

**AGREEMENT FOR
PURCHASE AND SALE OF REAL ESTATE
(AND JOINT ESCROW INSTRUCTIONS)**

between

PACIFIC COAST HOMES, a California corporation

and

THE CITY OF FULLERTON, a California municipal corporation

TABLE OF CONTENTS

| | Page |
|--|------|
| 1. Purchase and Sale | 2 |
| 2. Price/Simultaneous Acquisition | 2 |
| 3. Payment of Purchase Price | 2 |
| 4. Natural Hazards Disclosure | 3 |
| 5. Remedial Action Plan/Option to Extend Closing Date | 4 |
| 6. Inspections Prior to Contingency Date | 4 |
| 7. Due-Diligence Prior to Contingency Date | 6 |
| 8. Condition of Title | 6 |
| 9. Seller’s Representations, Warranties and Covenants | 7 |
| 10. Buyer’s Representations, Warranties and Covenants | 9 |
| 11. Escrow | 10 |
| 12. Conditions to the Close of Escrow | 10 |
| 13. Disclaimer of Representations or Warranties by Seller | 16 |
| 14. Deliveries to Escrow Holder | 19 |
| 15. Closing Costs and Expenses | 21 |
| 16. Prorations | 21 |
| 17. Escrow Closing Procedures | 22 |
| 18. Possession at Close of Escrow | 22 |
| 19. Purchase of Neighborhood 1 Alone | 22 |
| 20. Post-Closing Obligations | 23 |
| 21. Condemnation | 25 |
| 22. Casualty | 26 |
| 23. Notices | 26 |
| 24. No Brokers | 27 |
| 25. Further Actions | 27 |
| 26. Legal and Equitable Enforcement of this Agreement | 28 |
| 27. Assignment | 29 |
| 28. Governing Law and Resolution of Disputes | 29 |
| 29. Miscellaneous | 30 |

EXHIBITS

Exhibit A – Form of Deed with Real Property Description, Covenants and Restrictions

Exhibit B – Form of License Agreement

**AGREEMENT FOR
PURCHASE AND SALE OF REAL ESTATE
(AND JOINT ESCROW INSTRUCTIONS)**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL ESTATE (AND JOINT ESCROW INSTRUCTIONS) ("Agreement") is made and entered into as of the Effective Date, by and between **PACIFIC COAST HOMES, a California corporation** ("Seller"), and **THE CITY OF FULLERTON, a California municipal corporation** ("Buyer") (each, a "Party" and collectively, "the Parties") on the following terms and conditions.

RECITALS:

- a. Seller owns certain real property in the City of Fullerton, commonly known as the West Coyote Hills Project Site ("Project Site"). Under Master (Specific) Plan MSP 2-A, as amended, and Vesting Tentative Tract Map No. 17609 ("VTTM No. 17609"), the Project Site includes nine (9) planning areas identified as neighborhoods ("Neighborhoods"). The portions of the Project Site designated as Neighborhood 1 and Neighborhood 3 (collectively, the "Real Property") are the subject of this Agreement. The remainder of the Project Site shall mean the "Remainder Property."
- b. VTTM No. 17609 for the West Coyote Hills development project ("Project") was approved by the Fullerton City Council on November 17, 2015, pursuant to Resolution No. 2015-62, subject to Conditions of Approval ("Conditions of Approval"). The Conditions of Approval provided, in part, for potential acquisition by the Buyer of the Real Property solely for permanent deed-restricted open-space/park resource conservation purposes, including habitat preservation and related recreational uses, subject to the terms and conditions thereof including coverage of the Real Property within a Conservation Easement approved by United States Fish and Wildlife Service.
- c. Pursuant to VTTM No. 17609 and the Conditions of Approval, on May 17, 2016, Buyer delivered to Seller a Notice of Acquisition to purchase the Real Property (Neighborhood 1 and Neighborhood 3 together). However, because the Final Approval Date for the Project (as defined in the Conditions of Approval) did not occur within three (3) years of the City's action approving VTTM No. 17609, the City's notice became ineffective. The Buyer still retained a right to give notice to acquire Neighborhood 1 standing alone.
- d. On March 29, 2019, Buyer delivered a timely notice to Seller of Buyer's intent to acquire Neighborhood 1 under the Conditions of Approval. In addition, since the Seller continues to be willing to sell Neighborhood 3 together with Neighborhood 1, the Buyer also seeks to acquire the Real Property.
- e. Seller and Buyer now desire to enter into this Agreement on specified terms and conditions for public acquisition of the Real Property on the terms and conditions provided herein.
- f. Capitalized terms used herein shall have the meaning set forth in the Glossary of Terms attached hereto, or if no definition is set forth in the Glossary of Terms, such capitalized

terms shall have the meaning immediately following or preceding the use of such terms. If not otherwise defined in this Agreement, capitalized terms shall have the meaning ascribed thereto in the Conditions of Approval.

In consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Purchase and Sale.** Seller agrees to sell and Buyer agrees to purchase the Real Property on the terms and conditions set forth in this Agreement.

2. **Price/Simultaneous Acquisition.** The purchase price (“**Purchase Price**”) for the Real Property is Eighteen Million Seventy-Five Thousand Dollars (\$18,075,000), consisting of Seven Million Eight Hundred Thousand Dollars (\$7,800,000) for Neighborhood 1, and Ten Million Two Hundred Seventy-Five Thousand Dollars (\$10,275,000) for Neighborhood 3. Buyer may purchase Neighborhood 3 only if Buyer purchases Neighborhood 1 simultaneously in the same transaction. In the event Buyer cannot timely secure funding for purchase of both Neighborhood 1 and Neighborhood 3 together, or otherwise decides not to purchase Neighborhood 3, Buyer in its sole discretion may proceed with the purchase of Neighborhood 1 alone at the price set forth in this **Paragraph 2**, on the same terms and conditions set forth herein for the purchase of the Real Property, except as modified herein for the purchase and sale of Neighborhood 1 alone.

3. **Payment of Purchase Price.** The Purchase Price shall be paid as follows:

(a) **Deposit.** Buyer shall deliver to Escrow Holder by Cash Equivalent a deposit of One Hundred Thousand Dollars (\$100,000) within three (3) Business Days after the Effective Date, which amount and all interest, if any, accrued thereon (the “**Deposit**”) shall be creditable to the Purchase Price and subject to the Liquidated Damages provisions of this Agreement from and after the Contingency Date. Escrow Holder shall hold the Deposit in an interest-bearing federally insured account with interest accruing for the benefit of Buyer; provided, however, that Buyer and Seller may waive the requirement that the account be interest-bearing if they determine that the cost for establishing and maintaining an interest-bearing account exceeds any anticipated interest earnings. For the avoidance of doubt, the Parties agree that if this Agreement is terminated, for any reason, prior to the Contingency Date, Buyer shall be entitled to the return of the Deposit.

(b) **Funding for Buyer’s Acquisition.** The Parties understand and acknowledge that, as of the Effective Date, Buyer does not have immediately available funds to acquire the Real Property for the Purchase Price and is seeking grant funding outside of the City of Fullerton. Buyer shall have the right to terminate this Agreement by delivering written notice to Seller as soon as possible, but in any event no later than the Contingency Date, if Buyer determines that funding will not be available to acquire the Real Property. If Buyer elects not to terminate this Agreement and to proceed with the purchase of Neighborhood 1 alone, as permitted hereunder, Buyer shall give written notice (“**Neighborhood 1 Notice**”) of said election to Seller as soon as possible, and in any event no later than the Contingency Date.

(c) **Balance of Purchase Price.** Subject to the possible escrow withholding account to be established in accordance with **Paragraph 14(a)(vi)** below, no later than one (1) Business Day

prior to the Closing Date, Buyer shall deposit into Escrow by Cash Equivalent the remainder of the Purchase Price for the Real Property, or for Neighborhood 1, as the case may be, together with Buyer's share of closing costs, adjusted by prorations as provided herein.

(d) **Independent Contract Consideration.** Within two (2) Business Days after the Effective Date, Buyer shall deliver to Seller, outside of Escrow, the amount of One Hundred Dollars (\$100) (the "**Independent Contract Consideration**"), which Seller and Buyer agree, together with Buyer's anticipated due diligence expenditures, has been bargained for as consideration for Seller's execution and delivery of this Agreement and affording Buyer the right to purchase the Real Property as set forth herein. The Independent Contract Consideration is in addition to, and independent of, the Purchase Price and any other consideration or payment provided for in this Agreement, and is nonrefundable in all events.

(e) **Liquidated Damages.** SELLER AND BUYER AGREE THAT, IF THE PURCHASE AND SALE OF THE REAL PROPERTY IS NOT COMPLETED IN ACCORDANCE WITH THIS AGREEMENT BECAUSE BUYER DEFAULTS UNDER OR BREACHES THIS AGREEMENT, SELLER SHALL BE ENTITLED TO TERMINATE THIS AGREEMENT, AND IF SUCH TERMINATION OCCURS AFTER THE CONTINGENCY DATE, THEN UPON TERMINATION THE DEPOSIT SHALL BE PAID TO SELLER AS LIQUIDATED DAMAGES AND AS SELLER'S SOLE REMEDY. SELLER AND BUYER AGREE THAT, UNDER THE CIRCUMSTANCES EXISTING AS OF THE EFFECTIVE DATE, ACTUAL DAMAGES MAY BE DIFFICULT TO ASCERTAIN AND THE DEPOSIT IS A REASONABLE ESTIMATE OF THE DAMAGES THAT WILL BE INCURRED BY SELLER IF BUYER DEFAULTS UNDER OR BREACHES THIS AGREEMENT AND FAILS TO PURCHASE THE REAL PROPERTY (EITHER NEIGHBORHOODS 1 AND 3 TOGETHER, OR NEIGHBORHOOD 1 ALONE) IN ACCORDANCE WITH THIS AGREEMENT.

SELLER'S INITIALS: _____ BUYER'S INITIALS: _____

4. **Natural Hazards Disclosure.** Seller shall, no later than ten (10) days prior to the Contingency Date, deliver or cause to be delivered to Buyer, a Natural Hazard Disclosure Report ("**Disclosure Report**") for the Real Property pursuant to the applicable Disclosure Statutes. As used in this Agreement, "**Disclosure Statutes**" means, collectively, California Government Code §§8589.3, 8589.4 and 51183.5, California Public Resources Code §§2621.9, 2694 and 4136. With respect to the Disclosure Statutes and the Disclosure Report, and consistent with California Civil Code §1102.4, the (a) delivery of the Disclosure Report to Buyer shall be deemed to satisfy all obligations and requirements of Seller under the Disclosure Statutes; (b) Seller shall not be liable for any error or inaccuracy in, or omission from, the information in the Disclosure Report; and (c) the Disclosure Report is being provided by Seller for purposes of complying with the Disclosure Statutes and shall not be deemed to constitute a representation or warranty by Seller as to the presence or absence in, at or around the Real Property of the conditions that are the subject of the Disclosure Statutes. Buyer acknowledges that the Real Property is located in the vicinity of an airport, within what is known as an airport influence area, as stated in the Conditions of Approval.

5. **Remedial Action Plan/Option to Extend Closing Date.** Buyer represents that it is required to submit any Remedial Action Plans (“**RAPs**”) required for the Real Property, as approved by the relevant environmental agencies, to State funding agencies that are providing grant funding to be used by Buyer, in part, to purchase the Real Property. Seller will submit all necessary applications therefor to the relevant environmental agencies and promptly provide copies of said applications to Buyer, but makes no promises, representations or warranties regarding approval of any RAP or the timing or the conditions thereof. In light of the foregoing, the Closing Date hereunder shall be on or before September 30, 2020; provided, however, that in the event the necessary RAPs are not provided to the Buyer by August 3, 2020, the Closing Date shall be automatically extended to November 30, 2020; and provided further, that if the necessary RAPs are provided by August 3, 2020, but closing by September 30, 2020 is anticipated to be delayed by reason of the schedule and/or required actions of a State funding agency, the Buyer may extend the Closing Date by exercising an option to extend and making a payment (the “**Extension Payment**”) in the amount of Fifty Thousand Dollars (\$50,000) to the Seller on or before September 5, 2020, in which case the Closing Date shall be extended to November 30, 2020. Said Extension Payment shall be non-refundable, but shall be credited against the Purchase Price if closing is completed by November 30, 2020. In the event the Buyer does not make the Extension Payment if and when due under this paragraph, this Agreement shall terminate and the Deposit required under Paragraph 3(a) shall be delivered to the Seller.

6. **Inspections Prior to Contingency Date.**

(a) On or before the Contingency Date, Buyer shall have performed any inspections, investigations, tests or studies (collectively, the “**Inspections**”) which Buyer desires to perform for the purpose of determining whether or not Buyer will proceed with the purchase of the Real Property and shall have approved and accepted same. To perform any Inspections, Buyer and its agents, contractors and representatives shall have access to the Real Property, provided that: (1) any Inspection shall not interfere with Seller’s Remediation Obligations and Habitat Obligations or any work undertaken to comply with the Conditions of Approval and mitigation measures for the Project; (2) Buyer must provide a draft work plan that describes the proposed invasive Inspections to Seller for Seller’s reasonable approval at least ten (10) Business Days before accessing the Real Property; (3) Buyer must give Seller at least five (5) Business Days’ notice of any Inspection which requires access to the Real Property, and with respect to any invasive Inspection (including any so-called “Phase II” testing), Buyer must obtain Seller’s prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; (4) prior to performing any Inspections, Buyer must deliver evidence of insurance (which may be a certificate of insurance) to Seller confirming that Buyer and its contractors, agents and representatives who will be conducting such Inspections have in effect the insurance described in Paragraph 6(e); and (5) all such Inspections shall be conducted by Buyer in compliance with this Paragraph 6. Seller shall have the right to have a representative present with respect to any Inspections conducted on the Real Property.

(b) In conducting the Inspections, Buyer and its agents, contractors and representatives shall: (1) comply with all applicable Governmental Regulations; (2) promptly pay when due all costs of the Inspections; (3) not permit any liens to attach to the Real Property by reason of the Inspections (or to immediately pay off or bond around any such liens which may be filed); and (4) promptly repair and restore any areas of the Real Property, including habitat, which are

disturbed or damaged as a result of any Inspections, substantially to the condition which existed prior to the Inspections.

(c) To the fullest extent permitted by law, Buyer shall keep confidential the information resulting from the Inspections. Buyer shall deliver to Seller copies of all reports, surveys and studies generated by the Inspections. Buyer may disclose confidential information to Buyer's representatives to the extent each needs to know confidential information for the sole purpose of evaluating the Real Property, provided Buyer takes all reasonable measures to assure that, to the fullest extent permitted by law, Buyer's representatives keep such information confidential. Buyer shall not contact any governmental authority regarding the results of any testing performed on the Real Property unless required by law and, if permitted by law, only after Buyer has given Seller not less than seven (7) days' written notice prior to any such contact.

(d) Buyer hereby indemnifies, protects, defends and holds the Seller Indemnified Parties harmless from all Claims arising out of any entry onto the Real Property by, or any Inspections performed by Buyer, its agents, contractors or representatives. Buyer waives and releases any Claims or other remedies of any kind whatsoever against the Seller Indemnified Parties for property damages or bodily and/or personal injuries to Buyer, its agents, contractors, and representatives arising out of any entry onto the Real Property by, or any Inspections performed by said Persons, except to the extent any such Claims or other remedies arise from the negligence or willful misconduct of one of the Seller Indemnified Parties. The provisions of this Paragraph 6(d) are Surviving Obligations.

(e) **Insurance.** Before entering the Real Property for any Inspection, Buyer shall procure and maintain, at its own expense, during the performance of its obligations under this Agreement, policies of liability insurance in the State of California reasonably acceptable to Seller, which are primary as to any other existing, valid and collectible insurance insuring Buyer against loss or liability caused by or in connection with the performance of this Agreement by Buyer, or its agents, consultants, contractors or subcontractors, in amounts not less than:

(i) Commercial General Liability Insurance with a minimum combined single limit of liability of at least One Million Dollars (\$1,000,000) and a general aggregate limit of Two Million Dollars (\$2,000,000).

(ii) Comprehensive Automobile Liability Insurance or Business Auto Policy covering all owned, hired or otherwise operated non-owned vehicles, with a minimum combined single limit of One Million Dollars (\$1,000,000) each occurrence for bodily injury and property damage.

(iii) Workers' Compensation Insurance as required by California, and Employers' Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000) per employee and One Million Dollars (\$1,000,000) each occurrence.

The insurance coverage required herein may be provided through self-insurance or by one or more policies of insurance issued to Buyer or its agents, consultants, contractors or subcontractors; provided, however, that in order for such insurance to be acceptable, Buyer shall have contractually required such agents, consultants, contractors or subcontractors to indemnify,

defend and hold harmless Seller from Claims to the extent of Buyer's obligations provided for in this Agreement with Seller named as an additional insured to such agreements, and such insurance policies shall otherwise meet the terms and conditions of this Paragraph 6.

The policies of liability insurance shall name Seller as an additional insured and shall not exclude or restrict coverage based upon alleged or actual negligence of an additional insured. Such insurance shall provide coverage for Claims and damages arising out of the actions of Buyer or its agents, consultants, contractors or subcontractors on or about the Real Property while the policy is in force, regardless of whether the Claim or damage arises after the policy is expired. Buyer shall deliver to Seller a certificate of insurance and additional insured endorsements evidencing the existence of the policies and further evidencing that coverage will not be canceled or materially changed prior to thirty (30) days' advance written notice to Seller. Subrogation against Seller shall be waived as respects all of the insurance policies set forth above (including without limitation policies of any subcontractor). The insurance required hereunder in no way limits or restricts any indemnity by Buyer or its agents, consultants, contractors or subcontractors under this Agreement, nor is the insurance to be carried limited by any limitation placed on the indemnity as a matter of law.

