the equivalent thereof.

7.20.3 Additional Insured. The City shall be named as an additional insured on the general liability insurance covering the Project and the Property with an endorsement form as approved by the City Manager or his/her designee. Comprehensive general liability policies shall also be endorsed to name as additional insureds the City, and its City Council members, officers, agents and employees. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, reduction in coverage, or intent not to renew to the address established for notices to the City pursuant to Section 7.1 of this Agreement.

7.20.4 Certificates of Insurance. Upon the City's request at any time during the Term of this Agreement, Owner and Affordable Housing Owner shall provide certificates of insurance, in form and with insurers reasonably acceptable to the City, evidencing compliance with the requirements of this Section, and shall provide complete copies of such insurance policies, including a separate endorsement approved by the City Manager or his/her designee, as indicated in Section 7.20.3, naming the City as an additional insured.

7.21 Burden and Benefit. City and Owner and Affordable Housing Owner hereby declare their understanding and intent of the burden of the covenants set forth herein touching and concerning the Project and the Property.

7.22 Amendments. Changes and modifications to this Agreement shall be made only upon the written mutual consent of the Parties. However, no changes shall be made to this Agreement which would adversely affect any bonds issued under this Project without the written consent of all appropriate parties with respect to any bond issuance.

7.23 No Third Party Beneficiaries. This Agreement shall not benefit or be enforceable by any person, or firm, or corporation, public or private, except the City, Owner, Affordable Housing Owner and their respective successors and assigns.

7.24 Counterparts. This Agreement may be executed in counterparts, which together will be one agreement.

7.25 Assessment Districts; Covenant and Waivers. Owner and Affordable Housing Owner agree to cast affirmative ballots for the increase of any assessment for existing assessment districts for the maintenance of parking and median landscaping, street lighting and parks conferring special benefits, and for the formation of any new assessment district for such purposes, in order to supplement then-existing assessments upon properties within the Project. Owner and Affordable Housing Owner hereby waive any right they or either of them may have to contest or protest such assessments or any assessment increases. In the event that any such assessment district has insufficient funds for its purposes, then Owner and Affordable Housing Owner shall pay the funds that the assessment district requires to the assessment district within five (5) business days after written demand from the assessment district from time to time.

ARTICLE 8 INCORPORATION OF CERTAIN DEVELOPMENT AGREEMENT PROVISIONS

The term of the Development Agreement is for seven (7) years, while the term of this Agreement is much longer (as described in the definition of "Term" in Section 1.1 above). The following provisions of the Development Agreement are hereby incorporated herein to clarify that they survive the expiration of the Development Agreement (but, except for Sections 8.1, 8.4 and 8.7, such provisions will not survive any earlier termination of the Development Agreement due to a default by the "Developer" thereunder) and continue until the expiration (or earlier termination) of this Agreement, it being understood that all of the rights and benefits of Owner and Affordable Housing Owner under the following (except for obligations thereunder arising prior to termination and Sections 8.1, 8.4 and 8.7) shall terminate upon any early termination of the Development Agreement due to a default by Owner or Affordable Housing Owner thereunder.

8.1 No Other Separate Conveyance of Affordable Units. After the initial conveyance by Owner to Affordable Housing Owner of Affordable Units, Owner and the Affordable Housing Owner and their successors in interest shall not convey their respective portions of the Property separately, but shall only convey them concurrently and to the same purchaser, only to a purchaser reasonably approved in writing by City (which will consider the reputation and experience of the purchaser in owning and operating affordable rental units). As a condition to the initial conveyance by Owner to Affordable Housing Owner of Affordable Units, Owner and Affordable Housing Owner shall execute, acknowledge and record (i) a separate agreement (i.e., a covenant and agreement to hold property as one parcel) imposing the foregoing restriction on the Property, which shall be subject to the written approval of City, and (ii) "conditions,

covenants and restrictions" for the Project ("CC&R's"), which shall also be subject to the written approval of City. Such separate agreement and CC&R's shall be senior to any and all deeds of trust and other liens (except property taxes and assessments not yet due).

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

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

8.2.2 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 the Development Agreement.

8.2.3 Building Standards. All construction on the Property shall adhere to all City building codes in effect at the time the plan check or permit is approved per Title 15 of the Moorpark Municipal Code and to any federal or state building requirements that are then in effect (collectively "the Building Codes").

8.2.4 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 the Development Agreement.

8.3 Densities Allowed for Development. Owner and Affordable Housing Owner agree 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, Government Code Sections 65915 through 65917.5 or both; neither Owner nor Affordable Housing Owner shall be entitled to further density bonuses or incentives or concessions and further agrees that its execution of and compliance with this Agreement is in consideration for the density bonus obtained through the Project Approvals that is greater than would otherwise be available. Residential Planned Development Permit No. 2012-02, including the special conditions that incorporate and include all of the requirements set forth in this Agreement are part of the Project conditions of approval and not merely contractual in nature.

8.4 Assessment Districts. Prior to issuance of a Zoning Clearance for the first building permit or the approval of any final map for the Project: (a) Owner and Affordable Housing Owner shall pay the City a single Five Thousand Dollar (\$5,000) Assessment District Formation Fee; and (b) either two Assessment Districts (one fully funded and a second "back-up" district) or one Assessment District containing two zones (one zone to be fully funded and the other to be a back up zone), as determined by the City at the City's discretion, shall be formed that includes the Property. The first District out of the two Districts or the first zone of the one District, whichever is

applicable, shall be for the purposes of funding future costs for the maintenance landscaping and irrigation of the landscaped area above the retaining wall along the southern perimeter of the Property and the maintenance of the storm water quality basin and drainage improvements, including basin landscaping and irrigation. The second District or second zone of the District, whichever is applicable, shall be for the maintenance of parkway landscaping on Casey Road and Walnut Canyon Road and Project slopes adjacent to the Walnut Canyon School, the maintenance of the storm water basin access drive and the emergency access drive. It shall be the intent of the City to approve the required assessment each year, but to only levy that portion of the assessment necessary to recover any past City costs or any anticipated City costs for the that fiscal year. The City shall administer the annual renewal of the Assessment District or Districts, and any costs related to such administration shall be charged to the fund established for such Assessment District revenues and expenses. Owner and Affordable Housing Owner agree to cast affirmative ballots for the establishment of both Assessment Districts, or both zones of the one District, as applicable, and for annual increases in the assessments thereunder, for the purposes specified in this subsection. Owner and Affordable Housing Owner hereby waive any right they may have to contest or protest any such assessments or assessment increases. In the event that any such Assessment District has insufficient funds for its purposes, then Owner or Affordable Housing Owner shall pay the funds required to the Assessment District within five (5) business days after written demand from the Assessment District from time to time. Owner and Affordable Housing Owner also agree to add this language to any Regulatory Agreement as part of the sale of any bonds issued by the City for the Project.

8.5 Fee Protest Waiver. Owner and Affordable Housing Owner agree that any fees and payments pursuant to the Development Agreement, this Agreement and for RPD 2012-02 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.

8.6 Required Tenant and Guest Parking. Owner and Affordable Housing Owner agree to provide a total of at least 2.00 parking spaces per unit on site. Two parking spaces shall be designated and reserved for each of the 2-bedroom and 3-bedroom units, and one space shall be designated and reserved for each of the 1-bedroom units, with the remainder of the spaces available for guest parking. At least one of the parking spaces designated and reserved for each of the units shall be in a garage or covered carport. There shall be no extra charges for required parking for any units (whether or not they are Affordable Units). Owner and Affordable Housing Owner shall only be required to provide ninety-four (94) guest parking spaces.

