

## **EXHIBIT A**

### **Conditions of Approval of Vesting Tentative Tract Map No. 17609**

Vesting Tentative Tract Map No. 17609 ("VTTM 17609") is approved subject to compliance, to the reasonable satisfaction of the Director of Public Works and the Director of Community Development, with all applicable sections of the Fullerton Municipal Code, the California Code of Regulations, the California Building Standards Code and all other applicable regulations, and entry into a Subdivision Implementation Agreement and certain License agreements as provided in these Conditions of Approval in a form mutually acceptable to the City and the Property Owner.

The Property Owner must comply in full with each and every condition listed below, and the Subdivision Implementation Agreement and Licenses provided for in these conditions, in accordance with the phasing and timing required, prior to exercising the rights conferred by Vesting Tentative Tract Map 17609. Further, the Property Owner must remain in compliance with all such conditions. Failure to comply with each and every condition may result in the revocation of the vesting tentative tract map.

The Subdivision Implementation Agreement must be executed and delivered prior to the earlier of (i) approval of the first final map or (ii) the commencement of any grubbing and clearing, grading, or excavation or issuance of any grading, foundation, or building permits, whichever occurs first, for any development on the subject property.

#### **A. Planning and Building.**

1. The project shall at all times comply with all conditions, standards, requirements and plans contained within VTTM 17609, unless otherwise approved through an amendment to said map subject to the provisions contained within the Fullerton Municipal Code.
2. Prior to issuance of building permits, all development shall be reviewed for consistency with then-applicable provisions of the California Building Code.
3. Any amendments to VTTM 17609 or any other project approvals shall be reviewed and approved pursuant to the Fullerton Municipal Code, and shall be subject to the provisions of the California Environmental Quality Act ("CEQA"). In the event such subsequent review identifies additional or more severe environmental impacts, the project may be subject to additional review and mitigation measures.

#### **B. Traffic and Circulation.**

1. The project will adhere to all applicable City codes and General Plan policies relating to the provision and maintenance of circulation facilities.

C. [Intentionally Omitted.]

D. Air Quality.

1. The project shall adhere to the following applicable rules of the South Coast Air Quality Management District ("SCAQMD"):
  - i. SCAQMD Rule 403, which establishes requirements for dust control associated with grading and construction activities. (Refer to Tables 4 and 5 in Appendix 14.5 for specific control measures and the relevant guidance for implementing the measures.)
  - ii. SCAQMD Rules 431.1 and 431.2, which require the use of low sulfur fuel for stationary construction equipment.
  - iii. SCAQMD Rule 1108, which sets limitations on ROG content in asphalt.
  - iv. SCAQMD Rule 1113, which sets limitations on ROG content in architectural coatings.
  - v. SCAQMD Rule 1150, which governs excavation of landfill sites.
  - vi. SCAQMD Rule 1166, which sets limits of VOC emissions from the removal of VOC-contaminated soil.
  - vii. The project shall comply with Title 24 energy-efficient design regulations as well as the provision of window glazing, wall insulation, and efficient ventilation methods in accordance with California Building Code requirements.

E. Soils and Geology.

1. Prior to the issuance of grading permits, the Property Owner will adhere to the recommendations of and perform the supplemental geotechnical analysis described in the geotechnical investigation prepared by Leighton and Associates (1998).
2. Prior to the issuance of grading permits, the Property Owner will demonstrate compliance on any grading plans with the erosion and siltation control measures of the City's grading ordinance and all applicable local and State building codes and seismic design guidelines.
3. Prior to issuance of grading permits and consistent with MM 4.5-3d, the project plans must demonstrate compliance, subject to the review and approval of the Director of Public Works, with Fullerton Municipal Code Chapter 14.03, which requires contour grading for all slopes.

F. Public Services and Utilities.

1. Prior to issuance of grading permits, the Director of Public Works will be responsible for reviewing and approving completed water utility plans prepared by the Property Owner's engineer to ensure that water facilities are adequate to meet projected water service demands. The final design of the water system and location of the pressure zones will be dependent on the final grading plan.
2. All water mains shall be extended within street rights-of-way. If any water main cannot be constructed within the street right-of-way, an all-weather access road shall be shown on the water improvement plans and approved by the Director or Public Works prior to map recordation.
3. Prior to issuance of building permits for the first phase of the development, the Property Owner shall prepare a construction phasing water supply and fire suppression plan for review and approval of the Fire Chief. In addition, prior to the delivery of lumber for any given phase's construction, fire hydrants and either temporary or permanent water lines shall be installed and operational throughout that phase of the Project.
4. Prior to the issuance of building permits, the Property Owner shall construct the following water facilities: Pump Station 2D-4C, a 400 kW backup generator at the Tank Farm, and two 12-inch water mains across Gilbert Street. (A pump station 2D-5 must be constructed if there is any development in Pressure Zone 5 in Phase 1A.)
5. Prior to the issuance of building permits for development in Phase 1B of the Phasing Plan [formerly Phase II], the following water facilities shall be constructed by the Property Owner: Reservoir 4A, Pump Station 4A-5, and Fire Pump Station 2D-5.
6. All sewer mains shall be extended within street rights-of-way. If any sewer main cannot be constructed within the street right-of-way, an all-weather access road shall be shown on the sewer improvement plans and approved by the Director or Public Works prior to map recordation.
7. Prior to final sign-off of building permit, the building address number shall be clearly displayed on curbs and on residences. In the case of a residence facing an alley, the building address number shall also be displayed on the rear of the building.
8. Prior to issuance of building permits, any plans submitted by the Property Owner must demonstrate compliance with all requirements of the most recently adopted California Fire Code ("CFC"), including but not limited to fire flows, circulation, and accessibility as approved by the Fire Chief.

9. Prior to issuance of building permits, consistent with Condition D.1.vii, the Property Owner and/or the project architect shall consult with Southern California Edison during the facility design phase to ensure that energy conservation measures will be incorporated to the extent feasible.

G. Public Health and Safety.

1. The City of Fullerton will require all plans for proposed uses within the project area to comply with all applicable Federal, State, and local regulations pertaining to the use of toxic and/or hazardous materials.
2. Excavation of any contaminated soils will occur in accordance with SCAQMD Rule 1166 procedures to ensure that potential air contamination is mitigated.
3. Prior to the issuance of a grading permit in any phase, a plan for final abandonment in such phase shall be prepared by a licensed petroleum engineer and submitted to and approved by the Division of Oil, Gas, and Geothermal Resources. Final abandonment and restoration of the West Coyote oil field shall proceed pursuant to the procedures established by the Division of Oil, Gas, and Geothermal Resources.
4. Prior to issuance of building permits within the 10,000 foot radius of a Fullerton Municipal Airport runway, the Property Owner shall demonstrate it has filed a FAR Part 77 application with the Federal Aviation Administration. The Airport Land Use Commission ("ALUC") has determined the project is consistent with the Airport Environs Land Use Plan ("AELUP").
5. The Property Owner shall be required to disclose to all potential purchasers the fact that all future development within the subject property is located within the Airport Influence Area pursuant to Assembly Bill 2776. Specifically, the disclosure shall read: "This property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. You may wish to consider what airport annoyances, if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you."
6. Consistent with MM 4.9-1b, the Property Owner shall implement the Remedial Action Program ("RAP") approved by the Orange County Health Care Agency ("OCHCA"), which will result in the restoration of the impacted areas on the subject property to regulatory requirements in order to protect the health and safety of the community and environment.

Remediation of the property will be achieved in accordance with OCHCA requirements prior to the issuance of building permits in each phase.

7. Consistent with MM 4.9-1b, data obtained during remediation of the property will be included in a comprehensive report presenting all data collected. The report will follow the OCHCA reporting format and will include detailed maps illustrating excavation locations, confirmation sample locations (fill and excavation bottom samples), OCHCA verification of sample locations (as directed), and tables summarizing all laboratory analytical results from samples collected and analyzed. Field activities will also be recorded by on-site personnel on a daily basis. The final report will be submitted to the OCHCA as the lead agency for approval, sign-off, and subsequent site closure. Additional copies will be forwarded to the Santa Ana Regional Water Quality Control Board and the City of Fullerton.
8. All storage areas for oils, solvents, coolants, wastes and other miscellaneous fluids shall be covered and protected with secondary containment structures such as lined troughs in the event of leakage from drums, barrels, cans or other primary structures.
9. Disposal containers for oil, solvents, hydraulic fluids, coolants and other filter and chemical wastes from maintenance activities shall be provided on-site, within the designated staging area. Disposal of these wastes shall be conducted in accordance with California Administrative Code Title 22 regulations. Under no circumstances shall disposal occur on-site or within the project area.
10. All equipment maintenance shall be conducted within a specified area of the project site designated for such purposes. The construction inspector shall approve the location of this maintenance area as well as appropriate signage and protection from soil contamination through the use of an impervious barrier.

#### H. Hydrology and Flood Control.

1. Prior to initiation of construction activity at the site, a notice of intent ("NOI") with the appropriate fees for coverage of the project under the California Statewide General National Pollution Discharge Elimination System ("NPDES") Permit for Storm Water Discharges Associated with Construction Activities (General Permit) shall be submitted to the Regional Water Quality Control Board. As required by this NPDES permit, a Storm Water Pollution and Prevention Plan ("SWPPP") will be prepared and will include Best Management Practices ("BMPs") in order to reduce sedimentation and erosion during construction.
2. Prior to issuance of a grading permit in any phase, a SWPPP shall be prepared for that phase by the Property Owner and submitted to the Director of Public Works for approval. The SWPPP will establish BMPs in

order to reduce sedimentation and erosion during construction. The Director of Public Works will ensure that the requirements of the SWPPP are defined on permit plan cover sheets as either general or special notes. These plans shall also comply with the Water Quality Ordinance adopted by the City (Chapter 12.18 of the Fullerton Municipal Code).

3. Prior to the recordation of any final tract map, or issuance of grading permits, as deemed appropriate by the Director of Public Works, the Property Owner shall submit and obtain approval from the Director of Public Works, of a Water Quality Management Plan ("WQMP") or Standard Urban Stormwater Mitigation Plans ("SUSMP"), if applicable, specifically identifying BMPs that will be used on or off site to control predictable pollutant runoff. This WQMP or SUSMP shall identify, at a minimum, the routine, structural and non-structural measures consistent with the Orange County Drainage Area Management Plan ("DAMP") and the County NPDES permit as adopted by the Santa Ana Regional Water Quality Control Board, which details implementation of BMPs whenever they are applicable to a project, the assignment of long-term maintenance responsibilities (specifying the Property Owner, parcel owner, maintenance association, lessee, etc.); and, shall reference the location(s) of structural BMPs. These plans shall also comply with the Water Quality Ordinance adopted by the City (Chapter 12.18 of the Fullerton Municipal Code).

The DAMP describes the specific water pollutant control program elements of the Orange County NPDES Stormwater Program. The purpose of the DAMP is to satisfy NPDES permit requirements and evaluate the impacts of urban stormwater discharges on receiving waters. A Conceptual WQMP, which includes structural and non-structural BMPs as prescribed in the DAMP, must be prepared for all development projects proposed within the County.

4. Prior to issuance of a grading permit, a final hydrology study shall be prepared by a registered engineer that will address final sizing of storm drains, energy dissipaters, and related infrastructure. This condition will be verified by the Director of Public Works.

I. Aesthetics.

1. The proposed project will adhere to the General Plan goals, policies, and programs (including design criteria established for scenic corridors/trails) and Specific Plan design guidelines and development standards that promote good quality urban design and aesthetic resource preservation via the design review process. Compliance with this condition will be subject to the review of the Director of Community Development

J. [Intentionally Omitted.]

K. [Intentionally Omitted.]

L. Public Acquisition.

1. City Acquisition of Certain Portions or Entire Project Site. The Property Owner shall make the following areas available for public acquisition by the City solely for permanent deed-restricted open space/park resource conservation purposes, including habitat preservation and related recreational purposes: (1) the area identified as Neighborhood 1 ("Neighborhood 1") as shown on the West Coyote Hills Trails and Key Vista Improvements Phasing Plan attached hereto as Exhibit 1 ("Exhibit 1"); (2) Neighborhood 1 and the area identified as Neighborhood 3 on Exhibit 1 hereto ("Neighborhood 3"), together; and (3) the entire project site (APN Nos. 287-081-24, 25, 26, 48, 51, 52, 53, and 54; 287-082-27 and 28, and 288-091-12, 13, and 14, ("Entire Project Site"), as follows.
  - i. Final Approval Date. As used in this Condition L and throughout these Conditions of Approval, the term "Final Approval Date" shall mean the later of the following dates: (1) the ninety-first (91<sup>st</sup>) day after the date of adoption by the City's Planning Commission or, if applicable, the City Council, of a resolution constituting the City's final administrative action ("Final Administrative Action") approving VTTM 17609; or (2) if a lawsuit is filed prior to the date referred to in clause (1) challenging the validity or legality of VTTM 17609, the Resolution adopting VTTM 17609, or any of the actions taken by the City in connection therewith, including without limitation the City's compliance with the California Environmental Quality Act ("CEQA") with respect thereto, the date on which said challenge is finally resolved in favor of the validity and legality of such matter(s), whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of time required to appeal an involuntary dismissal), or binding written settlement agreement. In no event shall Property Owner be required to sell any portion of the Entire Project Site in the event the Final Approval Date does not occur.
  - ii. Neighborhood 1; Purchase Price. The Property Owner shall make Neighborhood 1 available for potential acquisition by the City for the sum of Nine Million Six Hundred Thousand Dollars (\$9,600,000). It is the intention of the Parties that the City shall have a right to purchase Neighborhood 1 on the terms and conditions provided herein, but nothing herein shall obligate the City to purchase Neighborhood 1.

- iii. Neighborhood 3; Appraisal and Purchase Price. The Property Owner shall also make Neighborhood 3 available for potential acquisition by the City, provided that the City may acquire Neighborhood 3 only if the City at the same time acquires Neighborhood 1. Subject to the possible CPI adjustment set forth below, the City's purchase price for Neighborhood 3 shall be the fair market value based upon the highest and best use of Neighborhood 3 under the development plan set forth in West Coyote Hills Specific Plan Amendment #8 and VTTM 17609. The fair market value shall be established through a valuation process conducted in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions as applied to said development plan. The valuation process described below shall commence no later than Final Administrative Action and be completed by January 15, 2016. In this process the City and the Property Owner shall each obtain its own appraisal of Neighborhood 3 by November 30, 2015. If the fair market value figures in the two appraisals differ by 10% or less of the amount of the higher appraisal, the fair market value of Neighborhood 3 shall be deemed to be the average of the two appraisals. If the fair market value figures in the two appraisals differ by more than 10% but less than 20% of the amount of the higher appraisal, the two appraisers shall jointly select a third appraiser to conduct a review appraisal by January 15, 2016, and the third appraiser's opinion of value shall be deemed to be the fair market value of Neighborhood 3 (provided, however, that in no event shall the third appraiser's determination of the fair market value of Neighborhood 3 be outside the range of the City's and Property Owner's initial appraisals or, if it is, the purchase price shall be deemed to be the appraisal amount as determined by the appraiser retained by the City or the Property Owner whose appraisal is closest to the fair market value figure arrived at by the third appraiser). If the fair market value figures in the two appraisals differ by 20% or more of the amount of the higher appraisal, the City and Property Owner shall immediately meet and confer to discuss the reasons therefore, including the assumptions and methodology used, and to seek to resolve the purchase price forthwith.

Each appraisal prepared pursuant to this Condition L.1.iii shall be based upon the following assumptions and hypothetical conditions and such other assumptions and hypothetical conditions that the appraiser(s) determine to be fair and reasonable: (1) the date of value will be the date each appraiser renders his/her valuation determination; (2) the development costs will be estimated and prepared in a manner that is consistent with the report previously prepared by Mote Companies dated July 10, 2013, and any update thereto, copies of which will be provided to each appraiser; (3) in



the absence of acquisition by the City, the lots/pads/homes in Neighborhood 3 would be completed in substantial conformity with the plans, mix, and specifications set forth in the "Strategic Market Analysis in Support of Appraisal for West Coyote Hills in Fullerton, CA" prepared by The Concord Group ("TCG") for the Property Owner dated July 30, 2013, and any update thereto, copies of which will be provided to each appraiser; (4) in the absence of acquisition by the City, the lots/pads/homes in Neighborhood 3 would be marketed and sold consistent with the market analysis prepared by The Concord Group referred to in clause (3) above; (5) Neighborhood 3 is assumed to be in compliance with applicable federal, state, and local laws, regulations, and policies relating to contamination by hazardous materials and substances and no costs for remediation of any such materials or substances will be included; and (6) the cost of performing the mitigation measures relating to the coastal sage scrub habitat on and adjacent to Neighborhood 3 is the responsibility of the Property Owner and has no effect on the fair market value of Neighborhood 3. In addition, in the event the closing of the sale of Neighborhood 3 occurs more than one (1) year after the date on which the Property Owner and City enter into the final purchase and sale agreement for Neighborhood 3, as set forth in Condition L.4.i, the purchase price for Neighborhood 3 shall be adjusted in accordance with the percentage change in the Consumer Price Index (All Items) published by the United States Department of Labor, Bureau of Labor Statistics, for the geographical region in which the City is situated (as used throughout these Conditions of Approval, the "CPI") between the date of said agreement and the Neighborhood 3 closing date.

- iv. Entire Project Site; Appraisal and Purchase Price. The Property Owner shall also make the Entire Project Site available for potential acquisition by the City. Subject to the possible CPI adjustment set forth below, the City's purchase price for the Entire Project Site shall be the fair market value based upon the highest and best use of the Entire Project Site under the development plan set forth in West Coyote Hills Specific Plan Amendment #8 and VTTM 17609. The fair market value shall be established through a valuation process conducted in conformity with the Uniform Appraisal Standards for Federal Land Acquisitions as applied to said development plan. The valuation process shall commence no later than Final Administrative Action and be completed by January 15, 2016. In this process the City and the Property Owner shall each obtain its own appraisal of the Entire Project Site no later than November 30, 2015. If the fair market value figures in the two appraisals differ by 10% or less of the amount of the higher appraisal, the fair market value of the Entire Project Site shall be

deemed to be the average of the two appraisals. If the fair market value figures in the two appraisals differ by more than 10% but less than 20% of the amount of the higher appraisal, the two appraisers shall jointly select a third appraiser to conduct a review appraisal by January 15, 2016, and the third appraiser's opinion of value shall be deemed to be the fair market value of the Entire Project Site (provided, however, that in no event shall the third appraiser's determination of the fair market value of the Entire Project Site be outside the range of the City's and Property Owner's initial appraisals or, if it is, the purchase price shall be deemed to be the appraisal amount as determined by the appraiser retained by the City or the Property Owner whose appraisal is closest to the fair market value figure arrived at by the third appraiser). If the fair market value figures in the two appraisals differ by 20% or more of the amount of the higher appraisal, the City and the Property Owners shall immediately meet and confer to discuss the reasons therefore, including the assumptions and methodology used, and to seek to resolve the purchase price forthwith.

Each appraisal prepared pursuant to this Condition L.1.iv shall be based upon the following assumptions and hypothetical conditions and such other assumptions and hypothetical conditions that the appraiser(s) determine to be fair and reasonable: (1) the date of value will be the date each appraiser renders his/her valuation determination; (2) the development costs will be estimated and prepared in a manner that is consistent with the report previously prepared by Mote Companies dated July 10, 2013, and any update thereto, copies of which will be provided to each appraiser; (3) in the absence of acquisition of the Entire Project Site by the City, the lots/pads/homes in the Entire Project Site would be completed in substantial conformity with the plans, mix, and specifications set forth in the "Strategic Market Analysis in Support of Appraisal for West Coyote Hills in Fullerton, CA" prepared by The Concord Group ("TCG") for the Property Owner dated July 30, 2013, any update thereto, copies of which will be provided to each appraiser; (4) in the absence of acquisition of the Entire Project Site by the City, the lots/pads/homes in the Entire Project Site would be marketed and sold consistent with the market analysis prepared by The Concord Group referred to in clause (3) above; and (5) the Entire Project Site is assumed to be in compliance with applicable federal, state, and local laws, regulations, and policies relating to contamination by hazardous materials and substances, and no costs for any remediation of any such materials or substances will be included in the appraisal. In addition, in the event the closing of the sale of the Entire Project Site occurs more than one (1) year after the date on which the Property Owner and City enter into the final purchase and sale agreement for the Entire Project Site, as set

forth in Condition L.4.i, the purchase price for the Entire Project Site shall be adjusted in accordance with the percentage change in the CPI between the date of said agreement and the closing date for the Entire Project Site.