7. **Due-Diligence Prior to Contingency Date.** On or before the Contingency Date, Buyer shall have reviewed and accepted any Due-Diligence Materials provided to Buyer. Prior to and in connection with approval of VTTM No. 17609, numerous Project-related reports and materials were provided to Buyer as part of the permitting process for the Project and are contained in the public record, providing information on the condition of the Property, including but not limited to the certified Environmental Impact Report and Addendum No. 1, the Remedial Action Plan, and others ("**Existing Reports**"). Buyer acknowledges receipt of such Existing Reports for due diligence purposes. Seller shall provide to Buyer prior to Closing, and thereafter, any final applications, reports or other materials including any proposed conditions or restrictions ("**New Reports**") submitted by Seller to regulatory agencies, including but not limited to any environmental agency for approval of a RAP, for purposes of obtaining additional regulatory permits or approvals for the Project, to the extent that such New Reports relate to the areas of Neighborhood 1 and/or Neighborhood 3. Seller's obligation to provide such New Reports is a continuing obligation and shall survive the Closing. Seller shall provide New Reports to Buyer either by providing copies or by making such materials available in an on-line "data room" or FTP site.

8. **Condition of Title.** At the Close of Escrow, fee simple title to the Real Property shall be conveyed to Buyer by Seller pursuant to a deed substantially in the form of Deed attached hereto as Exhibit A, subject only to the following matters (the "**Approved Title Conditions**"): (a) matters affecting the condition of title to the Real Property approved or waived by Buyer in accordance with Paragraph 12(a)(i); (b) covenants and restrictions to be set forth in the Deed (i) restricting use of the Real Property to passive open space and habitat conservation purposes, and inclusion of the Real Property within the WCH Habitat Preserve and Habitat Obligations, both as defined under the Conditions of Approval, M.2 and M.3, and Mitigation Measure 4.12-1 ("**VTTM Covenants**"), (ii) relating to Habitat Obligations, Remediation Obligations, or well abandonments required and/or approved by any other regulatory agencies ("**Other Covenants**") imposed prior to Closing, to the extent applicable to the Real Property, and (iii) prohibiting installation by the Buyer, and its successors or assignees, at or on the Real Property of any wells

or facilities for the production of any minerals or any groundwater/geothermal resources (whether for drinking, agriculture, irrigation, reclamation or other uses); (c) the License Agreement (substantially in the form attached hereto as Exhibit B) for post-closing access and performance of Habitat Obligations, Remediation Obligations or soil management, or construction of Trail/Vista Point Improvements as provided in the Conditions of Approval; (d) reservations in favor of Seller of mineral rights, groundwater rights, geothermal resources, habitat credits, easements for public utilities, and access rights for any environmental investigation or remediation required under VTTM No. 17609 Standard Condition 25; and (e) matters affecting the condition of title to the Real Property created by or resulting from the acts of Buyer, or any Person acting on behalf of Buyer (including encumbrances resulting from any financing procured by Buyer).

9. **Seller's Representations, Warranties and Covenants.** The following constitute representations, warranties and covenants of Seller to Buyer as of the Effective Date:

(a) **Representations and Warranties.**

(i) Seller is a corporation, duly incorporated, validly existing and in good standing under the law of the State of California.

(ii) Seller has the corporate power, right and authority to enter into this Agreement and all documents required hereunder to be executed by Seller and to consummate the transactions contemplated herein.

(iii) All requisite corporate action has been taken by Seller in connection with the entering into this Agreement, the documents required hereby to be executed by Seller, and the consummation of the transactions contemplated herein.

(iv) Each Person executing this Agreement and the documents required herein to be executed by Seller has the legal power, right, and actual authority to bind Seller to the terms and conditions thereof.

(v) This Agreement and all of the documents to be delivered by Seller at the Close of Escrow will constitute binding and legal obligations of Seller, enforceable against Seller in accordance with their respective terms, subject to the effect of bankruptcy and similar laws.

(vi) The execution and delivery of this Agreement and the documents to be delivered by Seller at the Close of Escrow do not require the consent or approval of any other Person on behalf of Seller, nor shall such execution and delivery result in a breach or violation of any Governmental Regulation or conflict with, breach, result in a default under or violate any contract or agreement to which Seller is a party, or by which Seller or the Real Property is bound. Seller's rights under this Agreement, Seller's assets, and the Real Property itself, do not and shall not constitute plan assets within the meaning of 29 C.F.R. §2510.3-101, as modified by Section 3(42) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), Seller is not a "governmental plan" within the meaning of Section 3(32) of ERISA, and the execution of this Agreement, and the sale of the Real Property by Seller, are not subject to any state statutes regulating investments of, or any fiduciary obligations with respect to, governmental plans.

(vii) Seller is not, nor is it owned or controlled directly or indirectly by, any Person, group, or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury (“**OFAC**”) pursuant to Executive Order 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, “Specially Designated National and Blocked Person” or other banned or blocked Person (any such Person, group, entity or nation being hereinafter referred to as a “**Prohibited Person**”); Seller is not (nor is it owned or controlled, directly or indirectly, by any Person, group, or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and from and after the effective date of the above-referenced Executive Order, Seller (and any Person, group, or entity which Seller controls, directly or indirectly) has not knowingly conducted nor will knowingly conduct business nor has knowingly engaged nor will knowingly engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation.

(viii) Seller has not received any written notice from any governmental authority that the Real Property is in violation of any laws, ordinances or regulations.

(b) **Pre-Closing Covenants.** Prior to the Closing Date, Seller covenants as follows:

(i) Seller will use commercially reasonable efforts to comply in all material respects with Governmental Regulations applicable to the Real Property within the scope of and as contemplated by the Conditions of Approval; provided that the Parties acknowledge Seller’s option to complete Remediation Obligations and Habitat Obligations on the Real Property after the Close of Escrow pursuant to the Conditions of Approval.

(ii) Seller will not enter into any leases, rental agreements or other agreements affording any Person rights of use, occupancy and/or possession of all or any part of the Real Property, nor will Seller enter into any other agreements affecting the Real Property, other than contracts to comply with the Conditions of Approval or mitigation measures, or requirements of other regulatory agencies, in the ordinary course of business (such as maintenance and service contracts); provided, however, that Seller shall provide written notification to Buyer of Seller’s intent to enter into any such contracts prior to entering into same.

(iii) Seller will not convey all or any portion of the Real Property (or enter into any contract to do so) or knowingly subject the Real Property to any additional liens or encumbrances of any kind with the exception of liens or encumbrances related to construction of the Initial Trails or other work pursuant to the Conditions of Approval; provided, however, that Seller shall provide written notification to Buyer of Seller’s intent to subject the Real Property to any such liens or encumbrances prior to any such subjection.

(iv) Seller will not, without the prior written consent of Buyer, clear and grub, grade, develop or alter any portion of the Real Property, other than any actions required to

comply with any final order of any regulatory agency, to undertake any well abandonments, to comply with Habitat Obligations under Conditions M.2 through M.9 of the Conditions of Approval, to undertake Remediation Obligations under Standard Condition 25 of the Conditions of Approval, or to comply with the Project's mitigation, monitoring, and reporting program.

(v) Seller, at its sole expense, shall apply to the City for lot line adjustments or other actions necessary to create Neighborhoods 1 and 3 as separate legal parcels, in accordance with Condition L.4.i of the Conditions of Approval.

10. **Buyer's Representations, Warranties and Covenants.** The following constitute representations, warranties and covenants of Buyer to Seller as of the Effective Date:

(a) **Representations and Warranties.**

(i) Buyer is a municipal corporation, duly incorporated, validly existing and in good standing under the law of the State of California.

(ii) Buyer has the legal power, right and authority to enter into this Agreement and all documents required hereby to be executed by Buyer and to consummate the transactions contemplated herein.

(iii) All requisite action has been taken by Buyer in connection with entering into this Agreement, the documents required hereby to be executed by Buyer, and the consummation of the transactions contemplated herein.

(iv) Each Person executing this Agreement and the documents required herein to be executed on behalf of Buyer has the legal power, right, and actual authority to bind Buyer to the terms and conditions thereof.

(v) This Agreement and all of the documents to be delivered by Buyer at the Close of Escrow will constitute binding and legal obligations of Buyer, enforceable against Buyer in accordance with their respective terms subject to the effect of bankruptcy and similar laws.

(vi) The execution and delivery of this Agreement and the documents to be delivered by Buyer at the Close of Escrow do not require the consent or approval of any other Person on behalf of Buyer nor shall such execution and delivery result in a breach or violation of any Governmental Regulation or conflict with, breach, result in a default under or violate any contract or agreement to which Buyer is a party.

(vii) Buyer is not, nor is it owned or controlled directly or indirectly by, any Person, group, or nation named on any list issued by OFAC pursuant to Executive Order 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a Prohibited Person; Buyer is not (nor is it owned or controlled, directly or indirectly, by any Person, group, or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person. From and after the effective date of the above-referenced Executive Order, Buyer

(and any Person, group, or entity which Buyer controls, directly or indirectly) has not knowingly conducted nor will knowingly conduct business nor has knowingly engaged nor will knowingly engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation.

(b) **Pre-Closing Covenants.** Prior to Closing, Buyer covenants that it shall process and approve lot line adjustments or other actions necessary to create Neighborhoods 1 and 3 as separate legal parcels and waive all normally applicable City fees for the processing, approval, and recordation of the same, in accordance with Condition L.4.i of the Conditions of Approval.

11. **Escrow.**

(a) **Escrow Instructions.** Seller shall, no later than two (2) Business Days after the Effective Date, cause the Opening of Escrow by delivering a fully executed copy of this Agreement to Escrow Holder. The Escrow Holder shall confirm the Opening of Escrow in writing to Seller and Buyer by executing a copy of this Agreement where provided, confirming Escrow Holder's agreement to comply with the joint escrow instructions contained herein. Buyer and Seller shall execute and deliver to Escrow Holder any additional or supplemental escrow instructions reasonably requested by Escrow Holder as may be necessary or convenient to implement the terms of this Agreement and to consummate the transaction contemplated herein, provided that they are not inconsistent with the terms of this Agreement.

(b) **Reporting Person.** Escrow Holder is designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4. Upon the Close of Escrow, Escrow Holder shall file Form 1099 and send the statement to Seller, as required under the aforementioned statute and regulation.

(c) **Close of Escrow.** The Close of Escrow shall occur on the Closing Date, unless Buyer and Seller agree in writing to a different date.

12. **Conditions to the Close of Escrow.**

(a) **Conditions Precedent to Buyer's Obligations.** The Close of Escrow and Buyer's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction or waiver, not later than the Closing Date (unless another date is specified), of the following conditions:

(i) **Title Matters.** Prior to the Closing Date, the Title Company shall be committed to issue to Buyer a standard CLTA owner's policy of title insurance, with liability equal to the total purchase price for the Real Property ("**Owner's Title Policy**") at the Close of Escrow, showing title to the Real Property vested in Buyer, subject only to the Approved Title Conditions.

(A) **Title Report.** Seller shall cause the Title Company to provide to Buyer as soon as reasonably possible after the Effective Date a preliminary title report (the "**Title Report**"), showing the status of title to the Real Property, together

with copies of all documents shown in the Title Report which constitute exceptions to title.

(B) **Objections.** If any exceptions which appear in the Title Report are unacceptable to Buyer, in Buyer's sole and absolute discretion, Buyer may within ten (10) Business Days after receipt of the Title Report, give notice to Seller of such unacceptable matters ("**Buyer's Title Objections**"). Unless Buyer timely gives Seller notice of Buyer's Title Obligations, Buyer shall be deemed to have approved the Title Report, all exceptions reflected in the Title Report shall be deemed to be Approved Title Conditions, and Buyer shall have waived its right to terminate this Agreement under this Paragraph 12(a)(i) (except as set forth below with respect to any New Title Matters).

If Buyer timely gives Seller notice of Buyer's Title Objections, Seller shall have five (5) Business Days after receipt of such notice from Buyer within which to advise Buyer if Seller will correct or cure Buyer's Title Objections prior to the Closing Date. If Seller fails to give Buyer notice of its election to correct or cure Buyer's Title Objections within such five (5) Business Day period, then Seller will be deemed to have elected not to correct or cure Buyer's Title Objections. In such event, Buyer shall have the option to either (a) terminate this Agreement by notice to Seller within five (5) Business Days thereafter, or (b) proceed to the Closing, in which event Buyer's Title Objections shall be deemed waived. If Buyer fails to timely elect option (a) within the aforesaid five (5) Business Day period, it shall conclusively be deemed to have elected option (b). With the exception of any of Buyer's Title Objections which Seller has elected to correct or cure, Seller shall have no obligation to bring any action or proceeding or otherwise to incur any expense whatsoever to eliminate or cure any Buyer's Title Objections, except that Seller shall pay or otherwise discharge, prior to or on the Closing Date, all Monetary Obligations, and no Buyer's Title Objection shall be required with respect to any Monetary Obligations (including any New Title Matters which are Monetary Obligations).

(C) **Updates or Supplements.** If any update or supplement to the Title Report which is provided to Buyer after Buyer has approved the Title Report, reflects any new matters materially and adversely affecting title to the Real Property, in Buyer's reasonable determination ("**New Title Matters**"), then in such event Buyer may give notice to Seller of its disapproval of such New Title Matters within five (5) Business Days after receipt of the update or supplement. If Buyer fails to give notice of approval or disapproval of any New Title Matters within such five (5) Business Day period, such New Title Matters shall be deemed approved and shall be deemed to be Approved Title Conditions. Seller shall have five (5) Business Days after receipt of notice from Buyer of Buyer's disapproval of any New Title Matters within which to advise Buyer if Seller will correct or cure such disapproved New Title Matters prior to the Closing Date. If Seller fails to give Buyer notice of its election to correct or cure such New Title Matters within such five (5) Business Day period, then Seller will be deemed to have elected not to correct or cure such New Title Matters. In such event, Buyer shall have the option

to either (a) terminate this Agreement by notice to Seller within five (5) Business Days thereafter, or (b) proceed to the Closing, in which event any objections which Buyer may have with respect to such New Title Matters shall be deemed waived. If Buyer fails to timely elect option (a) within the aforesaid five (5) Business Day period, it shall conclusively be deemed to have elected option (b).

In the event of a termination of this Agreement pursuant to this Paragraph 12(a)(i), the provisions of Paragraph 12(d) shall apply.

(ii) **Tenancies and Leases.** On the Closing Date, the Real Property shall not be subject to any use agreements, leases or tenancies of any nature, and no Person (other than Seller) shall be in possession, or have any right to access and/or use, the Real Property, or any part thereof, other than contracts to comply with the Conditions of Approval or mitigation measures, or requirements of other regulatory agencies, in the ordinary course of business (such as maintenance and service contracts); provided, however, that on the Closing Date, Seller shall provide written notification to Buyer of such contracts existing at Closing, and, in the event that Seller enters into any such contracts from and after the Effective Date, Seller shall promptly provide written notification to Buyer of the same.

(iii) **Accuracy of Seller's Representations, Warranties and Covenants.** As of the Closing Date, Seller shall have duly performed in all material respects each and every obligation to be performed by Seller hereunder and, except as provided herein, Seller's representations and warranties set forth in this Agreement shall be true and correct in all material respects. To the extent that any events occur after the Effective Date but prior to the Closing Date which affect the truth or correctness of any of Seller's representations or warranties and which materially and/or adversely affect the value of the Real Property, Seller will provide a written disclosure of such events to Buyer promptly upon Seller obtaining knowledge thereof ("**Seller Disclosure Schedule**"). If Seller provides a Seller Disclosure Schedule, Buyer shall have the right to approve or disapprove thereof, and the Close of Escrow is conditioned upon Buyer's approval thereof. If Buyer disapproves of a Seller Disclosure Schedule, then this Agreement shall automatically terminate, and the provisions of Paragraph 12(d) shall apply. Seller shall have no obligation to take any corrective or curative actions with respect to any matter set forth in a Seller Disclosure Schedule which is disapproved by Buyer, unless resulting from a breach of any of Seller's covenants hereunder. Buyer and Seller acknowledge and agree that Seller has no duty, prior to dedication or sale to Buyer of the Real Property or thereafter, for restoration of any property following any natural disaster such as earthquake, flood, or fire. Failure of Buyer to disapprove of any Seller Disclosure Schedule within five (5) Business Days after receipt thereof shall be deemed approval thereof, in which case Seller's representations and warranties shall be deemed modified to reflect the matters set forth in the Seller Disclosure Schedule.

(iv) **Other Conditions.** All other conditions set forth in this Agreement for Buyer's benefit shall have been satisfied or waived.

The conditions set forth in this Paragraph 12(a) are solely for the benefit of Buyer. Buyer shall at all times have the right to waive any condition, provided that such waiver is

in writing. Unless Buyer gives notice to Seller prior to the applicable date that a condition set forth in Paragraph 12(a) has not been satisfied, Buyer will conclusively be deemed to have waived such condition. If Buyer has actual knowledge that any other condition set forth in this Paragraph 12(a) has not been satisfied, but Buyer proceeds to the Close of Escrow, then Buyer will conclusively be deemed to have waived such condition. However, no waiver of a condition by Buyer shall release Seller from liability for any breach of a covenant under this Agreement.

(b) **Conditions Precedent to Seller's Obligations.** The Close of Escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction or waiver, not later than the Closing Date (unless another date is specified) of the following conditions:

(i) **Grant Funding.** Buyer is seeking grant funding for the Purchase Price and must have sufficient funds no later than the Contingency Date to purchase the Real Property. If Buyer has not secured sufficient funding and does not give notice of termination of this Agreement by that date under Paragraph 3(b), and Buyer does not elect to make the Extension Payment provided under Paragraph 5, Seller may terminate this Agreement in its sole and absolute discretion by delivering written notice to Buyer; provided however that, in the event Buyer has sufficient funding to purchase Neighborhood 1 alone and has given timely notice under Paragraph 3(b), Buyer may proceed with closing with respect to Neighborhood 1 alone subject to the terms and conditions provided herein. In all events, Seller may terminate this Agreement in its entirety on written notice if any governmental agency providing any portions of grant funding to Buyer imposes any terms and conditions relating to the Real Property or the Project prior to the Contingency Date that in Seller's sole judgment would have a materially adverse effect on the Real Property, the Remainder Property or the Project.