8.7 City Ability to Modify. Owner and Affordable Housing Owner acknowledge the City's ability to modify the development standards and to change the General Plan designation and zoning of the Property upon the termination or expiration of the Development Agreement (if the Project has not been built), and Developer hereby waives any rights they might otherwise have to seek judicial review of such City actions to change the development standards, General Plan designation and zoning to those

development standards and density of permitted development to that in existence prior to the approval of General Plan Amendment No. 2004-05 ("GPA 2004-05") and Zone Change No. 2004-04 ("ZC 2004-04").

8.8 Indemnity. Owner and Affordable Housing Owner will defend, indemnify and hold City harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from any activity by Owner or Affordable Housing Owner or the contractors of either of them.

8.9 Storm Water/Flood Detention Basin. City agrees that Owner and Affordable Housing Owner may use the storm water/flood detention basin located on the City Property and depicted on Exhibit No. 5 for storm water/retention purposes for the Project, and City shall execute and deliver a revocable license agreement to Owner and Affordable Housing Owner to that effect; however, City may elect by written notice to Owner and Affordable Housing Owner to relocate said detention basin and any service road and secondary access road located on the City Property at any time, and Owner and Affordable Housing Owner shall reimburse or pay City for the costs of such relocation within ten (10) business days after written demand from City from time to time describing such costs. Owner and Affordable Housing Owner shall promptly provide a bond acceptable to City in the amount of such costs, as projected in good faith by City, to ensure payment of the costs, and every two (2) years the amount of the bond shall be increased (by amendment or by a replacement bond) by the percentage increase over the applicable two year period in the Caltrans Highway Bid Price Index for Selected California Construction Items, as determined in good faith by the City Manager.

WHEREFORE, the parties have executed this Agreement as of the date first-above written.

CITY:

CITY OF MOORPARK

By: _____

Print Name: _____

Title: _____

OWNER:

**ESSEX MOORPARK OWNER, L.P.,
a California limited partnership**

**By: Essex Moorpark GP, L.P.,
a California limited partnership,
its general partner**

**By: Essex Management
Corporation,
a California corporation,
its general partner**

**By: _____
Print Name: _____
Title: _____**

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 Ventura)

On _____, before me, _____,
(insert name and title of the officer)

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 Ventura)

On _____, before me, _____,
(insert name and title of the officer)

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 NO. 1
TO AFFORDABLE HOUSING AGREEMENT

LEGAL DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF VENTURA, AND IS DESCRIBED AS FOLLOWS:

ALL of Parcel 213 of in that certain Lot Line Adjustment No. 2005-04 in the City of Moorpark, County of Ventura, State of California, recorded July 21, 2005 as Document No. 20050721-0178764 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi, as per map filed in Book 5, Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder and a portion of Lot 4, Tract No. 3 as 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 filed in Book 5, Page 37 of said Miscellaneous Records (maps).

TOGETHER WITH that portion of Parcel IA of in that certain Lot Line Adjustment No. 200503 in the City of Moorpark, County of Ventura, State of California, recorded May 3, 2005 as Document No. 20050503-0108315 or official records in the Office of the County Recorder of said County, being a portion of Lot "T", Tract No. "L", Rancho Simi as per map filed in Book 5 Page 5 of Miscellaneous Records (Maps) in the Office of said County Recorder, lying northerly of the following described line;

BEGINNING at a point in east line of Parcel IA of said Lot Line Adjustment No. 2005-03, distant thereon North 292.97 feet from the southeasterly corner thereof;

1st Thence, departing said east line South 89°38'32"West 752.05 feet;

2nd Thence, South 27°20'34"West 36.75 feet;

3rd Thence, South 89°03'54"West 293.78 feet to a point in the west line of said Parcel 1A.

**EXHIBIT NO. 2
TO AFFORDABLE HOUSING AGREEMENT**

**TYPE OF UNIT, NUMBER OF UNITS,
HOUSEHOLD SIZE ADJUSTMENT AND UTILITY ALLOWANCE;
LOCATIONS OF AFFORDABLE UNITS**

Very Low Income

<u>Type of Unit</u>	<u>Number of Units</u>	<u>Household Size Adjustment</u>	<u>Utility Allowance</u>
1-br	8	2 persons	\$156
2-br/2 bath	7	3 persons	\$175
3-br	1	4 persons	\$199
Total	16		

Low Income

<u>Type of Unit</u>	<u>Number of Units</u>	<u>Household Size Adjustment</u>	<u>Utility Allowance</u>
1-br	11	2 persons	\$156
2-br/2 bath	12	3 persons	\$175
3-br	1	4 persons	\$199
Total	24		

Moderate Income

(but must instead be Low Income when tax credit and/or tax exempt bond laws apply to the Project)

<u>Type of Unit</u>	<u>Number of Units</u>	<u>Household Size Adjustment</u>	<u>Utility Allowance</u>
1-br	0	2 persons	\$156
2-br/2 bath	5	3 persons	\$175
3-br	5	4 persons	\$199
Total	10		

The above Adjustment for Household Size is intended to provide a single rental rate applicable to eligible tenants for each type of unit, and, therefore, is applied regardless of actual household size. The Affordable Housing Owner may not charge additional rent based on a larger actual household size.

Illustration: For example, the maximum rent for a Very Low Income Household renting a 2-bedroom unit would be calculated as follows: 30% x 50% x the Ventura County median income for a household of three divided by 12, less the utility allowance.

Illustration: For example, the maximum rent for a Low Income Household renting a 2-bedroom unit would be calculated as follows: $30\% \times 60\% \times$ the Ventura County median income for a household of three divided by 12, less the utility allowance.

Illustration: For example, the maximum rent for a Moderate Income Household renting a 2-bedroom unit would be calculated as follows: $30\% \times 110\% \times$ the Ventura County median income for a household of three divided by 12, less the utility allowance.