2. Notice of Acquisition. In order for the City to acquire Neighborhood 1, Neighborhoods 1 and 3 together, or the Entire Project Site, the City shall give timely written notice to the Property Owner of the City's intent to proceed with such acquisition in the manner provided below.
  - i. The City shall give acquisition notice ("Acquisition Notice") on or before the later of the following dates: (1) February 29, 2016, or (2) thirty (30) days after the Final Approval Date. Notwithstanding the foregoing, if the Final Approval Date does not occur within two (2) years following the date of the Final Administrative Action, Property Owner shall have the right, in its sole and absolute discretion, to withdraw its offer to sell Neighborhoods 1 and 3 together and/or the Entire Project Site, in which event (1) at such time that the Final Approval Date thereafter occurs the Property Owner shall have the right to proceed with development of the Entire Project Site in accordance with VTTM 17609 (except for Neighborhood 1 if the City has given notice of acquisition therefore); (2) no Acquisition Notice for Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, shall be effective; and (3) the terms and conditions in this Condition L relating to the City's acquisition of Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, shall be of no further force or effect; provided further that the City shall have the right to request in writing that the Property Owner extend such two (2) year period for an additional one (1) year, and if the City makes such a request the Property Owner agrees to consider said request, but the Property Owner reserves the right to accept or reject the request in its sole and absolute discretion.
  - ii. An Acquisition Notice shall identify whether the City intends to proceed with one of the following: (1) the acquisition of Neighborhood 1 only; (2) the acquisition of Neighborhoods 1 and 3 together; or (3) the acquisition of the Entire Project Site ("Single Acquisition Notice"). However, subject to Condition L.2.iii below, the City at its option may give notice of alternative acquisition scenarios for more than just one of the options in the foregoing sentence ("Alternative Acquisition Notice") identifying (1) the City's intention to proceed with the acquisition of the Entire Project Site or, in the event the City is unable for whatever reason to complete the acquisition of the Entire Project Site, to alternatively proceed with the acquisition of Neighborhoods 1 and 3 together, or with only Neighborhood 1; or (2) the City 's intention to proceed with the

acquisition of Neighborhoods 1 and 3 together or, in the event the City is unable for whatever reason to complete the acquisition of both Neighborhoods 1 and 3 together, to alternatively proceed with the acquisition of only Neighborhood 1. If the Acquisition Notice identifies the City's intention to proceed with the acquisition of Neighborhood 1 only, the Acquisition Notice shall further state whether the City intends to fund the acquisition in whole or in part with public bond funds. In the event the City fails to timely deliver an Acquisition Notice under this Condition L.2, its right to purchase any property hereunder shall automatically terminate. In the event the City timely delivers an Acquisition Notice but its Acquisition Notice does not state its intent to proceed with acquisition of Neighborhoods 1 and 3 together, or the Entire Project Site, its right to purchase Neighborhood 1 and 3 together, or the Entire Project Site, as applicable, shall automatically terminate. In addition, at any time prior to the deadline for delivery of an Acquisition Notice, the City shall have the right, in its sole and absolute discretion, to deliver to the Property Owner written notice irrevocably abandoning and waiving the City's right hereunder to seek to acquire Neighborhood 1, Neighborhoods 1 and 3 together, or the Entire Project Site.

- iii. In the event the City gives the Property Owner an Alternative Acquisition Notice pursuant to Condition L.2.ii, the Parties recognize, in light of Condition L.5 and the uncertainty caused by the Acquisition Notice as to which areas of the Project Site the Property Owner will be able to develop, that development of the Property may be delayed and the Property Owner may incur increased costs of seeking and obtaining necessary permits and approvals for applicable habitat obligations under Conditions M.2-M.9 and remediation obligations under Condition 25. In order to give the Property Owner an Alternative Acquisition Notice, the City shall make an option payment ("Option Payment") by depositing the sum of Four Hundred Thousand Dollars (\$400,000) into a title company escrow opened by the Property Owner at the time that the Acquisition Notice is given. The Option Payment shall be released from escrow and remitted to the Property Owner at the time of execution of a purchase and sale agreement as provided in these Conditions of Approval. In the event the City proceeds with the purchase of the subject property, the Option Payment shall be a credit against the purchase price. In the event the City does not purchase the subject property, the Option Payment shall be retained by the Property Owner. The purchase and sale agreement for the subject acquisition shall contain provisions implementing this condition.

3. Acquisition of Neighborhood No. 1. The process for the City's acquisition of Neighborhood 1, following its delivery of a timely Notice of Acquisition, shall be as follows.

- i. Neighborhood 1; Purchase and Sale Agreement. For a period up to two (2) months after the City's delivery of an Acquisition Notice for Neighborhood 1 (only) under Condition L.2.i, the City and Property Owner shall each exercise commercially reasonable diligence to negotiate and agree upon the terms and conditions to be incorporated into a final purchase and sale agreement. The final purchase and sale agreement for Neighborhood 1 shall include, but not be limited to, the following provisions: (1) prior to the close of escrow the Property Owner, at its expense, shall cause a lot line adjustment or final map to be prepared, approved, and recorded to create Neighborhood 1 as a separate legal parcel, provided that the City agrees to cooperate with the processing and approval of said lot line adjustment or final map and waive all normally applicable City fees for the processing, approval, and recordation of same; (2) the purchase price for Neighborhood 1 shall be as set forth in Condition L.1.ii; (3) subject to the possible escrow withholding account to be established in accordance with clause (8) below, the purchase price shall be paid by wire transfer of immediately available funds (or by such other means as may be acceptable to the Property Owner in its sole and absolute discretion); (4) the closing date shall be consistent with Conditions L.3.ii or iii, below, as applicable; (5) title shall be delivered at the close of escrow free and clear of all monetary liens and encumbrances, excepting only non-delinquent property taxes and assessments (which shall either be prorated at the close of escrow or paid by the Property Owner through the escrow subject to the Property Owner's right to recover the portion of said taxes and assessments that are allocable to the period after the closing date); (6) escrow and title fees and charges and closing costs shall be allocated and paid in accordance with the customary practice for the sale of undeveloped land in Orange County; (7) each party shall pay for its own attorney's fees and broker/finder fees (if any) with respect to the transaction; (8) at the close of escrow, the Property Owner, at its sole option shall either (a) have performed all of its obligations and be in compliance with Conditions G.7, M.2, and M.3 and Standard Condition 25 with respect to Neighborhood 1, or (b) commit to perform all of such obligations with commercially reasonable diligence after the close of escrow (in the case of any remediation obligations under Condition 25 no later than one (1) year after approval of an amended Remedial Action Plan, and in the case of the habitat obligations under Conditions M.2-M.9 in the time frame required by the USFWS), in which case the City will grant to the Property Owner at the closing a non-exclusive license

in the form attached hereto as Exhibit 3 to enter onto Neighborhood 1 to perform such obligations, and the Property Owner, at its election, shall either deliver to the City at the closing performance security in a sum sufficient to cover 100% of the estimated cost of performing such obligations and in a form reasonably acceptable to the City, or the Property Owner shall cooperate with the City in establishing an escrow withholding account in which a portion of the purchase price equal to said estimated cost shall be deposited and retained to fund and/or secure the performance of such obligations and with any balance remaining in said account after completion of the work to be disbursed to the Property Owner; (9) the grant deed conveying Neighborhood 1 to the City shall contain a deed restriction permanently restricting the use of Neighborhood 1 solely for open space/park resource conservation purposes, including habitat preservation and related recreational purposes; and (10) such other terms and conditions consistent with the foregoing and these Conditions of Approval to which the Property Owner and City may hereafter agree, with acknowledgment that the above provisions do not constitute all of the terms and conditions that may ultimately be included in a final Purchase and Sale Agreement.

If after said two-month period the City and Property Owner have not agreed in writing upon all of the terms and conditions of the purchase and sale agreement, either party shall have the right to submit the dispute as to any unresolved terms to binding resolution by a neutral third party under the commercial arbitration rules of the American Arbitration Association, or such other rules and procedures to which the City and Property Owner may hereafter agree, with such neutral third party to be instructed to resolve such dispute consistent with the express terms and conditions set forth herein and otherwise in accordance with the customary practice for the sale of undeveloped land in Orange County; provided that the arbitrator shall have no power to impose terms or conditions different from or inconsistent with any of the terms and conditions provided herein. The City and Property Owner shall cooperate with one another in an effort to cause said dispute to be resolved within thirty (30) additional days. The date that all of the terms and conditions of the purchase and sale agreement have been finally determined (whether by mutual agreement of the parties or by binding arbitration) is referred to herein as the "Agreement Date".

- ii. Neighborhood 1; Closing Without Public Bond Funding. If the City's Acquisition Notice for Neighborhood 1 proposes to fund the acquisition without any public bond funds, the purchase and sale of Neighborhood 1 shall close on the latest of the following dates: (1) thirty (30) days after the Agreement Date; (2) thirty (30) days

after the Final Approval Date; (3) February 1, 2017; or (4) if the Property Owner elects to perform its obligations set forth in Conditions G.7, M.2, and M.3 and Standard Condition 25 with respect to Neighborhood 1 prior to the close of escrow, as referred to in clause (8) of the second sentence in Condition L.3.i above, thirty (30) days after the date the Property Owner delivers written notice to the City that it has completed the performance of said obligations (provided that clause (3) shall not apply if the Property Owner elects to perform said obligations after the close of escrow).

- iii. Neighborhood 1; Closing With Public Bond Funding. If the City's Acquisition Notice for Neighborhood 1 proposes to fund the acquisition in whole or in part with public bond funds, the City shall take all necessary steps to place the proposed bond measure on the ballot no later than the next general election on November 8, 2016. If the voters approve the bond measure, the City shall act with commercially reasonable diligence to sell the bonds in an amount sufficient to fund the purchase price for Neighborhood 1 (or the portion thereof that the City intends to fund with bond proceeds), and the sale of Neighborhood 1 shall close on the latest of the following dates: (1) thirty (30) days after the Agreement Date; (2) thirty (30) days after the Final Approval Date; (3) if the Property Owner elects to perform its obligations in Conditions G.7, M.2, and M.3 and Standard Condition 25 with respect to Neighborhood 1 prior to the close of escrow, as referred to in clause (8) of the second sentence in Condition L.3.i above, thirty (30) days after the date the Property Owner delivers written notice to the City that it has completed the performance of said obligations (provided that this clause (3) shall not apply if the Property Owner elects to perform such obligations after the close of escrow); (4) one hundred twenty (120) days after the bond election results approving the bond are certified; or (5) if any legal action is filed challenging or contesting the public bond measure for acquisition of Neighborhood 1, one hundred twenty (120) days after the final favorable resolution of said action and regardless of whether such final favorable resolution is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of time required to appeal an involuntary dismissal), or binding written settlement agreement. If the voters do not approve the bond measure, or the legal challenge to the bond measure is upheld by the Superior Court, the City shall thereafter have the right, exercisable within thirty (30) days after the bond election results are certified or the Superior Court judgment is entered, to deliver a further written notice to the Property Owner electing to fund the acquisition of Neighborhood 1 without any bond funds ("Post-Bond Election Acquisition Notice"), in which event the sale of Neighborhood 1 shall close on the latest of the following dates: (1) thirty (30) days

after the Agreement Date; (2) thirty (30) days after the Final Approval Date; (3) if the Property Owner elects to perform its obligations in Conditions G.7, M.2, and M.3 and Standard Condition 25 with respect to Neighborhood 1 prior to the close of escrow, as referred to in clause (8) of the second sentence in Condition L.3.i above, thirty (30) days after the date the Property Owner delivers written notice to the City that it has completed the performance of said obligations (provided that this clause (3) shall not apply if the Property Owner elects to perform such obligations after the close of escrow); or (4) sixty (60) days after the bond election results are certified or the adverse legal judgment is entered in the Superior Court. If the City fails to timely deliver a Post-Bond Election Acquisition Notice, the City shall have no right or obligation to purchase Neighborhood 1, the purchase and sale agreement for Neighborhood 1 (if theretofore executed) shall be terminated, each party shall bear all of its own costs and expenses incurred with respect thereto, and the Property Owner may proceed with development of Neighborhood No. 1 as provided in VTTM 17609. The purchase and sale agreement shall contain terms and conditions consistent with the foregoing.

- iv. Neighborhood 1; Effect of Acquisition. In the event the City acquires Neighborhood 1, the Property Owner shall still construct at its own expense and dedicate to the City the Neighborhood Trails and Key Vista Improvements associated with Neighborhood 1. In the event the City acquires only Neighborhood 1, VTTM 17609, these Conditions of Approval (to the extent applicable to Neighborhood 1), and the Project Phasing Plan (Exhibit D to PC Resolution 2015- 31) shall be deemed to be modified without need for any further action by the City or Property Owner to reflect the elimination of all development in Neighborhood 1 (except the Neighborhood Trails and Key Vista Improvements); all obligations under Conditions M.2-M.9 shall remain in full force and effect for Neighborhood 1, including that Neighborhood 1 shall be included within the WCH Habitat Preserve and the Habitat Obligations under MM 4.12-1 and the Open Space Dedication Areas within Conditions M.2-M.3 herein; Neighborhood 1 shall be covered by and included within the Conservation Easement provided under MM 4.12-1e; and Neighborhood 1 shall be subject to permanent deed restriction consistent with clause (9) in the second sentence of Condition L.3.i above. Upon the City's acquisition of Neighborhood 1, the Property Owner shall have no obligations with respect to environmental investigation and/or remediation in Neighborhood 1 excepting only (1) to the extent the Property Owner elects to perform its obligations set forth in Conditions G.7, M.2, and M.3 and Standard Condition 25 of these Conditions of Approval with respect to Neighborhood 1 after the close of escrow, as referred to in clause



(8) of the second sentence in Condition L.3.I above, the Property Owner shall be responsible to perform such obligations; and (2) as may be required by the judgment or order of a court of competent jurisdiction or a federal, state or local regulatory agency with jurisdiction over Neighborhood 1 in respect to pre-existing contamination caused by the Property Owner or its predecessors-in-interest, and limited to investigation and/or remediation as necessary to achieve clean-up levels commensurate with use of Neighborhood 1 for open space/park resource, conservation, and similar public purposes, including habitat preservation. To the extent any such judgment or order requires remediation of Neighborhood 1 to a higher standard based on a different use or uses of the property, the City and its successors-in-interest shall be responsible at their sole cost and expense for completion of such additional remediation, as necessary to fulfill the requirements of said judgment or order.

4. Acquisition of Neighborhoods 1 and 3, Together, or the Entire Project Site. The process for the City's acquisition of Neighborhoods 1 and 3 together or the Entire Project Site, following the City's delivery of a timely Acquisition Notice therefor, shall be as follows.

- i. Neighborhoods 1 and 3, Together, or the Entire Project Site; Purchase and Sale Agreement. For a period of up to two (2) months after the City's delivery of an Acquisition Notice for Neighborhoods 1 and 3 together, or for the Entire Project Site, as applicable, the City and Property Owner shall each exercise commercially reasonable diligence to negotiate and agree upon the terms and conditions to be incorporated into a final purchase and sale agreement for the subject property. The final purchase and sale agreement for Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, shall include, but not be limited to, the following provisions: (1) if the City's Acquisition Notice states its intent to proceed with the acquisition of Neighborhoods 1 and 3 together but not the Entire Project Site, prior to the close of escrow the Property Owner, at its expense, shall cause lot line adjustments or final maps to be prepared, approved, and recorded to create Neighborhoods 1 and 3 as separate legal parcels, provided that the City agrees to cooperate with the processing and approval of said lot line adjustments or final maps and waive all normally applicable City fees for the processing, approval, and recordation of same; (2) the purchase prices shall be as set forth in Conditions L.1.ii-L.1.iii, as applicable; (3) subject to the possible escrow withholding account to be established in accordance with clause (8) below, the purchase price shall be paid by wire transfer of immediately available funds (or by such other means as may be acceptable to the Property Owner in its sole and absolute discretion); (4) the

closing date shall be consistent with Condition L.4.ii below; (5) title shall be delivered at the close of escrow free and clear of all monetary liens and encumbrances, excepting only non-delinquent property taxes and assessments (which shall either be prorated at the close of escrow or paid by the Property Owner through the escrow subject to the Property Owner's right to recover the portion of said taxes and assessments that are allocable to the period after the closing date); (6) escrow and title fees and charges and closing costs shall be allocated and paid in accordance with the customary practice for the sale of undeveloped land in Orange County; (7) each party shall pay for its own attorney's fees and broker/finder fees (if any) with respect to the transaction; (8) if the conveyance relates to Neighborhoods 1 and 3 (but not the Entire Project Site), at the close of escrow the Property Owner, at its sole option shall either (a) have performed all of its obligations and be in compliance with Conditions G.7, M.2, and M.3 and Standard Condition 25, or (b) commit to perform all of such obligations with commercially reasonable diligence after the close of escrow (in the case of any remediation obligations under Condition 25 no later than one (1) year after approval of an amended Remedial Action Plan, and in the case of the habitat obligations under Conditions M.2-M.9 in the timeframe required by the USFWS), in which case the City will grant to the Property Owner at the closing a non-exclusive license in the form attached hereto as Exhibit 3 to enter onto Neighborhoods 1 and 3 to perform such obligations and the Property Owner, at its election, shall either deliver to the City at the closing performance security in a sum sufficient to cover 100% of the estimated cost of performing such obligations and in a form reasonably acceptable to the City, or the Property Owner shall cooperate with the City in establishing an escrow withholding account in which a portion of the purchase price equal to said estimated cost shall be deposited and retained to fund and/or secure the performance of such obligations and with any balance remaining in said account after completion of the work to be disbursed to the Property Owner; (9) the grant deed conveying Neighborhoods 1 and 3, or the Entire Project Site, as applicable, to the City shall contain a deed restriction permanently restricting the use of the property so conveyed solely for open space/park resource conservation purposes, including habitat preservation and related recreational purposes; and (10) such other terms and conditions consistent with the foregoing and these Conditions of Approval to which the Property Owner and City may hereafter agree, with acknowledgment that the above provisions do not constitute all of the terms and conditions that may ultimately be included in a final Purchase and Sale Agreement. The Property Owner and the City shall undertake reasonable efforts to finalize

such other terms and conditions to be included in the final purchase and sale agreement.

If after said two-month period the City and Property Owner have not agreed in writing upon all of the terms and conditions of the purchase and sale agreement for Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, either Party shall have the right to submit any unresolved terms to non-binding mediation by a neutral third party in accordance with the JAMS mediation rules, or such other rules and procedures to which the City and Property Owner may hereafter agree, with such neutral third party to be instructed to address such dispute consistent with the express terms and conditions set forth herein and otherwise in accordance with the customary practice for the sale of undeveloped land in Orange County; provided that the mediator shall have no power to propose terms or conditions different from or inconsistent with the terms and conditions provided herein. The City and Property Owner shall cooperate with one another in an effort to cause said dispute to be mediated within thirty (30) additional days. In the event that all terms and conditions of the purchase and sale agreement for Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, are finally agreed upon by mutual agreement of the parties, through mediation or otherwise, the date thereof shall be referred to herein as the "Agreement Date" for purposes of this Section L.4. In the event that all terms and conditions of the purchase and sale agreement for Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, are not finally agreed upon by mutual agreement of the parties, through mediation or otherwise, the Property Owner shall not be bound to sell Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, to the City; the City shall not be bound to purchase Neighborhoods 1 and 3 together or the Entire Project, as applicable, from the Property Owner; and all of the terms and conditions set forth in this Condition L relating to the acquisition of Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable, shall be deemed to be deleted and of no further force or effect; provided, however, that in such event the City shall continue to have the right and the Property Owner shall continue to have the obligation to proceed with the purchase and sale of Neighborhood 1 subject to the terms and conditions set forth in Condition L.3.

- ii. Neighborhoods 1 and 3, Together, or Entire Project Site; Closing. The City shall take all necessary steps to place any proposed public bond measure for funding of the acquisition of Neighborhoods 1 and 3, together, or the Entire Project Site, as applicable, on the ballot no later than the next general election on November 8, 2016. If the voters approve the bond measure, the

City shall act with commercially reasonable diligence to sell the bonds in an amount sufficient to fund the purchase price for the property to be so acquired (or the portion thereof that the City intends to fund with bond proceeds) and the sale of Neighborhoods 1 and 3, together, or the Entire Project Site, as applicable, shall close on the latest of the following dates: (1) thirty (30) days after the Agreement Date for the applicable property; (2) thirty (30) days after the Final Approval Date; (3) if the Property Owner elects to perform its obligations set forth in Conditions G.7, M.2, and M.3 and Standard Condition 25 of these Conditions of Approval with respect to the applicable property prior to the close of escrow, as referred to in clause (8) of the second sentence in Condition L.4.i above, thirty (30) days after the date the Property Owner delivers written notice to the City that it has completed the performance of said obligations (provided that this clause (3) shall not apply if the Property Owner elects to perform said obligations after the close of escrow); (4) one hundred twenty (120) days after the bond election results are certified; or (5) if any legal action is filed contesting the public bond measure for acquisition of the applicable property, one hundred twenty (120) days after the final favorable resolution of said action and regardless of whether such final favorable resolution is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of time required to appeal an involuntary dismissal), or binding written settlement agreement. If the voters do not approve the bond measure for the acquisition of Neighborhoods 1 and 3, together, or the Entire Project Site, as applicable, or the legal challenge to the bond measure is upheld by the Superior Court, the City shall have no right or obligation to purchase Neighborhoods 1 and 3 together, or the Entire Project Site, as applicable; the purchase and sale agreement for Neighborhoods 1 and 3, together, or the Entire Project Site, as applicable (if theretofore executed) shall be terminated and each party shall bear all of its own costs and expenses incurred with respect thereto; and the Property Owner may proceed with development of the balance of the Entire Project Site as provided in VTTM 17609.