(ii) **Accuracy of Buyer's Representations, Warranties and Covenants.** Buyer shall have duly performed in all material respects each and every agreement to be performed by Buyer hereunder, and Buyer's representations and warranties set forth in this Agreement shall be true and correct in all material respects. To the extent that any events occur prior to the Closing Date which affect the truth or correctness of Buyer's representations or warranties, Buyer will provide a written disclosure of such events to Seller promptly upon Buyer obtaining knowledge thereof ("**Buyer Disclosure Schedule**"). If Buyer provides a Buyer Disclosure Schedule, Seller shall have the right to approve or disapprove thereof, and the Close of Escrow is conditioned upon Seller's approval thereof. If Seller disapproves of a Buyer Disclosure Schedule, then this Agreement shall automatically terminate, whereupon the provisions of Paragraph 12(d) shall apply. Buyer shall have no obligation to take any corrective course of action with respect to any matter set forth in a Buyer Disclosure Schedule which is disapproved by Seller, unless resulting from a breach of Buyer's covenants hereunder. Failure of Seller to disapprove of any Buyer Disclosure Schedule within three (3) Business Days after receipt thereof shall be deemed approval thereof, in which case Buyer's representations and warranties shall be deemed modified to reflect the matters set forth in the Buyer Disclosure Schedule.

(iii) **Subdivision/Lot Line Adjustment.** The subdivision or lot line process provided for in Paragraph 10(b) shall be completed.

(iv) **Recordation of Easements, Covenants and Restrictions.** To the extent that the United States Fish and Wildlife Service has approved the Conservation Easement required under Mitigation Measure 4.12-1e (“**Conservation Easement**”), or any regulatory agency has required the recordation of any other covenant or restriction (including any covenant or restriction related to Habitat Obligations, Remediation Obligations, or well abandonments undertaken by Seller), as applicable to the Real Property, said easement, covenant or restriction shall have been recorded prior to Closing.

(v) **Extension of VTTM No. 17609.** The City shall have approved a three-year extension of VTTM No. 17609, to commence and be effective as of December 8, 2020.

(vi) **Modification of Improvements.** In light of the City’s acquisition of Neighborhood 1 and Neighborhood 3 and the elimination of all residential development on the Project Site east of Gilbert Street, the Parties agree to negotiate for adjustments to off-site facilities under VTTM No. 17609 and the City Engineering Department Letter dated September 30, 2015, and to finalize such adjustments as soon as reasonably possible. Approval of such mutually-agreed adjustments shall be a condition of Closing.

(vii) **Grant of Access Rights.** Buyer acknowledges that Seller may require access through and across portions of the Real Property in order for Seller and its assignees to access, construct, repair and maintain (together, “**Access Rights**”) certain facilities that may include water, electrical, storm drain, sewer, cable and/or other public utility-type facilities and related improvements (“**Utility Improvements**”) that may be necessary for development of the West Coyote Hills property (Project Site) owned by Seller west of Gilbert Street, in accordance with VTTM No. 17609 and final subdivision maps filed thereunder, and applicable regulations of the City of Fullerton for public utilities. Prior to Closing, the Parties shall negotiate in good faith regarding the Access Rights for the Utility Improvements, if any, and shall undertake best efforts to reach an agreement prior to Closing. The Access Rights shall be in the form(s) reasonably necessary to serve Seller’s Utility Improvements requirements, and may be in the form of an encroachment agreement, license agreement, right of entry, or if the Utility Improvements are of a permanent nature, an easement, and shall be recorded. The Utility Improvements shall be located in such a manner as to ensure that, in the reasonable discretion of the City of Fullerton, they will not have a material adverse impact on the use of the Real Property for open-space/park resource conservation purposes, including habitat preservation and related recreational uses. In the event the Parties are unable to complete an agreement on the Access Rights for the Utility Improvements prior to Closing, a memorandum referring to this provision shall be recorded at Closing, and the Parties shall negotiate post-closing in good faith to finalize and record such Access Rights as soon as reasonably feasible thereafter, and in all events prior to approval of the first final subdivision map for the Project. If the Parties are unable to agree on said Access Rights, the matter shall be resolved in accordance with the dispute resolution provisions in Paragraph 28. In no event may Seller or its assignees be required to locate such Utility Improvements outside the Project Site without their consent in their sole and absolute discretion. The Access Rights

shall be reflected in the first final subdivision map recorded for the Project, and all succeeding final maps, but shall expire if a final subdivision map is not timely filed for the Project pursuant to VTTM No. 17609 as extended.

(viii) **Other Conditions.** All other conditions set forth in this Agreement for Seller's benefit shall have been satisfied or waived.

The conditions set forth in this Paragraph 12(b) are solely for the benefit of Seller. Seller shall at all times have the right to waive any condition, provided that such waiver is in writing. If Seller has actual knowledge that any condition set forth in this Paragraph 12(b) has not been satisfied, but Seller proceeds to the Close of Escrow, then Seller will conclusively be deemed to have waived such condition. However, no waiver of a condition by Seller shall release Buyer from liability for any breach of a covenant under this Agreement.

(c) **Deemed Modification of VTTM.** The Close of Escrow and the obligations of both Seller and Buyer with respect to the transactions contemplated by this Agreement are subject to the applicable condition for "deemed modification" in VTTM No. 17609, Condition of Approval L.3.iv, whereby Buyer's purchase of Neighborhood 1 only automatically eliminates the area of Neighborhood 1, or Condition of Approval L.4.v, whereby Buyer's purchase of Neighborhood 1 and Neighborhood 3 automatically eliminates the areas of Neighborhood 1 and Neighborhood 3 and any development in such acquired real property, together with elimination of any and all rights and obligations pertaining thereto, except for remaining obligations of the Seller in those areas provided in the Conditions of Approval, and subject to any recorded easement, covenant or restriction; provided that if the Parties determine that any further action is needed with regard to modification of any Project entitlement in order to reflect the elimination of development of the Real Property, they agree to cooperate in good faith to undertake any such additional actions prior to the Closing Date.

(d) **Failure of Conditions.** In the event that any of the conditions set forth in Paragraphs 12(a), 12(b) or 12(c) are not satisfied (or waived, if applicable) by the applicable dates, for a reason other than a breach or default by Buyer or Seller under this Agreement, or in the event of a termination of this Agreement, including, without limitation, termination pursuant to Paragraph 21 or Paragraph 22:

(i) This Agreement, the Escrow and the rights and obligations of Buyer and Seller thereunder shall terminate, except for the Surviving Obligations;

(ii) Escrow Holder shall promptly return to Seller and Buyer any documents deposited by them, respectively, into Escrow which are held by Escrow Holder on the date of termination;

(iii) Escrow Holder shall promptly return to Buyer the Deposit, along with any interest accrued thereon;

(iv) All Due-Diligence Materials, and all surveys, appraisals, investigative reports, environmental reports, and other written materials developed by or for the benefit of Buyer in connection with the Inspections (if any) will, at Seller's request, be promptly delivered to Seller, at no expense to Seller, except for internally generated reports or

materials which are confidential in Buyer's reasonable opinion. Seller acknowledges that such documents will be delivered by Buyer without any representations or warranties. The foregoing documents shall also be delivered to Seller, at Seller's request, if Buyer defaults under this Agreement. The foregoing obligations are Surviving Obligations; and

(v) Seller shall be free to proceed with the development of the Real Property in accordance with VTTM No. 17609.

(e) **Cancellation Fees and Expenses.** In the event that Escrow terminates for a reason other than the default of Buyer or Seller under this Agreement, the cancellation charges required to be paid to Escrow Holder and the Title Company shall be borne one-half (1/2) by Seller and one-half (1/2) by Buyer, and all other charges shall be borne by the Party incurring same. In the event that Escrow terminates because of the default of Buyer or Seller, the defaulting Party shall pay all such cancellation charges. The foregoing obligations are Surviving Obligations.

13. **Disclaimer of Representations or Warranties by Seller.**

(a) **Inspections and Reviews.** Buyer acknowledges that prior to the Closing Date, Buyer will have conducted any and all Inspections and review of Due-Diligence Materials that Buyer may have desired and will have evaluated the Real Property (including, without limitation, the physical and environmental condition of the Real Property and compliance with Governmental Regulations and Environmental Laws) to the full and complete satisfaction of Buyer, and that Buyer will acquire the Real Property solely on the basis of the foregoing, the title insurance protection afforded by the Owner's Title Policy, and the express representations, warranties and covenants of Seller set forth in this Agreement. Buyer is not acquiring the Real Property on the basis of any information provided or any representations, warranties or covenants made by Seller, or any Person acting on Seller's behalf other than the express conditions, representations, warranties and covenants of Seller set forth in this Agreement and the Conditions of Approval. Buyer further acknowledges to Seller that except as expressly set forth in this Agreement, neither Seller nor any other Person acting on Seller's behalf has made any representations, warranties or covenants concerning the Real Property, and that Buyer, in executing, delivering and/or performing this Agreement, has not relied upon any representations, warranties or covenants other than those expressly set forth this Agreement.

(b) **"AS IS" PURCHASE.** BUYER AGREES THAT THE REAL PROPERTY IS TO BE SOLD TO AND ACCEPTED BY BUYER "AS IS" AND "WHERE IS," WITH ALL FAULTS, IF ANY, INCLUDING, WITHOUT LIMITATION, THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER DOES HEREBY DISCLAIM ANY AND ALL WARRANTIES, AND MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED OF ANY KIND TO BUYER INCLUDING, WITHOUT LIMITATION, WARRANTIES RELATING TO (1) THE PHYSICAL CONDITION OF THE LAND, IMPROVEMENTS, IF ANY, AND ANY PERSONAL PROPERTY, (2) THE HABITABILITY OF THE REAL PROPERTY, IMPROVEMENTS OR ANY PERSONAL PROPERTY, OR THEIR SUITABILITY FOR ANY PARTICULAR PURPOSE, (3) THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY, INCLUDING THE PRESENCE (OR ABSENCE) OF HAZARDOUS MATERIALS OR OTHER CONTAMINATION, (4) COMPLIANCE OF

THE REAL PROPERTY WITH GOVERNMENTAL REQUIREMENTS, INCLUDING ENVIRONMENTAL LAWS, (5) SOIL CONDITIONS, DRAINAGE, FLOODING CHARACTERISTICS, UTILITIES (INCLUDING THE AVAILABILITY THEREOF), OR (6) ANY OTHER CONDITIONS EXISTING IN, UNDER OR ABOUT THE REAL PROPERTY.

BUYER COVENANTS, REPRESENTS AND WARRANTS THAT: (i) BUYER HAS INSPECTED OR WILL INSPECT THE REAL PROPERTY, AND IMPROVEMENTS ON THE REAL PROPERTY, IF ANY, AND ALL MATTERS RELATING THERETO WHICH BUYER DESIRES; (ii) NEITHER SELLER NOR ANYONE ON SELLER'S BEHALF HAS MADE, OR IS MAKING, ANY WARRANTIES OR REPRESENTATIONS RESPECTING THE REAL PROPERTY OTHER THAN THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT; (iii) OTHER THAN ANY WARRANTIES OR REPRESENTATIONS RESPECTING THE REAL PROPERTY THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER IS RELYING SOLELY ON BUYER'S OWN INVESTIGATION OF THE REAL PROPERTY AND ALL MATTERS PERTAINING THERETO, INCLUDING BUT NOT LIMITED TO THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY; AND (iv) EXCEPT AS EXPRESSLY SET FORTH HEREIN, BUYER IS PURCHASING THE REAL PROPERTY "AS IS."

BUYER ACKNOWLEDGES THAT OTHER THAN ANY WARRANTIES OR REPRESENTATIONS RESPECTING THE REAL PROPERTY THAT ARE EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLER MAKES NO, AND EXPRESSLY DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS CONCERNING THE ACCURACY OR COMPLETENESS OF ANY OF THE DUE-DILIGENCE MATERIALS.

FURTHER, BUYER ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO CLAIMS FOR LOSS OF USE, RENTS, ANTICIPATED PROFIT OR BUSINESS OPPORTUNITY, OR BUSINESS INTERRUPTION, DIMINUTION IN VALUE, OR MENTAL OR EMOTIONAL DISTRESS OR FEAR OF INJURY OR DISEASE BY BUYER OR ANY THIRD PARTY.

ANY REPORTS, REPAIRS OR WORK REQUIRED BY BUYER ARE THE SOLE RESPONSIBILITY OF BUYER, AND BUYER AGREES THAT THERE IS NO OBLIGATION ON THE PART OF SELLER TO MAKE ANY CHANGES, ALTERATIONS OR REPAIRS TO THE REAL PROPERTY (EXCEPT THOSE SET FORTH IN THE CONDITIONS OF APPROVAL), OR TO CURE ANY VIOLATIONS OF LAW OR TO COMPLY WITH THE REQUIREMENTS OF ANY INSURER. BUYER IS SOLELY RESPONSIBLE FOR OBTAINING ANY APPROVAL OR PERMIT NECESSARY FOR TRANSFER OF THE REAL PROPERTY TO BUYER BY SELLER AND, EXCEPT THOSE SET FORTH IN THE CONDITIONS OF APPROVAL, FOR ANY REPAIRS OR ALTERATIONS NECESSARY TO OBTAIN THE SAME, ALL AT BUYER'S SOLE COST AND EXPENSE.

NOTWITHSTANDING THE FOREGOING, AND CONSISTENT WITH PARAGRAPH 13(e), NOTHING IN THIS PARAGRAPH 13(b) SHALL REDUCE OR MODIFY IN ANY WAY ANY

OBLIGATION OF SELLER PERTAINING TO THE REAL PROPERTY UNDER VTTM NO. 17609 AND THE CONDITIONS OF APPROVAL, OR UNDER ANY OTHER APPLICABLE GOVERNMENTAL APPROVAL OR PERMIT.

THE PROVISIONS OF THIS PARAGRAPH 13(b) SHALL SURVIVE THE CLOSE OF ESCROW AND SHALL NOT BE DEEMED MERGED INTO THE DEED OR ANY OTHER INSTRUMENT OR CONVEYANCE DELIVERED AT THE CLOSE OF ESCROW.

BUYER'S
INITIALS

(c) **No Independent Investigation by Seller.** Buyer further acknowledges that any information and materials provided or to be provided by Seller or any Person acting on Seller's behalf with respect to the Real Property (including, without limitation, the Due-Diligence Materials) were obtained from a variety of sources and third parties, and that Seller has not made any independent investigation or verification of such information and materials, and that, except as expressly set forth in this Agreement, Seller therefore disclaims any representations or warranties as to the accuracy or the completeness of such information and materials. Seller will not be liable for any negligent misrepresentation or any failure to investigate the Real Property to verify the accuracy of any of the information and materials provided or to be provided to Buyer, nor will Seller be liable or bound in any manner by any verbal or written statements, representations, appraisals, environmental assessment reports, or other information or materials pertaining to the Real Property furnished to Buyer by Seller or by any Person acting on Seller's behalf, except for the express representations and warranties of Seller set forth in this Agreement.

BUYER'S
INITIALS

(d) **GENERAL RELEASE.** EXCEPT FOR SELLER'S OBLIGATIONS UNDER VTTM NO. 17609, THE CONDITIONS OF APPROVAL, THIS AGREEMENT AND/OR ANY DOCUMENT EXECUTED BY SELLER AT THE CLOSE OF ESCROW, (i) BUYER RELEASES SELLER AND ALL SELLER INDEMNIFIED PARTIES FROM ANY AND ALL CLAIMS WHICH BUYER OR ANY PARTY RELATED TO OR AFFILIATED WITH BUYER (A "**BUYER RELATED PARTY**") HAS OR MAY HAVE ARISING FROM OR RELATED TO THE REAL PROPERTY, INCLUDING THE DUE-DILIGENCE MATERIALS, AND ANY CONSTRUCTION, SOILS OR GRADING DEFECTS, ENGINEERING DEFECTS, ERRORS OR OMISSIONS IN THE DESIGN, CONSTRUCTION OR GRADING, AND ANY ENVIRONMENTAL OR OTHER PHYSICAL CONDITION OF THE REAL PROPERTY, AND (ii) BUYER SHALL NOT LOOK TO SELLER IN CONNECTION WITH THE FOREGOING FOR ANY REDRESS OR RELIEF. THIS RELEASE SHALL BE GIVEN FULL FORCE AND EFFECT ACCORDING TO EACH OF ITS EXPRESSED TERMS AND PROVISIONS, INCLUDING THOSE RELATING TO UNKNOWN AND UNSUSPECTED CLAIMS, DAMAGES AND CAUSES OF ACTION, AND, IN THAT REGARD, SUBJECT TO THE IMMEDIATELY PRECEDING SENTENCE, BUYER HEREBY EXPRESSLY WAIVES ALL RIGHTS AND BENEFITS IT MAY NOW HAVE OR HEREAFTER ACQUIRE UNDER CALIFORNIA CIVIL CODE SECTION 1542 WHICH PROVIDES: "*A GENERAL RELEASE*

DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.” THE FOREGOING RELEASE IS A SURVIVING OBLIGATION.

BUYER'S
INITIALS

(e) Nothing in Paragraphs 13(a)-(d) above shall reduce or modify in any way any obligation of Seller pertaining to the Real Property under VTTM No. 17609 and the Conditions of Approval, under any other applicable governmental approval or permit, or under this Agreement.

14. **Deliveries to Escrow Holder.**

(a) **By Seller.** Seller shall deliver or cause to be delivered to Escrow Holder, at least one (1) Business Day prior to the Closing Date, the following:

(i) **Deed.** A grant deed (“**Deed**”) in substantially the form of **Exhibit A** attached hereto, duly executed and acknowledged by Seller, conveying the Real Property to Buyer.