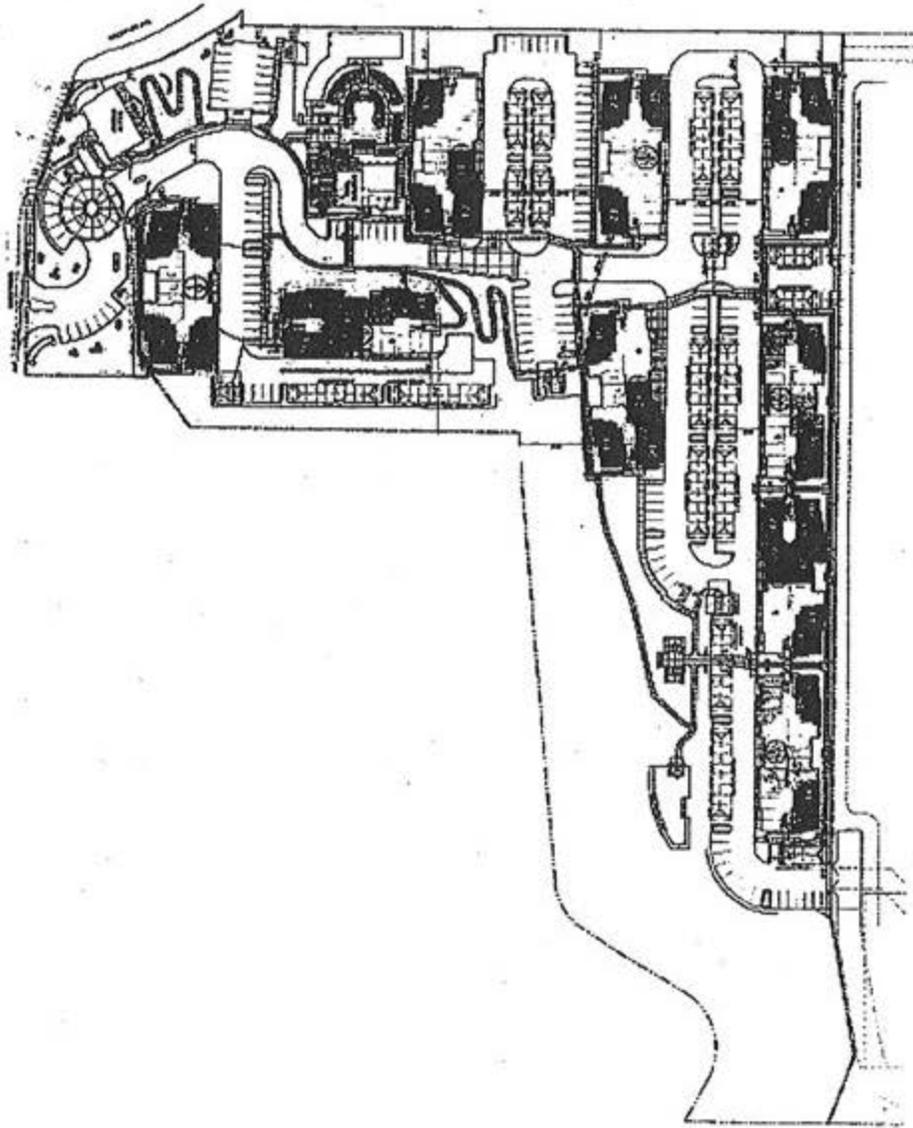
Utility Allowances will be adjusted annually using the most current "Allowances for Tenant Furnished Utilities and Other Services" (form HUD-52667) based on Apartment/Walk Up unit type as posted and updated annually by the Area Housing Authority of the County of Ventura based on the following appliances/utilities to be provided to the units:

Natural Gas – Heating, cooking, water heating

Water, Sewer, Trash, Other Electric allowance (for lights and other electric uses)

Locations of Affordable Units (Including Handicapped-Compliant Units)

The Affordable Units (including handicapped-compliant units) shall be located as shown on the site plan attached hereto.



UNIT NO.	UNIT TYPE	APPROX. MARKET RATE	APPROX. UNIT PRICE	APPROX. UNIT AREA	APPROX. UNIT PRICE PER SQ. FT.
101	1 BR	1,200	100,000	800	125
102	1 BR	1,200	100,000	800	125
103	1 BR	1,200	100,000	800	125
104	1 BR	1,200	100,000	800	125
105	1 BR	1,200	100,000	800	125
106	1 BR	1,200	100,000	800	125
107	1 BR	1,200	100,000	800	125
108	1 BR	1,200	100,000	800	125
109	1 BR	1,200	100,000	800	125
110	1 BR	1,200	100,000	800	125
111	1 BR	1,200	100,000	800	125
112	1 BR	1,200	100,000	800	125
113	1 BR	1,200	100,000	800	125
114	1 BR	1,200	100,000	800	125
115	1 BR	1,200	100,000	800	125
116	1 BR	1,200	100,000	800	125
117	1 BR	1,200	100,000	800	125
118	1 BR	1,200	100,000	800	125
119	1 BR	1,200	100,000	800	125
120	1 BR	1,200	100,000	800	125
121	1 BR	1,200	100,000	800	125
122	1 BR	1,200	100,000	800	125
123	1 BR	1,200	100,000	800	125
124	1 BR	1,200	100,000	800	125
125	1 BR	1,200	100,000	800	125
126	1 BR	1,200	100,000	800	125
127	1 BR	1,200	100,000	800	125
128	1 BR	1,200	100,000	800	125
129	1 BR	1,200	100,000	800	125
130	1 BR	1,200	100,000	800	125
131	1 BR	1,200	100,000	800	125
132	1 BR	1,200	100,000	800	125
133	1 BR	1,200	100,000	800	125
134	1 BR	1,200	100,000	800	125
135	1 BR	1,200	100,000	800	125
136	1 BR	1,200	100,000	800	125
137	1 BR	1,200	100,000	800	125
138	1 BR	1,200	100,000	800	125
139	1 BR	1,200	100,000	800	125
140	1 BR	1,200	100,000	800	125
141	1 BR	1,200	100,000	800	125
142	1 BR	1,200	100,000	800	125
143	1 BR	1,200	100,000	800	125
144	1 BR	1,200	100,000	800	125
145	1 BR	1,200	100,000	800	125
146	1 BR	1,200	100,000	800	125
147	1 BR	1,200	100,000	800	125
148	1 BR	1,200	100,000	800	125
149	1 BR	1,200	100,000	800	125
150	1 BR	1,200	100,000	800	125
151	1 BR	1,200	100,000	800	125
152	1 BR	1,200	100,000	800	125
153	1 BR	1,200	100,000	800	125
154	1 BR	1,200	100,000	800	125
155	1 BR	1,200	100,000	800	125
156	1 BR	1,200	100,000	800	125
157	1 BR	1,200	100,000	800	125
158	1 BR	1,200	100,000	800	125
159	1 BR	1,200	100,000	800	125
160	1 BR	1,200	100,000	800	125
161	1 BR	1,200	100,000	800	125
162	1 BR	1,200	100,000	800	125
163	1 BR	1,200	100,000	800	125
164	1 BR	1,200	100,000	800	125
165	1 BR	1,200	100,000	800	125
166	1 BR	1,200	100,000	800	125
167	1 BR	1,200	100,000	800	125
168	1 BR	1,200	100,000	800	125
169	1 BR	1,200	100,000	800	125
170	1 BR	1,200	100,000	800	125
171	1 BR	1,200	100,000	800	125
172	1 BR	1,200	100,000	800	125
173	1 BR	1,200	100,000	800	125
174	1 BR	1,200	100,000	800	125
175	1 BR	1,200	100,000	800	125
176	1 BR	1,200	100,000	800	125
177	1 BR	1,200	100,000	800	125
178	1 BR	1,200	100,000	800	125
179	1 BR	1,200	100,000	800	125
180	1 BR	1,200	100,000	800	125
181	1 BR	1,200	100,000	800	125
182	1 BR	1,200	100,000	800	125
183	1 BR	1,200	100,000	800	125
184	1 BR	1,200	100,000	800	125
185	1 BR	1,200	100,000	800	125
186	1 BR	1,200	100,000	800	125
187	1 BR	1,200	100,000	800	125
188	1 BR	1,200	100,000	800	125
189	1 BR	1,200	100,000	800	125
190	1 BR	1,200	100,000	800	125
191	1 BR	1,200	100,000	800	125
192	1 BR	1,200	100,000	800	125
193	1 BR	1,200	100,000	800	125
194	1 BR	1,200	100,000	800	125
195	1 BR	1,200	100,000	800	125
196	1 BR	1,200	100,000	800	125
197	1 BR	1,200	100,000	800	125
198	1 BR	1,200	100,000	800	125
199	1 BR	1,200	100,000	800	125
200	1 BR	1,200	100,000	800	125