If the voters do not approve the bond measure for the acquisition of Neighborhoods 1 and 3, together, or the Entire Project Site, as applicable, the City shall have the right, exercisable within thirty (30) days after the bond election results are certified, to deliver a written notice to the Property Owner electing to fund the acquisition of Neighborhood 1 only without any bond funds pursuant to a Post-Bond Election Acquisition Notice, under the same timing, terms and conditions provided in Condition L.3.iii.

- iii. Neighborhoods 1 and 3, Together; Effect of Legal Challenge to Public Bond Measure. Nothing in these Conditions of Approval is intended or shall be interpreted to suspend the Property Owner's right to proceed with development of the balance of the Project Site under VTTM 17609 in the event a legal action ("Legal Action") is filed seeking to prevent a bond measure from being voted upon at an election or contesting a public bond measure passage for acquisition of Neighborhoods 1 and 3, together. In the event of such Legal Action, the development of Neighborhoods 1 and 3 shall be suspended until the City closes escrow for acquisition of the applicable property or the City's right to acquire the applicable property terminates in accordance with this Condition L. Property Owner shall have the right in its sole discretion to cooperate with the City to defend any such Legal Action. The City's right to continue with the subject acquisition in the event of such Legal Action shall be as follows: (1) If the Legal Action is not decided by the Superior Court with finality (whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal and the passage of time required to appeal an involuntary dismissal, or binding written settlement agreement) within 12 months of filing, or if the Legal Action is decided unfavorably to the City, Property Owner shall have the right in its sole discretion to rescind the purchase and sale agreement and proceed with development of the property under VTTM 17609 (except for Neighborhood 1 if the City has given timely Acquisition Notice with respect thereto); (2) If the Legal Action is decided by the Superior Court in the City's favor within 12 months of filing, but an appeal is taken, the City shall have the continued right to acquisition of the subject property up to a total of 18 months from the original date of filing of the Legal Action; and (3) If any appellate proceeding in the Legal Action is not decided favorably to the City with finality (whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal and the passage of time required to appeal an involuntary dismissal, or binding written settlement agreement) within the 18-month period from original filing, the Property Owner shall have the right in its sole discretion to rescind the purchase and sale agreement and proceed with development of the property under VTTM 17609 (except for Neighborhood 1 if the City has given timely Acquisition Notice with respect thereto). The Property Owner, in exercising its right to terminate hereunder, agrees to take into account any request by the City for an extension of time and the reasons stated therefore. If the City successfully defends said Legal Action and acquires Neighborhoods 1 and 3 together, the Neighborhood Trails and Key Vista Improvements associated with Neighborhoods 1 and 3 and the associated Open Space Area A as shown on Exhibit 1 shall still be constructed by Property Owner. In

the event the City does not achieve a final favorable resolution of said Legal Action, the City shall have no right or obligation to purchase Neighborhoods 1 and 3 together; the purchase and sale agreement (if theretofore executed under Condition L.3.i) shall be terminated; each party shall bear all of its own costs and expenses incurred with respect thereto, and the Property Owner may proceed with development as provided in VTTM 17609. The purchase and sale agreement shall contain terms and conditions consistent with the foregoing.

- iv. Entire Project Site; Effect of Legal Challenge to Public Bond Measure. In the event a legal action ("Legal Action") is filed seeking to prevent a bond measure from being voted upon at an election, or contesting a public bond measure after passage for the City's acquisition of the Entire Project Site, Property Owner's right to develop the property pursuant to VTTM 17609 and all obligations of the Property Owner set forth in these Conditions of Approval shall be suspended during the pendency of said Legal Action, except for Conditions M.1 (Laguna Lake Donation), M.4 (Initial Trail Improvements) and Standard Conditions 22, 24, 26, and 29; and the City's obligations with respect to the ballot measure and the close of escrow date shall likewise be suspended for the period of time that said Legal Action delays the City's ability to sell the bonds and obtain the proceeds needed to fund the acquisition. Property Owner shall have the right in its sole discretion to cooperate with the City to defend any such Legal Action. The City's right to continue with acquisition of the Entire Project Site in the event of such Legal Action shall be as follows: (1) If the Legal Action is not decided by the Superior Court with finality (whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal and the passage of time required to appeal an involuntary dismissal, or binding written settlement agreement) within 12 months of filing, or if the Legal Action is decided unfavorably to the City, Property Owner shall have the right in its sole discretion to rescind the purchase and sale agreement and proceed with development of the property under VTTM 17609 (except for Neighborhood 1 if the City has given timely Acquisition Notice with respect thereto); (2) If the Legal Action is decided by the Superior Court in the City's favor within 12 months of filing, but an appeal is taken, the City's shall have the continued right to acquisition of the subject property up to a total of 18 months from the original date of filing of the Legal Action; and (3) If any appellate proceeding in the Legal Action is not decided favorably to the City with finality (whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal and the passage of time required to appeal an involuntary dismissal, or binding written settlement agreement) within the 18-month period

from original filing, the Property Owner shall have the right in its sole discretion to rescind the purchase and sale agreement and proceed with development of the property under VTTM 17609 (except for Neighborhood 1 if the City has given timely Acquisition Notice with respect thereto). The Property Owner, in exercising its right to terminate hereunder, agrees to take into account any request by the City for an extension of time and the reasons stated therefor. In the event the City does not achieve a final favorable resolution of said Legal Action, the City shall have no right or obligation to purchase the Entire Project Site; the purchase and sale agreement (if theretofore executed under Condition L.3.i) shall be terminated; each party shall bear all of its own costs and expenses incurred with respect thereto, and the Property Owner may proceed with development (except for Neighborhood 1 if the City has given a timely Acquisition Notice with respect thereto) as provided in VTTM 17609. The purchase and sale agreement shall contain terms and conditions consistent with the foregoing.

- v. Neighborhoods 1 and 3, Together; Effect of Acquisition. In the event the City acquires Neighborhoods 1 and 3, together, Property Owner shall still construct at its own expense and dedicate to the City the Neighborhood Trails and Key Vista Improvements associated with Neighborhoods 1 and 3. In the event the City acquires Neighborhoods 1 and 3, together, VTTM 17609, these Conditions of Approval (to the extent applicable to Neighborhoods 1 and 3), and the Project Phasing Plan (Exhibit D to PC Resolution 2015 - 31) shall be deemed to be modified without need for any further action by the City or Property Owner to reflect the elimination of all development in Neighborhoods 1 and 3 (except the Neighborhood Trails and Key Vista Improvements); and all obligations under Conditions M.2-M.9 shall remain in full force and effect for Neighborhoods 1 and 3, including that Neighborhoods 1 and 3 shall be included within the WCH Habitat Preserve and the Habitat Obligations under MM 4.12-1 and the Open Space Dedication Areas within Conditions M.2-M.3 herein; Neighborhoods 1 and 3 shall be covered by and included within the Conservation Easement provided under MM 4.12-1e; and Neighborhoods 1 and 3 shall be subject to permanent deed restriction consistent with clause (9) in the second sentence of Condition L.4.i above. Upon the City's acquisition of Neighborhoods 1 and 3, together, the Property Owner shall have no obligations with respect to environmental investigation and/or remediation in Neighborhoods 1 and 3 excepting only (1) to the extent the Property Owner elects to perform its obligations set forth in Conditions G.7, M.2, and M.3 and Standard Condition 25 with respect to Neighborhoods 1 and 3 after the close of escrow, as referred to in clause (8) of the second sentence in Condition L.4.i above, the Property Owner shall be

responsible to perform such obligations, (2) as may be required by the judgment or order of a court of competent jurisdiction or a federal, state or local regulatory agency with jurisdiction over Neighborhoods 1 and 3 in respect to pre-existing contamination caused by the Property Owner or its predecessors-in-interest, and subject to the understanding that, as between the Property Owner and City, Property Owner's responsibility and liability shall be limited to investigation and/or remediation as necessary to achieve clean-up levels commensurate with use of Neighborhoods 1 and 3 for open space/park resource, conservation, and similar public purposes, including habitat preservation. To the extent any such judgment or order requires remediation of Neighborhoods 1 and 3 to a higher standard based on a different use or uses of the property, the City and its successors-in-interest shall be responsible at their sole cost and expense for completion of such additional remediation, as necessary to fulfill the requirements of said judgment or order.

- vi. Entire Site; Effect of Acquisition. In the event the City and Property Owner enter into a mutually acceptable purchase and sale agreement for the Entire Project Site, all project-related rights and obligations then outstanding with respect to the applicable property shall be suspended, except for Conditions M.1 (Laguna Lake Donation), M.4 (Initial Trail Improvements) and Standard Conditions of Approval 22, 24, 26, and 29, and as may be expressly set forth in the purchase and sale agreement. If the City thereafter acquires the Entire Project Site, VTTM 17609 shall be deemed to have terminated and be of no further force or effect, and all of the Property Owner's and City's project-related rights and obligations then outstanding on the date of such acquisition likewise shall be deemed to have terminated and be of no further force and effect, with the exception of (1) any liabilities of the City or the Property Owner arising out of a breach of the terms of the purchase and sale agreement, (2) any post-closing obligations of the Property Owner set forth in the purchase and sale agreement, and (3) Standard Conditions 22, 24, 26, and 29 which shall continue to apply and be binding notwithstanding the termination of VTTM 17609. Upon acquisition of the Entire Project Site by the City, Property Owner shall have no obligations with respect to environmental investigation and/or remediation for the property except as may be required by the judgment or order of a court of competent jurisdiction or a federal, state or local regulatory agency with jurisdiction over the applicable property in respect to pre-existing contamination caused by the Property Owner or its predecessors-in-interest, and limited to investigation and/or remediation as necessary to achieve clean-up levels commensurate with use of the applicable property for open space/park resource, conservation,



and similar public purposes, including habitat preservation. To the extent any such judgment or order requires remediation of the applicable property to a higher standard based on a different use or uses of the property, the City and its successors-in-interest shall be responsible at their sole cost and expense for completion of such additional remediation, as necessary to fulfill the requirements of said judgment or order.

5. No Grading or Development Pending Acquisition. The Property Owner agrees that, without the City's prior written consent, the Property Owner will not clear and grub, grade, develop, or alter any portion of the Entire Project Site that is subject to potential acquisition by the City under these provisions, during any period in which the City has the right to elect to purchase said property or, if the City has elected to purchase said property, pending the close of escrow for the transfer of the property to the City; provided however, that the Property Owner shall have the right to take any actions on the property necessary to comply with any final order of any regulatory agency, to undertake any well abandonments, or to take any action necessary for Habitat Obligations under Conditions M.2 through M.9 or for remediation under Standard Condition 25. In addition, the Parties acknowledge that nothing herein creates any duty on the part of the Property Owner, prior to dedication or sale to the City of any portion of the Entire Project Site, for restoration of any property following any natural disaster such as earthquake, flood or fire.
6. Effect of Legal Challenge to Public Bond Measure. Nothing in these Conditions of Approval is intended or shall be interpreted to suspend the Property Owner's right to proceed with development of the balance of the Entire Project Site in the event a Legal Action is filed contesting a public bond measure for acquisition of Neighborhood 1, or Neighborhoods 1 and 3 together, as applicable. In such event the development of Neighborhood 1, or Neighborhoods 1 and 3 together, as applicable, shall be suspended until the City closes escrow for acquisition of the applicable property or the City's right to acquire the applicable property terminates in accordance with this Condition L, whichever first occurs. All rights and obligations hereunder for development of any portions of the Entire Project Site that are not the subject of a City Acquisition Notice and said Legal Action shall remain in full force and effect notwithstanding said legal action.

#### M. Public Benefits.

1. Laguna Lake Donation. Within One Hundred Twenty (120) days of Final Approval by the City of VTTM 17609, the Property Owner shall contribute a grant to the Laguna Lake Capital Improvement Fund in the amount of Two Hundred Seventy Thousand Dollars (\$270,000), which shall be in satisfaction of the off-site expenditure provisions of Government Code Sections 66452.6(a)(1) and (2), and four (4) phased final maps may be

filed pursuant to VTTM 17609. This donation shall be irrevocable upon the approval of VTTM 17609 and shall be undertaken in all events, regardless of whether the City acquires any part or all of the project site or the Property Owner undertakes any development on the project site, and also regardless of any suspension of obligations provided for herein.

2. Habitat Preservation and Improvement. In accordance with MM 4.12-1a, and related mitigation measures, the Property Owner shall re-vegetate, preserve, and/or enhance coastal sage scrub habitat and other native trees and plant materials ("Habitat Obligations") within (i) the open space areas to be dedicated to the City under VTTM 17609 as reflected in Exhibit 2 ("Open Space Dedication Areas") attached hereto and incorporated herein by reference ("Exhibit 2"), (ii) certain portions of the Robert E. Ward Nature Preserve ("Ward Nature Preserve") as that Preserve is depicted on Exhibit 1, and (iii) the areas of Neighborhoods 1 and 3 to the extent acquired by the City. The Habitat Obligations shall be performed in phases in conjunction with the phased development of the adjoining portions of the project under VTTM 17609 and the Project Phasing Plan, in accordance with MM 4.12-1d; provided however, that the City and Property Owner acknowledge that the USFWS may modify the extent, nature, and timing of the Habitat Obligations in the event of the City's acquisition of Neighborhood 1 or Neighborhoods 1 and 3 and if that occurs the Property Owner's obligation to commence said Habitat Obligations shall be extended until later of (i) the date that is ninety (90) days after the date of USFWS approval or (ii) the deadline set forth in the Phasing Plan. With respect to the Property Owner's Habitat Obligations to be performed within the Ward Nature Preserve, Neighborhood 1 or Neighborhoods 1 and 3 together, to the extent acquired by the City, or Open Space Dedication Areas if not completed prior to dedication and acceptance, the City shall grant to the Property Owner at no cost a License in the form of Exhibit 3 ("License Agreement") attached hereto and incorporated herein by reference, allowing Property Owner to enter onto any portions of the Ward Nature Preserve and said Neighborhood areas to perform any required work. Acreage counts for those portions of the Ward Nature Preserve and said Neighborhoods to be re-vegetated, preserved, and/or enhanced with coastal sage scrub and/or with other native trees and plant materials shall be included in satisfying the Habitat Obligations. The Open Space Dedication Areas, the applicable portions of the Ward Nature Preserve, and said Neighborhood areas if acquired by the City shall be covered by and included within the Conservation Easement provided under MM 4.12-1e and shall be subject to deed restrictions to maintain the areas as open space and similar public purposes as stated herein. Prior to the dedication of any Open Space Dedication Areas to the City and any acquisition by the City of said Neighborhood areas, Property Owner shall bear all costs for completion of all Habitat Obligations both on Property Owner's property and within the Ward Nature Preserve. Upon completion of each phase of the

improvements for each Open Space Dedication Area, such area (excluding any neighborhood trails or other areas to be owned by the Homeowner Association(s)) shall be dedicated to the City. The City shall not unreasonably reject an offer of dedication. Following dedication, the Management Agency identified under MM 4.12-1g and Condition M.3 shall have sole and exclusive responsibility for the Habitat Obligations in the Open Space Dedication Areas, the Ward Nature Preserve, and, if applicable, Neighborhood 1 or Neighborhoods 1 and 3.

3. Written Service Contract with Management Agency for Habitat Endowment. To implement the Habitat Endowment established under MM 4.12-1g and Condition M.2, the Property Owner shall enter into a written service contract ("Service Contract") with a responsible management agency ("Management Agency") for the Habitat Obligations under the terms and conditions provided in MM 4.12-1g, for perpetual maintenance and protection of coastal sage scrub and wetland habitat within the WCH Habitat Preserve. The cost of the Service Contract shall be paid from the Endowment and shall not be an additional cost to the Property Owner. In addition to approval by the US Fish and Wildlife Service ("USFWS") and the US Army Corps of Engineers ("USACOE"), the Management Agency selected by the Property Owner shall be subject to approval by the City, which approval may not be unreasonably withheld. Any dispute regarding selection of the Management Agency shall be resolved by the USFWS. In addition, the form and content of the Service Contract shall be acceptable to the USFWS, the USACOE and the Management Agency, and shall be provided to the City for its review and comment in advance of execution with the Management Agency. It is understood and agreed as between the Property Owner and the City that the City is not assuming any responsibility for funding or maintenance of the Habitat Obligations that are to be undertaken by the Management Agency.
4. Initial Trail Improvements. Subject to notification to the USFWS in accordance with West Coyote Hills Specific Plan Amendment #8 and the Conditions of Approval set forth herein, and to receipt of all necessary approvals and permits, the Property Owner shall within 60 days of the Final Approval Date commence the design and construction of an initial portion of the trail system to be located partly within the Ward Nature Preserve and partly on certain portions of the Property Owner's property ("Initial Trail Improvements") in the location(s) shown on Exhibit 1, in order to provide public access to the Ward Nature Preserve. Subject to the terms and conditions below, this condition for the Initial Trail Improvements shall be irrevocable upon the approval of VTTM 17609 and shall be undertaken by the Property Owner in all events, regardless of whether the City acquires any part or all of the Entire Project Site or the Property Owner undertakes any development on the Entire Project Site, and also regardless of any suspension of obligations provided for herein.

The scope of work and cost for all design, ground work, installations, and other work for the Initial Trail Improvements (including trail tread, fencing, trail markers, monuments, and signage, trail head areas and associated parking and facilities, and the like) shall be in accordance with generally accepted standards for recreational trails and the West Coyote Hills Interpretative Master Plan (Acorn Group), pp. 20-39, the West Coyote Hills Specific Plan Amendment #8, and subject to the review and approval of the Director of Parks and Recreation. The City shall review and consent to the design, scope of work, and cost of the Initial Trail Improvements proposed by the Property Owner prior to the commencement of any work, which consent may not unreasonably withheld. In the event the City declines to consent, the design, scope of work, and cost shall be submitted to binding resolution by a neutral third party selected under the provisions set forth in the Subdivision Implementation Agreement. In respect to the Initial Trail Improvements located within the Ward Nature Preserve, the City shall grant Property Owner at no cost the License Agreement allowing Property Owner to enter onto portions of the Ward Nature Preserve as necessary to construct the Initial Trail Improvements and to perform any required repairs or maintenance. The Property Owner shall complete the Initial Trail Improvements no later than fourteen (14) months after the Final Approval Date. Upon completion, the Initial Trail Improvements shall be dedicated to the City, and the City shall not unreasonably reject an offer of dedication. Prior to the City's acceptance of the offer of dedication, any public use of the Initial Trail Improvements shall be subject to the License Agreement which shall be agreed upon prior to opening the Initial Trail Improvements for public use, in accordance with the License Agreement; and the City shall have be liable for any injuries or damages due to or associated with public use of the Initial Trail Improvements, and shall indemnify the Property Owner from and against any third party claims for injury or damages due to or associated with such use, in accordance with the License Agreement. If the City unreasonably fails to accept an offered dedication, the Property Owner shall have no further maintenance or other obligations with respect to the Initial Trail Improvements and may close and abandon them.