(ii) **License Agreement.** A license agreement (“**License Agreement**”) providing Seller access to the Real Property to conduct any post-closing remediation and/or habitat obligations or other remaining applicable obligations, as provided in the Conditions of Approval for VTTM No. 17609 in substantially the form of **Exhibit B** (or as modified by mutual agreement of Seller and Buyer) attached hereto, duly executed and acknowledged by Seller.

(iii) **Non-Foreign Certification.** A certification duly executed by Seller (“**FIRPTA Certificate**”), setting forth Seller’s address and federal tax identification number and certifying that Seller is a “United States Person” and that Seller is not a “foreign person” in accordance with and/or for the purpose of the provisions of Section 1445 of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder, and a corresponding certification (Form 593 or other applicable California form) for filing with the applicable taxing authorities in the State of California.

(iv) **Bring-Down Certificate.** A final update of the Seller Disclosure Schedule (if applicable).

(v) **1099S.** A duly executed counterpart of a Real Estate Reporting Solicitation for the purposes of complying with Section 6045(e) of the Internal Revenue Code (“**Form 1099S**”).

(vi) **Escrow Withholding Account or Performance Security.** At the Close of Escrow Seller, at its sole option, shall either (a) have performed all of its Habitat Obligations and Remediation Obligations as to the Real Property under Conditions G.7,

M.2 and M.3, and Standard Condition 25 of the Conditions of Approval, or (b) commit to perform all of such obligations with commercially reasonable diligence after the Close of Escrow, in which case Seller, at its election, shall either deliver to Buyer at the Close of Escrow performance security in a sum sufficient to cover 100% of the estimated cost of performing such obligations and in a form reasonably acceptable to Buyer, or Seller shall cooperate with Buyer 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 Seller. Seller will make reasonable efforts to complete Remediation Obligations under Standard Condition 25 of the Conditions of Approval no later than one (1) year after approval of an amended Remedial Action Plan(s) for the Real Property, and in the case of the Habitat Obligations under Conditions M.2-M.9 of the Conditions of Approval in the timeframe required by the United States Fish and Wildlife Service, provided these obligations and the timing thereof do not conflict. In the event Seller elects to perform such obligations after the Close of Escrow, the Parties agree that delays may occur (such as ceasing work during California gnatcatcher breeding season), work may take longer than expected, or may involve unanticipated agency requirements, which shall not constitute a breach of this Agreement. In the event Seller elects to perform such obligations after the Close of Escrow, upon Seller's written notice to Buyer of the completion of Seller's obligations under Conditions G.7, M.2 and M.3, and Standard Condition 25 of the Conditions of Approval, relating to the Real Property any such performance security shall be released or such withholding account disbursed to Seller within thirty (30) days of such completion.

(vii) **Proof of Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the Person(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller as may be reasonably required by the Title Company and/or Buyer (including but not limited to a commercially reasonable form of owner's declaration).

(viii) **Other Documents.** Any other documents or instruments reasonably required to consummate the transaction in accordance with this Agreement.

(b) **By Buyer.** Buyer shall deliver or cause to be delivered to Escrow Holder, at least one (1) Business Day prior to the Closing Date, the following:

(i) **Purchase Price.** The Purchase Price (after adjusting for any prorations hereunder) together with Buyer's share of closing costs.

(ii) **Deed.** The Deed fully executed and acknowledged by Buyer.

(iii) **License Agreement.** The License Agreement, duly executed and acknowledged by Buyer.

(iv) **Proof of Authority.** Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transactions contemplated hereby, and such

proof of the power and authority of the Person(s) executing and/or delivering any instruments, documents or certificates on behalf of Buyer to act for and bind Buyer as may be reasonably required by the Title Company.

(v) **Bring-Down Certificate.** A final update of the Buyer Disclosure Schedule (if applicable).

(vi) **1099S.** A duly executed counterpart of the Form 1099S.

(vii) **Preliminary Change of Ownership Report.** A duly executed Preliminary Change of Ownership Report in the form required by the Orange County Recorder's Office.

(viii) **Other Documents.** Any other documents or instruments reasonably required to consummate the transaction in accordance with this Agreement.

15. **Closing Costs and Expenses.** Seller shall pay (a) one-half (½) of all Escrow fees and costs, (b) the premiums for the Owner's Title Policy (exclusive of the cost of any upgrades, endorsements, co-insurance and reinsurance to Owner's Title Policy, including the cost of extended coverage over general exceptions and any endorsements, which shall be paid for by Buyer), (c) the City and County documentary transfer tax, (d) the recording fees for the Deed(s), and (e) Seller's share of prorations. Buyer shall pay (f) premiums for the extended coverage portion of the Owner's Title Policy and any endorsements to the Owner's Title Policy requested by Buyer, (g) one-half (½) of all Escrow fees and costs, and (h) Buyer's share of prorations. Buyer and Seller shall each pay all of their own legal and professional fees and fees of other consultants incurred by Buyer and Seller, respectively. All other costs and expenses not otherwise provided for in this Agreement shall be allocated between Buyer and Seller in accordance with the customary practice for commercial real estate transactions of undeveloped land in Orange County, California.

16. **Prorations.**

(a) **General.** Prorations shall be made in accordance with local custom and practice in Orange County, California for commercial real estate transactions of undeveloped land, unless otherwise expressly provided herein. For purposes of calculating prorations, Buyer shall be deemed to be the owner of the Real Property for the entire day which is the date of the Close of Escrow.

(b) **Taxes and Assessments.** All non-delinquent real property taxes (including assessments) for the Real Property shall be prorated based on the actual current tax bill. All delinquent real property taxes, if any, and any supplemental or escaped real property taxes which relate to the period prior to the Closing Date shall be paid at the Close of Escrow from funds accruing to Seller. Buyer acknowledges that the sale of the Real Property will result in a reassessment of the Real Property and that a supplemental tax bill will be issued after the Close of Escrow, which shall be Buyer's sole responsibility.

(c) **Closing Statements.** The Parties shall provide the Escrow Holder with any information or documentation required to enable the Escrow Holder to compute the prorations,

and to prepare estimated closing statements at least five (5) Business Days before the Closing Date. Based on the information provided, Escrow Holder shall promptly prepare estimated closing statements and shall circulate copies to the Parties. The Parties shall work with each other and with Escrow Holder to modify said estimated closing statements, as needed, until they are in a position to approve their respective estimated closing statements. Promptly following the Close of Escrow, the Escrow Holder shall prepare and submit to the Parties final closing statements, which shall be substantially the same as the estimated closing statements approved by the Parties, but which reflect actual closing costs and recording charges.

17. **Escrow Closing Procedures.** On the Closing Date, Escrow Holder will:

(a) **Funds.** Disburse the funds deposited with Escrow Holder by Buyer as follows:

(i) Deduct the closing costs chargeable to the account of Seller pursuant to Paragraph 15.

(ii) If, as the result of the prorations pursuant to Paragraph 16, amounts are to be charged to the account of Seller, deduct the total amount of such charges.

(iii) Disburse the costs and expenses payable by Buyer and Seller pursuant to Paragraph 15 to the Parties entitled thereto.

(iv) Disburse the Purchase Price (net of any amounts charged to the account of Seller pursuant to Subparagraphs (i) and (ii) above), and any amounts retained in an escrow withholding account established pursuant to Paragraph 14(a)(vi), to Seller.

(v) Disburse the balance of the funds, if any, to Buyer.

The Parties shall provide the Escrow Holder with wire-transfer or other instructions with respect to any disbursements of funds to which they are entitled.

(b) **Recording.** Cause the Deed(s), the License Agreement, and any other documents which the Parties hereto may direct, to be recorded in the Official Records, and obtain conformed copies thereof for distribution to Buyer and Seller.

(c) **Documents.** After recordation, deliver the Deed(s), the License Agreement, and any other recorded documents to Buyer, and distribute originals or conformed copies of all other documents as directed by the Parties.

18. **Possession at Close of Escrow.** Seller shall deliver possession of the Real Property to Buyer upon the Close of Escrow.

19. **Purchase of Neighborhood 1 Alone.** If Buyer elects to purchase Neighborhood 1 alone under Paragraph 3(b), upon Seller's receipt from Buyer of a Neighborhood 1 Notice, the Parties shall mutually agree upon a revised Deed and License Agreement without affecting the Neighborhood 1 purchase price and create a separate legal parcel for Neighborhood 1 on or before the Closing Date. The escrow withholding amount (or performance security) in Paragraph

14(a)(vi) for post-closing Habitat Obligations and Remediation Obligations shall be reduced to reflect the sum related to Neighborhood 1 only.

20. **Post-Closing Obligations.**

(a) **Seller's Obligations.** After the Close of Escrow, if not previously completed, Seller shall be responsible to complete the VTTM No. 17609 Conditions of Approval (as deemed modified or modified under Paragraphs 12(b)(vi) and 12(c) hereof) and any obligations under any governmental permits and approvals that are applicable to the Real Property, including but not limited to provisions relating to Remediation Obligations, Habitat Obligations, well abandonment, and provision of Neighborhood Trails and Key Vista Improvements, according to the terms and conditions thereof; and nothing herein constitutes a modification or reduction of any such obligations. Further, Seller shall indemnify, defend (at its sole cost and expense), protect and hold harmless Buyer and Buyer's officials, officers, employees, and agents, including without limitation Buyer's consultants, attorneys, contractors, and subcontractors (collectively, the "**Buyer Indemnified Parties**"), from and against any and all Claims arising from or related to Seller's post-closing work, including Claims caused by or arising out of Seller's or its agents', contractors' or subcontractors' entry on, performance of work, or construction and maintenance of the Habitat Obligations as set forth in the License Agreement.

(b) **Buyer's Obligations.**

(i) After the Close of Escrow, to the extent that the United States Fish and Wildlife Service approves the Conservation Easement required under Mitigation Measure 4.12-1e, or any regulatory agency with jurisdiction over the Real Property and/or the Habitat Obligations or Remediation Obligations requires and/or approves any other covenant or restriction (including any covenant or restriction related to Habitat Obligations, Remediation Obligations, or well abandonments undertaken by Seller), as applicable to the Real Property, Seller shall promptly furnish notice of same to Buyer and Buyer shall insure that said easement, covenant or restriction is recorded as soon as feasible.

(ii) After the Close of Escrow, Buyer shall be responsible to ensure that the use of the Real Property and any activity thereon is consistent with all recorded covenants, including permanent deed-restricted open space/park resource conservation purposes, habitat preservation and related passive recreational uses, the License Agreement and any other covenant, condition or restriction recorded against the Real Property, including the Conservation Easement to be recorded pursuant to VTTM No. 17609 and the Conditions of Approval, as well as any restrictions or obligations limiting use of the Real Property under any other governmental permits and approvals applicable to the Real Property, including but not limited to provisions relating to Remediation and Habitat Obligations, well abandonment, and provision of Neighborhood Trails and Key Vista Improvements, according to the terms and conditions thereof; and nothing herein constitutes a modification or reduction of any such obligations.

(iii) After the Close of Escrow, to the extent that Seller and Buyer have not finalized the Access Rights provided for under Paragraph 12(b)(vii), they will undertake

best efforts to do so as soon as reasonably feasible, and in all events prior to the approval of the first final subdivision map as provided in said Paragraph.

(iv) Buyer shall cooperate in good faith with Seller in Seller's efforts to obtain any governmental permits and approvals applicable to the Real Property in order to carry out Seller's Habitat Obligations, Remediation Obligations, well abandonment and other work required by the Conditions of Approval or other agency approvals. Buyer acknowledges that it has no pre-review or approval rights or authority other than as stated in the Conditions of Approval (M.3, management entity contract) or as required by applicable law; provided, however, that Seller shall provide Buyer with copies of all final submitted applications and permits, and any related documentation submitted to governmental authorities related to any such work, for Buyer's files.

(v) Consistent with the Conditions of Approval, Buyer shall be responsible for the operation, maintenance, security and insurance for the Real Property, excepting the obligations of the Management Agency identified in Condition M.3 of the Conditions of Approval and Mitigation Measure 4.12-1g. Buyer agrees that to the extent it makes repairs, alterations, relocations, or construction of any improvements or facilities of any kind located on or within the Real Property ("**Changes**"), including but not limited to the construction of a parking lot or trails, Buyer assumes full responsibility for all approvals and costs thereof, including but not limited to any Habitat Obligations, Remediation Obligations, or open-space maintenance obligations that may be required in connection therewith; and provided further, that Buyer shall ensure that any such Changes are consistent with the Conservation Easement and any recorded covenants and restrictions, and are approved by the applicable Regulatory Agency, including but not limited to the United States Fish and Wildlife Service and/or the Orange County Health Care Agency as required. Upon Buyer's purchase of the Real Property, and subject to the Conditions of Approval and this Agreement, Buyer assumes all liability for the operation, repair, maintenance, and security of the Real Property including all responsibility for any injury or damages to Persons or property associated with Buyer's use or operation of the Real Property.

(vi) To the fullest extent permitted by law, Buyer shall indemnify, defend (at Buyer's sole cost and expense), protect and hold harmless the Seller Indemnified Parties from and against any and all Claims (including, without limitation, Claims for bodily injury, death or property damage), which may arise at any time after the close of Escrow from or in any manner related to (directly or indirectly), or in connection with, Buyer's use and ownership of the Real Property (including, without limitation, the use of the Real Property by the general public or any contractor or consultant retained by Buyer) or any activities in connection with the exercise of said rights on the Real Property. Notwithstanding the foregoing, nothing herein shall be construed to require Buyer to indemnify, defend, protect, or hold harmless a Seller Indemnified Party from either (1) any Claim arising from the active negligence or willful misconduct of an Indemnified Party, (2) 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, or (3) any Claim arising from or related to Seller's post-closing work required by the Conditions of Approval or mitigation measures. 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 Seller 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 Buyer's defense and indemnity obligation and written notice of such Claim being provided to Buyer. Payment to Buyer 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. Buyer's indemnification obligations are Surviving Obligations. Buyer assumes all risk and liability for damage to the Real Property from use of the Real Property by the general public, and injury to personal property and/or Persons, in, upon, or about the Real Property.

(vii) **Specific Environmental Release and Indemnity.** SUBJECT TO THE CONDITIONS OF APPROVAL, BY ACCEPTING TITLE TO THE REAL PROPERTY, BUYER, FOR ITSELF AND ALL BUYER RELATED PARTIES, RELEASES SELLER AND ALL SELLER INDEMNIFIED PARTIES FROM ANY CLAIMS RELATED IN ANY MANNER TO ANY ENVIRONMENTAL CONDITION OF THE REAL PROPERTY ARISING AFTER THE CLOSING DATE, EXCEPT FOR MATTERS ARISING FROM OR RELATED TO SELLER'S POST-CLOSING WORK. BUYER FURTHER EXPRESSLY WAIVES ANY RIGHTS OF INDEMNIFICATION, CONTRIBUTION, REIMBURSEMENT, OR SIMILAR RIGHTS UNDER CERCLA OR RCRA, FOR ANY CLAIMS RELATED IN ANY MANNER TO THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY ARISING AFTER THE CLOSING DATE, EXCEPT FOR MATTERS ARISING FROM OR RELATED TO SELLER'S POST-CLOSING WORK. ADDITIONALLY, TO THE FULLEST EXTENT PERMITTED BY LAW, BUYER, FOR ITSELF AND ALL BUYER RELATED PARTIES, SHALL INDEMNIFY, DEFEND (AT BUYER'S SOLE COST AND EXPENSE), PROTECT AND HOLD HARMLESS SELLER INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL CLAIMS MADE RELATED TO THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY ARISING AFTER THE CLOSING DATE, EXCEPT FOR MATTERS ARISING FROM OR RELATED TO SELLER'S POST-CLOSING WORK. SUCH CLAIMS SHALL INCLUDE, BUT ARE NOT LIMITED TO, ANY STRICT LIABILITY CLAIMS, INCLUDING THOSE UNDER CERCLA. IN THE EVENT THIS RELEASE AND INDEMNITY PROVISION IS JUDICIALLY DETERMINED TO EXCEED THAT PERMITTED BY APPLICABLE LAW, THEN THIS INDEMNITY PROVISION SHALL BE CONSTRUED SO AS TO PRESERVE THE MAXIMUM INDEMNITY PERMITTED THEREBY. THIS RELEASE AND INDEMNITY PROVISION IS A SURVIVING OBLIGATION.

21. **Condemnation.** If, prior to the Closing Date, any portion of the Real Property is taken, or if the access thereto is restricted, by any Authority under power of eminent domain or otherwise (each, a "**Taking**"), or if the Real Property becomes subject to a pending, threatened or contemplated Taking which has not been consummated, Seller shall notify Buyer of such fact promptly after Seller obtains knowledge thereof. In the event of any Taking or pending, threatened or contemplated Taking which would materially and adversely affect the value of the Real Property (each, a "**Material Taking**"), in Buyer's reasonable determination, Buyer shall have the option to terminate this Agreement upon written notice to Seller given not later than fifteen (15) Business

Days after receipt of Seller's notice. If this Agreement is so terminated, the provisions of Paragraph 12(d) shall apply. If Buyer does not timely exercise its option to terminate this Agreement with respect to a Material Taking, or in the event of a Taking that is not a Material Taking, upon the Close of Escrow Seller shall assign and turn over, and the Buyer shall be entitled to receive and keep, all awards for any such Taking which accrue to Seller and the Parties shall proceed to the Close of Escrow pursuant to terms hereof, without modification of the terms of this Agreement and without any reduction in the Purchase Price. Unless or until this Agreement is terminated, Seller shall take no action with respect to the settlement of any such Taking proceeding without the prior written approval of Buyer. The provisions of this Paragraph 21 are intended to supersede any Governmental Regulations to the contrary, which are hereby waived to the fullest extent allowable by law.