UNIT SUMMARY				
1 - 1 BR	2 - 2 BR	3 - 3 BR	4 - 4 BR	TOTAL
11	13	1	1	26
8	7	1	1	16
19	20	2	2	43

BELOW MARKET RATE UNITS
 MOORPARK, CALIFORNIA
 15450 MOORPARK

MOORPARK APARTMENTS
ESSEX PROPERTY TRUST
 15450 MOORPARK, #113
 NORTH CA, 92234
 951-953-1074
 WWW.ESSEXPROPERTYTRUST.COM



APPROXIMATELY 100 UNITS
 1750 QUINN AVE., SUITE 150
 ANAHEIM, CALIFORNIA
 714 774 2073



PLAN A1
1 BEDROOM, 1 BATH



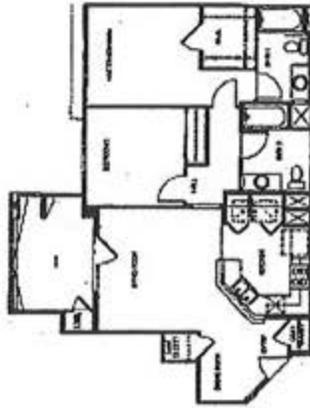
PLAN A2
1 BEDROOM, 1 BATH



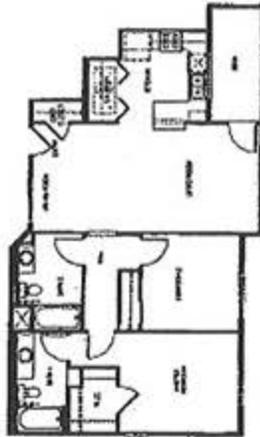
PLAN A3
1 BEDROOM, 1 BATH



PLAN B1
2 BEDROOM, 2 BATH



PLAN B2
2 BEDROOM, 2 BATH



PLAN B3
2 BEDROOM, 1 BATH

MOORPARK APARTMENTS
ESSEX PROPERTY TRUST

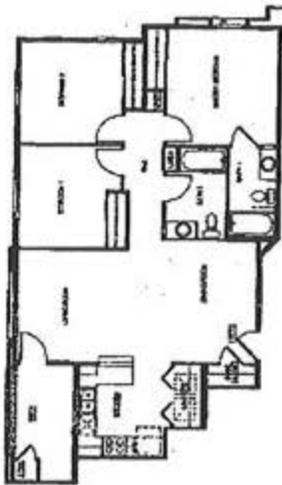
11817 Colton Ave #118
Irvine CA 92618
949.852.4214
www.essexpropertytrust.com

UNIT PLANS

PODEPAR, CALIFORNIA
1111 F STREET
SAN ANTONIO

Architectural & Planning
1770 Quince Ave, Suite 200
Northridge, California
715 564 8223





PLAN C1
1 BEDROOM 1 BATH

MOORPARK APARTMENTS
 ESSEX PROPERTY TRUST
 10001 JAMES ST #113
 WASHINGTON DC 20014
 PH: 202/462-7000
 WWW.ESSEXPROPERTYTRUST.COM

UNIT PLANS

RAVENSLEY, CALIFORNIA
 94568-1000

Architectural & Planning
 10001 JAMES ST #113
 WASHINGTON DC 20014
 PH: 202/462-7000



**EXHIBIT NO. 3
TO AFFORDABLE HOUSING AGREEMENT**

FORM OF CERTIFICATIONS OF TENANT ELIGIBILITY

New Certification _____ / Recertification _____ Unit Number _____

INCOME COMPUTATION AND CERTIFICATION

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income

Re: **(NAME and ADDRESS of Apartment Building)**

To: _____

I/We the undersigned state that I/we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the unit being applied for in the above apartment project. Listed below are the names of all persons who intend to reside in the unit:

1. Name of Members Of the Household	2. Relationship to Head of Household	3. Age	4. Social Security Number	5. Place of Employment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Income Computation

6. The total anticipated income, calculated in accordance with this paragraph 6, of all persons (except children under 18 years) listed above for the 12-month

period beginning the earlier of the date that I/we plan to move into a unit or sign a lease for a unit is \$ _____.

If this form is being completed in accordance with recertification of a Lower Income Tenant's or Very Low Income Tenant's occupancy of a Lower Income Unit or a Very Low Income Unit, respectively, this form must be completed based upon the current income of the occupants.

Included in the total anticipated income listed above are:

(a) the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses and other compensation for personal services;

(b) the net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowances for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family ;

(c) interest and dividends and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (6)(b) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate.

(d) the full amount of periodic payments received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including any lump sum amount except deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;

(e) payments in lieu of earnings, such as unemployment and disability compensation, workers' compensation and severance pay;

(f) welfare assistance. If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(1) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(2) the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced form the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage;

(g) periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(h) all regular pay, special pay and allowances of a member of the Armed Forces except the special pay to a family member serving in the Armed Forces except the special pay to a family member serving in the Armed Forces who is exposed to hostile fire; and

Excluded from such anticipated income are:

(a) income from employment of children (including foster children) under the age of 18 years;

(b) payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(c) lump sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and workers' compensation), capital gains and settlement for personal or property losses except payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay;

(d) amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(e) income of a live-in aide, as defined by 24 CFR §5.403;

(f) the full amount of student financial assistance paid directly to the student or to the educational institution;

(g) the special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(h) (1) amounts received under training programs funded by the Department of Housing and Urban Development;

(2) amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(3) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(4) amounts received under a resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the

Public Housing Issuer or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, and resident initiatives coordination. No resident may receive more than one such stipend during the same period of time;

(5) incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program.

- (i) temporary, nonrecurring or sporadic income (including gifts);
- (j) reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;
- (k) earnings in excess of \$480 for each full-term student 18 years old or older (excluding the head of household and spouse);
- (l) adoption assistance payments in excess of \$480 per adopted child; and
- (m) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts;
- (n) amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (o) amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (p) amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR §5.609(c) apply.

7. Do the persons whose income or contributions are included in item 6 above:

(a) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles and interests in Indian trust land)

_____ Yes _____ No; or

(b) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?

_____ Yes _____ No

(c) If the answer to (a) or (b) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000?
_____ Yes _____ No

(d) If the answer to (c) above is yes, state:

(1) the combined total value of all such assets: \$ _____

(2) the amount of income expected to be derived from such assets in the 12-month period beginning on the date of initial occupancy in the unit that you propose to rent: \$ _____, and

(3) the amount of such income, if any, that was included in item 6 above:
\$ _____

8. Are all of the individuals who propose to reside in the unit full-time students*?
_____ Yes _____ No

*A full-time student is an individual enrolled as a full-time student during each of 5 calendar months during the calendar year in which occupancy of the unit begins at an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of students in attendance or is an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(a) If the answer to 8(a) is yes, is at least 2 of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?
_____ Yes _____ No

9. Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Owner"), has any family relationship to the Owner; or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member, ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or Trustee held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit; and I/we declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. I/We will assist the Affordable Housing Owner in obtaining any information or documents required to verify the statements made herein, including either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding calendar year.