5. Neighborhood Trails and Key Vista Improvements. Subject to notification to the USFWS in accordance with West Coyote Hills Specific Plan Amendment #8 and these Conditions of Approval, and to receipt of all necessary approvals and permits, the Property Owner shall implement the Neighborhood Trails and Key Vista Improvements identified on Exhibit 1. The Neighborhood Trails and Key Vista Improvements shall begin in each Phase under the West Coyote Hills Project Phasing Plan in conjunction with the phased development of the adjoining portions of the project, upon the issuance of the first residential unit building permit in each such Phase; provided however, that (1) in the event the City acquires Neighborhoods 1 and 3, together, the Property Owner shall have no obligation to commence the Phase 1A Neighborhood Trails and Key Vista Improvements prior to

commencement of residential development in Phase 1B under the Phasing Plan; and (2) in the event that the City acquires Neighborhood 1 only, the Property Owner shall have no obligation to commence the Phase 1A Neighborhood Trails and Key Vista Improvements prior to commencement of residential development in Neighborhood 3 of Phase 1A under the Phasing Plan. The scope of work and cost for all design, ground work, installations, and other work for the Neighborhood Trails and Key Vista Improvements (including trail tread, fencing, trail markers, monuments, and signage, trail head areas and associated parking and facilities, and the like) shall be in accordance with generally accepted standards for recreational trails and vistas, the West Coyote Hills Interpretative Master Plan (Acorn Group), pp. 20-39, and the West Coyote Hills Specific Plan Amendment #8, and as shown on Exhibit 1. Prior to the commencement of any work, the City shall review and consent to the design, scope of work and cost of the Neighborhood Trails and Key Vista Improvements. Design shall be subject to the review and approval of the Director of Parks and Recreation, and the Director of Community Development. In the event the City declines to consent to the design as proposed by the Property Owner, or as modified by mutual agreement between the Property Owner and the City, the design, scope of work and cost shall be submitted to binding resolution by a neutral third party selected under the provisions set forth in the Subdivision Implementation Agreement. The Neighborhood Trails and Key Vista Improvements shall be completed and offered for dedication to the City in each Phase prior to obtaining more than seventy-five percent (75%) percent of the building permits in that Phase; provided however, that (i) in the event the City acquires Neighborhood 1 only, the Neighborhood Trails and Key Vista Improvements associated with Neighborhood 1 shall be completed and offered for dedication to the City by the Property Owner prior to obtaining more than seventy-five percent (75%) percent of the building permits for residential development in Neighborhood 3 in Phase 1A; and (2) in the event that the City acquires Neighborhoods 1 and 3, together, the Neighborhood Trails and Key Vista Improvements associated with Neighborhoods 1 and 3 shall be completed and offered for dedication to the City by the Property Owner prior to obtaining more than seventy-five percent (75%) percent of the building permits for residential development in Phase 1B. Public access to the Neighborhood Trails and Key Vista Improvements shall be permitted as each Phase is completed, following dedication and acceptance of each phase of the Improvements by the City. The City shall not unreasonably reject an offer of dedication. If the City unreasonably fails to accept an offered dedication, the Property Owner shall have no further maintenance or other obligations with respect to the Neighborhood Trails and Key Vista Improvements and may close and abandon them.

6. Interpretive Center. In the event the City does not acquire the Entire Project Site under Condition L, the Property Owner shall design and

construct an Interpretive Center to be located within the Ward Nature Preserve at a cost not to exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000), including all design, ground work, installations, and other work, in accordance with Exhibit 4 (Interpretive Center Construction Scope) attached hereto and incorporated herein by reference ("Exhibit 4"); provided however, that said cost shall be subject to a CPI adjustment between the date of Final Administrative Action and the time for commencement of construction under the provisions of the Subdivision Implementation Agreement for CPI adjustments. The cost for the Interpretive Center shall not include any design or other costs incurred by the Property Owner prior to approval of VTTM 17609. The Property Owner shall prepare and submit conceptual design plans for the Interpretive Center within one hundred twenty (120) days after the latest of the following dates: (1) the Final Approval Date; (2) the date prior to the deadline for the City's delivery of an Acquisition Notice on which the City delivers the Termination Notice to the Property Owner that irrevocably abandons and waives the City's right to acquire the Entire Project Site (if applicable); or (3) if the City timely delivers an Acquisition Notice to the Property Owner in which the City elects to proceed with acquisition of the Entire Project Site, the date on which it is finally determined and resolved that such acquisition will not be completed, whether because of the parties' failure to enter into a binding purchase and sale agreement, failure of the bond measure referred to in Condition L.4.ii, or otherwise. The City and Property Owner shall use their best efforts to reach an agreement on the design plans within one hundred twenty (120) days from submittal to the City, or the parties may mutually agree to extend the time period for agreement on design. The City shall not unreasonably withhold agreement on the design plans. If agreement is not reached on the design plans, they shall be submitted to binding resolution by a neutral third party selected under the provisions set forth the Subdivision Implementation Agreement. Once the Design Plans are either agreed upon or resolved by a third party neutral, the Property Owner shall take all steps required to complete the Interpretive Center no later than the issuance of a building permit for the one hundred thirtieth (130th) residential unit of the project. If the City requires the Property Owner to change the agreed-upon design plans or to add to the construction scope in a manner that materially increases the Property Owner's overall costs to design, engineer, construct, and install the Interpretive Center, the City shall be responsible for the additional costs of such City-imposed design changes and any dispute as to such matter shall be resolved by a neutral third party as referred to above. Upon completion, the Interpretive Center shall be offered for dedication to the City and the City shall not unreasonably reject an offer of dedication. If the City unreasonably fails to accept an offer of dedication, the Property Owner shall have no further maintenance or other obligations with respect to the Interpretive Center and may secure and abandon it. If the City acquires the Entire Project

Site, the Property Owner shall have no obligation to design or construct the Interpretive Center.

7. Repair, Maintenance, Security, and Liability Obligations. Except as provided with regard to public use of the Initial Trail Improvements prior to dedication by the Property Owner and acceptance by the City under Condition M.4, the Property Owner at its sole expense shall have all responsibility prior to dedication and acceptance by the City, for operation, repair, maintenance, and security (including providing security consistent with requirements of the USACOE and USFWS) and assume liability for the Open Space Dedication Areas, the Initial Trail Improvements, applicable portions of the Trail/Vista Improvements within each Phase, and the Interpretive Center (collectively, the "Resources Improvements"), including the Habitat Obligations and all responsibility for any injury or damages to persons or property due to or associated with the Resources Improvements, in accordance with Exhibit 5 (Open Space Area, Maintenance, Repair and Security Obligations) attached hereto and incorporated herein by reference. Upon the City's acceptance of dedication of the Resources Improvements, or any of them, the City shall have all responsibility for operation, repair, maintenance, and security (including providing security consistent with requirements of the USACOE and USFWS and general fire and police protection under applicable City standards) in a manner consistent with the condition of the Resources Improvements at the time of dedication, in accordance with Exhibit 5, including all responsibility for any injury or damages to persons or property due to or associated with the Improvements; provided however, that (i) by accepting the Resources Improvements, the City does not contractually obligate itself to the Property Owner, or its successors or assigns, in respect to repair, maintenance, and security, and the City's liability with respect to such Resources Improvements shall be the same as such obligations City may have under applicable law with respect to property owned by the City; and (ii) the City's obligations do not include the Habitat Obligations that are the sole responsibility of the Management Agency under Conditions M.2 and M.3. Following the City's acceptance of dedication of the Resources Improvements, or any of them, Property Owner shall have no obligation with respect to environmental remediation of the Resources Improvements areas except as may be required by a final judgment or order of a court of competent jurisdiction or final order issued to the Property Owner by a Federal, State, or local regulatory agency with jurisdiction over the property with respect to pre-existing contamination caused by the Property Owner or its predecessors in interest, and limited to remediation as necessary to achieve clean-up levels commensurate with use of the property for open space/park resource, conservation, and similar public purposes, including habitat preservation; and provided further that to the extent that the judgment or order requires cleanup of said areas to a higher standard based on a different use or uses of the property, the City and its successors in interest

shall be responsible at their sole cost and expense for completion of such additional cleanup, as necessary to fulfill the requirements of said judgment or order.

8. Cooperation and Use of Ward Nature Preserve. The City and Property Owner shall cooperate with and provide reasonable assistance to each other to the extent necessary to implement these Conditions, the Subdivision Implementation Agreement, and any License Agreements required by these Conditions. In this regard the Ward Nature Preserve shall be utilized as part of the Property Owner's overall conservation effort as provided in MM4.12-1a, and the City consents to application of the Habitat Obligations to the Ward Nature Preserve.
9. Open Space, Trails, and Interpretive Center Support Endowment. In conjunction with the City's acceptance of the Resources Improvements, the Property Owner shall also provide funding to the City, in a total amount not to exceed Three Million Eight Hundred Forty Thousand Dollars (\$3,840,000) for the City to operate, maintain, repair, and secure the Resources Improvements, with such sum to be subject to a CPI adjustment between the date of Final Administrative Action and the time each funding payment is due (as so adjusted, the "Endowment Amount"). The Endowment Amount shall be funded in installments as each of the Resources Improvements is completed, offered for dedication and accepted by the City (in the case of the Open Space Improvements and the Trail/Vistas Improvements, no earlier than issuance of the first building permit in each associated Project Phase as shown on the Project Phasing Plan). The City reserves the right to make a reasonable final determination as to the pro rata amount due in the event of a dispute between the City and the Property Owner regarding the amount of any payment. In no event shall the total amount exceed the Endowment Amount specified above. An anticipated funding schedule for the endowment shall be included as part of the Subdivision Implementation Agreement, but such schedule shall not alter the endowment obligation set forth in this Condition. The City shall invest, manage and use the funds paid by Property Owner pursuant to this Condition M.9 substantially as set forth in Exhibit 6 (Open Space, Trails and Interpretive Center Support Endowment Guidelines and Procedures) attached hereto and incorporated herein by reference ("Exhibit 6").
10. Additional Trail Improvements. The Property Owner shall make limited improvements and upgrades (including reestablishing trail grades, drainage, and replacement of decomposed granite surfacing) as necessary to the Nora Kutner, Castlewood, and existing southern West Coyote Hills backbone trails, as depicted on the City of Fullerton Recreational Trails Map as Amended 10-5-2004, to be completed prior to occupancy of the first home of the appropriate Phase within which the above referenced trails are associated, as shown on Exhibit 1.



11. Fire Station. As part of the 2011 project approvals, the Property Owner was required to dedicate a 1.4 acre site for construction of City Fire Station No. 6; and in satisfaction of that condition, the Property Owner has dedicated the site and the fire station has been constructed.
12. Brush Engine. The Property Owner shall dedicate one Type III Brush Engine at a total cost (with equipment) of approximately Three Hundred Fifty Thousand Dollars (\$350,000) to the City before issuance of any grading permit for the project.
13. Landscaping. In addition to obligations the Property Owner may have under existing land use regulations and development approvals, the Property Owner shall install certain infrastructure improvements as follows:
  - i. Landscaped medians for the project frontages of Euclid Avenue, Gilbert Street, and Rosecrans Street prior to the first occupancy of homes in Phases 1A, 1B and 2A, respectively under the Project Phasing Plan; and
  - ii. Landscaping improvements to the parkway along the northerly right-of-way of the section of Castlewood Drive between Gilbert Street and Parks Road prior to the first occupancy of homes in Phase 1A of the project under the Project Phasing Plan.
14. Formation of Financing District. The City and Property Owner shall cooperate in good faith to establish a landscaping and lighting maintenance district or other appropriate assessment or community facilities district (collectively, a "Financing District") for the Property, or portions thereof, to finance the maintenance of the Project collector parkway and median landscaping; provided, however, that the City reserves its legislative discretion with respect thereto. By accepting VTTM 17609, the Property Owner consents to the formation of such Financing District and agrees to take all necessary action to accomplish formation of same.
15. Water Equipment and Software. The Property Owner shall provide equipment and software interfaces with the City's water customer information and billing system related to the installation of the automated water meter reading system prior to issuance of the first certificate of occupancy for the first residential unit within the project.
16. Library Technology Grant. Subject to agreement by the City Library, the Property Owner shall provide a library technology grant in the amount of \$291/residential unit approved, with a minimum of One Hundred Seventy-Six Thousand Dollars (\$176,000) for the project. The fee per residential unit shall be paid on or before final map approval for each dwelling unit included within the applicable subdivision. Upon recordation of the last

final map for the residential portions of the project, any remaining balance of the minimum grant amount shall be due and payable.

17. Payment of Development Impact Fees At Rates in Effect at the Time Fees Are Due. Notwithstanding any other provision of law and applicable case law authority relating to the rights of a property owner/subdivider under the vesting tentative map provisions of the Subdivision Map Act (Government Code Section 66498.1 *et seq.*), the Property Owner consents and agrees that, except as expressly set forth in Condition P relating to park fees, the Property Owner and its successors and assignees shall be responsible for payment of all normally applicable development impact fees for the project that are in effect at the time those fees are due and the Property Owner (on its behalf and on behalf of its successors and assignees) voluntarily waives the benefits of the vesting tentative map statute to have such fees frozen, fixed, or reduced. Notwithstanding the foregoing, nothing in this Condition M.17 shall restrict the right of the Property Owner to contest any future development impact fee increases as being unreasonable or invalid under applicable provisions of law.

N. Suspension or Termination of Obligations.

1. Following the date of Final Administrative Action and prior to the commencement of any development or alteration of the land by the Property Owner (including without limitation any clearing and grubbing, excavation, or grading), if a legal action ("Legal Action") is filed contesting VTTM 17609 or the project in any manner, or if any agency denies a permit or approval necessary for the project or imposes conditions ("Adverse Permitting Actions") that Property Owner in its sole discretion determines are inconsistent with VTTM 17609 or beyond the scope of the conditions contemplated by Property Owner as of the date of Final Administrative Action, Property Owner shall have the right to deliver a written notice to the City ("Suspension Notice"); provided however, such a Suspension Notice shall not affect the right of the City under Condition L to acquire all or a portion of the Entire Project Site in either of the following circumstances: (1) after any bond election at which the City's voters approve a bond measure for the acquisition of all or a portion of the Entire Project Site, or (2) if the City Council has voted to place a bond measure on the ballot to authorize the acquisition of all or a portion of the Entire Project Site, less than thirty (30) days after the last day that the City is permitted by law to rescind the call of the bond election and notify the Orange County Registrar of Voters of such action ("Non-Suspension Acquisition Periods"). If the Property Owner delivers a Suspension Notice to the City at any time, the Property Owner shall pay for any and all costs incurred by the City in respect to preparing for a ballot measure for public bonds to acquire any portion of or the Entire Project Site, but only to the extent such ballot measure does not go forward. A Suspension Notice shall identify the Property Owner's reasons for the suspension of Property

Owner's rights and obligations under these Conditions of Approval, any Subdivision Implementation Agreement, or any License Agreement provided for hereunder. Excepting the Non-Suspension Acquisition Periods, from and after the delivery of a timely Suspension Notice, the rights and obligations of the Property Owner and the City under these Conditions of Approval, any Subdivision Implementation Agreement, and any License Agreement, including the City's rights and obligations to deliver an Acquisition Notice, to negotiate a final purchase and sale agreement, to proceed with the ballot measure, and to take other actions with respect to potential acquisition of Neighborhoods 1 or 3 together or the Entire Project Site, shall be suspended unless and until said Legal Action or Adverse Permitting Action is finally and favorably resolved, or in the case of an Adverse Permitting Action the Property Owner in its sole discretion seeks and obtains acceptable replacement permits or approvals; provided however, that the Laguna Lake Donation (Condition M.1.ii), the Initial Trail Improvements (Condition M.2), and Standard Conditions of Approval 22, 24, 26, and 29 are not subject to suspension and shall be provided and performed by the Property Owner in all events. City does not represent or warrant that a suspension of obligations for any Adverse Permitting Actions as referred to herein, constitutes a "development moratorium" within the meaning of Government Code Section 66452.6(b) or will extend the life or duration of VTTM 17609.

2. If the outcome of any Legal Action or Permitting Action referred to in Condition N.1 above that would give the Property Owner the right to deliver a Suspension Notice is adverse to the Property Owner, VTTM 17609, or the project, the Property Owner in its sole and absolute discretion may either (1) take such steps as may be necessary to address such adverse action and seek to continue with the project, or (2) give notice to the City that Property Owner will not proceed with the project under VTTM 17609, in which case Property Owner shall voluntarily consent in writing to the City's revocation of VTTM 17609 and the City shall accept and approve said revocation, and all rights and obligations of the Property Owner and City arising out of this Resolution, VTTM 17609, and any Subdivision Implementation Agreement, License Agreement, purchase and sale agreement, and any other agreement entered into with respect to the project shall be terminated, except that the Property Owner shall remain responsible for performance of Standard Conditions of Approval 22, 26, and 29.
3. In the event the City does not approve any phased final map(s) timely applied for by the Property Owner that are in substantial compliance with VTTM 17609, in addition to any legal rights Property Owner may have to seek judicial redress of said City action, Property Owner may give notice to the City that all rights and obligations then remaining on the part of the Property Owner with respect to the portions of the Entire Project Site covered by said final map(s) are terminated by the Property Owner in the

same manner as provided in Condition N.2 for revocation of VTTM 17609; provided however, that any improvements or public benefits that were actually commenced by the Property Owner prior to any such decision not to approve a final map shall be completed; and in all events the Property Owner shall remain responsible for performance of all of the applicable Conditions of Approval as to any area under an approved final map.

**O. Level of Public Benefits.**

1. To the extent necessary, the specific timing and phasing of public benefits shall be delineated in the Subdivision Implementation Agreement which will carry forward the project's public benefit obligations upon the recordation of each final map, or as otherwise specified. The timing and phasing provisions of the Subdivision Implementation Agreement shall be consistent with the provisions of these Conditions of Approval and the Project Phasing Plan.

**P. Dedication of Lot C/Park Fees.**

1. The residential development originally proposed as Neighborhood 2 under Tract Map 17651 has been eliminated under VTTM 17609, and said area is included in Lot A for dedication to the City as Open Space Preserve in accordance with VTTM 17609 (including construction of the Trails/Vista Point Improvements), subject to the WCH Habitat Preserve and the Habitat Obligations under MM 4.12-1 and associated mitigation measures, and Conditions M.2 and M.3 herein. In recognition of the Property Owner's substantial dedication of open space/habitat areas and its performance of its various obligations with respect to open space and habitat preservation, improvement, and restoration set forth in Conditions M.2-M.11, the Property Owner's obligation to pay park fees to the City shall be limited to the sum of Six Hundred Sixty Thousand Dollars (\$660,000), to be paid to the City in three (3) annual installments, with the first such payment due and payable no later than (1) the first anniversary of the City's Final Administrative Action approving VTTM 17609 or (2) the Final Approval Date for VTTM 17609, whichever is later; and the following two (2) annual payments due and payable on the first and second anniversaries of the first payment date. Said payments shall be made irrespective of the dates on which the Property Owner pulls residential building permits for the project.

**STANDARD CONDITIONS**

1. Project development shall occur in substantial conformance with West Coyote Hills Specific Plan Amendment #8 and with plans, maps, descriptions, and statements of the Property Owner, except to the extent that the plans or designs

are modified by the Planning Commission and/or City Council and such modifications are accepted by the Property Owner.

2. Project approval shall be subject to compliance with all conditions included in the Engineering Department Letter dated September 30, 2015, attached as Exhibit E to Resolution No. PC 2015-31. All final subdivision maps must be found to be in substantial conformance with approved VTTM 17609.
3. All final grading plans shall be in substantial conformance with approved VTTM 17609.
4. Prior to recordation of the final phased tract maps, documents shall be submitted for the review and approval of the Directors of Public Works and Community Development establishing a Homeowners' Association (HOA) and Covenants, Conditions and Restrictions (CC&Rs) for the residential areas and a management entity such as a Property Owners' Association or a Mutual Benefits Agreement for the commercial area concerning the joint ownership and maintenance of the private drives, streets, common areas and public areas to be maintained consistent with the West Coyote Hills Specific Plan Amendment #8.
5. A Master Signage Program and all signs shall be submitted for review and approval by the Community Development Department, prior to the issuance of any sign permits.
6. Detailed landscape and irrigation plans shall be prepared by a licensed landscape architect for the model homes, parks, street parkways, and common slope/open space areas. Such plans will be designed and submitted in accordance with West Coyote Hills Specific Plan Amendment #8 and Fullerton Municipal Code Chapter 15.50.
7. In residential Neighborhoods 3-8, the Property Owner shall provide for installation of drought tolerant landscaping in accordance with Fullerton Municipal Code Chapter 15.50 for all front yard areas and exterior side yard areas on corner lots. All private rear yard areas may be designed and installed by homeowners in accordance with Master Specific Plan 2-A (Amendment No. 8) and Fullerton Municipal Code Chapter 15.50.
8. Property Owner shall pre-wire all home sites with "Cat 5" or equivalent fiber optics data transmission system.
9. Property Owner shall utilize public easements in private streets for the fiber-optic network (joint trenches).
10. Property Owner shall join Underground Alert.
11. If a private fiber network is installed and revenue from services carried over the private fiber network are received by or on behalf of the Property Owner or a Homeowners' Association ("HOA"), the Property Owner or HOA receiving such

fees shall pay City 7% of revenue from all services carried over the private fiber network.

12. Video programming (as opposed to data) shall require a separate "franchise."

13. Property Owner shall be bound by both the CAN and Telecom ordinances.

14. Property Owner shall provide sufficient conduit capacity to allow City to run a 24-strand fiber cable for City's own purposes.

15. Property Owner shall provide dedicated fiber to City for remote water meter reading purposes and other municipal purposes.

16. Chevron Land and Development Company, the parent company of Pacific Coast Homes, shall guarantee the environmental remediation and indemnification obligations of Conditions 24 and 25, in the form of Exhibit 7 (Guaranty Agreement) attached hereto and incorporated herein by reference.

17. Prior to the issuance of building permits for residential construction for any given phase of development, an "all weather road surface" providing access to the entire phase shall be constructed by the Property Owner. In addition, prior to the delivery of lumber for any given phase's construction, fire hydrants and either temporary or permanent water lines shall be installed and operational throughout that phase of the project.