22. **Casualty.** After the Effective Date and prior to Closing, all risk of loss or damage to the Real Property due to earthquake, flood, fire, or any other casualty event ("**Casualty Event**") shall be borne by Seller. However, the Parties acknowledge and agree that Seller has no duty for any restoration of any property following such a Casualty Event. If Seller receives information prior to Closing that any part of the Real Property has been damaged by any Casualty Event, Seller shall immediately notify Buyer of such fact and provide Buyer with all information and documentation in Seller's possession relating to any such damage. If the damage is deemed "**Material Damage**," Buyer shall have the option to terminate this Agreement upon written notice to Seller given not later than fifteen (15) Business Days after receipt of Seller's notice. "**Material Damage**" shall mean any damage which would materially and adversely affect the value of the Real Property. If this Agreement is so terminated, the provisions of Paragraph 12(d) shall apply and Seller may proceed with development of Neighborhood 1 and Neighborhood 3 under VTTM No. 17609 and other Project approvals. If Buyer does not exercise its option to terminate this Agreement, the Parties shall proceed with Closing without modification of this Agreement.

23. **Notices.** All notices required or permitted to be given pursuant to this Agreement shall be in writing, and shall be delivered either personally, by a nationally recognized overnight delivery service (such as, but not limited to, Federal Express or UPS) or by U.S. certified mail, postage prepaid, return-receipt requested and addressed to the Parties at their respective addresses as they appear below. Notices may also be given by e-mail transmission to the e-mail addresses which appear below, provided that a copy of the notice is also sent by one of the other above-described methods of service. Notices delivered by email will only be effective if the email clearly and prominently states that it is an effective notice given under this Agreement. The Parties may change their addresses or e-mail addresses for notice by giving notice of such change in accordance with this Paragraph 23. Notices sent by overnight delivery service shall be deemed received on the Business Day following the date of deposit with the delivery service. Mailed notices shall be deemed received upon the date of delivery shown on the return-receipt or on the third Business Day after the date of mailing. Notices sent by e-mail shall be deemed served on the date of transmission, provided that such notices are sent prior to 5:00 p.m. (Pacific Time) on a Business Day, and otherwise on the next Business Day. Notwithstanding the foregoing, actual receipt of notice by a party shall constitute notice given in accordance with this Agreement on the date received, unless deemed earlier received pursuant to this Paragraph 23.

To Buyer:

The City of Fullerton
303 W. Commonwealth Ave.
Fullerton, CA 92832
Attention: City Manager
E-Mail: _____

To Seller:

Pacific Coast Homes
6001 Bollinger Canyon Road, H1323
San Ramon, CA 94583-2324
Attention: Ivan Jimenez
E-Mail: IJimenez@chevron.com

With Copy to:

Rutan & Tucker, LLP
611 Anton Boulevard, 14th Floor
Costa Mesa, CA 92626
Attention: Peter J. Howell, Esq.
E-mail: phowell@rutan.com

Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111
Attention: Ronald E. Van Buskirk
E-mail: ronald.vanbuskirk@pillsburylaw.com

To Escrow Holder:

First American Title Company

Attention: _____
E-mail: _____

24. **No Brokers.** Each Party represents and warrants that it has not engaged, and is not aware of the engagement of, any brokers or finders in connection with the transaction contemplated by this Agreement. In the event any claims for brokers' or finders' fees or commissions are made in connection with this Agreement, Buyer shall indemnify, save harmless and defend Seller and Seller Indemnified Parties from and against such claims, if they are based upon any act, statement, or representation or agreement by Buyer; and Seller shall indemnify, save harmless and defend Buyer and each Buyer Related Party from and against such claims if they are based upon any act, statement, representation, or agreement by Seller. The indemnification provisions of this Paragraph 24 are Surviving Obligations.

25. **Further Actions.** Buyer and Seller agree to execute such instruments and documents and to take all further actions reasonably required to consummate the purchase and sale transaction contemplated herein.

26. **Legal and Equitable Enforcement of this Agreement.**

(a) **Default by Seller.** SELLER AND BUYER AGREE THAT, IF THE PURCHASE AND SALE OF THE REAL PROPERTY IS NOT COMPLETED IN ACCORDANCE WITH THIS AGREEMENT BECAUSE SELLER MATERIALLY DEFAULTS UNDER OR MATERIALLY BREACHES THIS AGREEMENT, BUYER SHALL BE ENTITLED, AS BUYER'S SOLE REMEDY TO TERMINATE THIS AGREEMENT AND UPON TERMINATION THE DEPOSIT (LESS THE INDEPENDENT CONSIDERATION) SHALL BE RETURNED TO BUYER AND SELLER SHALL PAY TO BUYER AN AMOUNT EQUAL TO BUYER'S DOCUMENTED THIRD PARTY EXPENSES INCURRED IN CONNECTION WITH BUYER'S DUE DILIGENCE INVESTIGATION UNDER THIS AGREEMENT, BUT IN NO EVENT SHALL SUCH AMOUNT EXCEED TWENTY-FIVE THOUSAND DOLLARS (\$25,000). THE PARTIES ACKNOWLEDGE THAT THESE DAMAGES HAVE BEEN SPECIFICALLY NEGOTIATED BETWEEN THEMSELVES AND ARE, AMONG OTHER THINGS, TO COMPENSATE BUYER FOR ITS COSTS AND EXPENSES ASSOCIATED WITH THIS AGREEMENT. BUYER SPECIFICALLY WAIVES ANY AND ALL RIGHT (1) TO FILE OR RECORD ANY LIEN OR ENCUMBRANCE AGAINST THE PROPERTY; (2) TO INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES; OR (3) TO SEEK SPECIFIC PERFORMANCE OF THIS AGREEMENT OR TO RECORD ANY LIS PENDENS. THE FOREGOING SHALL NOT LIMIT BUYER'S REMEDIES WITH RESPECT TO (i) SELLER'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, AND (ii) SELLER'S OBLIGATIONS WITH RESPECT TO THE RETURN OF THE DEPOSIT TO BUYER UPON THE TERMINATION OF THIS AGREEMENT PURSUANT TO ANY PROVISION HEREOF. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER SHALL NOT BE IN DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS HEREUNDER UNLESS AND UNTIL SELLER RECEIVES NOTICE FROM BUYER SPECIFYING SUCH DEFAULT AND SELLER FAILS TO CURE SUCH DEFAULT WITHIN FIVE (5) DAYS AFTER RECEIPT OF SUCH NOTICE, EXCEPT THAT NO SUCH NOTICE OR CURE PERIOD SHALL APPLY TO A DEFAULT BY SELLER WHICH IS THE FAILURE TO CLOSE THE TRANSACTION ON THE CLOSING DATE.

BUYER'S INITIALS

SELLER'S INITIALS

(b) **Default by Buyer.** IN THE EVENT THAT THE CLOSE OF ESCROW DOES NOT OCCUR BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL HAVE THE REMEDY SET FORTH IN PARAGRAPH 3(e). NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, BUYER SHALL NOT BE IN DEFAULT WITH RESPECT TO ANY OF ITS OBLIGATIONS HEREUNDER UNLESS AND UNTIL BUYER RECEIVES NOTICE FROM SELLER SPECIFYING SUCH DEFAULT AND BUYER FAILS TO CURE SUCH DEFAULT WITHIN FIVE (5) DAYS AFTER RECEIPT OF SUCH NOTICE, EXCEPT THAT NO SUCH NOTICE OR CURE PERIOD SHALL APPLY TO A DEFAULT BY BUYER WHICH IS THE FAILURE TO CLOSE THE TRANSACTION ON THE CLOSING DATE.

BUYER'S INITIALS

SELLER'S INITIALS

27. **Assignment.** Neither Party may assign this Agreement, or any rights hereunder, without the prior written consent of the other Party which the other Party may grant or withhold in its sole and absolute discretion; provided, however, that Seller may assign its rights and obligations under this Agreement to its Affiliates without the prior written consent of Buyer. No assignment will release Buyer from its obligations hereunder.

28. **Governing Law and Resolution of Disputes.**

(a) **Governing Law.** This Agreement is governed by and interpreted in accordance with the laws of the State of California, without regard to its choice of law rules.

(b) **Resolution of Disputes.** The Parties shall exclusively and finally resolve any Dispute between them using direct negotiations, mediation, and then arbitration as set out in this Paragraph 28, except as permitted in Paragraph 28(e)(vii).

(c) **Direct Negotiations.** If a Dispute arises, a Party seeking to initiate the dispute resolution process shall give notice to the other Party setting out, in writing and in detail, the issues in Dispute and the value of the Claim. The Parties shall attempt to resolve the Dispute through direct negotiations in a meeting between the Parties, attended by individuals with decision-making authority, which must take place within 30 days, or as otherwise agreed to by the Parties, from the date the notice was sent.

(d) **Mediation.** If the Dispute cannot be resolved by direct negotiations within 30 days of initiation of the resolution process, either Party may initiate non-binding mediation by giving notice to the other Party. The mediation shall be attended by a representative from each Party with decision-making authority, and the proceeding shall take place in Orange County, California, before a neutral mediator selected by mutual agreement of the Parties under the JAMS mediation procedures.

(e) **Arbitration Proceedings.** If the Parties fail to resolve the Dispute within 60 days from notice of mediation, either Party may initiate private binding arbitration by giving notice to the other Party. The arbitration will be conducted under the JAMS Streamlined Arbitration Rules and Procedures (“**JAMS Rules**”), including the rules for selection of arbitrators. To the extent of any conflicts between the JAMS Rules and the provisions of this Agreement, the provisions of this Agreement shall prevail. Arbitration proceedings shall be conducted in Orange County, California. The following provisions shall apply to any arbitration proceeding:

(i) The arbitration shall be conducted before a single neutral arbitrator, unless the amount in dispute is more than \$1,000,000, in which case the matter shall be conducted before three (3) neutral arbitrators. If the Parties disagree as to the amount in dispute, the matter shall be heard by three (3) arbitrators.

(ii) The maximum number of witnesses each Party may call to give evidence on its behalf, including by oral testimony, declaration or witness statement, is five (5) fact witnesses and three (3) expert witnesses.

(iii) The existence of a Dispute and any negotiations, mediation, and arbitration proceedings between the Parties relating to any Dispute shall be kept confidential, and the

Parties shall not make any disclosure thereof to any third party except as may be required by law. Any information, documents, or materials, created or produced for the purposes of, or used in, negotiations, mediation, or arbitration of a Dispute shall be kept confidential and the Parties shall not disclose them to any third party unless required by law (but in that event disclosure must be limited to the extent necessary to comply with law), or to the extent necessary to enforce or challenge an award before a state court or other judicial authority.

(iv) The arbitrator(s) shall not have the power to award any damages waived and released under Paragraph 13(d). The arbitrator(s) shall have no authority to appoint or retain expert witnesses for any purpose unless agreed to by the Parties.

(v) Regardless of which Party prevails, all arbitration fees and costs shall be borne equally by the Parties, and each Party shall bear its own costs of legal representation, witness expenses, and ancillary costs.

(vi) The arbitration award shall be final and binding, and except for proceedings under Paragraph 28(e)(viii), the Parties agree to waive their rights to: (1) apply to any court for determination of a point of law or fact, and (2) take any form of appeal, review or recourse in respect of any such award to any court or other judicial authority, to the extent that such waiver may be validly made.

(vii) The Parties may apply to a court with appropriate jurisdiction for any of the following without waiving their arbitration rights:

(1) Interim measures as necessary until appointment of the arbitrator(s) or pending determination by the arbitrator(s).

(2) Preserving Real Property pending determination by the arbitrator(s).

(3) Enforcing judgment entered on an award.

(4) Enforcing Paragraph 28(e)(iii) and preventing any information, documents or materials used in those proceedings from being used or disclosed by that Party for any purpose other than enforcement of Paragraph 28(e)(iii).

(viii) Judicial proceedings to (1) preserve Real Property pending determination by the arbitrator(s), (2) enforce Paragraph 28(e)(iii), or (3) enforce judgment entered on an arbitration award may be brought in any court having jurisdiction over the Person or assets of the non-prevailing Party. The prevailing Party may seek, in any court having jurisdiction, judicial recognition of the award, or order of enforcement or any other order or decree that is necessary to give full effect to the award.

29. **Miscellaneous.**

(a) **Conflict of Interest.** No director, employee or agent of Buyer or any Buyer Related Party may enter into any business arrangement with any director, employee or agent of Seller or its Affiliate (other than as a representative of Seller) without Seller's prior written consent.

(b) **Force Majeure.** Each of the Parties shall be excused from performance of its obligations hereunder and shall not be deemed to be in default if its performance is prevented by (i) fire, earthquake, flood, explosion, drought, tidal wave, act of God, war, threat of war, hostilities, invasion, act of foreign enemies, mobilization, requisition, embargo, acts or threats of terrorism, riot, rebellion, revolution, insurrection, military or usurped power, civil commotion or war, strike, go slow, lockout or other labor dispute or disorder, shortages of labor or materials, any change in applicable laws, ordinances, rules or regulations adversely affecting such Party's obligations, delays in obtaining necessary approvals or consents from Authorities or other regulatory conflict or events, or other occurrence or condition of a like nature beyond the reasonable control of such Party; or (ii) any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic controls, riot, hostilities, war, threat of war, terrorist act, threat of terrorist act, or governmental policy (hereinafter, a "**Force Majeure Event**"). In no event shall a Force Majeure Event be deemed to result from financial difficulties. In the event that either Party hereto is or will be delayed or hindered or prevented from the performance of any act required hereunder (other than the payment of amounts due under this Agreement) by a Force Majeure Event, then performance of any such act will be excused for the period of the delay and the period for the performance of any such act will be extended for a period equivalent to the period of such delay.

(c) **Suspension and Termination.** Prior to Close of Escrow, if Seller provides a notice of suspension or termination under, Condition N (*Suspension or Termination of Obligations*) of the Conditions of Approval, at Seller's option all rights and obligations arising out of this Agreement may be terminated.

(d) **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any Person or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(e) **Waivers.** No waiver of any breach of any covenant or provision herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision contained herein. No extension of time for performance of any obligation or act shall be deemed an extension of time for performance of any other obligation or act.

(f) **Survival of Representations, Warranties and Covenants.** The representations and warranties made herein will survive the Close of Escrow and will not merge into the Deed. Notwithstanding the foregoing, no action may be brought for the breach of the representations, warranties and covenants set forth in Paragraphs 9 and 10 more than six (6) months after the Close of Escrow.

(g) **Successors and Assigns.** Subject to the provisions of Paragraph 27, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

(h) **Entire Agreement.** This Agreement (including all exhibits attached hereto) is the final expression of, and contains the entire agreement between, the Parties with respect to the subject matter hereof and supersedes all prior understandings (including any so-called “term sheets” or “letters of intent”) with respect thereto. This Agreement may not be modified, changed, or amended, except by written instrument signed by authorized representatives of both Parties.

(i) **No Third-Party Benefit.** This Agreement is for the benefit of the Parties only (and the Seller Indemnified Parties and the Buyer Related Parties), and is not intended to and shall not confer any rights or benefits upon any other Person.

(j) **Construction.** Paragraph headings are solely for convenience, and are not a part of this Agreement. Whenever required by the context of this Agreement, the singular includes the plural, the masculine includes the feminine and the neuter, and vice versa. The word “or” is not exclusive, and the word “includes” and “including” are not limiting. This Agreement will not be construed as if it had been prepared by one of the Parties, but rather as if both Parties had prepared the same. Unless otherwise indicated, all references to Paragraphs (and Subparagraphs) are to Paragraphs (and Subparagraphs) of this Agreement, and a reference to a Paragraph includes all of the individual paragraphs within the provision cited. All exhibits referred to in this Agreement are attached and incorporated by this reference. References to “days” herein means calendar days, unless otherwise specified. In the event the date on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, the action will be taken on the next succeeding Business Day. All periods of time referred to herein are calculated by excluding the first day and including the last day. Each Party has participated in the drafting of this Agreement and has had the opportunity to consult with legal counsel and any other advisors of its choice to its satisfaction regarding the terms and provisions of this Agreement. As a result, the rule of construction that an agreement be construed against the drafter must not be asserted or applied to this Agreement.

(k) **Counterparts; Electronic Signatures.** This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one (1) and the same instrument. Copies of signatures on documents transmitted by email shall be binding on the Parties, but the Parties shall deliver originals of any documents with signatures sent in such manner promptly thereafter. It is understood and agreed that certain closing documents may not be delivered electronically.

(l) **Relationship of the Parties.** This Agreement is not intended to create nor may this Agreement be construed as creating between the Parties, a partnership, joint venture or association of any kind.

(m) **Severability and Savings.** If any provision, or part of a provision, as applicable, of this Agreement is determined to be invalid or unenforceable by a court or arbitrator of competent jurisdiction, the invalidity or unenforceability will not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability will remain in full force and effect. The offending provision, or part of the provision, as applicable, will be modified to be valid and enforceable while achieving to the greatest possible extent, the economic, legal and commercial objectives of the invalid or enforceable provision; provided, however, if such

modification is not possible, then the provision will be severed and treated as if it were never a part of this Agreement.

(n) **Data Privacy.** Seller and Buyer agree that it is not anticipated that any personal data will be processed by Buyer on behalf of Seller or the Seller Indemnified Parties under or as a result of this Agreement, other than as contained within the terms of this Agreement. If Buyer begins to process personal data on behalf Seller or the Seller Indemnified Parties, then Buyer shall immediately notify Seller and the Parties will amend this Agreement to incorporate appropriate data protection provisions into this Agreement.

(o) **Records and Inspection.** Up until twenty-four (24) months from the end of the calendar year in which this Agreement is completed or terminated (1) Buyer shall ensure that each Buyer Related Party retain all records related to this Agreement and (2) Seller may inspect at any time all records to confirm that the requirements of the Agreement are met.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the dates indicated below.

BUYER

SELLER

**THE CITY OF FULLERTON, a municipal
corporation**

**PACIFIC COAST HOMES, a California
corporation**

By: _____

By: _____

Its: _____

Its: _____

Dated: _____, 2019

Dated: _____, 2019

GLOSSARY OF TERMS

As used in this Agreement, the following capitalized terms have the following meanings:

“Access Rights”: Has the meaning set forth in Paragraph 12(b)(vii).

“Affiliates”: All subsidiaries, divisions, affiliated companies, and parent corporation of Seller.

“Agreement”: Has the meaning set forth in the introductory Paragraph.