12. I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Affordable Housing Owner to lease the unit and will entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

I/We declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____, 20____ (year) in the City of Moorpark, California

Applicant Applicant

Applicant Applicant

[Signature of all persons (except children under the age of 18 years) listed in number 2 above required]

FOR COMPLETION BY OWNER/AFFORDABLE HOUSING OWNER ONLY:

1. Calculation of eligible income:

a. Enter amount entered for entire household in 6 above: \$ _____

b. (1) If the amount entered in 7(c) above is yes, enter the total amount entered in 7(d)(2), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$ _____);

(2) Multiply the amount entered in 7(d)(1) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(d)(1) would be if invested in passbook savings (\$ _____), subtract from that figure the amount entered in 7(d)(3) and enter the remaining balance (\$ _____);

(3) Enter at right the greater of the amount calculated under (1) or (2) above: \$ _____

c. TOTAL ELIGIBLE INCOME (line 1.a plus line 1.b(3)): \$ _____

2. The amount entered in 1.c:

_____ Qualifies the applicant(s) as a Moderate-Income Tenant(s).

_____ Qualifies the applicant(s) as a Lower-Income Tenant(s).

_____ Qualifies the applicant(s) as a Very-Low Income Tenant(s).

3. Number of apartment unit assigned: _____ Bedroom size: _____
Rent: \$ _____

4. This apartment unit (**was/was not**) last occupied for a period of 31 or more consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit qualified them as a Lower-Income Tenant(s).

5. Method used to verify applicant(s) income:

_____ Employer income verification.

_____ Copies of tax returns.

_____ Other(_____)

6. Is occupant a City of Moorpark resident on the waiting list who was given priority? Yes: _____ No: _____

Manager

Date

INCOME CALCULATION WORKSHEET

Include all household income for all persons over 18 years of age. Written verification of all income must be included.

Applicant	Gross Wages & Salaries* (YTD as of: _____)	Net Income from 1040 (self employed)	1099 Income	Public Assistance	Social Security	Pension	Unemployment disability or workers compensation pay	Military Pay	Alimony and/or Child Support	Family Supp. (regular gift from person not living in unit)
1										
2										
3										
4										

(A) TOTAL INCOME \$ _____

*Includes overtime pay, commissions, fees, tips, and bonuses. Does not include amounts received as reimbursements of medical costs or insurance payments.

ASSET CALCULATION

All income earned on assets in excess of \$5,000 must be included as household income. Written verification must be included. If written verification is not available for savings, the current passbook savings rate as determined by HUD may be used.

Real Property* \$ _____	Savings \$ _____
Stocks \$ _____	Bonds \$ _____
Other** \$ _____	

(B) TOTAL ASSET INCOME \$ _____

*Includes rental income or equity if not rented only. Equity is the difference between the market value of the property and the total dollar amount of any loans secured by the property.

**Does not include the personal property i.e., furniture or automobiles.

TOTAL HOUSEHOLD INCOME (A + B) \$ _____

**INCOME VERIFICATION
(FOR EMPLOYED PERSONS)**

The undersigned employee has applied for a rental unit located in a project financed under the Multifamily Revenue Bond Program for persons of low and very low income. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

EMPLOYER

Annual Wages (Gross)	_____	Other Income	_____
Overtime	_____	Avg. Total Hours Worked Weekly	_____
Bonuses	_____	Total Current Income	_____
Commissions	_____	Year-to-Date Income	_____
Current Base Pay	_____		

Pay Period: Weekly | Bi-weekly | Monthly | Other _____

Do you anticipate an increase in the base pay over the next 12 months? Yes No
 If so, please indicate the amount of anticipated increase \$ _____ per _____
 start date: _____

NOTE TO EMPLOYER: This form is an estimate of anticipated earnings solely for the purpose of determining income status. This form does not constitute a promise by the employer to the employee of guaranteed wages, bonuses or raises.

I hereby certify that the statements above are true and complete to the best of my knowledge.

Date Employer

Signature Title

Employer's Address Employer's Phone Number

APPLICANT

I hereby grant you permission to disclose my income to _____ in order that they may determine my income eligibility for rental of an apartment located in their project which has been financed under the Multifamily Revenue Bond Program.

_____ Date

_____ Print Name (Resident)

_____ Signature (Resident)

Please send to:
(Management Co.
or Owner)

INCOME VERIFICATION
(for self-employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding calendar year and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature

Date

INCOME VERIFICATION
(for Social Security recipients)

TO: SOCIAL SECURITY ADMINISTRATION

Ladies and Gentlemen:

I have applied for a rental unit located in a project financed under the _____ Multifamily Housing Program for persons of very low income: Every income statement of a prospective tenant must be stringently verified. In connection with my application for a rental unit, I hereby authorize the Department of Social Services to release to _____ the specific information requested below:

Date: _____

Signature: _____

Social Security No.: _____

Name (Print): _____

Address(Print) _____

Monthly	Benefits	Began/Will	Begin:
_____	_____	_____	_____
Social	Security	Benefit	Amount:
\$ _____	_____	_____	_____

Other Benefit(s): _____ Amount: \$ _____

Medicare Deductions: \$ _____

Are benefits expected to change? [] Yes [] No

If yes, please state date and amount:

Date: _____ of change

Amount \$ _____

If recipient is not receiving full benefit amount; please indicate reason and date recipient will start receiving full benefit amount:

Reason:

Date _____ of _____ Resumption: _____
Amount: _____

Date: _____

Signature: _____

Title: _____

Please _____ send _____ form _____ to:

INCOME VERIFICATION
(for Department Social Services recipients)

TO: CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

Ladies and Gentlemen:

I am receiving assistance through your office. I have applied for a rental unit located in project financed under the _____ Multifamily Housing Program for persons of very low income. Every income statement of a prospective tenant must be stringently verified. In connection with my application for a rental unit, I hereby authorize the Department of Social Services to release to _____ the specific information requested below:

Date: _____

Signature: _____

Caseload Number: _____

Name (Print): _____

Case Number: _____

Case Worker: _____

1. Number of persons included in budget: _____

2. Total monthly budget \$ _____

(a) Amount of grant \$ _____

(b) Date aid last began: _____

(c) Other income and source: _____

(d) Is other income included in total budget? Yes No

3. Please specify type of aid: (AFDC, FR, Food Stamps, ANB, MediCal, Etc.): _____

4. If recipient is not receiving full grant, please indicate reason:

[] Overpayment due to client's failure to report other income

[] Computation error

[] _____]
Other: _____

Date when full grant will resume: _____

Date: _____

Case Worker's Signature: _____

Telephone: _____

District Office: _____

Your very early response will be appreciated.

Please return form to:

DECLARATION OF NO INCOME

As managing agents for _____
(Name of Development)

assisted by the Low Income Housing Program, we are required to verify all income. To comply with this requirement, we ask your cooperation in supplying the information requested in the Certification below. This information will be held in strict confidence and used only for the purpose of establishing eligibility.

Name of Management Company

By:

Name and Title

CERTIFICATION

I, _____, do hereby certify that I do NOT receive income from ANY source. I understand sources of income include, but are not limited to the following:

Employment	Study	Pensions
Unemployment	Self Employment	General Assistance
Compensation	AFDC	Disability
Social Security	SSI	Union Benefits
Workers Compensation	Retirement Funds	Family Support
Child Support	Alimony	Annuities
Education Grants/Work	Income from Assets	

I understand that should I become gainfully employed or begin receiving income from any source, I must report the information to the manager immediately.