18. Subject to the Property Owner's satisfactory final completion of the work, City hereby agrees to accept Property Owner's offer(s) of dedication of the public streets, sidewalks, streetscape landscaping and related public improvements within the dedicated public street rights-of-way and the public water and sewer systems, public storm water systems, and the City facilities within and adjacent to the property; provided however, that City reserves the right to make a reasonable determination as to the timing of acceptance of any public improvements/facilities to protect the City against a likelihood of extraordinary maintenance and repair costs or a need for the City to make special accommodations for encroachments or access if any of said public improvements are within future construction zones associated with a subsequent phase of Property Owner's development. City's acceptance of any public improvements/facilities shall not constitute a waiver or release by City of any of its rights against Property Owner, Property Owner's contractor or subcontractors, and any surety with respect to defective or deficient work. In addition, by accepting public improvements/facilities, the City does not contractually obligate itself to the Property Owner to thereafter maintain, repair, or replace any of the dedicated public improvements/facilities and the City makes no representation or warranty to Property Owner with respect to any such matters and the City's liability with respect to such dedicated public improvements/facilities shall be the same as whatever obligations the City may have under applicable law.

19. Upon recordation of the first final map under VTTM 17609, Property Owner shall promptly deliver to City a written agreement in a form reasonably approved by the City's legal counsel and executed by Property Owner, pursuant to which Property Owner assigns its rights and obligations set forth in the Water Delivery Agreement to City. In this regard, Property Owner warrants, represents, and covenants to City that (i) Property Owner has not previously assigned, transferred, or encumbered any of its respective rights or obligations in the Water Delivery Agreement to any other person or entity and no such assignment, transfer, or encumbrance shall occur prior to the Property Owner's assignment and transfer of its rights and obligations under the Water Delivery Agreement to City; (ii) the Water Delivery Agreement is in full force and effect, has not been modified or amended, and to the best knowledge of Property Owner, no default has occurred and no circumstance exists which, with the giving of notice or passage of time, would constitute a default by either party under the Water Delivery Agreement; (iii) to the best knowledge of Property Owner there is no pending or threatened litigation, claim, or administrative proceeding challenging or affecting the validity and enforceability of either the Water Delivery Agreement; and (iv) all of the representations and warranties set forth in clauses (i)-(iii) of this sentence shall be true and correct on the date of approval of VTTM 17609. The City agrees to cooperate with the Property Owner in effectuating an assignment to City of the Water Delivery Agreement. After assignment of the Water Delivery Agreement to City, the City may not assign or amend the Water Delivery Agreement without the written consent of Property Owner, which consent may be granted or withheld in Property Owner's sole and absolute discretion.

In addition, and notwithstanding the foregoing, Property Owner shall be responsible, at its sole cost, for all costs incurred to plan, design, engineer, finance, obtain any required governmental permits and approvals for, construct, install, and inspect the initial construction of the "Delivery Facilities" referred to in Section 1.5 of the Water Delivery Agreement, including without limitation any transmission and distribution pipelines, valves, pump stations, and other incidental facilities as are needed to deliver water from its existing source(s) to the connection to City's facilities in a location reasonably acceptable to City; and in this regard, Property Owner shall indemnify, defend, and hold harmless City from any costs or liabilities that City might incur with respect to such matters pursuant to Sections 1.5 of the Water Delivery Agreement as a result of accepting the assignment of said agreement. City shall have the reasonable right to approve the design and the plans and specifications for the Delivery Facilities, even if some or all of the same are located outside City's boundaries. It is understood and agreed that City may require Owner to construct and install the Delivery Facilities at any time following recordation of the first final map under VTTM 17609 and prior to the time that City decides to deliver the "Notice of Initiation" referred to in Section 1.2.2 of the Water Delivery Agreement, in which case Property Owner shall proceed with reasonable diligence to plan, design, engineer, obtain all necessary permits for, construct, and install the Delivery Facilities as quickly as possible thereafter.

City acknowledges that the Water Delivery Agreement does not guarantee a fixed or minimum water supply over the term of said agreement. Property Owner represents and warrants to City, however, that for the fifteen (15) years preceding the Agreement Date, the Water Entitlement amount for the "Water Shares" referred to therein averaged approximately 615.6 acre feet per year, with a low of 486 acre feet per year and a high of 684 acre feet per year.

20. The Subdivision Implementation Agreement shall provide that the Property Owner shall cause to be maintained all private improvements not agreed to be maintained by City, other public agencies or the holder of an easement, a conservancy, or a non-profit environmental preservation group, including any such improvements on non-residential property.
21. Available remedies in the event of any material default, cross-default, breach, or violation of the terms of the Subdivision Implementation Agreement or any License Agreements shall be specified therein.
22. The Property Owner shall indemnify, defend, and hold harmless the City, and City officials, officers, employees, and agents, including without limitation City consultants, attorneys, contractors, and subcontractors (collectively, the "City's Affiliated Parties"), from and against any third-party claim, action, or proceeding of any kind ("Claim") against the City or the City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of VTTM 17609, the Subdivision Implementation Agreement, any License Agreement, or the approval of any permit granted pursuant to thereto. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. The City shall promptly notify the Property Owner of any such Claim and the City shall cooperate with the Property Owner in the defense of such Claim. If City fails to promptly notify the Property Owner of such Claim, the Property Owner shall not be responsible to indemnify, defend, and hold the City harmless from such Claim until the Property Owner is so notified; and if the City fails to cooperate in the defense of a Claim the Property Owner shall not be responsible to defend, indemnify, and hold harmless the City during the period that the City so fails to cooperate or for any losses attributable thereto. The Property Owner shall be entitled to control the defense of such Claim; provided, however, that the Property Owner shall not have the authority to settle such action without the City's approval or to unilaterally modify or change any development approval, or the Subdivision Implementation Agreement or any License Agreement, and the Property Owner shall have no authority to bind the City to take any further actions with respect thereto except with the City's prior written consent, which consent the City may withhold in its sole and absolute discretion. The Property Owner shall have the right to choose legal counsel to defend the Claim (subject to such counsel's compliance with any applicable conflict of interest or ethical rules that apply) and the Property Owner shall pay any attorney's fees, expert witness fees, costs, interest, and other amounts that may be awarded against the City or the Property Owner, or both, resulting from the Claim. The Property Owner shall keep the City informed of the status of any pending or threatened



Claim upon the City's request, and promptly notify the City thereafter if there is any change in the status of the Claim. In the event the Property Owner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, the Property Owner shall be entitled to retain the same.

23. Nothing in Resolution No. PC 2015-31, these Conditions of Approval, the Subdivision Implementation Agreement, or any License Agreement shall prevent or limit the Property Owner, in any manner, in the Property Owner's sole discretion, from encumbering the property or any portion thereof, or any improvement thereon, by any mortgage, deed of trust, or other security device securing financing with respect to the property; provided, that the lien of any such encumbrance shall be terminated or re-conveyed with respect to any portions of the Property to be conveyed or dedicated for open space/park resource conservation purposes or any other public purposes no later than the conveyance or acceptance of the dedication of same.
24. The Property Owner shall indemnify, defend, and hold harmless the City and City's Affiliated Parties from and against any and all third-party claims, liabilities, and losses (collectively, "Claims") for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any pre-existing contamination caused or deposited by Property Owner or its predecessors on or under any of the property in violation of any applicable environmental law; (ii) the actual or alleged migration of any pre-existing contamination caused or deposited by Property Owner or its predecessors from the property through the soils or groundwater to a location or locations off of the property; (iii) the storage, handling, transport, or disposal of any pre-existing contamination caused or deposited by Property Owner or its predecessors on, to, or from the property, the Ward Nature Preserve, and any other area disturbed, graded, or developed by the Property Owner in connection with the Property Owner's development of the project; and (iv) the Property Owner's failure to comply with any of the Property Owner's environmental remediation obligations; provided however, that this indemnity shall exclude and not apply to any such Claims to the extent caused in whole or in part by any affirmative conduct or actions on or near the property taken by the City itself through any of its employees, agents or contractors (but this exclusion shall not apply to any inaction on the part of the City). The foregoing indemnity obligations shall not apply to any contamination or substances placed or stored on a separate legal lot within the property after the lot termination date provided in the Subdivision Implementation Agreement, nor shall the foregoing indemnity obligation apply to any contamination or substances placed, handled, or stored on the Ward Nature Preserve after the date that the Property Owner completes its required work in the Ward Nature Preserve and the City accepts the work.

To the extent that the Property Owner is or may be entitled to defense or indemnification from any other person, including any current or prior owner of the property or any portion thereof, or any person or entity operating any business on the property or any portion thereof, in connection with any Claim covered by the indemnity provisions set forth in the preceding paragraph, whether contractual, legal, or equitable in nature, the Property Owner concurrently shall assert any such defenses or indemnification rights on behalf of the City and City's Affiliated Parties or assign such rights to the City, on a non-exclusive basis, at City's option. However, the Property Owner's obligation to defend, indemnify, and hold harmless the City and City's Affiliated Parties shall not be limited or eliminated in any way by the terms of any such contractual, legal, or equitable indemnification rights from any other person or entity.

25. In respect to the development of the project site under VTTM 17609, the Property Owner shall remediate any pre-existing contamination caused or deposited by Property Owner or its predecessors on and under the property, and in portions of the Ward Nature Preserve within which the Property Owner is performing work, in accordance with all applicable environmental laws, including without limitation and to the extent applicable (i) the abandonment of all oil wells located within the development areas on the property not previously abandoned in accordance with applicable abandonment standards and environmental laws in effect at the time of the said abandonment, and/or the re-abandonment of such wells as may be required by applicable law, as applicable; and (ii) the terms, provisions, and requirements set forth in that certain Remedial Action Plan for the property dated February 2005, prepared by Blasland Bouck and Lee, as approved by the Orange County Health Department and the California Water Resources Control Board, as the same may from time to time be amended ("Remedial Action Plan"), including amendments as may be needed with regard to remediation for deed-restricted open space/park resource, conservation, and similar public uses in the Open Space Dedication Areas, the Ward Preserve, and Neighborhood 1 or Neighborhoods 1 and 3 if acquired by the City, including the Neighborhood Trails and Key Vista Improvements therein. The Property Owner's soils engineer or environmental consultant shall certify to the City that all remediation has been completed in accordance with the foregoing Remedial Action Plan ("Remediation Completeness Certification"). Further, to the extent that the governmental agency(ies) responsible for approving the Remedial Action Plan (as amended) may issue a "closure letter" or similar document with respect to the completed work (stating that subject to the normal conditions and exceptions, based on the information presented, the agency is not taking any further enforcement action with respect to implementation of the Remedial Action Plan ("Closure Letter")), Property Owner shall take reasonable steps to seek such a Closure Letter from the applicable agency and shall include an executed copy of said Closure Letter, if obtained, with the Remediation Completeness Certification; provided however, that the Parties recognize that the agency may have no duty to issue such a Closure Letter and a Closure Letter is not a requirement for a sufficient Remediation Completeness Certification. With respect to the Open Space Dedication Areas, the Remediation Completeness Certification shall be delivered

to the City prior to the dedication of the applicable area(s). With respect to the Ward Nature Preserve, such Certification shall be delivered to the City prior to the City's acceptance of the work to be performed by the Property Owner thereon. With respect to any portions of the Entire Project Site acquired by the City pursuant to Condition of Approval L, such Certification shall be delivered to the City prior to the close of escrow or, if the Property Owner elects to perform such work post-closing, prior to the City's release of the performance security delivered by the Property Owner to the City pursuant to clause (8) in the second sentence of Conditions of Approval L.3.i or L.4.i, as applicable. Following such dedication or acquisition, the Property Owner shall have no obligation with respect to environmental investigation and/or remediation except as may be required by a judgment or order issued by a court of competent jurisdiction or a final order issued to the Property Owner by a Federal, State or local regulatory agency with jurisdiction over the property in respect to pre-existing contamination caused by the Property Owner or its predecessors in interest, and limited to investigation and/or remediation as necessary to achieve clean-up levels commensurate with use of the property for open space/park resource, conservation, and similar public purposes, including habitat preservation.

26. The Property Owner shall indemnify, defend, and hold harmless the City and City's Affiliated Parties from and against any third-party claims, liabilities, or losses ("Claims") for personal injury or death, property damage, economic loss, statutory fines and penalties, and damages of any kind or nature, including without limitation attorney's fees, expert witness fees, and costs incurred in any administrative, judicial, or alternative dispute resolution forum based or asserted to be based upon any actual or alleged act or omission of the Property Owner or any of its officers, employees, partners, members, agents, contractors, or subcontractors ("Owner's Affiliated Parties") relating to the ownership, development or maintenance of the project or the property, excepting only such Claims arising as a result of the gross negligence or willful misconduct of the City; provided however, that in the event of any inconsistency between this Condition and Condition No. 24, Condition No. 24 shall govern and control. The Property Owner shall defend, at its expense (whether with its own funds or through insurance coverage), including payment of attorney's fees, expert witness fees, and costs, the City and City's Affiliated Parties in any administrative, judicial, or alternative dispute resolution forum based upon such alleged acts or omissions. City may in its discretion participate in the defense of any such legal action.
27. The Subdivision Implementation Agreement and any License Agreement shall provide that the prevailing party in an action to enforce such Agreement, because of a breach of the Agreement, or arising out of or connected with the Agreement, shall be entitled to recover its reasonable attorney's fees, expert fees and costs and court costs.
28. The Subdivision Implementation Agreement and any License Agreements shall provide for a duty on the part of the City and the Property Owner to cooperate

with and provide reasonable assistance to each other to the extent necessary to implement such Agreements.

29. The Property Owner shall reimburse the City for all normal administrative costs incurred by the City in connection with the processing and approval of VTTM 17609 and related approvals, including the Subdivision Implementation Agreement and any License Agreements. In addition, Property Owner shall pay generally applicable processing and permit fees to cover the reasonable cost to the City of processing and reviewing applications and plans for final maps, development approvals, building and grading permits, and the like, and performing necessary studies and reports, inspecting work by or on behalf of the Property Owner, and monitoring compliance with any development approvals and applicable laws or ordinances, at the rates in effect at the time such fees are due; provided however, that nothing herein shall restrict the right of the Property Owner to contest any future fee increases as being unreasonable or invalid under applicable provisions of law.
30. For any sale, transfer, or assignment of the Property Owner's fee title to the property (other than a transfer due to City acquisition of Neighborhood 1 or the entire project site) the Property Owner's rights, duties, and obligations set forth or arising under Resolution PC 2015-31, these Conditions of Approval, the Subdivision Implementation Agreement or any License Agreement granted ("Transferred Rights and Obligations"), as to the property or portion thereof transferred, shall be assigned to and assumed by Property Owner's successors or assigns. Prior to the effective date of a proposed transfer, the Property Owner shall notify the City, in writing, of the proposed transfer and deliver to the City a written assignment and assumption, in a form subject to the reasonable approval of the City Attorney (or designee), pursuant to which the Property Owner will assign and the successor owner will assume all of the Transferred Rights and Obligations of the Property Owner with respect to the property or portion thereof to be transferred, including in the case of a partial transfer the obligation to perform such obligations that must be performed in relation to the portion of the property so transferred prior to the successor owner's right to develop that portion of the property. The Property Owner's successors or assigns shall be bound by the Transferred Obligations, as to any subsequent sale, transfer, or assignment of the successor owner's fee title, including the following:
- a) The Property Owner shall continue to be jointly and severally liable to the City, together with the successor owner, to perform all of the Transferred Obligations unless the Property Owner is given a release in writing by the City, which release shall be only with respect to the portion of the property so transferred in the event of a partial transfer. The City shall provide such a release upon the Property Owner's full satisfaction of all of the following conditions:

- (1) The Property Owner no longer has a legal or equitable interest in the portion of the property so transferred other than as a beneficiary under a deed of trust;
    - (2) The Property Owner is in substantial compliance with Resolution PC 2015-31, these Conditions of Approval, the Subdivision Implementation Agreement, and any License Agreement between the Property Owner and the City; and
    - (3) The successor owner either provides the City with substitute security equivalent to any security previously provided by the Property Owner to the City, if applicable, to secure performance of the successor owner's obligations with respect to the property or the portion of the property transferred, or if the transferred obligation is not a secured obligation, the successor owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor owner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required.
  - b) In the event the Property Owner transfers any subdivision(s) of the project, the City shall allow the successor owner to substitute bonds or other security instruments in place of the bonds or security instruments originally posted by the Property Owner for public improvements within the subdivision(s) to the extent permitted by law and subject to the reasonable approval of the City Engineer. The successor owner shall also be required at such time to replace Property Owner as a party to any applicable subdivision implementation agreement(s), subject to the reasonable approval of the City Community Development Director.
31. The Property Owner and City acknowledge that the City and Chevron U.S.A., Inc. ("Chevron"), a prior owner of the property, entered into an agreement with respect to the property encompassed by VTTM 17609 and other adjacent land on or about June 15, 1977, all as more specifically set forth therein ("1977 Agreement"). Property Owner represents and warrants to City that Property Owner is the current holder of all of the rights once held by Chevron under the 1977 Agreement. The Property Owner contends that the 1977 Agreement is still operative and the Property Owner has certain development rights under the 1977 Agreement that are not abandoned or waived by the City's approval and the Property Owner's acceptance of VTTM 17609. The City does not acknowledge that the 1977 Agreement is still operative, that the Property Owner has any development rights thereunder, or that any development rights the Property Owner may have under the 1977 Agreement survive the City's approval and the Property Owner's acceptance of VTTM 17609. Notwithstanding their respective contentions with respect to the 1977 Agreement, the Property Owner agrees that, from and after the Final Approval Date, unless the City does not approve a final

tract map timely submitted by Property Owner that substantially complies with VTTM 17609 as provided below, the City's approval and the Property Owner's acceptance of VTTM 17609 will operate to supersede the 1977 Agreement, the Property Owner forever waives and relinquishes any rights, claims, and causes of action it may have that arise from or relate to the 1977 Agreement, and the 1977 Agreement shall be deemed terminated and of no further force or effect; provided however, that in the event that (1) the Final Approval Date does not occur, or (2) after the Final Approval Date the City does not approve a final map timely submitted by Property Owner that substantially complies with VTTM 17609, the Property Owner does not waive and reserves all of its rights to assert such rights, claims, and causes of action it may have pursuant to or arising out of the 1977 Agreement in respect to the area of the property covered by said final map, in which event the City also reserves all of its pre-existing rights and defenses with respect thereto (excepting any claim or defense of waiver based on approval or acceptance of VTTM 17609 itself).

32. The Property Owner and City acknowledge that in 2010, the Property Owner filed a legal action against the City, *Pacific Coast Homes v. City of Fullerton*, Orange County Superior Court No. 30-2010-00401519-CU-WM-CJC ("Lawsuit"), challenging a prior denial by the City Council of certain applications by the Property Owner to develop the Entire Project Site, which Lawsuit remains pending and is currently subject to a court-ordered stay. The Lawsuit alleges a number of claims against the City, including that the City in denying the project applications violated the 1977 Agreement. The City has not filed a responsive pleading in the Lawsuit, but does not admit any of the Property Owner's allegations set forth therein. The Property Owner shall dismiss the Lawsuit with prejudice within ten (10) business days after the Final Approval Date, contingent upon the City and the Property Owner entering into a binding stipulation and agreement that said dismissal shall have no res judicata or collateral estoppel effect as to any rights, claims, and causes of action pursuant to or arising under the 1977 Agreement, to the extent such rights are not waived or released and are reserved by the Property Owner as set forth in Condition 31 above.
33. Final grading design for all residential and commercial lots shall be accomplished in such a manner as to direct storm water run-off to the adjoining roadway, private or public. Any minor variation that may be necessary due to an immitigable conflict will be subject to the review and approval of the Director of Public Works.