“Approved Title Conditions”: Has the meaning set forth in Paragraph 8.

“Authorities” or **“Authority”**: Any federal, state or local governmental or quasi-governmental bodies or agencies having jurisdiction over the Real Property, including, without limitation, the State of California, the County of Orange, and the City of Fullerton.

“Business Day”: Any day other than a Saturday, Sunday, legal holiday or any day on which the City of Fullerton is closed.

“Buyer”: Has the meaning set forth in the introductory Paragraph, and includes any assignee approved by Seller.

“Buyer Disclosure Schedule”: Has the meaning set forth in Paragraph 12(b)(ii).

“Buyer Indemnified Parties”: Has the meaning set forth in Paragraph 20(a).

“Buyer Related Party”: Has the meaning set forth in Paragraph 13(d).

“Buyer’s Title Objections”: Has the meaning set forth in Paragraph 12(a)(i)(B).

“Cash Equivalent”: A federal wire transfer of funds.

“Casualty Event”: Has the meaning set forth in Paragraph 22.

“Changes”: Has the meaning set forth in Paragraph 20(b)(v).

“Claims”: Any liability, loss, demand, damage, Encumbrance / Lien, cause of action of any kind, order, subpoena, obligation, cost, royalty, fee, assessment, duty, requirement, charge, penalty, fine, judgment, interest, and award (including recoverable legal counsel fees and cost of litigation of the Person asserting the claim), whether arising by law, contract, tort, voluntary settlement, or in any other manner.

“Close of Escrow” or **“Closing”**: The date that the Deed is recorded in the Official Records.

“Closing Date”: Except as set forth in Paragraph 5, Closing shall occur no later than September 30, 2020.

“Conditions of Approval”: Has the meaning set forth in Recital b.

“Conservation Easement”: Has the meaning set forth in Paragraph 12(b)(iv).

“Contingency Date”: The date which is thirty (30) calendar days prior to the Closing Date.

“Deed”: Has the meaning set forth in Paragraph 14(a)(i).

“Deposit”: Has the meaning set forth in Paragraph 3(a).

“Disclosure Report”: Seller’s report of (a) written notice of any pending or threatened actions, suits, arbitrations, claims or proceedings, at law or in equity, affecting title to or possession of the Real Property; (b) written notice from any Authority that the Real Property is in violation of any Governmental Regulations; and (c) other disclosures pursuant to the Disclosure Statutes.

“Disclosure Statutes”: Has the meaning set forth in Paragraph 4.

“Dispute”: Any Claim, disagreement, dispute or controversy arising out of this Agreement or the performance of any obligations under this Agreement, including a Claim under this Agreement and any dispute or controversy regarding the existence, construction, validity, interpretation, enforceability, termination or breach of this Agreement, whether based in contract, tort or in any other manner.

“Due-Diligence Materials”: Has the meaning set forth in Paragraph 7, consisting of Existing Reports and New Reports as defined therein.

“Effective Date”: The date that this Agreement is signed by the last to sign of Seller and Buyer, as reflected beneath their respective signatures.

“Encumbrance / Lien”: Any charge, encumbrance or similar right available to creditors at law to secure debts owed to them.

“Environmental Condition”: A condition or circumstance relating to the Real Property which is or is alleged to be not in compliance with Environmental Law.

“Environmental Laws”: All federal, state and local laws, common law, regulations, codes, policies, guidance documents, rules, and ordinances relating to pollution; the protection of the environment; the release, emission, discharge, or disposal of any material or chemical substance; human health or safety; Hazardous Materials; natural resource damage; product registration; hazard communication, each as from time to time has been or may be amended or adopted before or after the Effective Date, including, but not limited to, any of the following: The Occupational Safety and Health Act, 29 U.S.C.A. §651, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901, et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C.A. §9601, et seq.; the Clean Water Act, 33 U.S.C.A. §1251 et seq.; the Clean Air Act, 42 U.S.C.A. §7401, et seq.; the Safe Drinking Water Act, 42 U.S.C.A. §3001, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. §2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C.A. §2701 et seq.

“ERISA”: Has the meaning set forth in Paragraph 9(a)(vi).

“Escrow”: The escrow opened with Escrow Holder for the consummation of the transaction described in this Agreement.

“Escrow Holder”: First American Title Company.

“Existing Reports”: Has the meaning set forth in Paragraph 7.

“Extension Payment”: Has the meaning set forth in Paragraph 5.

“FIRPTA Certificate”: Has the meaning set forth in Paragraph 14(a)(iii).

“Force Majeure Event”: Has the meaning set forth in Paragraph 29(b).

“Form 1099S”: Has the meaning set forth in Paragraph 14(a)(v).

“Governmental Regulations”: Any applicable laws, statutes, ordinances, rules, requirements, resolutions, policy statements and regulations (including, without limitation, those relating to land use, subdivision, zoning, and Hazardous Materials), of the Authorities bearing on the construction, maintenance, use, operation, management or ownership of the Real Property.

“Habitat Obligations”: Obligations and activities set forth in the Conditions of Approval.

“Hazardous Materials”: Any chemical substance, product, waste, or other material which is, or becomes identified, listed, published, regulated, or defined as, or which shows the characteristics of, a hazardous substance, hazardous waste, hazardous material, toxic substance, or other regulatory term, including oil, oil waste, by-products and components, naturally occurring radioactive materials, hydrocarbons, and hydrocarbons waste, produced water, by-products and components, polychlorinated biphenyls, and asbestos, or which is otherwise regulated or restricted under any Environmental Law or by any government authority, or which may otherwise cause, contribute to, or result in an Environmental Condition.

“Independent Contract Consideration”: Has the meaning set forth in Paragraph 3(d).

“Initial Trails”: Initial Trail Improvements as set forth in the Conditions of Approval.

“Inspections”: Has the meaning set forth in Paragraph 6(a).

“License Agreement”: Has the meaning set forth in Paragraph 14(a)(ii).

“Liquidated Damages”: Has the meaning set forth in Paragraph 3(e).

“Material Damage”: Has the meaning set forth in Paragraph 22.

“Material Taking”: Has the meaning set forth in Paragraph 21.

“Monetary Obligations”: Any and all liens and encumbrances voluntarily placed, or voluntarily caused to be placed of record against the Real Property, evidencing an obligation which

can be satisfied by the payment of money, including, without limitation, delinquent real property taxes and assessments, deeds of trust and mortgages, and mechanic liens, but excluding the lien of non-delinquent real property taxes and assessments, and including any mechanics liens placed of record against the Real Property which result from any work which Seller is obligated to perform under this Agreement.

“Neighborhood 1”: The area identified as Neighborhood 1 as generally depicted on Exhibit A.

“Neighborhood 1 Notice”: Has the meaning set forth in Paragraph 3(b).

“Neighborhood 3”: The area identified as Neighborhood 3 as generally depicted on Exhibit A.

“Neighborhoods”: Has the meaning set forth in Recital a.

“New Reports”: Has the meaning set forth in Paragraph 7.

“New Title Matters”: Has the meaning set forth in Paragraph 12(a)(i)(C).

“OFAC”: Has the meaning set forth in Paragraph 9(a)(vii).

“Official Records”: The Official Records of the County of Orange, State of California.

“Opening of Escrow”: The date on which a fully executed copy of this Agreement is delivered to Escrow Holder by Seller as set forth in Paragraph 11(a), and Escrow Holder has acknowledged its obligations hereunder by signing a copy hereof in the place provided below.

“Owner’s Title Policy”: A standard CLTA owner’s policy of title insurance as set forth in Paragraph 12(a)(i).

“Other Covenants”: Has the meaning set forth in Paragraph 8 of this Agreement.

“Party” or **“Parties”**: Has the meaning set forth in the introductory Paragraph.

“Person”: An individual, corporation, partnership (limited or general), limited liability company, limited liability partnership, trust, or other form of association or entity.

“Prohibited Person”: Has the meaning set forth in Paragraph 9(a)(vii).

“Project Site”: Has the meaning set forth in Recital a.

“Project”: Has the meaning set forth in Recital b.

“Purchase Price”: Has the meaning set forth in Paragraph 2.

“RAPs”: Has the meaning set forth in Paragraph 5.

“Real Property”: That land situated in the City of Fullerton, Orange County, California, as described in Exhibit 1 to Exhibit A hereto, identified as “Parcel 1” therein (consisting of approximately 10.4 acres) (also known as “Neighborhood 1”) and “Parcel 3” therein (consisting of approximately 13.7 acres) (also known as “Neighborhood 3”) in VTTM No. 17609, with all improvements thereon, and appurtenant easements, hereditaments, rights, rights of way, rights to adjacent streets, alleys and rights of way, including land use entitlements and other rights which “run with the land” in the State of California.

“Regulatory Agency”: Any governmental agency that has jurisdiction over the Real Property and/or over the Remediation Obligations or Habitat Obligations, including but not limited to the United States Environmental Protection Agency, the United States Fish and Wildlife Service, the Orange County Health Care Agency, the Division of Oil, Gas and Geothermal Resources, the California Department of Fish and Wildlife, the South Coast Air Quality Management District, and the Santa Ana Regional Water Quality Control Board.

“Remainder Property”: The remainder of the Project Site as generally depicted on Conditions of Approval Exhibit 1: West Coyote Hills Trails and Key Vista Improvement Phasing Plan to VTTM No. 17609.

“Remediation Obligations”: Obligations and activities set forth in the Conditions of Approval, including Standard Condition 25.

“Seller”: Has the meaning set forth in the introductory Paragraph.

“Seller Disclosure Schedule”: Has the meaning set forth in Paragraph 12(a)(iii).

“Seller Indemnified Parties” or **“Indemnified Parties”**: Seller and Seller’s shareholders, and their constituent officers, directors, shareholders, members and partners, and the agents, employees and representatives of each of the foregoing, and any lenders to Seller, and their respective heirs, successors and assigns.

“Surviving Obligations”: Those obligations which by the express terms of this Agreement survive the Close of Escrow or the termination of this Agreement.

“Taking”: Has the meaning set forth in Paragraph 21.

“Title Company”: First American Title Company.

“Title Report”: Has the meaning set forth in Paragraph 12(a)(i)(A).

“Trail/Vista Point Improvements”: Neighborhood Trails and Key Vista Improvements as set forth in the Conditions of Approval.

“Utility Improvements”: Has the meaning set forth in Paragraph 12(b)(vii).

“VTTM No. 17609”: Has the meaning set forth in Recital a.

“VTTM Covenants”: Has the meaning set forth in Paragraph 8 of this Agreement.

“WCH Habitat Preserve”: Has the meaning set forth in the Conditions of Approval and mitigation measures, as used in Paragraph 8 of this Agreement.

ESCROW HOLDER:

The undersigned Escrow Holder hereby acknowledges receipt of this Agreement (including the Joint Escrow Instructions contained herein) and agrees to act as Escrow Holder under this Agreement in strict accordance with such escrow instructions, and any additional or supplemental escrow instructions executed by the parties.

FIRST AMERICAN TITLE COMPANY

By: _____

EXHIBIT A

FORM OF GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, **Pacific Coast Homes**, a California Corporation, hereinafter called "Grantor," hereby grants and conveys to the **City of Fullerton**, hereinafter called "Grantee," all of the Grantor's rights, title and interest in certain real property in the West Coyote Hills, City of Fullerton, County of Orange, California ("Real Property"), as described on Exhibit 1 hereto.

PROVIDED THAT: Said Real Property shall be permanently restricted for passive open-space/park resource conservation uses, including habitat restoration and preservation and related recreational uses, subject to Conditions of Approval ("Conditions of Approval") of Vesting Tentative Tract Map No. 17609, approved by the City of Fullerton on November 15, 2015 ("VTTM No. 17609").

EXCEPTING AND RESERVING UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE OWNERSHIP OF AND/OR RIGHTS TO THE FOLLOWING:

1. All oil, gas, and other hydrocarbons, non-hydrocarbons, gases or gaseous substances, and other minerals of whatsoever nature without regard to similarity to the above-mentioned substances (collectively, "Minerals") that may be produced from said Real Property at or below a depth of five hundred (500) feet, but without any right whatsoever to enter upon or pass through the surface and upper five hundred (500) feet of said Real Property for said production.

2. All Groundwater or Geothermal Resources (including indigenous steam, hot water and hot brines; steam and other gases, hot water and hot brines resulting from water, gas or other fluids artificially introduced into substance formations; heat or other associated energy found beneath the surface of the earth; and byproducts of any of the foregoing such as Minerals (exclusive of oil or hydrocarbon has that can be separately produced) which are found in solution or association with or derived from any of the foregoing below a depth of five hundred (500) feet), but without any right whatsoever to enter upon or pass through the surface and upper five hundred (500) feet of said Real Property.

3. The sole and exclusive right from time to time to drill and maintain wells or other facilities into or through said Real Property below a depth of five hundred (500) feet to explore for and to produce, inject, store and remove from or through such wells or facilities any Minerals, Groundwater or Geothermal Resources, including the right to perform any and all operations deemed by Grantor necessary or convenient for the exercise of such rights, but without any right whatsoever to enter upon or pass through the surface and upper five hundred (500) feet of said real property. Nothing herein is intended, or shall be construed, however, as in any way waiving or relinquishing Buyer's right to subjacent support for the Property.

4. All Habitat Credits of any kind resulting from restoration, enhancement and/or maintenance of wildlife habitat on said Real Property pursuant to the provisions of VTTM No. 17609.

5. The right to access said Real Property at or below the surface in a reasonable manner to perform any environmental investigation or remediation that may be required of Grantor, or its successors or assigns, under Standard Condition 25 of VTTM No. 17609 relating to pre-existing contamination or well abandonments.

PROVIDED FURTHER THAT: Grantee, for itself and on behalf of any successors and assigns, covenants and agrees that:

1. Upon request by Grantor, the United States Fish and Wildlife Service or and/or the California Department of Fish and Wildlife, Grantee shall record against the Real Property any Conservation Easements if and as approved by said agencies in accordance with VTTM No. 17609.

2. Grantee shall not install at or on the Real Property any wells or facilities for the production of any Minerals or any Groundwater or Geothermal Resources (whether for drinking, agriculture, irrigation, reclamation or other uses).

The Restrictions, Reservations of Ownership and Rights, and Covenants described herein are for the benefit of Grantor, and its successors and assigns, and shall be binding upon the Grantee, and its successors and assigns, including any Management Agency appointed under Condition M.3 of the Conditions of Approval, and shall also run with appurtenant lands owned by Grantor in the West Coyote Hills.

EXHIBIT 1 to Deed

PARCEL 1:

BEING THOSE PORTIONS OF SECTIONS 16 AND 17, TOWNSHIP 3 SOUTH, RANGE 10 WEST, IN THE RANCHOS LA HABRA LOS COYOTES AND SAN JUAN CAJON DE SANTA ANA, IN THE CITY OF FULLERTON, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SAID SECTIONS ARE SHOWN ON TRACT NO. 64, FILED IN BOOK 10, PAGE 14 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE WEST LINE OF SAID SOUTHWEST QUARTER OF SECTION 16, DISTANT THEREON SOUTH 00°50'56" WEST 692.03 FEET MORE OR LESS FROM THE NORTHWEST CORNER OF THE SOUTH HALF OF SAID SOUTHWEST QUARTER OF SECTION 16, SAID POINT BEING THE INTERSECTION WITH A CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1160.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 42°40'53" EAST; THENCE CONTINUING SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 270.32 FEET THROUGH A CENTRAL ANGLE OF 13°21'08" TO THE TRUE POINT OF BEGINNING, A RADIAL LINE TO SAID POINT BEARS NORTH 56°02'01" EAST; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 30.07 FEET THROUGH A CENTRAL ANGLE OF 01°29'07" TO A POINT OF CUSP ON A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 345.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 57°31'08" EAST; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 112.77 FEET THROUGH A CENTRAL ANGLE OF 18°43'43", A RADIAL LINE TO SAID POINT BEARS SOUTH 10°41'50" EAST; THENCE SOUTH 22°26'58" EAST 121.78 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 42.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 52.83 FEET THROUGH A CENTRAL ANGLE OF 72°04'27" TO THE BEGINNING OF A COMPOUND CURVE HAVING A RADIUS OF 144.25 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 40°22'31" EAST; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 54.51 FEET THROUGH A CENTRAL ANGLE OF 21°39'04"; THENCE SOUTH 71°16'33" WEST 169.19 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 100.00 FEET; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 40.33 FEET THROUGH A CENTRAL ANGLE OF 23°06'33" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 410.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 04°23'06" WEST; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 164.00 FEET THROUGH A CENTRAL ANGLE OF 22°55'07"; THENCE SOUTH 71°27'59" WEST 33.57 FEET; THENCE NORTH 16°48'05" WEST 95.07 FEET; THENCE NORTH 32°09'03" WEST 100.58 FEET; THENCE NORTH 42°27'18" WEST 88.41 FEET; THENCE NORTH 31°46'29" WEST 120.47 FEET; THENCE NORTH 61°33'39" WEST 398.50 FEET; THENCE NORTH 72°03'50" WEST 88.39 FEET; THENCE NORTH 83°24'10" WEST 145.37 FEET; THENCE NORTH 76°18'55" WEST 161.09 FEET; THENCE NORTH 83°06'50" WEST 122.37 FEET; THENCE NORTH 02°09'20" EAST 112.61 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 361.00 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 31.61 FEET THROUGH A CENTRAL ANGLE OF 05°01'01" TO A POINT ON THE SOUTHERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED TO THE CITY OF FULLERTON, RECORDED MAY 10, 1960 IN BOOK 5236, PAGE 404 OF OFFICIAL RECORDS, A RADIAL LINE TO SAID POINT BEARS SOUTH 12°17'07" EAST; THENCE EASTERLY ALONG SAID SOUTHERLY LINE, SOUTH 88°58'19" EAST 52.78 FEET; THENCE NORTH 40°05'45" EAST 33.98 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 361.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 24°48'26" EAST;



CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS
2552 WHITE ROAD, SUITE B • IRVINE, CA 92614-6236
(949) 660-0110 FAX: 660-0418

EXHIBIT "A"

LEGAL DESCRIPTION
FOR PARCELS OF WEST COYOTE HILLS
FULLERTON, CALIFORNIA

W.O. No. 0979-261-001
Engr. B.J.W. Chk'd. J.W.