I certify that the foregoing information is true, complete and correct. Inquiries may be made to verify statements herein. I also understand that false statements or omissions are grounds for disqualification and/or prosecution under the full extent of California law.

Signature

Date

Witness Signature

Date

Support Verification

Source's Mailing Address: _____

Phone #: _____

Fax #: _____

Recipient: _____

Federal law requires that we verify the annual income of all persons applying for admissions to or living in a community that offers affordable housing. This community operates under the guidelines of Section 42 of the Internal Revenue Code. To comply with these requirements, we ask your cooperation in supplying the information requested below regarding the above referenced individuals. This information will be used only for determination of eligibility and/or rent computation. You will notice a release of information is authorized by the applicant/tenant's signature below.

Your assistance in completing this form accurately and timely is greatly appreciated!

Applicant/Tenant Release Statement	
Applicant/Tenant	Name:

I hereby authorize the release of the following information in order to determine my eligibility for the Bond Program. Please complete the form in full and return it to the MANAGEMENT COMPANY at your earliest convenience.	
Signature: _____	
Social Security #: _____	

Please complete the following. If the monies are based on a percentage of the payor's income, please indicate the average amount per period.

Type of Benefit	Amount	Frequency
<input type="checkbox"/> Child Support	_____	() weekly () monthly () yearly
<input type="checkbox"/> Family Support	_____	() weekly () monthly () yearly
<input type="checkbox"/> Alimony	_____	() weekly () monthly () yearly
<input type="checkbox"/> Other _____ (Please list type)	_____	() weekly () monthly () yearly

Are monies paid to offset an AFDC grant? Yes No

Do you anticipate any changes in the next 12 months? Yes No

Comments: _____

Signature _____ of _____ Source: _____
 SSN#: _____

Date Completed Form: _____

**EXHIBIT NO. 4
TO AFFORDABLE HOUSING AGREEMENT**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE
FOR THE [MONTH/QUARTER] ENDING _____**

The undersigned, _____, as the authorized representative of _____ (the "Affordable Housing Owner"), has read and is thoroughly familiar with the provisions of the Affordable Housing Agreement by and between Essex Moorpark Owner, L.P. ("Owner") and the City of the City of Moorpark (the "City"), dated as of _____, 2017.

As of the date of this Certificate, the following numbers of completed residential Units in the Project (i) are occupied, or (ii) are currently vacant and being held available for such occupancy and have been so held continuously since the date a Very Low Income Tenant or Low Income Tenant vacated such Unit, as indicated:

Occupied by Very Low Income Tenants

Number of Units: _____

Occupied by Low Income Tenants

Number of Units: _____

Occupied by Moderate Income Tenants

Number of Units: _____

Held vacant for occupancy continuously since last occupied by Very Low Income Tenants and Low Income Tenants:

Vacant Units

Number: _____

Occupied Units

Number: _____

Very Low Income Tenants and Low Income Tenants who commenced occupancy of Units during the preceding [month/quarter]:

Very Low Income:

Units Nos.: _____

Low Income:
Units Nos. _____

Moderate Income:

Number of Units:

Attached is a separate sheet (the "Bond Program Report") listing, among other items, the following information for each apartment Unit in the Project: the number of each apartment Unit, the occupants of each Unit, the rental paid for each Unit and the size and number of bedrooms of each Unit. It also indicates which Units are occupied by Low Income Tenants and Very Low Income Tenants and Moderate Income Tenants and which Units became Low Income Units and Very Low Income Units and Moderate Income Tenants during the preceding [month/quarter]. The information contained thereon is true and accurate.

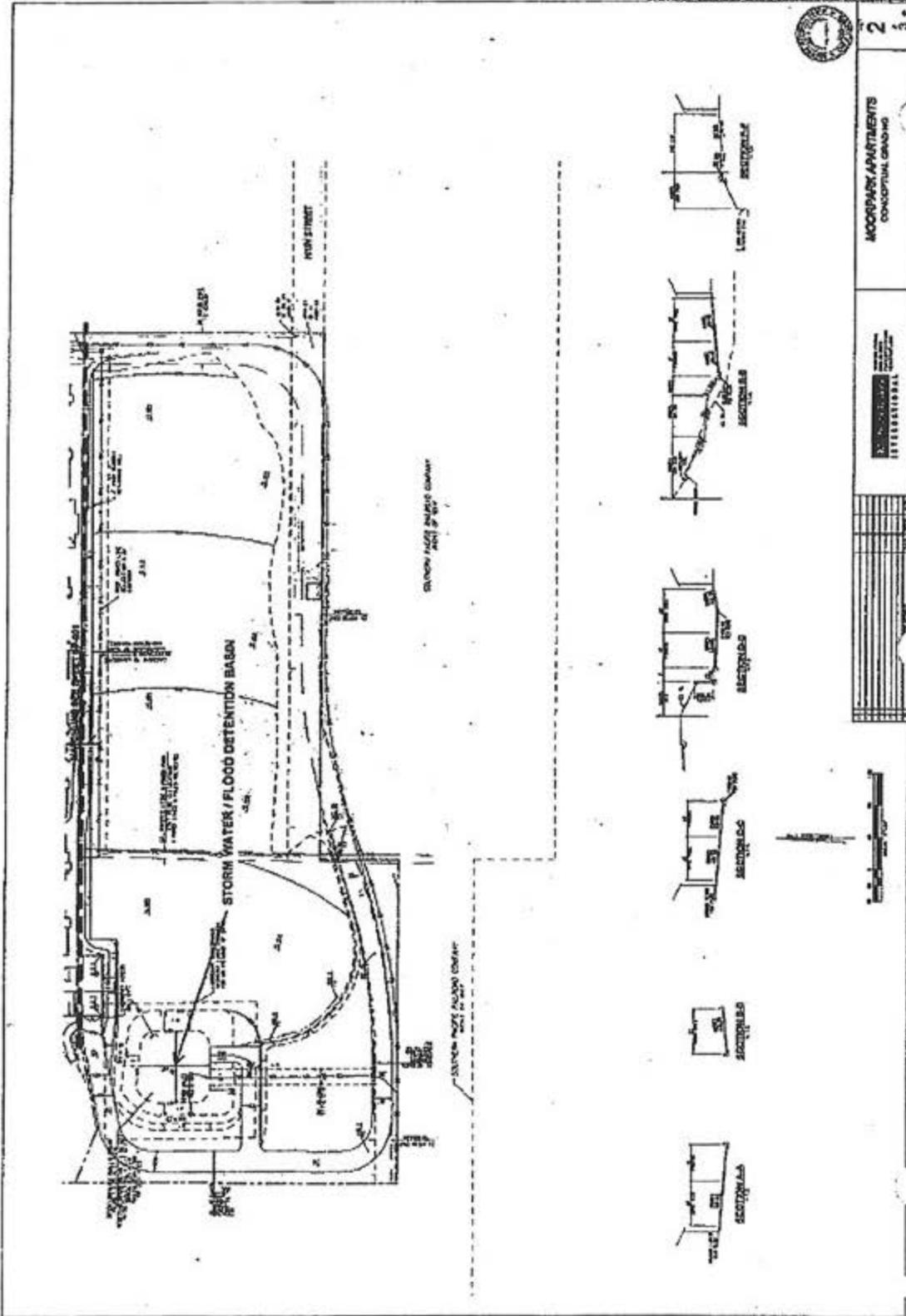
The undersigned hereby certifies that (1) a review of the activities of the Owner and Affordable Housing Owner during such [month/quarter] and of Owner's and the Affordable Housing Owner's performance under the Affordable Housing Agreement among Owner, Affordable Housing Owner and the City, has been made under the supervision of the undersigned; and (2) to the best of the knowledge of the undersigned, based on the review described in clause (1) hereof, the neither the Owner nor the Affordable Housing Owner is in default under any of the terms and provisions of the above documents [or describe the nature of any default in detail and set forth the measures being taken to remedy such default: _____

_____.]

EXHIBIT NO. 5
TO AFFORDABLE HOUSING AGREEMENT

INITIAL LOCATION OF STORM/WATER DETENTION BASIN ON CITY PROPERTY

(Attached.)