(Continued)

Res. No. 2015-62 - Exhibit A

**Exhibit A, Attachments:**

**Exhibit 1 – West Coyote Hills Trails and Key Vista Improvements Phasing Plan**

**Exhibit 2 – Open Space Dedication Areas**

**Exhibit 3 – License Agreement**

**Exhibit 4 – Interpretive Center Construction Scope**

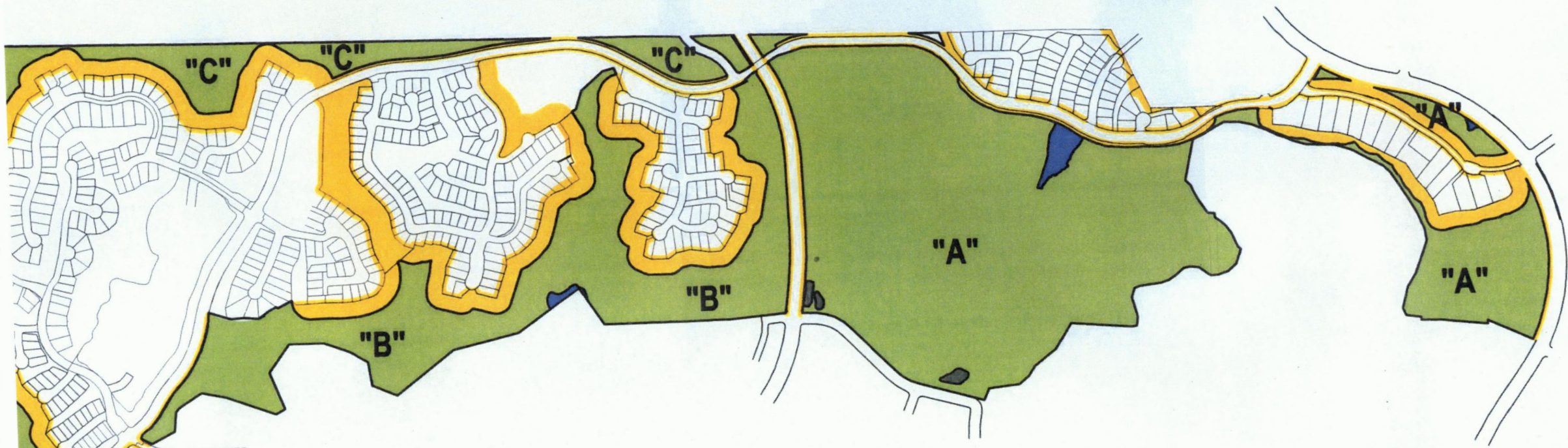
**Exhibit 5 – Open Space Area, Maintenance, Repair and Security Obligations**

**Exhibit 6 – Open Space, Trails and Interpretive Center Support Endowment Guidelines  
and Procedures**



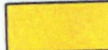
**Exhibit 7 – Guaranty Agreement**



# Conditions of Approval Exhibit 2: Open Space Dedication Areas



Approximate Acreages Pending Final Design

	230.7 Acres - City Owned Property
	8.4 Acres - Detention Basins / Water Quality Areas
	70.9 Acres - Fuel Modification
<hr/>	
310.0 Acres Total	

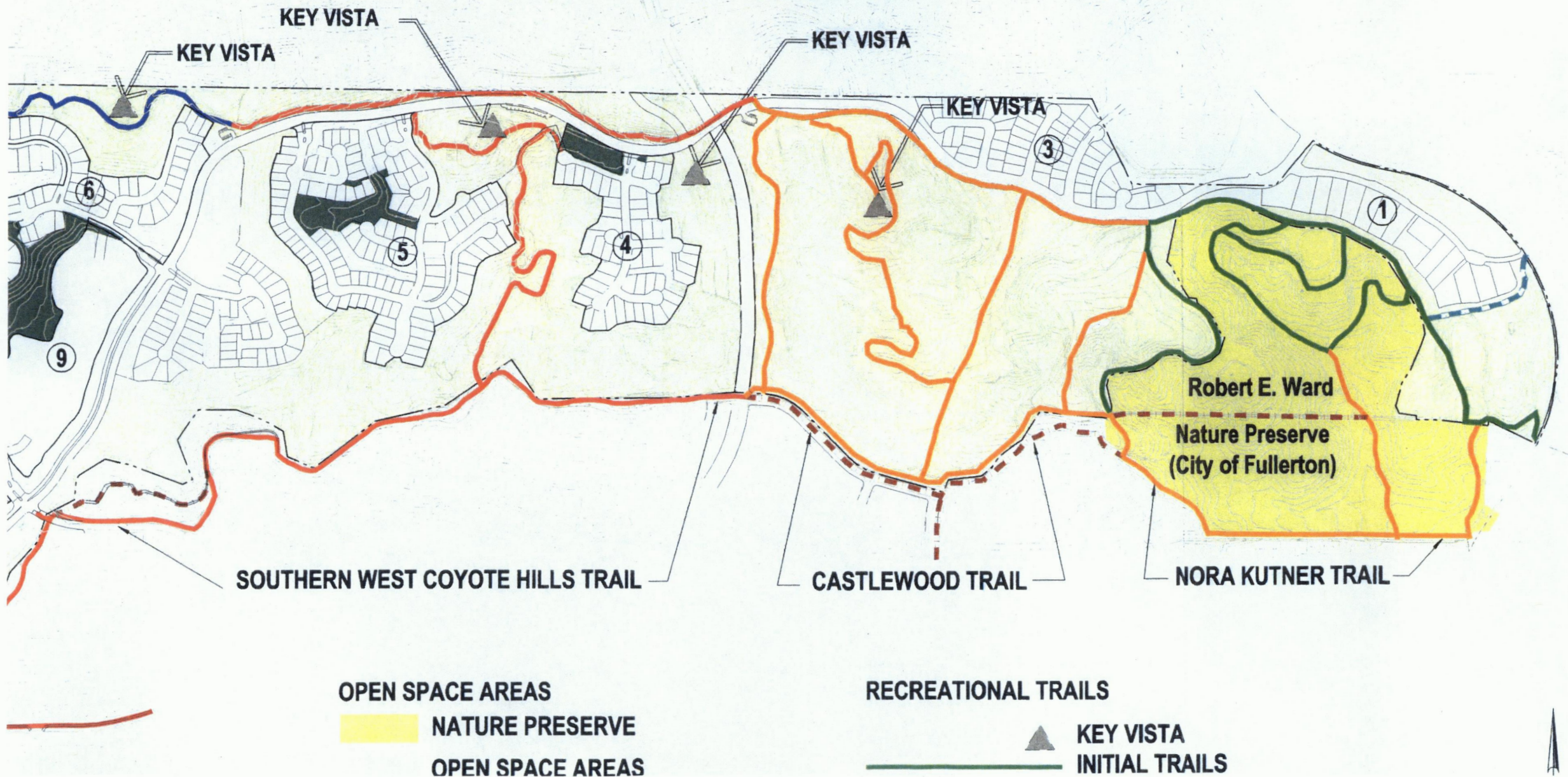
Legend:





# Conditions of Approval Exhibit 1: West Coyote Hills Trails and Key Vista Improvement Phasing Plan

September 15, 2015





## LICENSE AGREEMENT

This LICENSE AGREEMENT ("License Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2015 (the "Effective Date"), by and between Pacific Coast Homes, a California corporation ("Property Owner"), and the City of Fullerton, a California municipal corporation ("City") (each, a "Party," and collectively, the "Parties"), on the following terms and conditions.

### RECITALS:

- a. Property Owner owns certain real property in the City of Fullerton, commonly known as the West Coyote Hills Project Site ("Project Site").
- b. City owns real property in the City of Fullerton, commonly known as the Robert E. Ward Nature Preserve ("Ward Preserve"), which adjoins the Project Site.
- c. Pursuant to Resolution No. PC-2015-31 adopted \_\_\_\_\_, 2015, the Planning Commission of the City of Fullerton approved Vesting Tentative Tract Map 17609 ("VTTM 17609"), subject to the Conditions of Approval for VTTM 17609 ("Conditions of Approval"), for the West Coyote Hills Development Project ("WCH Project") proposed by the Property Owner. Capitalized terms not otherwise defined in this License Agreement shall have the meaning ascribed thereto in the Conditions of Approval.
- d. Pursuant to VTTM 17609 and the Conditions of Approval, the Property Owner and the City desire to enter into this License Agreement on specified terms and conditions whereby: (i) Property Owner grants to City a right of public access and use with respect to certain Initial Trail Improvements to be constructed partly within the Project Site, prior to the dedication by Property Owner and acceptance of said Improvements by the City; and (ii) City grants to Property Owner the right to enter into the Ward Preserve and other property that is currently owned by the City or may be acquired by the City through dedication or purchase for certain purposes described herein.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Parties agree as follows:

1. Property Owner Grant of License to City (Initial Trail Improvements in Project Site).  
Pursuant to the Conditions of Approval, Condition M.4, Property Owner shall construct certain Initial Trail Improvements to be located partly within the Project Site and partly within the Ward Preserve, for use as a hiking trail(s) and public access to the Ward Preserve, prior to the dedication and acceptance by the City of said Improvements. For these purposes, Property Owner hereby grants to City a non-exclusive license over certain portions of the Project Site ("City License Area") depicted generally as "Initial Trails" on Exhibit A (West Coyote Hills Trails and Vista Points Improvements), attached hereto and incorporated by reference, for said purposes, to commence upon Property Owner's notice to City of completion of construction of said Improvements. Property Owner acknowledges that City will be granting access to the City License Area to the general public. The right of entry and use of the City License Area is subject to the following terms and conditions:
  - a. The City License Area shall be used only during daylight hours (sunrise to sunset) solely for the purpose of a hiking trail and access to the Ward Preserve; and Property Owner shall install and maintain appropriate signage in connection with the Initial Trail Improvements, in accordance with generally accepted standards

for recreational trails and the West Coyote Hills Interpretative Master Plan (Acorn Group), pp. 20-39, providing notice of the hours of usage and restriction of use.

- b. To the fullest extent permitted by law, City shall indemnify, defend (at City's sole cost and expense), protect and hold harmless Property Owner, all subsidiaries, divisions, and affiliated companies of Property Owner, and all of such parties' representatives, partners, members, designees, officers, directors, shareholders, employees, agents, successors, and assigns, and any lender of Property Owner with an interest in the City License Area (collectively, "Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death or property damage), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional, expert or consultants' fees and costs incurred as a result of such claim or claims or in enforcing this indemnity provision) of every kind and nature whatsoever (collectively, "Claims") which may arise at any time from or in any manner related to (directly or indirectly), or in connection with, the rights of City to use the City License Area (including, without limitation, the use of the City License Area by the general public) or any activities in connection with the exercise of said rights on the City License Area. Notwithstanding the foregoing, nothing herein shall be construed to require City to indemnify, defend, protect, or hold harmless an Indemnified Party from either (i) any Claim arising from the active negligence or willful misconduct of an Indemnified Party or (ii) any Claim arising from defective work by any Indemnified Party, whether latent or patent, or any unsafe condition caused or created by any of the Indemnified Parties. Subject to the aforesaid limitations, the duty to defend hereunder is wholly independent of and separate from the duty to indemnify, and such duty to defend exists regardless of any ultimate liability of Property Owner or any Indemnified Party and such defense obligation shall arise upon presentation of a Claim by any Indemnified Party that is within the scope of City's defense and indemnity obligation and written notice of such Claim being provided to City. Payment to City by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party shall not be a condition precedent to enforcing such an Indemnified Party's rights to indemnification hereunder. The City's indemnification obligations hereunder shall survive the expiration or earlier termination of this License Agreement, until such time as it is determined by final judgment that action against the Indemnified Parties for such matter indemnified hereunder is fully and finally barred by the applicable statute of limitations. The terms of this License Agreement are contractual and the result of arms' length negotiation between the parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this License Agreement. The express indemnification provisions set forth in this License Agreement shall solely govern all issues of indemnification and contribution between the Parties on the subject hereof.

- c. The City, as a material part of the consideration to the Property Owner under this License Agreement, hereby assumes all risk and liability for damage to the City License Area arising from the use of the City License Area by the general public, and injury to personal property and/or persons, in, upon, or about the City License Area during the term of this License Agreement, arising from any cause, and City hereby waives all claims in respect thereof against Property Owner or the Indemnified Parties, except to the extent caused either by (i) the active negligence or willful misconduct of Property Owner or the Indemnified Parties or (ii) defective work by Property Owner or the Indemnified Parties, whether latent or patent, or any unsafe condition caused or created by Property Owner or the Indemnified Parties. Subject to the limitations set forth in the preceding sentence, City hereby assumes the risk of any and all Claims and other obligations arising out of or incurred in connection with the entry onto and use of the City License Area by City (including, without limitation, the use of the City License Area by the general public), and City irrevocably and unconditionally releases, waives, and discharges, (and covenants not to sue) Property Owner and the Indemnified Parties from all responsibility to City and any other person or entity entitled to assert a claim on City's behalf, with respect to any event, occurrence, injury or other incident occurring on the City License Area or in any way related to the entry onto and use of the City License Area by City or the general public (collectively, the "Damage and Personal Injury Claims").
- d. Subject to Property Owner's responsibility with respect to defective work and unsafe conditions, as set forth above, City agrees to enter the City License Area and conduct all operations thereon at City's own risk, and City hereby releases and forever discharges the Indemnified Parties of and from any and all claims, demands, actions or causes of action whatsoever which City may have, or may hereafter have, against the Indemnified Parties specifically arising out of the matter of the entry of City into the City License Area (collectively, the "Entry Claims" and together with the Damage and Personal Injury Claims, the "Released Claims"). This release shall be binding upon the undersigned and the heirs, executors, administrators, successors and assigns of City and covers all Claims arising out of or connected with City's use of the Premises. City hereby expressly waives any right under or benefit of any law of any jurisdiction whatsoever providing to the contrary. Neither the acceptance of this release nor any payment made hereunder shall constitute any admission of any liability by Property Owner.

City acknowledges that it has read this License Agreement and had the opportunity to be advised by legal counsel and, for itself and for City's subdivisions, departments, commissions, agencies or other similar entities, officials, officers, employees, agents, successors and assigns, knowingly and voluntarily expressly waives all rights and benefits it may have or hereafter acquire pursuant to California Civil Code Section 1542 with respect to the Released Claims, including those relating to unknown and unsuspected Claims, damages and causes of action, which provides as follows:

**“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.”**

**CITY's Initials: \_\_\_\_\_**

**PROPERTY OWNER's Initials: \_\_\_\_\_**

- e. City shall obtain, at its sole cost and expense, any and all required governmental permits, licenses and authorizations for access and use of the City License Area, and shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating City's activities on the City License Area.
- f. City shall maintain, repair or replace any part of the Initial Trail Improvements that are damaged or destroyed as a result of City's activities (including, without limitation, the use of the City License Area by the general public) in the City License Area. Further, City acknowledges the presence of non-producing oil and gas wells in the City License Area and that the exact location of such wells is unknown. Excepting for the active negligence or willful misconduct of Property Owner, or any act or omission by Property Owner constituting defective work, whether latent or patent, or creating any unsafe condition, City shall be solely responsible for any and all damage done to such wells.
- g. City shall keep any equipment used or brought into the City License Area under its absolute and complete control at all times and said equipment shall be used on the City License Area at the sole risk of City. City shall not alter, damage or commit any kind of waste upon the City License Area or any improvement, equipment or personal property thereon, and shall not unreasonably interfere in any manner with the lawful operations or activities of the Property Owner.
- h. City shall not undertake any work in the City License Area without prior written notice to Property Owner at least 48 hours in advance. City agrees that all work done or undertaken by it on the City License Area shall be for its sole account and not as an agent, servant, or contractor for Property Owner. City shall not cause any workmen's or materialmen's liens to be placed upon the City License Area and agrees to indemnify and hold Property Owner harmless against any such liens that are placed upon the City License Area in violation of City's obligations hereunder, including but not limited to the payment of attorneys' fees. Should City fail to timely remove any such lien, Property Owner may take action as necessary to remove such lien and City shall immediately reimburse Property Owner for the expenses incurred to remove the lien.
- i. City agrees to furnish all labor, tools, equipment, and material for the performance of the work done by it in connection with use of the City License Area and to pay all taxes assessed on wages for said labor and to make any and all reports required in connection therewith.

- j. Other than this License, no interest of any kind in the Project Site is hereby given and City shall not assert any claim or title to the City License Area under this License Agreement.
  - k. Except as otherwise stated in this License Agreement, City hereby acknowledges that neither Property Owner nor its employees or agents have made any oral or written warranties or representations to City relative to the condition or use by City of the City License Area, and City acknowledges that City assumes all responsibilities regarding the Occupational Safety Health Act in connection with City's activities on the City License Area.
  - l. This License is granted subject to the terms and conditions of the Conditions of Approval, including without limitation Condition M.4, and shall not change any rights or obligations of either Party under said Conditions.
2. City Grant of License to Property Owner (Habitat Obligations, Initial Trail Improvements, Interpretive Center, Southern Trails, Feeder Trail, Remediation).

Pursuant to the Conditions of Approval, Property Owner shall undertake certain activities on City-owned property including for purposes of construction, repair, and maintenance, and public access and use as follows: (a) performance of certain Habitat Obligations in the Ward Preserve, within Open Space Dedication Areas if not complete at the time of dedication and acceptance by the City, and within the areas of Neighborhood 1 or Neighborhoods 1 and 3 if acquired by the City, if not complete at the close of escrow, and to the extent not borne by the Management Agency identified under Condition M.3 (Conditions M.2, M.3, G.7, L.3.i, and L.4.i) ("Habitat Obligation Areas"); (b) construction, repair, abandonment and maintenance of trails as reflected in Exhibit A hereto, including the Initial Trail Improvements within the Ward Preserve (Condition M.4), an Interpretive Center within the Ward Preserve (Condition M.6), a portion of the feeder trail in the area of Neighborhood No. 1 located in the Ward Preserve (if required); certain additional trail improvements to and abandonment of portions of the Nora Kutner, Castlewood, and existing southern West Coyote Hills backbone trails (Condition M.10) (all subsection (b) items are, collectively, the "Public Benefit Improvements"); and (c) performance of certain Remediation Obligations (Standard Condition 25) within the Open Space Dedication Areas if not complete at the time of dedication and acceptance by the City and the areas of Neighborhood 1 or Neighborhoods 1 and 3 if acquired by the City and not complete at close of escrow (Conditions L.3.i and L.4.i). In order for Property Owner to access and use City property to undertake the Habitat Obligations, the Public Benefit Improvements, and Remediation Obligations, City hereby grants to Property Owner, at no cost, a non-exclusive license, generally in the areas as depicted on Exhibit A ("Property Owner License Areas"), attached hereto and incorporated herein by reference, subject to the following terms and conditions, which shall apply prior to the dedication of the Habitat Obligation Areas and the Public Benefit Improvements by Property Owner and acceptance thereof by City, as follows:

- a. To the fullest extent permitted by law, Property Owner shall indemnify, defend (at Property Owner's sole cost and expense), protect and hold harmless City and City officials, officers, employees, and agents, including without limitation City consultants, attorneys, contractors, and subcontractors, (collectively, the "City

Indemnified Parties”) from and against any and all Claims caused by or arising out of Property Owner’s or its agents’, contractors’ or subcontractors’ entry on, performance of work, or construction and maintenance of the Habitat Obligations within the Habitat Obligation Areas and the Public Benefit Improvements within the Property Owner License Areas. Notwithstanding the foregoing, nothing herein shall be construed to require Property Owner to indemnify, defend, protect, or hold harmless a City Indemnified Party from either (i) any Claim arising from the active negligence or willful misconduct of a City Indemnified Party or (ii) any Claim arising from defective work by any of the City Indemnified Parties, whether latent or patent, or any unsafe condition caused or created by any of the City Indemnified Parties. Subject to the aforesaid limitations, the duty to defend hereunder is wholly independent of and separate from the duty to indemnify and such duty to defend exists regardless of any ultimate liability of City or any City Indemnified Party and such defense obligation shall arise upon presentation of a Claim by any City Indemnified Party that is within the scope of Property Owner’s defense and indemnity obligation and written notice of such Claim being provided to Property Owner. Payment to Property Owner by any City Indemnified Party or the payment or advance of defense costs by any City Indemnified Party shall not be a condition precedent to enforcing such City Indemnified Party’s rights to indemnification hereunder. Property Owner’s indemnification obligation hereunder shall survive the expiration or earlier termination of this License Agreement until such time as it is determined by final judgment that action against the City Indemnified Parties for such matter is indemnified hereunder is fully and finally barred by the applicable statute of limitations. The terms of this License Agreement are contractual and the result of arms’ length negotiation between the Parties hereto. Accordingly, any rule of construction of contracts (including, without limitation, California Civil Code Section 1654) that ambiguities are to be construed against the drafting party shall not be employed in the interpretation of this License Agreement. The express indemnification provisions set forth in this License Agreement shall solely govern all issues of indemnification and contribution between the Parties.

- b. Property Owner shall obtain, at its sole cost and expense, any and all required governmental permits, licenses and authorizations necessary to undertake the Habitat Obligations, the Remediation Obligations, and to construct, repair and maintain the Public Benefit Improvements in the Property Owner License Areas, and shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating Property Owner’s activities within said Areas.
- c. Property Owner agrees to furnish all labor, tools, equipment, and material for the performance of the work done by it in connection with such use and to pay all taxes assessed on wages for said labor and to make any and all reports required in connection therewith.
- d. Other than this License, no interest of any kind is hereby given in any City property and Property Owner shall not assert any claim or title to the Property Owner License Areas under this License Agreement.

- e. Property Owner agrees that all work done or undertaken by it within the Habitat Obligation Areas, the Remediation Obligation Areas, and the Property Owner License Areas shall be for its sole account and not as an agent, servant, or contractor for City. Property Owner shall not cause any workmen's or materialmen's liens to be placed upon the Improvements or within the said Areas, and agrees to indemnify and hold the City harmless against any such liens in violation of Property Owner's obligations hereunder, including but not limited to the payment of attorneys' fees. Should Property Owner fail to timely remove any such lien, City shall take action as necessary to remove such lien and Property Owner shall immediately reimburse City for the expenses incurred to remove the lien.
- f. This License is granted subject to the terms and conditions of the Conditions of Approval, including without limitation Conditions M.2, M.3, M.4, M.6, M.10, L.3.i, and L.4.i and shall not change any rights or obligations of either Party under said Conditions.