Date 12-06-2019
Sheet 1 of 9

THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 167.58 FEET THROUGH A CENTRAL ANGLE OF 26°35'49", A RADIAL LINE TO SAID POINT BEARS SOUTH 51°24'15" EAST; THENCE SOUTH 54°55'08" EAST 31.13 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 40.00 FEET; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 19.70 FEET THROUGH A CENTRAL ANGLE OF 28°12'49"; THENCE SOUTH 83°07'57" EAST 139.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 740.00 FEET; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 163.53 FEET THROUGH A CENTRAL ANGLE OF 12°39'42"; THENCE SOUTH 70°28'15" EAST 47.22 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1040.00 FEET; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 30.43 FEET THROUGH A CENTRAL ANGLE OF 01°40'36" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 21°12'21" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 8.41 FEET THROUGH A CENTRAL ANGLE OF 32°06'57" TO THE BEGINNING OF A REVERSE CURVE HAVING A RADIUS OF 35.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 10°54'35" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 20.54 FEET THROUGH A CENTRAL ANGLE OF 33°37'10" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 1048.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 22°42'34" EAST; THENCE SOUTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 228.27 FEET THROUGH A CENTRAL ANGLE OF 12°28'48" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 35.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 35°11'22" EAST; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 20.54 FEET THROUGH A CENTRAL ANGLE OF 33°37'10" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 68°48'32" EAST; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 8.41 FEET THROUGH A CENTRAL ANGLE OF 32°06'57" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 1040.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 36°41'35" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 30.43 FEET THROUGH A CENTRAL ANGLE OF 01°40'36" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 660.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 38°22'12" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 90.96 FEET THROUGH A CENTRAL ANGLE OF 07°53'48" TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 740.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 30°28'23" WEST; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 319.24 FEET THROUGH A CENTRAL ANGLE OF 24°43'03" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 10.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 55°11'26" EAST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 14.68 FEET THROUGH A CENTRAL ANGLE OF 84°07'36", TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 10.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 28°56'10" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 8.67 THROUGH A CENTRAL ANGLE OF 49°39'43"; THENCE SOUTH 69°16'28" EAST 69.51 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 10.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE AN ARC DISTANCE OF 9.03 FEET THROUGH A CENTRAL ANGLE OF 51°44'36" TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 10.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 72°28'09" EAST;



**W. ALDEN &
ASSOCIATES**
CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS
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EXHIBIT "A"

LEGAL DESCRIPTION
FOR PARCELS OF WEST COYOTE HILLS
FULLERTON, CALIFORNIA

W.O. No. 0979-261-001
Engr. B.J.W. Chk'd. J.W.

Date 12-06-2019
Sheet 2 of 9

THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 10.36 FEET THROUGH A CENTRAL ANGLE OF 59°20'51" TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 315.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 13°07'18" WEST; THENCE EASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 231.93 FEET THROUGH A CENTRAL ANGLE OF 42°11'07" TO THE TRUE POINT OF BEGINNING, A RADIAL LINE TO SAID POINT BEARS SOUTH 29°03'49" EAST.

CONTAINS: 451,660 SQ. FT. - 10.4 ACRES MORE OF LESS

PARCEL 2:
TO BE USED AT A FUTURE DATE.

PARCEL 3:

BEING THOSE PORTION OF SECTIONS 16 AND 17, TOWNSHIP 3 SOUTH, RANGE 10 WEST, IN THE RANCHOS LA HABRA LOS COYOTES AND SAN JUAN CAJON DE SANTA ANA, IN THE CITY OF FULLERTON, COUNTY OF ORANGE, STATE OF CALIFORNIA, AS SAID SECTIONS ARE SHOWN ON TRACT NO. 64, FILED IN BOOK 10, PAGE 14 OF MISCELLANEOUS MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NO. 90-151 AS SHOWN ON THE MAP FILED IN BOOK 263, PAGES 44 THROUGH 48 INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, SAID CORNER BEING THE INTERSECTION OF THE CENTERLINE OF IDAHO STREET (CITY OF LA HABRA, GILBERT STREET CITY OF FULLERTON) (80.00 FEET WIDE) WITH THE NORTHERLY LINE OF THE CITY OF FULLERTON PER THE ORIGINAL INCORPORATION AS SHOWN ON SAID MAP; THENCE ALONG SAID NORTHERLY LINE, SOUTH 89°07'04" EAST 1318.68 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID NORTHERLY LINE, SOUTH 89°07'04" EAST 1056.35 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN THE QUITCLAIM DEED TO THE CITY OF FULLERTON RECORDED MAY 10, 1960 IN BOOK 5236, PAGE 404 OF OFFICIAL RECORDS, THENCE SOUTHERLY ALONG SAID DEED, SOUTH 24°58'19" EAST 564.56 FEET; THENCE NORTH 88°58'19" WEST 243.80 FEET; THENCE SOUTH 37°17'01" EAST 96.62 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 371.00 FEET; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 242.53 FEET THROUGH A CENTRAL ANGLE OF 37°27'19"; THENCE NORTH 89°49'41" WEST 247.92 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 471.00 FEET; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 273.86 FEET THROUGH A CENTRAL ANGLE OF 33°18'50"; THENCE NORTH 56°30'52" WEST 32.53 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 829.00 FEET; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 369.20 FEET THROUGH A CENTRAL ANGLE OF 25°31'01"; THENCE NORTH 82°01'53" WEST 63.84 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 451.00 FEET; THENCE WESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 211.11 FEET THROUGH A CENTRAL ANGLE OF 26°49'10", A RADIAL LINE TO SAID POINT BEARS SOUTH 34°47'17" WEST;



CIVIL ENGINEERS - LAND SURVEYORS - PLANNERS
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(949) 660-0110 FAX: 660-0418

EXHIBIT "A"

LEGAL DESCRIPTION
FOR PARCELS OF WEST COYOTE HILLS
FULLERTON, CALIFORNIA

W.O. No. 0979-261-001
Engr. B.J.W. Chk'd. J.W.


Date 12-06-2019
Sheet 3 of 9

THENCE NORTH 22°43'07" EAST 74.73 FEET; THENCE NORTH 85°08'20" WEST 101.95 FEET; THENCE NORTH 09°57'51" EAST 93.25 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 47.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 48°24'21" EAST; THENCE NORTHWESTERLY ALONG SAID CURVE AN ARC DISTANCE OF 90.26 FEET THROUGH A CENTRAL ANGLE OF 110°02'11", A RADIAL LINE TO SAID POINT BEARS SOUTH 61°37'50" WEST; THENCE NORTH 35°28'55" WEST 106.66 FEET; THENCE NORTH 21°11'32" WEST 116.28 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINS: 599,103 SQ. FT. - 13.7 ACRES MORE OR LESS

AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND MADE A PART HEREOF.

PREPARED BY ME OR UNDER MY DIRECTION.


JEFFREY A. WALDEN, P.L.S. 7914

12-06-2019
DATE



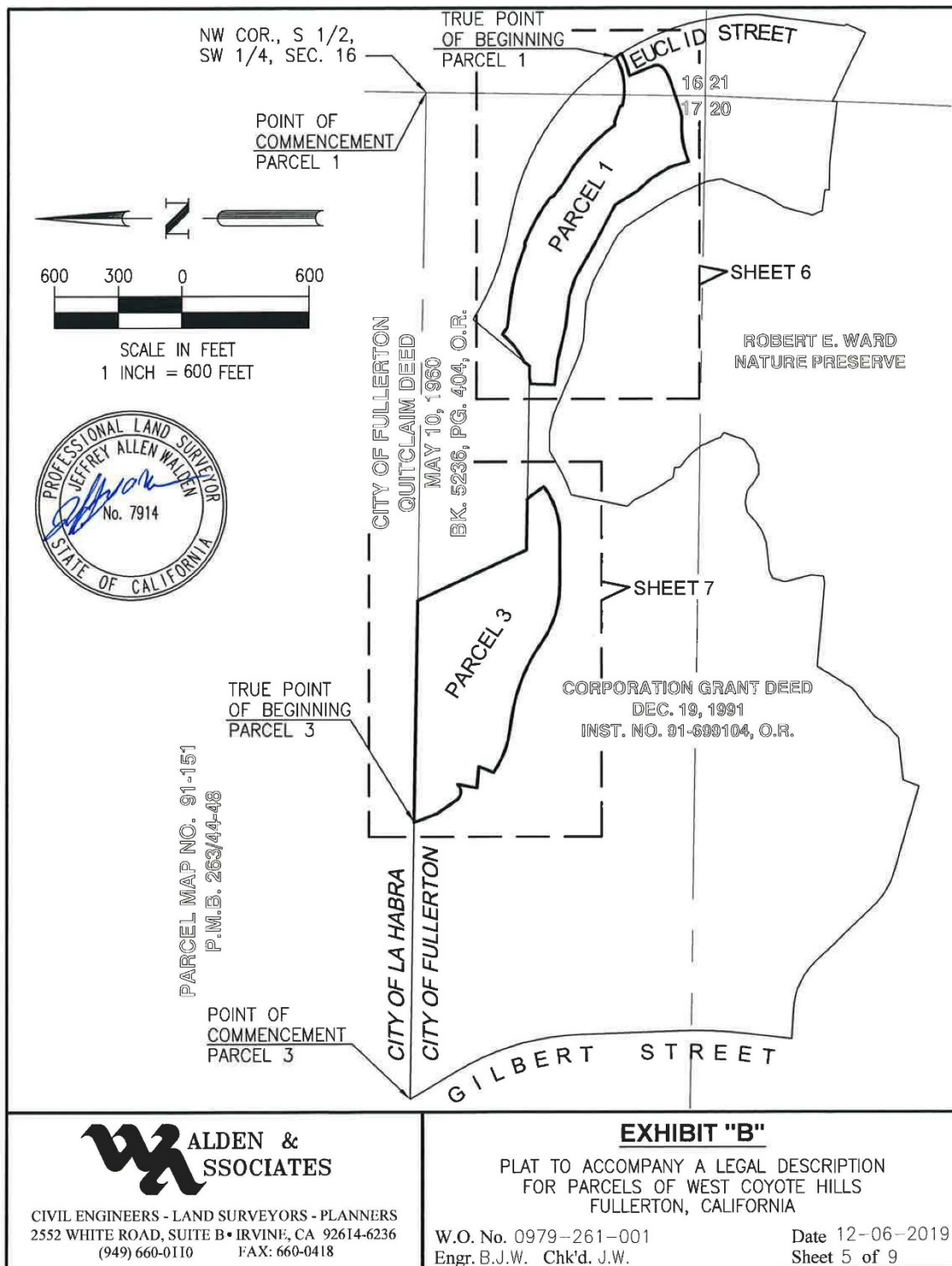
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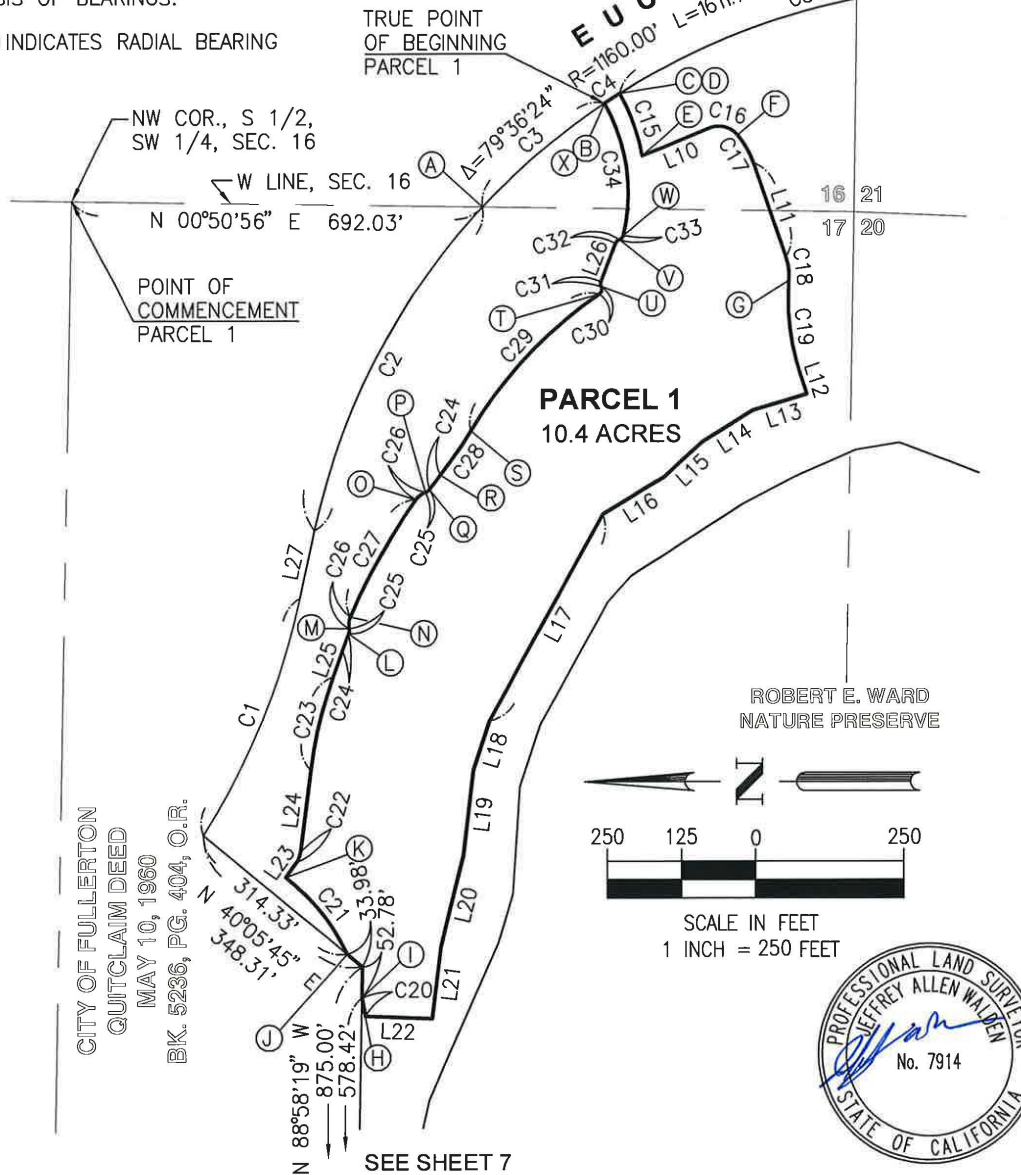
Date 12-06-2019
Sheet 4 of 9



NOTE:

SEE SHEET 8 FOR RADIAL BEARINGS AND LINE TABLE; SEE SHEET 9 FOR CURVE TABLE AND BASIS OF BEARINGS.

(A) INDICATES RADIAL BEARING



**ALDEN &
ASSOCIATES**

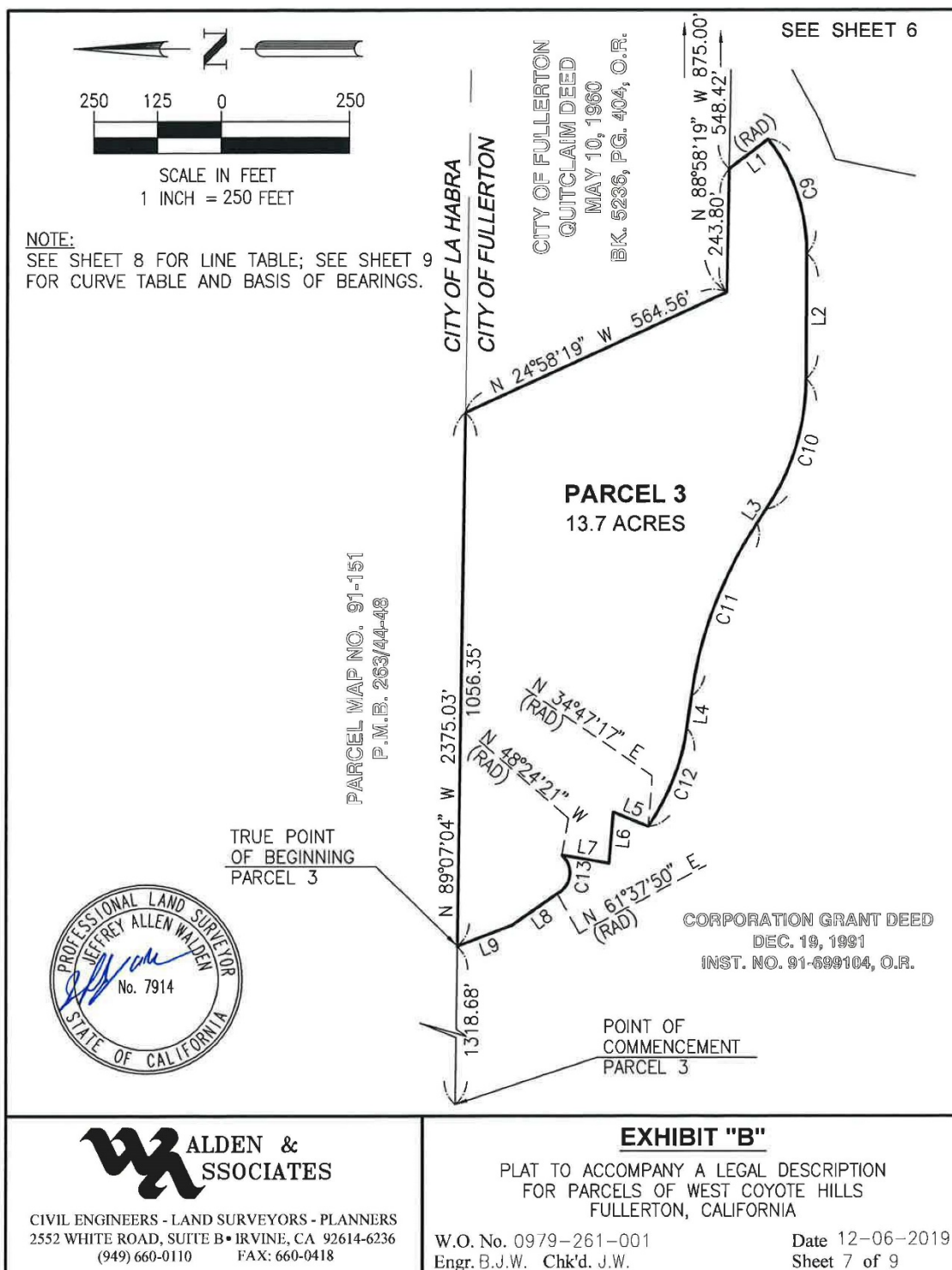
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EXHIBIT "B"