2

MOORPARK APARTMENTS
CONCEPTUAL GRADING

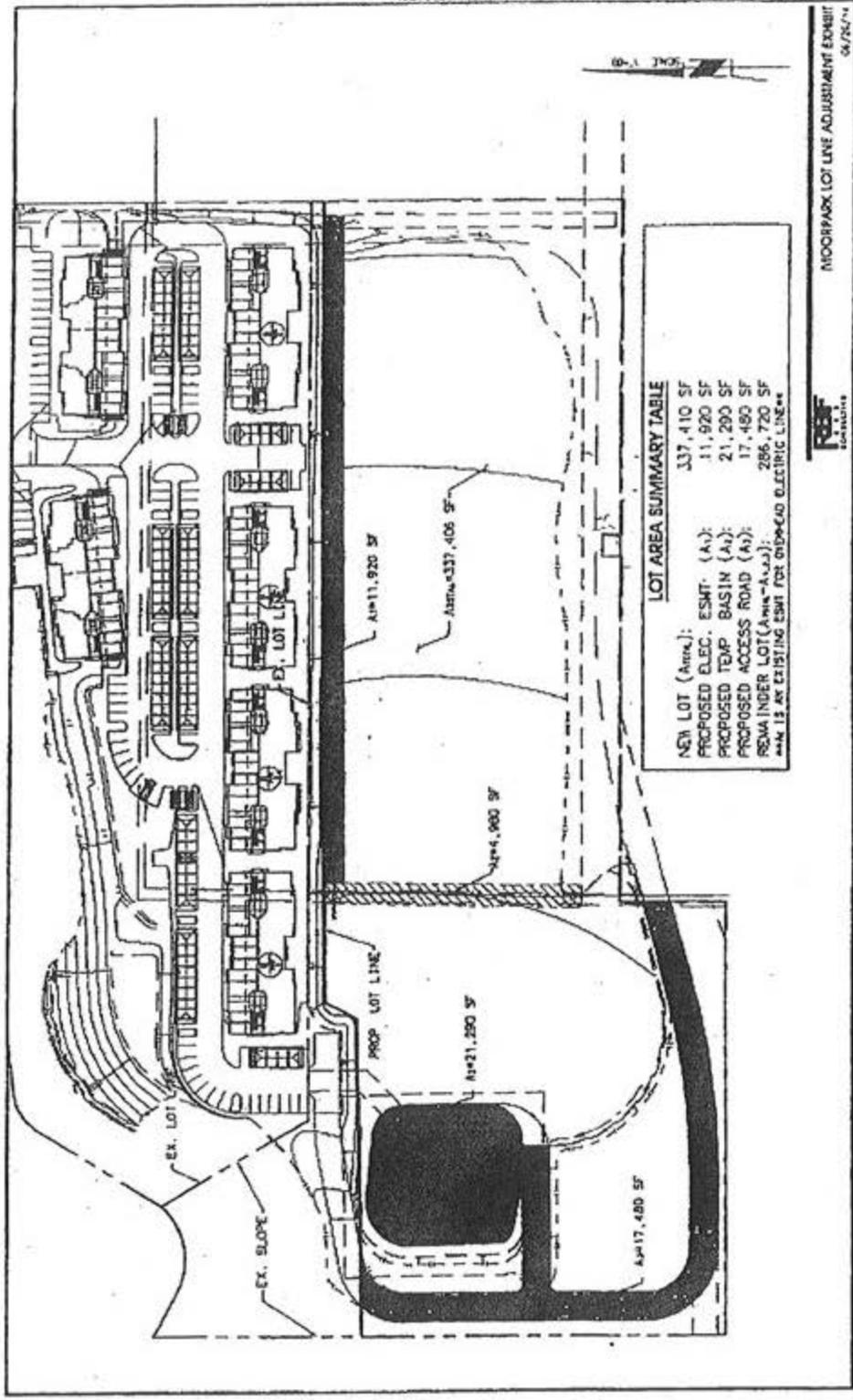
INTERNATIONAL



EXHIBIT "G"

FORM OF OVERHEAD POWER EASEMENT

Form to be proposed by Southern California Edison for a 66kV power line, but will be subject to approval by the City Manager, and it shall be executed and recorded by Developer prior to issuance of a grading permit for the Property and prior to conveying the City Site to the City. The easement must be a reasonable easement over the northerly 30 feet (or less) of the City Site, permitting reasonable use of the easement area by City for parking, ingress/egress and landscaping.