3. Term of License Agreement.

- a. This License Agreement shall commence on the Effective Date and shall expire as to each associated license area upon the dedication by Property Owner and the acceptance by the City of the Habitat Obligation Areas and the Public Benefit Improvements, or any of them (including the Initial Trail Improvements), or as otherwise required by the Conditions of Approval, and thereafter Property Owner shall have no responsibility for maintenance, repair, public security or otherwise with respect to said accepted Areas and/or Improvements, subject to the terms and conditions below. Upon City's acceptance of dedication of the Habitat Obligation Areas and the Public Benefit Improvements, or portion thereof (including the Initial Trail Improvements), the City shall assume all responsibility for operation, maintenance, and security for each such accepted Area or Improvement, or portion thereof.
- b. Notwithstanding the foregoing, City acknowledges that the license for the City License Area may be suspended by Property Owner if City is in material default of this License Agreement with respect to the City License Area ("Default") and City fails to cure such Default within thirty (30) days after City's receipt of written notice from Property Owner or, if the nature of the Default is such that it cannot be cured within 30 days, if City fails to commence to cure such Default within 30 days and thereafter pursue such cure to completion with reasonable diligence; provided further, that if the Property Owner suspends this License Agreement under this provision, Property Owner's obligations with respect to the Habitat Obligation Areas and the Public Benefit Improvements, to the extent affected by the Default, shall likewise be suspended until the Default is resolved to the reasonable mutual satisfaction of the City and Property Owner, or failing such agreement, under the dispute resolution provisions in the Subdivision Implementation Agreement between the Parties relating to the project. At all times, City shall be responsible for any reasonable expenses incurred by Property Owner to repair any damage to the City License Area that may have been caused by City or under its authority.



- c. Notwithstanding the foregoing, Property Owner acknowledges that the license for the Property Owner License Areas may be suspended by the City if the Property Owner is in material default of this License Agreement with respect to the Property Owner License Areas ("Default") and Property Owner fails to cure such Default within thirty (30) days after Property Owner's receipt of written notice from the City or, if the nature of the Default is such that it cannot be cured within 30 days, if Property Owner fails to commence to cure such Default within 30 days and thereafter pursue such cure to completion with reasonable diligence; provided however, that if City suspends this License Agreement under this provision, Property Owner's obligations with respect to the Habitat Obligation Areas and the Public Benefit Improvements, to the extent affected by the Default, shall likewise be suspended until the Default is resolved to the reasonable mutual satisfaction of the City and Property Owner, or failing such agreement, under the dispute resolution provisions in the Subdivision Implementation Agreement between the Parties relating to the project. At all times, Property Owner shall be responsible for any reasonable expenses incurred by City to repair any damage to the Property Owner License Areas that may have been caused by Property Owner or under its authority.
- d. The term and effectiveness of this License Agreement are subject to the provisions for suspension or termination of the Property Owner's project-related obligations under the Conditions of Approval, including but not limited to Conditions L.4.vi and N.

4. Insurance.

City and Property Owner shall each obtain and maintain insurance coverage at all times during the term of this License Agreement as follows:

- a. City shall obtain and maintain insurance coverage to cover liability assumed under this License Agreement, including but not limited to comprehensive general liability including personal injury and property damage liability. The limit of liability for such insurance shall not be less than Two Million Dollars (\$2,000,000) to indemnify against the claim of one or more persons. Said insurance shall be on forms and with a company satisfactory to Property Owner, protecting Property Owner against any liability to any person or persons, arising out of or in any way connected with the exercise of any of the permissions granted hereunder. Property Owner, its parent corporation and their affiliates, shall be named as additional insureds in such policy or policies, and certificates thereof endorsed "Premium Paid" shall be delivered to Property Owner prior to the exercise by City of any permission granted hereunder. City shall obtain the written agreement of the insurers to notify Property Owner, in writing, at least 30 days prior to cancellation of any such policy. It is expressly understood that the fulfillment by City of these obligations is a condition precedent to the exercise by City of this License Agreement.

In the alternative, City at its option may self-insure for the risks assumed by City hereunder if such self-insurance is consistent with City's self-insurance program applicable to other public park and recreational properties in the City of Fullerton.

City agrees to comply with all applicable state and federal labor laws and to maintain in effect Workers' Compensation Insurance as prescribed or permitted by law. City's insurance shall contain a waiver of subrogation in favor of Property Owner.

- b. Property Owner shall obtain and maintain insurance coverage to cover liability assumed under this License Agreement, including but not limited to comprehensive general liability including personal injury and property damage liability. The limit of liability for such insurance shall not be less than Two Million Dollars (\$2,000,000) to indemnify against the claim of one or more persons. Said insurance shall be on forms and with a company satisfactory to the City, protecting the City against any liability to any person or persons, arising out of or in any way connected with the exercise of any of the permissions granted hereunder. The City, and its agencies, employees, agents, and consultants, shall be named as additional insureds in such policy or policies, and certificates thereof endorsed "Premium Paid" shall be delivered to the City prior to the exercise by Property Owner of any permission granted hereunder. Property Owner shall obtain the written agreement of the insurers to notify the City, in writing, at least 30 days prior to cancellation of any such policy. It is expressly understood that the fulfillment by Property Owner of these obligations is a condition precedent to the exercise by Property Owner of this License Agreement.

In the alternative, PCH at its option may self-insure for the risks assumed by PCH through a self-administered claims program of its ultimate parent entity, Chevron Corporation.

Property Owner agrees to comply with all applicable state and federal labor laws and to maintain in effect Workers' Compensation Insurance as prescribed or permitted by law. Property Owner's insurance shall contain a waiver of subrogation in favor of City.

5. Cooperation by the Parties.

The Parties shall cooperate with and provide reasonable assistance to each other to the extent necessary to implement this License Agreement. The City shall take action in a prompt and reasonable manner on applications submitted by Property Owner to the City in proper form and acceptable for processing of necessary land use entitlements and permits relating to the activities Property Owner will undertake pursuant to this License Agreement.

6. Successors and Assigns.

All of the terms and provisions contained herein shall inure to the benefit of and shall be binding upon the Parties hereto and their respective heirs, legal representatives, successors and assigns, subject to the following.

- a. This License Agreement shall not be sold, transferred, or assigned (hereinafter, collectively, a "Transfer") by City without the express written consent of the Property Owner, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted Transfer in violation of this provision shall be null

and void. City shall give Property Owner thirty (30) days' prior written notice of any such proposed Transfer.

- b. Property Owner shall have the right to Transfer Property Owner's fee title in the City License Area, and Property Owner's rights and obligations under this License Agreement as to the Property Owner License Areas, in whole or in part, to any person, partnership, joint venture, firm, or corporation at any time. Any such Transfer shall include the assignment and assumption of all of Property Owners' rights and obligations set forth in or arising under this License Agreement as to the City License Area or the Property Owner License Areas, or portions thereof so transferred. Prior to the effective date of a proposed Transfer, Property Owner shall notify the City, in writing, of the proposed transfer and deliver to the City a written assignment and assumption, in a form subject to the reasonable approval of the City Attorney (or his or her designee), pursuant to which Property Owner assigns and the successor owner assumes all such rights and obligations (which successor, as of the effective date of the Transfer, shall become the "Property Owner" under this License Agreement), including in the case of a partial transfer, the duty to perform such obligations that must be performed in relation to the portion of the property so transferred prior to the successor owner's right to develop that portion of the City License Area or undertake construction, repair or maintenance activities in the Property Owner License Areas. The transfer of the rights and obligations of Property Owner to a parent, subsidiary, or other affiliate of Property Owner, or to any successor-in-interest or entity acquiring fifty- one percent (51%) or more of Property Owner's stock or assets, shall not be deemed a Transfer.

Notwithstanding any such Transfer, the transferring Property Owner shall continue to be jointly and severally liable to the City, together with the successor Property Owner, to perform all of the transferred obligations set forth in or arising under this License Agreement, unless the transferring Property Owner is given a release in writing by City, which release shall be only with respect to the portion of the City License Area or the Property Owner License Area so transferred in the event of a partial Transfer. City shall immediately provide such a release upon the transferring Property Owner's full satisfaction of all of the following conditions: (i) the transferring Property Owner no longer has a legal or equitable interest in the portion of the City License Area or the Property Owner License Area so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Property Owner is not then in material Default under this License Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a material Default hereunder; and (iii) the successor Property Owner either provides the City with substitute security equivalent to any security previously provided by the Property Owner to the City, if applicable, to secure performance of the successor Property Owner's obligations with respect to the property or the portion of the property transferred, or if the transferred obligation is not a secured obligation, the successor Property Owner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Property Owner

has the financial resources or commitments available to perform the transferred obligations at the time and in the manner required under this License Agreement.

7. Reimbursement of Costs.

To the extent it has not done so prior to the Effective Date, within thirty (30) days after the later of (i) the Effective Date or (ii) receipt of City's invoice, Property Owner shall reimburse the City for all costs reasonably incurred by City in connection with reviewing this License Agreement. City shall have the right to charge and the Applicant shall pay applicable processing and permit fees to cover the reasonable cost to the City of processing and reviewing applications and plans necessary to carry out the Habitat Obligations in the Habitat Obligation Areas or to construct, repair, and maintain the Public Benefit Improvements.

8. Default and Remedies.

In the event of any material default, cross-default, breach, or violation of the terms of this License Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written Notice of Default to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and provide a reasonable period of time ten (10) days if the Default relates to the failure to timely make a monetary payment due thereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this License Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period, the defaulting party must commence to cure within thirty (30) days after it receives the Notice of Default and thereafter use reasonable diligence to pursue said cure to completion.

- a. If Property Owner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council or other applicable City board, commission, or code enforcement official within ten (10) days of receiving the Notice of Default, and a hearing shall be scheduled at the next available City Council or other applicable City board, commission, or code enforcement meeting to consider Property Owner's appeal of the Notice of Default.
- b. If Property Owner alleges a City Default and alleges that City has not cured the Default within the Cure Period, Property Owner may pursue any equitable remedy available to it, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations under this License Agreement, in addition to the right to suspend this License Agreement pursuant to Section 3. Upon a City Default, any resulting delays in Property Owner's performance thereunder shall neither be a Property Owner Default nor constitute grounds for termination or cancellation of the License Agreement by City and shall, at Property Owner's option (and provided Property Owner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the term for a period equal to the length of the delay.

- c. Failure or delay by either party in delivering a Notice of Default shall not waive that party's right to deliver a future Notice of Default of the same or any other Default.

9. Specific Performance Remedy.

Due to the size, nature, and scope of the WCH Project, the Parties acknowledge it would not be practical or possible to restore the real property underlying the WCH Project to its pre-existing condition once implementation of this License Agreement has begun. Property Owner and City have invested significant time and resources and performed extensive planning and processing of the WCH Project and in agreeing to the terms of this License Agreement, and will be investing additional significant time and resources in implementing the WCH Project in reliance upon the terms of this License Agreement. It is not possible to determine the sum of money which would adequately compensate Property Owner or City for such efforts; and, for these reasons, the City and Property Owner agree that monetary damages would not be an adequate remedy if either City or Property Owner fails to carry out its obligations under this License Agreement. Accordingly, the City and Property Owner stipulate and agree that specific performance of this License Agreement is necessary if the other Party fails to carry out its obligations under this License Agreement.

10. Indemnity of Third Party Claims.

Property Owner shall indemnify, defend, and hold harmless City and City officials, officers, employees, and agents, including without limitation City consultants, attorneys, contractors, and subcontractors (collectively, the "City's Affiliated Parties"), from and against any Claims against City or City's Affiliated Parties seeking to challenge, set aside, void, or annul the approval of this License Agreement. Said indemnity obligation shall include payment of attorney's fees, expert witness fees, and court costs. City shall promptly notify Property Owner of any such Claim and City shall cooperate with Property Owner in the defense of such Claim. If City fails to promptly notify Property Owner of such Claim, Property Owner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Property Owner is so notified; and if City fails to cooperate in the defense of a Claim, Property Owner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. Property Owner shall be entitled to control the defense of such Claim; provided, however, that Property Owner shall not have the authority to unilaterally modify or change this License Agreement and Property Owner shall have no authority to bind City to taking any further actions with respect thereto except with City's prior written consent, which consent City may withhold in its sole and absolute discretion. Property Owner shall have the right to choose legal counsel to defend the Claim (subject to such counsel's compliance with any applicable conflict of interest or ethical rules that apply) and Property Owner shall pay any attorneys' fees, expert witness fees, costs, interest, and other amounts that may be awarded against City or Property Owner, or both, resulting from the Claim. Property Owner shall keep City informed of the status of any pending or threatened Claim upon City's request and promptly after there is any change in the status of the Claim. In the event Property Owner recovers any attorneys' fees, expert witness fees, costs, interest, or other amounts

from the party or parties asserting the Claim, Property Owner shall be entitled to retain the same.

11. Mortgage Protection.

This License Agreement shall not prevent or limit Property Owner in any manner, in Property Owner's sole discretion, from encumbering the City License Area or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the City License Area; provided however that at the time any portion of the City License Area is to be dedicated to and accepted by the City, any financing encumbrances established by Property Owner must be satisfied and discharged by Property Owner. City acknowledges that lenders providing such financing may require certain License Agreement interpretations and modifications, and agrees upon request, from time to time, to meet with Property Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City shall not unreasonably withhold or delay its consent to any such requested interpretation provided such interpretation is consistent with the intent and purposes of this License Agreement; provided, however, that City reserves its legislative discretion with respect to making any modifications to this License Agreement and Property Owner agrees to promptly pay or reimburse City for any City costs incurred with respect to its consideration of any such interpretations and modifications, whether or not the same are approved. Any mortgagee of the property shall be entitled to the following rights and privileges:

- a. Neither entering into this License Agreement nor a breach of this License Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the property made in good faith and for value, unless otherwise required by law.
- b. The mortgagee of any mortgage or deed of trust encumbering the property, or any part thereof, which mortgagee has submitted a request in writing to City in the manner specified for giving notices, shall be entitled to receive written notification from City of any Default by Property Owner in the performance of Property Owner's obligations under this License Agreement.
- c. If City timely receives a request from a mortgagee requesting a copy of any Notice of Default given to Property Owner under the terms of this License Agreement, City shall provide a copy of that Notice of Default to the mortgagee within ten (10) days of sending the Notice of Default to Property Owner. The mortgagee shall have the right, but not the obligation, to cure the Default during the remaining Cure Period allowed such party under this License Agreement.
- d. Any mortgagee who comes into possession of the City License Area, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the City License Area, or part thereof, subject to the terms of this License Agreement. Notwithstanding any other provisions of this License Agreement to the contrary, no mortgagee shall have an obligation or duty under this License Agreement to perform any of Property Owner's obligations or other affirmative covenants of Property Owner thereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be

performed by Property Owner is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance under this License Agreement.

12. Notice.

All notices given hereunder shall be effective when personally delivered or sent by overnight delivery service to any representative or employee of City or to Property Owner at the respective addresses shown below.

**CITY:**

City of Fullerton  
303 W. Commonwealth Ave.  
Fullerton, CA 92832  
Attn: City Manager

**PROPERTY OWNER:**

Pacific Coast Homes  
145 South State College Blvd., Suite 500  
Brea, CA 92821  
Attn: Jim Pugliese

13. Applicable law.

This License Agreement shall, in all respects, be governed by the laws of the State of California without regard to conflicts of law principles.

14. Modifications or Amendments.

No amendment, change or modification of this License Agreement shall be valid, unless in writing and signed by the Parties hereto.

15. Force Majeure.

Neither City nor Property Owner shall be deemed to be in Default of this License Agreement where failure or delay in performance of any obligations is caused by floods, earthquake, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control (including the Party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the Party's control. If any such events shall occur, the time for performance by either Party of any of its obligations shall be extended for the period of time that such events prevented such performance. Either Party learning of a force majeure event shall, as soon as reasonably practicable, notify the other Party in writing of the occurrence of the event, which notice shall include a statement as to the date on which the force majeure event commenced. Upon the cessation of the force majeure event or its effects which prevented performance hereunder, either Party with knowledge of the cessation of the event shall notify the other Party in writing of such cessation, which notice shall include a statement as to the date on which the force majeure event ceased. In the event the Term of this License Agreement is extended for any reason, the Parties shall cooperate in executing an appropriate memorandum or other writing memorializing the change to the Term. Notwithstanding the foregoing, in no event shall adverse financial or market conditions, interest rates, Property Owner's inability to obtain financing or its inability to obtain financing on terms acceptable to Property Owner, or Property Owner's actual or alleged lack of financial capability to perform be deemed to constitute an event or occurrence entitling Property Owner to an extension of its time for performance of any obligation set forth in this License Agreement.



16. Entire License Agreement.

This License Agreement, together with the Exhibit attached hereto, constitutes the entire understanding and agreement of the Parties with respect to its subject matter. Any and all prior agreements, understandings or representations with respect to its subject matter, whether written or oral, are hereby canceled in their entirety and are of no force or effect. Notwithstanding the foregoing, it is understood and agreed that this License Agreement is not intended to supersede, modify, or amend the Conditions of Approval or the Subdivision Implementation Agreement entered into by and between Property Owner and City with respect to construction or installation of any of the public improvements for the WCH Project. In addition, and notwithstanding the foregoing, nothing in this License Agreement is intended to supersede, modify, or amend Property Owner's obligations to undertake the Habitat Obligations in the Habitat Obligation Areas or to construct, repair, and maintain the Public Benefit Improvements in the City License Area and the Property Owner License Area in accordance with applicable federal, state, and local laws, regulations, and rules, including without limitation any warranty obligations that apply after said improvements have been accepted by City.

17. Headings.

The caption and paragraph headings used in this License Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.

18. No Other Inducement.

The execution and delivery of this License Agreement by the parties hereto has not been induced by any representations, statements, warranties or License Agreements other than those expressed herein.

19. Legal Fees.

If any Party commences legal proceedings for any relief against the other Party arising out of or to interpret this License Agreement, the non-prevailing Party shall pay the prevailing Party's legal costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorney's fees, expert's fees and court costs. As used herein, "legal proceedings" includes any arbitration proceedings to which the Parties may submit.

20. Non-Waiver.

No waiver by any Party hereto of a default of any provision of this License Agreement shall constitute a waiver of any preceding or succeeding default of the same or any other provision hereof.

21. Counterparts.

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



22. Full Authority.

Each of the Parties to this License Agreement represents and warrants (i) that the signatory to this License Agreement is duly authorized to execute this License Agreement on such Party's behalf; (ii) that he, she or it has the full right, power, legal capacity and authority to enter into and perform the Parties' respective obligations hereunder; and (iii) that such obligations shall be binding upon such Party without the requirement of the approval or consent of any other person or entity in connection herewith. Each of the signatories hereto represents and warrants that he or she is duly authorized to execute this License Agreement on the Party's behalf.

23. Severability.

If any one or more of the provisions of this License Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this License Agreement and shall in no way affect the validity of the remaining provisions of this License Agreement.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties hereto have executed this License Agreement this \_\_\_\_ day of \_\_\_\_\_, 2015.