LOT AREA SUMMARY TABLE

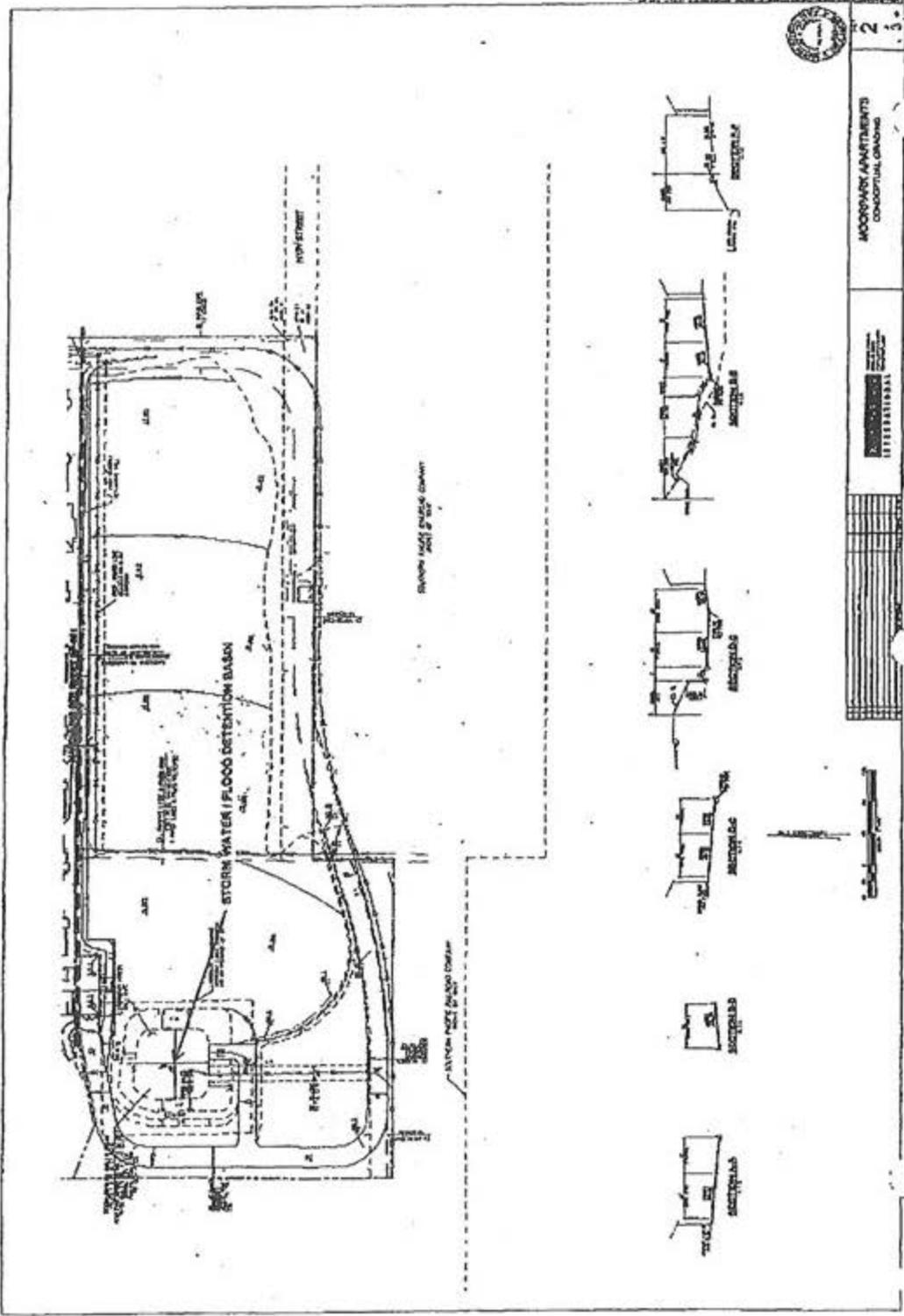
NEW LOT (Area):	337,410 SF
PROPOSED ELEC. ESMT. (A1):	11,920 SF
PROPOSED TEMP. BASIN (A2):	21,290 SF
PROPOSED ACCESS ROAD (A3):	17,480 SF
REMAINING LOT (Area-A1-A2-A3):	286,720 SF

NOTE: IS AN EXISTING ESMT FOR OVERHEAD ELECTRIC LINES

EXHIBIT "H"

STORM WATER/FLOOD DETENTION BASIN

(Diagram attached.)



2
3

MODERN APARTMENTS
CONCEPTUAL DRAWING

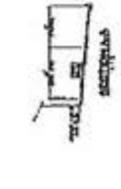
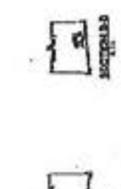
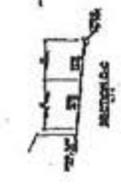
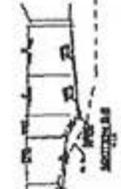
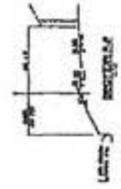


EXHIBIT "I"

FORM OF WELL SITE GRANT DEED
(AND CERTIFICATE OF ACCEPTANCE)

(Attached.)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Moorpark
799 Moorpark Avenue
Moorpark, California 93012
Attention: City Clerk

APN: 511-0-020-071

[SPACE ABOVE FOR RECORDER'S USE ONLY]

GRANT DEED
(Well Site)

THE UNDERSIGNED GRANTOR DECLARES AS FOLLOWS:

The undersigned declares that this Grant Deed is exempt from Recording Fees pursuant to California Government Code Section 27383.

Documentary Transfer Tax is \$0 (exempt; conveyance to a public entity).

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged the ESSEX MOORPARK OWNER, L.P., a California limited partnership ("Grantor") hereby grants to the CITY OF MOORPARK ("Grantee"), the land and located in the County of Ventura, State of California, more particularly described on Exhibit A attached hereto and incorporated herein by reference and all improvements thereon (collectively, the "Property").

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

Dated: _____, 2017

GRANTOR:

ESSEX MOORPARK OWNER, L.P.,
a California limited partnership

By: Essex Moorpark GP, L.P.,
a California limited partnership,
its general partner

By: Essex Management Corporation,
a California corporation,
its general partner

By: _____
Print Name: _____
Title: _____

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 the document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____ 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: _____

(affix seal in above space)

Exhibit A
to Grant Deed

LEGAL DESCRIPTION

A PORTION OF LOT T OF THE MAP OF A PART OF TRACT L OF RANCHO SIMI, IN THE CITY OF MOORPARK, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 5, PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 325.00 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT T, THENCE

1ST: WEST 10.00 FEET TO POINT; THENCE,

2ND: NORTH 20.00 FEET T A POINT; THENCE,

3RD: EAST 20.00 FEET TO POINT; THENCE,

4TH: SOUTH 20.00 FEET TO A POINT; THENCE,

5TH: WEST 10.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM 50% OF ALL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, AS RESERVED BY WALLY B. HOFFELT, IN A DEED RECORDED MARCH 28, 1942 IN BOOK 653, PAGE 659 OF OFFICIAL RECORDS. ANY AND ALL RIGHT TO ENTER IN OR UPON THE SURFACE, OR WITHIN 500 FEET OF THE PRESENT SURFACE, MEASURED VERTICALLY, FROM SUCH SURFACE WAS QUITCLAIMED BY WALLY B. HOFFELT IN A DEED RECORDED FEBRUARY 11, 1958 IN BOOK 1589, PAGE 153 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM AN UNDIVIDED 25% OF AN UNDIVIDED ONE-HALF INTEREST IN AND TO THE TOTAL OIL AND MINERAL RIGHTS IN AND UNDER SAID LAND, WITHOUT HOWEVER, THE RIGHT OF SURFACE OR SUBSURFACE ENTRY UPON SAID LAND WITHIN 500 FEET OF THE PRESENT SURFACE MEASURED VERTICALLY THEREFROM, AS RESERVED BY RILEY SPENCER AND DORA E. SPENCER, IN A DEED RECORDED FEBRUARY 4, 1958 IN BOOK 1587, PAGE 274 OF OFFICIAL RECORDS.

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant Deed dated _____, 2017, from Essex Moorpark Owner, L.P. to the City of Moorpark, which is a political corporation, is hereby accepted by the undersigned officer on behalf of the City of Moorpark pursuant to the authority conferred by action of the City of Moorpark on _____, 2017, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2017

Steven Kueny,
City Manager

ACKNOWLEDGMENT

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, _____,
(insert name and title of the officer)

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)

SCHEDULE 1

SCHEDULE OF PERFORMANCE

Design Phase: Design has been completed

Bond / Tax Certificate Application: May 19, 2017 (Tax credit application would follow shortly thereafter.)

Subdivision Mapping: Estimated to be September, 2017.

Conveyance to Affordable Housing Owner entity (after delivery of organizational documents for Affordable Housing Owner to City): October, 2017

Plan Check / Building Permits: May 31, 2017

Evidence to City of all debt/equity funds for all Project costs (with comprehensive Project budget): August, 2017

Close Bond Financing: October, 2017

Construction: 28 months from start of grading, but no later than December 31, 2020.

Lease-Up: approximately 11 months