**Property Owner:**

Pacific Coast Homes,  
a California corporation

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

Its: \_\_\_\_\_

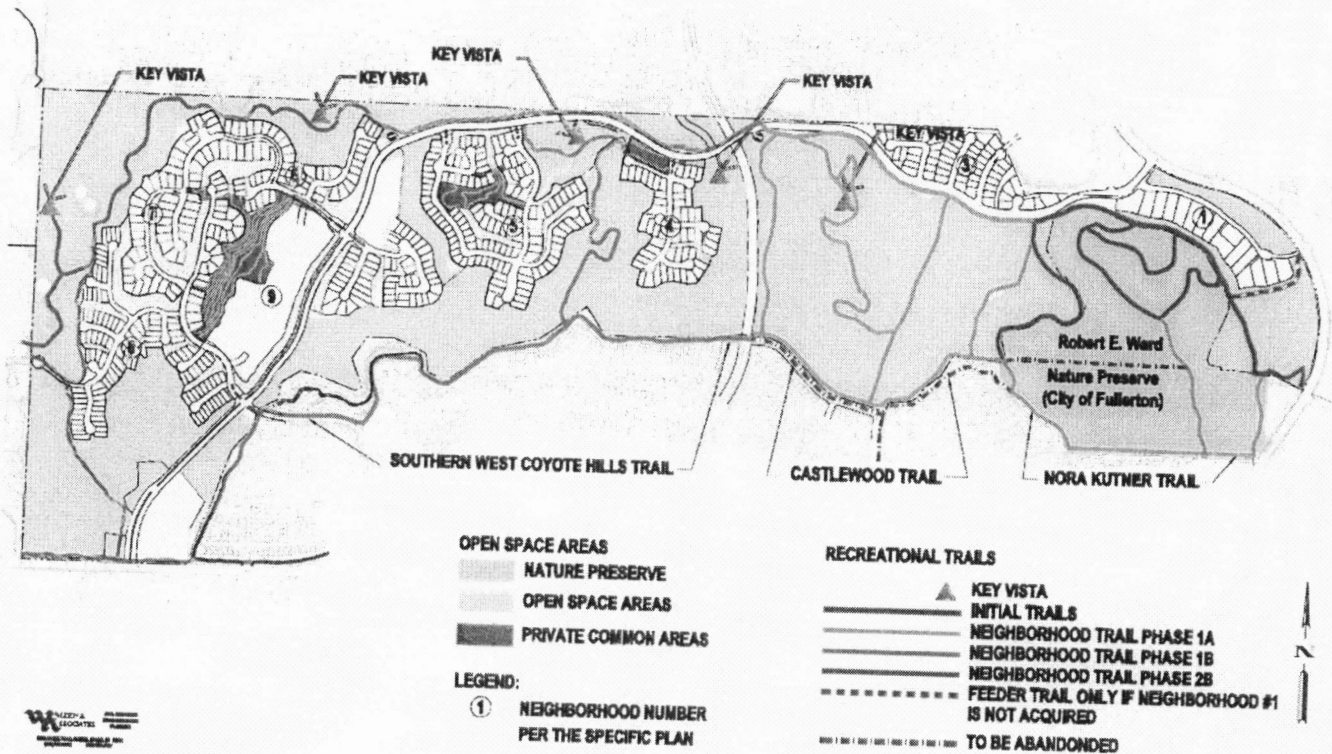
**City:**

City of Fullerton,  
a California municipal corporation

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

Its: \_\_\_\_\_

# EXHIBIT A [West Coyote Hills Trails and Vista Points Improvement Phasing Plan]



**Conditions of Approval Exhibit 4**  
**Interpretive Center Construction Scope**

Interpretive Center to be constructed in the Robert E. Ward Nature Preserve by Pacific Coast Homes, as identified on the Landscape Concept Plan, West Coyote Hills Specific Plan Amendment 8, Exhibit 36 as "Nature Center."

Building Size: Not to exceed 2,400 sf

Amenities:

- Lobby with a reception desk and waiting area
- Exhibit area
- Staff office
- Classroom
- Restrooms

Parking lot with capacity for 28 cars and 1 bus

Outdoor amphitheater / outdoor classroom

Outdoor lunch / snack area

Interpretive Nature Discovery Garden

Other Nature Preserve amenities includes improved trails, interpretive and informational regulatory signage/displays

## CONDITIONS OF APPROVAL EXHIBIT 5

### Open Space Area, Maintenance, Repair, and Security Obligations

#### Property Owner - Post-Construction Maintenance Obligations

Except as provided in Resolution No. PC-2015-31, Exhibit A (Conditions for Approval) with regard to public use of the Initial Trail Improvements prior to dedication by the Property Owner and acceptance by the City under Condition M.4, for each phase of construction, in accordance with Condition M.7, the Property Owner shall maintain, keep in good repair, and have responsibility for security (including security consistent with requirements of the USACOE and USFWS) for all improvements within the Open Space Dedication Areas, the Initial Trail Improvements, applicable portions of the Trail/Vista Improvements within each phase, and the Interpretive Center within the Robert E. Ward Nature Preserve (collectively, the "Resources Improvements") for a period of 90 days from completion of the work (the "Maintenance Period"). Prior to dedication and acceptance by the City, the Property Owner shall assume liability, including responsibility for any injury or damages to persons or property due to or associated with the Resources Improvements. During the Maintenance Period, City shall prepare a final "punch list" of uncompleted or unacceptable items and provide said list to the Property Owner in order for the Property Owner to affect reasonable repairs and/or complete unacceptable items. Upon completion of the "punch list" items or the end of the Maintenance Period, whichever occurs later, City shall accept dedication of each phase of the Resources Improvements. Owner shall guarantee materials and construction for a period of one year, but shall not be responsible for ordinary "wear and tear" nor any damage caused by others, including improper care and maintenance by City or others.

#### City - Post-Dedication and Acceptance Repair and Maintenance Obligations

Subject to City's reserved rights concerning defective or deficient work as set forth in the Subdivision Implementation Agreement, from and after City's acceptance of the applicable Resources Improvements or any of them, City shall assume all responsibility for maintenance, repair, operation, and security (including providing security consistent with requirements of the USACOE and USFWS and general polices and fire protection under applicable City standards) consistent with the condition of the Resources Improvements at the time of dedication. Upon the City's acceptance of dedication, the City shall assume liability and responsibility for any injury or damages to persons or property due to or associated with the Resources Improvements as provided in Condition M.7. City's obligations under this section apply to the following items located in or associated with the Resources Improvements:

1. All public recreation trails, including the trail tread, fencing, trail markers, monuments and signage, excluding private feeder trails leading to public trails.
2. All Key Vista sites, including facilities and improvements associated with said sites.
3. All trail head areas, including associated parking and facilities.

4. The Robert E. Ward Nature Preserve Interpretive Center, including associated parking and facilities.

Security Obligations

City shall provide security for the Resources Improvements as follows:

1. General site security consistent with the requirements of the U.S. Army Corps of Engineers and USFWS for the West Coyote Hills Habitat Preserve.
2. General fire and police protection, consistent with City standards for such services as applicable to this site.

Notwithstanding any of the foregoing to the contrary, City shall not bear responsibility for those obligations set forth in the Service Contract between Pacific Coast Homes and the Center for Natural Lands Management or similar entity for the management of the West Coyote Hills Habitat Preserve.

## **CONDITIONS OF APPROVAL EXHIBIT 6**

### **OPEN SPACE, TRAILS, AND INTERPRETIVE CENTER SUPPORT ENDOWMENT GUIDELINES AND PROCEDURES**

Pursuant to PC-2015-31, Condition for Approval M.9, Pacific Coast Homes ("Property Owner") shall provide to the City a certain endowment amount for purposes of operations, maintenance, repairs, and security for the Open Space Dedication Areas, the Initial Trail Improvements, the Trail/Vista Point Improvements, and the Interpretive Center (collectively, the "Resources Improvements") for the creation of an Open Space, Trails and Interpretive Center Support Endowment ("Endowment") substantially as follows:

1. City shall comply with all applicable Government Code requirements for City's management of invested funds, including to the extent applicable and not in conflict with said Codes, the Uniform Prudent Management of Institutional Funds Act (California Probate Code Section 18501 *et seq.*); provided, however, that unless otherwise required by applicable law, City shall not be bound by Probate Code Section 18504(d) (annual appropriation of amount greater than 7% of fair market value of Endowment creates rebuttable presumption of "imprudence").
2. City shall deposit the Endowment funds into a separate account to be used solely for operations, maintenance, repairs, and security, and related staffing requirements of and directly related to the Resources Improvements.
3. City shall be limited to the use of earned interest only from the Endowment ("Endowment Income") to fund those operations, maintenance, repairs, replacements, security operations, and related staffing requirements.
4. Except in the event of emergencies, no principal, net appreciation (realized or unrealized), or gains may be utilized to fund operations, maintenance, repairs, replacements, security operations or staffing requirements contemplated under the Endowment.
5. Endowment Income shall first be distributed to (i) support current-year expenses, then, if an excess remains, (ii) to an Income Stabilization Account and, if an excess still remains, (iii) re-capitalized into the Endowment principal.
6. Neither the Endowment nor any Endowment Income or related proceeds shall be used to fund new or other facilities.
7. Under PC-2015-31, Conditions for Approval M.2-M.7, the Resources Improvements are to be dedicated by Property Owner to the City, and following said dedication to and acceptance by the City, the Resources Improvements shall become the sole property and responsibility of the City including as to any obligations covered by the Endowment, and City accepts responsibility for maintaining endowment funds sufficient to operate, maintain, repair and secure said Improvements.

## **EXHIBIT 7**

### **GUARANTY AGREEMENT**

This Guaranty Agreement, is made and entered into by and between Chevron Land and Development Company ("Chevron"), a Delaware corporation, and the City of Fullerton ("City"), a California municipal corporation, each a "Party" and collectively the "Parties," as of \_\_\_\_\_, 2015 (the "Effective Date"), on the following terms and conditions;

#### **RECITALS:**

WHEREAS, Pacific Coast Homes, a California corporation (the "Company") received approval from the City on \_\_\_\_\_, 2015, of Vesting Tentative Tract Map No. 17609 ("VTM 17609"), including Conditions of Approval thereto ("Conditions of Approval"), pursuant to Resolution No. PC-2015-31, for the West Coyote Hills Development Project Site ("Project Site") owned and operated by the Company in the City;

WHEREAS, Chevron owns 100% of the outstanding stock of the Company; and

WHEREAS, Standard Condition 16 of the Conditions of Approval provides that Chevron shall enter into a guaranty agreement with the City as to certain remediation and indemnity obligations of the Company under Standard Conditions 24 and 25 of the Conditions of Approval.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the Parties agree as follows:

#### **ARTICLE I DEFINITIONS**

**Section 1.1 Definitions.** Except as otherwise expressly provided or unless the context otherwise requires, the terms defined in this Section 1.1, shall for all purposes of this Guaranty Agreement, have the meanings herein specified, the following definitions to be equally applicable to both the singular and plural forms of any of the terms herein defined:

**Section 1.1.1.** The term "Banking Day" shall mean any day other than a Saturday, a Sunday or any other day on which commercial banks in New York or California are authorized or required to be closed.

**Section 1.1.2.** The term "City" shall mean the City of Fullerton.

**Section 1.1.3.** The term "Chevron" shall mean Chevron Land and Development Company, until a successor corporation shall have become such pursuant to the applicable provisions hereof, and thereafter Chevron shall mean such successor corporation.

**Section 1.1.4.** The term "Company" shall mean Pacific Coast Homes.



**Section 1.1.5.** The term “Conditions of Approval” shall mean the Conditions of Approval attached to and approved with VTTM 17609.

**Section 1.1.6.** The term “Guaranty Agreement” shall mean this Guaranty Agreement dated as of \_\_\_\_\_, as originally executed or as it may from time to time be supplemented, modified or amended as provided herein.

**Section 1.1.7.** The term “Guaranteed Obligations” shall have the meaning accorded such term in Section 3.1 of this Guaranty Agreement.

**Section 1.1.8.** The term “Person” shall mean an individual, a corporation, a limited liability entity, a partnership, a joint venture, an association, a joint stock company, a trust, an unincorporated organization or a government or any agency, authority or political subdivision thereof.

**Section 1.1.9.** The term “Agreement” shall mean the Subdivision Implementation Agreement by and between the City and the Company dated as of \_\_\_\_\_, as originally executed or as it may from time to time be supplemented, modified or amended as provided herein.

**Section 1.2 Other Defined Terms.** Capitalized terms not otherwise defined in this Guaranty Agreement shall have the meaning ascribed thereto in the Conditions of Approval.

## **ARTICLE II CHEVRON REPRESENTATIONS**

**Section 2.1 Chevron Representations.** Chevron makes the following representations to City:

**Section 2.1.1.** Chevron has been duly organized and validly exists under the laws of the State of Delaware and has full corporate power and authority to enter into this Guaranty Agreement and to carry out and consummate all transactions contemplated by this Guaranty Agreement.

**Section 2.1.2** The execution and delivery of this Guaranty Agreement and the consummation of the transactions contemplated herein will not conflict with or constitute a breach of or default under Chevron’s charter documents, its By-Laws, or any indenture, or other material agreement or instrument to which Chevron is a party or by which it or its properties are bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over Chevron or any of its activities or properties.

**Section 2.1.3.** This Guaranty Agreement has been duly authorized, executed and delivered by Chevron and constitutes the valid and binding obligation of Chevron.

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### **ARTICLE III GUARANTY AND AGREEMENTS**

**Section 3.1 Guaranty.** Chevron hereby unconditionally guarantees to and for the benefit of City the full and prompt performance by the Company of the Company's obligations in Standard Conditions 24 and 25 of the Conditions of Approval (the "Guaranteed Obligations"); provided however, that Chevron shall have no obligation hereunder until Chevron has received a written demand from City. All payments by Chevron shall be made in lawful money of the United States of America.

**Section 3.2 Unconditional Nature of Obligations.** The obligations of Chevron under this Guaranty Agreement shall be absolute and unconditional, and shall remain in full force and effect until the entire Guaranteed Obligations shall have been performed, and except as specifically otherwise provided in this Guaranty Agreement, such obligations shall not be affected, modified or impaired upon the happening from time to time of any event, including without limitation any of the following, whether or not with notice to, or the consent of, Chevron:

- (a) waiver, surrender, compromise, settlement, release or termination of any or all of the obligations, covenants or agreements of Company under the Agreement;
- (b) failure to give notice to Chevron of the occurrence of an Event of Default under the Agreement;
- (c) the waiver, compromise or release of the payment, performance or observance by the Company or by Chevron, respectively, of any or all of the obligations, covenants or agreements of either of them contained in the Agreement or this Guaranty Agreement, as the case may be;
- (d) the extension of the time for payment of any principal or interest or for any other payment under the Agreement or of the time for performance of any other obligations, covenants or agreements under or arising out of the Agreement;
- (e) the modification, amendment or alteration (whether material or otherwise) of any obligation, covenant or agreement set forth in the Agreement;
- (f) the taking or the omission of any of the actions referred to in the Agreement including any acceleration of sums owing thereunder;
- (g) any failure, omission, delay or lack on the part of City to enforce, assert or exercise any right, power or remedy conferred on it in the Agreement;

- (h) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings affecting Chevron or Company or any of the respective assets of either of them, or any allegation or contest of the validity of this Guaranty Agreement in any such proceeding;
- (i) any defense based upon any legal disability of Company or, to the extent permitted by law, any release, discharge, reduction or limitation of or with respect to any sums owing by Company or any other liability of Company to City;
- (j) to the extent permitted by law, the release or discharge by operation of law of Chevron from the performance or observance of any obligation, covenant or agreement contained in this Guaranty Agreement; or
- (k) the default or failure of Chevron fully to perform any of its obligations set forth in this Guaranty Agreement.

If any payment by Company to City is rescinded or must be returned by City, the obligations of Chevron hereunder shall be reinstated with respect to such payment.

No set-off, counterclaim, reduction, or diminution of any obligation, or any defense of any kind or nature which Chevron has or may have against City shall be available hereunder to Chevron against City to reduce the payments to it under Section 3.1 of this Guaranty Agreement.

Chevron assumes responsibility for being and remaining informed of the financial condition of Company and of all other circumstances bearing upon the risk of nonpayment of amounts owing under the Agreement which diligent inquiry would reveal and agrees that City shall not have a duty to advise Chevron of information known to it regarding such condition or any such circumstances.

**Section 3.3 Proceedings Against Chevron.** In the event of a default in the obligations guaranteed pursuant to the terms hereof when and as the same shall become due, City shall have the right to proceed first and directly against Chevron under this Guaranty Agreement without proceeding against Company or exhausting any other remedies which it may have.

**Section 3.4 Costs.** Chevron agrees to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by City in enforcing or attempting to enforce this Guaranty Agreement following any default on the part of Chevron hereunder, whether the same shall be enforced by suit or otherwise.

**Section 3.5 Corporate Existence of Chevron.** Chevron covenants that so long as it has any outstanding obligations under this Guaranty Agreement, it will maintain its corporate existence, will not dissolve, sell or otherwise dispose of all of its assets and will not consolidate

with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it; *provided that* Chevron may, without violating the covenants in this Section 3.5 contained, consolidate with or merge into another corporation or permit one or more other corporations to consolidate with or merge into it, or sell or otherwise transfer all of its assets as an entirety and thereafter dissolve, if the surviving, resulting or transferee corporation, as the case may be, (i) shall be incorporated and existing under the laws of one of the States of the United States of America, (ii) assumes, if such corporation is not Chevron, all of the obligations of Chevron hereunder and (iii) is not, after such transaction, otherwise in default under any provisions hereof; *and provided further that* nothing in this Section 3.5 shall preclude Chevron from disposition or exchange of projects or assets for comparable consideration as part of its normal business activities.

**Section 3.6 Reimbursement of Chevron.** If at any time after (a) the Company has defaulted in performing the Guaranteed Obligations (a "Defaulted Obligation") and (b) Chevron has performed such Defaulted Obligation pursuant to Section 3.1 of this Guaranty Agreement, and the obligation involves the payment of money and the City receives all or a portion of the Defaulted Obligation payment from the Company, City hereby agrees to immediately reimburse Chevron in an amount equal to all or whatever portion of the Defaulted Obligation payment it has received from the Company.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1 Governing Law.** This Guaranty Agreement shall be governed by the California law without regard to conflict of law principles.

**Section 4.2 Notices.** All notices and other communications to Chevron or City may be electronically communicated by facsimile transmission or hand delivered or sent by overnight courier, to any party hereto at the addresses as provided in this Section 4.2:

All communications intended for Chevron shall be sent to:

Chevron Land and Development Company  
6001 Bollinger Canyon Road  
Building A  
San Ramon, CA 94583  
Attention: Treasurer

Fax Number: (925) 842-8090

With a copy to:

Pillsbury Winthrop Shaw Pittman LLP  
Four Embarcadero Center, 22nd Floor  
Post Office Box 2824  
San Francisco, CA 94126-2824  
Attention: Ronald Van Buskirk  
Fax Number (415) 983-1200

All communications intended for City shall be sent to:

City of Fullerton  
303 W. Commonwealth Avenue  
Fullerton, CA 92832  
Attention: City Manager,  
with a copy being sent to the City Attorney (at the same address)

or at any other address or facsimile transmission number of which either party shall have notified the other in any manner prescribed in this Section 4.2.

For all purposes of this Guaranty Agreement, a notice or communication will be deemed effective:

(a) if delivered by hand or sent by overnight courier, on the day it is delivered unless (i) that day is not a day upon which commercial banks are open for the transaction of business in the city specified (a "Local Banking Day") in the address for notice provided by the recipient or (ii) if delivered after the close of business on a Local Banking Day, then on the next succeeding Local Banking Day, and

(b) if sent by facsimile transmission, on the date transmitted, *provided that* oral or written confirmation of receipt is obtained from the recipient by the sender unless the date of transmission and confirmation is not a Local Banking Day, in which case on the next succeeding Local Banking Day.

**Section 4.3 Banking Days.** Except as otherwise provided in this Guaranty Agreement, if any date on which a payment is to be made, notice is to be given or other action taken hereunder is not a Banking Day, then such payment, notice or other action shall be made, given or taken on the next succeeding Banking Day in such place, and in the case of any payment, no interest shall accrue for the delay.

**Section 4.4 Successors and Assigns.** This Guaranty Agreement shall be binding upon Chevron and its successors and assigns and inure to the benefit of City and its permitted successors and assigns under the Agreement. Except as provided in Section 3.5 hereof, Chevron may not assign its obligations hereunder without the prior written consent of City.

**Section 4.5 Guaranty for Benefit of City.** This Guaranty Agreement is entered into by Chevron for the benefit of City. Nothing contained herein shall be deemed to create any right in, or permit any Person to enforce or make any claim hereunder or to be in whole or in part for the benefit of any person other than Chevron, City and their respective permitted successors and assigns.

**Section 4.6 Term.** This Guaranty Agreement shall commence as of the Effective Date and shall continue in existence as long as the obligations of the Company under Standard Conditions 24 and 25 of the Conditions for Approval remain in effect, subject to and including the provisions for suspension and termination provided in Conditions L and N of the Conditions of Approval.

**Section 4.7 Amendments and Waivers.** Any provision of this Guaranty Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by each of Chevron and City.

**Section 4.8 Headings.** The article and section headings of this Guaranty Agreement are for convenience only and shall not affect the construction hereof.

**Section 4.9 Partial Invalidity.** The invalidity of any one or more phrases, sentences, clauses or sections in this Guaranty Agreement shall not affect the validity or enforceability of the remaining portions of this Guaranty Agreement or any part thereof.

**Section 4.10 No Waiver, Remedies.** No failure or delay by City in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

**Section 4.11 Entire Agreement.** This Guaranty Agreement constitutes the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all oral statements and prior writings with respect thereto.

**Section 4.12 Execution in Several Counterparts.** This Guaranty Agreement may be executed by the Parties in counterparts, all of which shall for all purposes be deemed to be an original; but such counterparts shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF, CHEVRON LAND AND DEVELOPMENT COMPANY** and \_\_\_\_\_ have each caused this Guaranty Agreement to be executed in its respective name and on its behalf by its respective duly authorized officer as of the date first above written.

**CHEVRON LAND AND  
DEVELOPMENT COMPANY**

By \_\_\_\_\_

**CITY OF FULLERTON**

By \_\_\_\_\_