PLAT TO ACCOMPANY A LEGAL DESCRIPTION
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Date 12-06-2019
Sheet 6 of 9



RADIAL BEARINGS

- (A) N 42°40'53" E (RAD)
- (B) N 56°02'01" E (RAD C4)
- (C) N 57°31'08" E (RAD C4)
- (D) N 29°25'33" W (RAD C15)
- (E) N 10°41'50" W (RAD)
- (F) N 40°22'31" W (PCC)
- (G) N 04°23'06" E (PCC)
- (H) N 07°16'06" W (RAD)
- (I) N 12°17'07" W (RAD)
- (J) N 24°48'26" W (RAD)
- (K) N 51°24'15" W (RAD)
- (L) N 21°12'21" E (PRC)
- (M) N 10°54'35" W (PRC)
- (N) N 22°42'34" E (PCC)
- (O) N 35°11'22" E (PCC)
- (P) N 68°48'32" E (PRC)
- (Q) N 36°41'35" E (PRC)
- (R) N 38°22'12" E (PRC)
- (S) N 30°28'23" E (PRC)
- (T) N 55°11'26" E (PRC)
- (U) N 28°56'10" W (PRC)
- (V) N 72°28'09" E (PRC)
- (W) N 13°07'18" E (PCC)
- (X) N 29°03'49" W (RAD C34)

LINE TABLE

| LINE | BEARING | DISTANCE |
|------|---------------|----------|
| L1 | N 37°17'01" W | 96.62' |
| L2 | N 89°49'41" W | 247.92' |
| L3 | N 56°30'52" W | 32.53' |
| L4 | N 82°01'53" W | 63.84' |
| L5 | N 22°43'07" E | 74.73' |
| L6 | N 85°08'20" W | 101.95' |
| L7 | N 09°57'51" E | 93.25' |
| L8 | N 35°28'55" W | 106.66' |
| L9 | N 21°11'32" W | 116.28' |
| L10 | N 22°26'58" W | 121.78' |
| L11 | N 71°16'33" E | 169.19' |
| L12 | N 71°27'59" E | 33.57' |
| L13 | N 16°48'05" W | 95.07' |
| L14 | N 32°09'03" W | 100.59' |
| L15 | N 42°27'18" W | 88.41' |
| L16 | N 31°46'29" W | 120.47' |
| L17 | N 61°33'39" W | 398.50' |
| L18 | N 72°03'50" W | 88.39' |
| L19 | N 83°24'10" W | 145.37' |
| L20 | N 76°18'55" W | 161.09' |
| L21 | N 83°03'50" W | 122.37' |
| L22 | N 02°09'20" E | 112.61' |
| L23 | N 54°55'08" W | 31.13' |
| L24 | N 83°07'57" W | 139.53' |
| L25 | N 70°28'15" W | 47.22' |
| L26 | N 69°16'28" W | 69.51' |
| L27 | N 78°14'26" W | 117.50' |



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Date 12-06-2019
Sheet 8 of 9

| CURVE TABLE | | | |
|-------------|------------|----------|---------|
| CURVE | DELTA | RADIUS | LENGTH |
| C1 | 20°08'31" | 1240.00' | 435.91' |
| C2 | 30°55'19" | 1160.00' | 626.04' |
| C3 | 13°21'08" | 1160.00' | 270.32' |
| C4 | 1°29'07" | 1160.00' | 30.07' |
| C5 | 33°50'50" | 1160.00' | 685.26' |
| C9 | 37°27'19" | 371.00' | 242.53' |
| C10 | 33°18'50" | 471.00' | 273.86' |
| C11 | 25°31'01" | 829.00' | 369.20' |
| C12 | 26°49'10" | 451.00' | 211.11' |
| C13 | 110°02'11" | 47.00' | 90.26' |
| C15 | 18°43'43" | 345.00' | 112.77' |
| C16 | 72°04'27" | 42.00' | 52.83' |
| C17 | 21°39'04" | 144.25' | 54.51' |
| C18 | 23°06'33" | 100.00' | 40.33' |
| C19 | 22°55'07" | 410.00' | 164.00' |

C6, C7 & C8 WERE NOT USED.

| CURVE TABLE | | | |
|-------------|-----------|----------|---------|
| CURVE | DELTA | RADIUS | LENGTH |
| C20 | 5°01'01" | 361.00' | 31.61' |
| C21 | 26°35'49" | 361.00' | 167.58' |
| C22 | 28°12'49" | 40.00' | 19.70' |
| C23 | 12°39'42" | 740.00' | 163.53' |
| C24 | 1°40'36" | 1040.00' | 30.43' |
| C25 | 32°06'57" | 15.00' | 8.41' |
| C26 | 33°37'10" | 35.00' | 20.54' |
| C27 | 12°28'48" | 1048.00' | 228.27' |
| C28 | 7°53'48" | 660.00' | 90.96' |
| C29 | 24°43'03" | 740.00' | 319.24' |
| C30 | 84°07'36" | 10.00' | 14.68' |
| C31 | 49°39'43" | 10.00' | 8.67' |
| C32 | 51°44'36" | 10.00' | 9.03' |
| C33 | 59°20'51" | 10.00' | 10.36' |
| C34 | 42°11'07" | 315.00' | 231.93' |

BASIS OF BEARINGS:

THE BEARINGS SHOWN HEREON ARE BASED UPON THE SOUTHERLY LINE OF PARCEL MAP NO. 90-151, P.M.B. 263/44-48, BEING NORTH 89°07'04" WEST.



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FULLERTON, CALIFORNIA

W.O. No. 0979-261-001
Engr. B.J.W. Chk'd. J.W.

Date 12-06-2019
Sheet 9 of 9

EXHIBIT B

FORM OF LICENSE AGREEMENT

This LICENSE AGREEMENT ("License Agreement") is made as of the ____ day of _____, 2020 (the "Effective Date"), by and between Pacific Coast Homes, a California corporation ("PCH"), and the City of Fullerton, a California municipal corporation (the "City") (each, a "Party," and collectively, the "Parties"), on the following terms and conditions.

RECITALS:

- a. PCH owns certain real property in the City of Fullerton, commonly known as the West Coyote Hills Project Site ("Project Site").
- b. Pursuant to Resolution No. 2015-62, adopted on November 17, 2015, the City Council of the City of Fullerton approved Vesting Tentative Tract Map No. 17609 ("VTTM 17609"), subject to Conditions of Approval ("Conditions of Approval"), for the West Coyote Hills Development Project ("WCH Project") proposed by the PCH on the Project Site (capitalized terms not otherwise defined in this License Agreement shall have the meaning ascribed thereto in the Conditions of Approval).
- c. Pursuant to VTTM 17609 and the Conditions of Approval, on or about _____, PCH and the City entered into a Purchase and Sale Agreement ("PSA") for the City to purchase those portions of the Project Site commonly identified as Neighborhood 1 and Neighborhood 3, as more particularly described in the Grant Deed ("Grant Deed") attached to the PSA as Exhibit A (the "Subject Property").
- d. Pursuant to VTTM 17609 and the Conditions of Approval, PCH and the City desire to enter into this License Agreement on specified terms and conditions whereby the City grants to PCH the right to enter onto the Subject Property for certain purposes described herein, to become effective upon the closing of the City's acquisition of the Subject Property ("Closing").

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

1. City Grant of License to PCH (Habitat Obligations, Trail Improvements, Remediation).

Pursuant to the Conditions of Approval, PCH shall undertake certain activities on or near the Subject Property, to the extent not already completed at or before Closing, as follows: (a) revegetation, preservation and enhancement of certain natural resource habitat, to the extent not borne by the Management Agency identified under Condition of Approval M.3 (Conditions M.2, M.3, G.7, L.3.i, and L.4.i) ("Habitat Obligations"); (b) construction, repair, abandonment and/or maintenance of certain Initial Trail Improvements and the Neighborhood Trail Phase IA improvements, as reflected in Exhibit A hereto, and as may

be mutually modified by agreement of the Parties (“Trail Improvements”); (c) performance of certain remediation and well abandonment activities (Conditions L.3.i and L.4.i, Standard Condition 25) (“Remediation Obligations”); and (d) any preliminary sampling, testing or investigations needed to obtain any approvals of Habitation Obligations, Trail Improvements, and/or Remediation Obligations (collectively, the “Seller Obligations”). In order for PCH to access and use the Subject Property for these purposes, the City hereby grants to PCH, at no cost, a non-exclusive license on and over the Subject Property, subject to the following terms and conditions:

- a. To the fullest extent permitted by law, PCH shall indemnify, defend (at PCH’s sole cost and expense), protect and hold harmless the 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 PCH’s or its agents’, contractors’ or subcontractors’ entry on, performance of work, or construction and maintenance of the Seller Obligations. Notwithstanding the foregoing, nothing herein shall be construed to require PCH 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, PCH’s 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 the 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 PCH’s defense and indemnity obligation and written notice of such Claim being provided to PCH. Payment to PCH 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. PCH’s indemnification obligation hereunder shall survive the expiration or earlier termination of this License Agreement until such time as it barred by the applicable statute of limitations. The express indemnification provisions set forth in this License Agreement and the PSA shall solely govern all issues of indemnification and contribution between the Parties.
- b. PCH shall obtain, at its sole cost and expense, any and all required governmental permits, licenses and authorizations necessary to undertake the Seller Obligations on the Subject Property, and shall comply with all applicable statutes, ordinances, rules, regulations, orders and requirements regulating PCH’s activities.
- c. PCH agrees to furnish all labor, tools, equipment, and material for the performance of the work done by it in connection with such use of the Subject Property 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 the Subject property and PCH shall not assert any claim or title to the Subject Property under this License Agreement.
 - e. PCH agrees that all work done or undertaken by it pursuant to this License on the Subject Property shall be for its sole account, and not as an agent, servant, or contractor for the City. PCH shall not cause any workmen's or materialmen's liens to be placed upon any improvements or the Subject Property, and agrees to indemnify and hold the City harmless against any such liens in violation of PCH's obligations hereunder, including but not limited to the payment of attorneys' fees. Should PCH fail to timely remove any such lien, City may take action as necessary to remove such lien and PCH shall immediately reimburse the 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 L.3.i, L.4.i, M.2, M.3, M.4, M.6, and M.10, and shall not change any rights or obligations of either Party under said Conditions. In addition, this License Agreement does not apply to or modify any covenants, reservations or rights set forth in the Grant Deed.
2. Term of License Agreement.
- a. This License Agreement shall commence on the Effective Date and shall expire upon acceptance by the City of completion of the Seller Obligations as required by the Conditions of Approval, and thereafter PCH shall have no responsibility for maintenance, repair, security or otherwise with respect to the Subject Property, subject to the Conditions of Approval, the Grant Deed, and the terms and conditions below. Upon City's acceptance of completion of the Seller Obligations, the City shall assume all responsibility for operation, maintenance, and security for the Subject Property or any portion thereof.
 - b. Notwithstanding the foregoing, PCH acknowledges that this License Agreement may be suspended by the City if PCH is in material default hereunder with respect to the Seller Obligations or the Subject Property ("Default"), and PCH fails to cure such Default within thirty (30) days after PCH'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 PCH fails to commence to cure such Default within 30 days and thereafter pursue such cure to completion with reasonable diligence; provided however, that if the City suspends this License Agreement under this provision, PCH's obligations with respect to any remaining Seller Obligations, shall likewise be suspended until the Default is resolved to the reasonable mutual satisfaction of the City and PCH, or failing such agreement, under the dispute resolution provisions in the PSA. At all times, PCH shall be responsible for any reasonable expenses incurred by City to repair any damage on or to the Subject Property caused by PCH or under its authority.

- d. The term and effectiveness of this License Agreement are subject to the provisions for suspension or termination of PCH's project-related obligations under the Conditions of Approval, including but not limited to Conditions L.4.vi and N.

3. Insurance.

PCH shall obtain and maintain insurance coverage at all times during the term of this License Agreement to cover liability assumed hereunder, including but not limited to comprehensive general liability including personal injury and property damage liability. The limit of liability for such insurance shall be 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 insurance certificates thereof endorsed "Premium Paid" shall be delivered to the City prior to the exercise by PCH of any permission granted hereunder. PCH 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 PCH of these obligations is a condition precedent to the exercise by PCH of this License Agreement.

PCH further 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. PCH's insurance shall contain a waiver of subrogation in favor of the City.

In lieu of any insurances required under this License Agreement and notwithstanding anything to the contrary contained herein, PCH at its option may self-insure against the risks for which it is obligated to maintain insurance pursuant to this License Agreement. Such self-insurance shall be evidenced by a letter issued by Chevron U.S.A, which letter shall be delivered to the City prior to the exercise by PCH of any permission granted hereunder.

4. 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 PCH to the City in proper form and acceptable for processing of necessary land use entitlements and permits relating to the activities PCH may undertake pursuant to this License Agreement. The City shall cooperate in good faith, at no cost to the City, with PCH in PCH's efforts to obtain any governmental permits and approvals applicable to the Subject Property in order to carry out the License Agreement, including from any Regulatory Agency to implement Habitat Obligations, Remediation Obligations, well abandonment and other work required by the Conditions of Approval or other agency approvals consistent with PSA paragraph 20(b)(iii) and the Grant Deed.

5. 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 the City without the express written consent of PCH, which consent shall not be unreasonably withheld, delayed or conditioned. Any attempted Transfer in violation of this provision shall be null and void. The City shall give PCH thirty (30) days' prior written notice of any such proposed Transfer.
- b. PCH shall have the right to transfer or assign PCH's rights and obligations under this License Agreement, in whole or in part, to any person, partnership, joint venture, firm, or corporation at any time, including the transfer of the Habitat Obligations to a Management Agency appointed under Condition M.3 of the Conditions of Approval. Any such Transfer shall include the assignment and assumption of all of PCH's rights and obligations set forth in or arising under this License Agreement as to the Subject Property. Prior to the effective date of a proposed Transfer, PCH 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 PCH assigns and the successor owner assumes all such rights and obligations (which successor, as of the effective date of the Transfer, shall become the "PCH" for purposes of this License Agreement). The transfer of the rights and obligations of PCH to a parent, subsidiary, or other affiliate of PCH, or to any successor-in-interest or entity acquiring fifty one percent (51%) or more of PCH's stock or assets, shall not be deemed a Transfer.

Notwithstanding any such Transfer, the transferring party 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. City shall immediately provide such a release upon the transferring party's full satisfaction of all of the following conditions: (i) the transferring party 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 (ii) the successor party either provides the City with substitute security equivalent to any security previously provided by PCH 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.

6. Reimbursement of Costs.

The City shall have the right to charge and PCH shall pay applicable processing and permit fees to cover the reasonable costs to the City of processing and reviewing any applications and plans necessary to carry out the Seller Obligations.

7. Default, Remedies and Dispute Resolution.

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 (being 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 the Default is not cured, any and all disputes shall be handled under the dispute resolution provisions of the PSA. 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.

8. Specific Performance Remedy.

The Parties acknowledge it would not be practical or possible to restore the Subject Property to its pre-existing condition once implementation of this License Agreement has begun. PCH and the 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 PCH or the City for such efforts; and, for these reasons, the City and PCH agree that monetary damages would not be an adequate remedy if either the City or PCH fails in a material manner to carry out its obligations under this License Agreement. Accordingly, the City and PCH stipulate and agree that specific performance of this License Agreement is necessary if the other Party materially fails to carry out its obligations hereunder.

9. Indemnity of Certain Third-Party Claims.

PCH 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 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 PCH of any such Claim and City shall cooperate with PCH in the defense of such Claim. If City fails to promptly notify PCH of such Claim, PCH shall not be responsible to indemnify, defend, and hold the City harmless from such Claim until PCH

is so notified; and if the City fails to cooperate in the defense of a Claim, PCH 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. PCH shall be entitled to control the defense of such Claim; provided, however, that PCH shall not have the authority to unilaterally modify or change this License Agreement and PCH shall have no authority to bind the City to taking 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. PCH 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 PCH shall pay any attorneys' fees, expert witness fees, costs, interest, and other amounts that may be awarded against the City or PCH, or both, resulting from the Claim. PCH shall keep the City informed of the status of any pending or threatened Claim upon the City's request and promptly after there is any change in the status of the Claim. In the event PCH recovers any attorneys' fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, PCH shall be entitled to retain the same.

10. Notice.

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

CITY:

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

PCH:

Pacific Coast Homes
6001 Bollinger Canyon Road, V1336C
San Ramon, CA 94583
Attn: Ivan Jimenez

11. Governing Law, Interpretation.

This License Agreement shall be governed by California law without regard to conflicts of law principles. The terms of this License Agreement are contractual in nature and the result of arms' length negotiation between the Parties. 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 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.

12. Modifications or Amendments.

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

13. Force Majeure.

Neither the City nor PCH 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, PCH's inability to obtain financing or its inability to obtain financing on terms acceptable to PCH, or PCH's actual or alleged lack of financial capability to perform be deemed to constitute an event or occurrence entitling PCH to an extension of its time for performance of any obligation set forth in this License Agreement.

14. 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 Grant Deed. In addition, nothing in this License Agreement supersedes, modifies or amends the Seller Obligations or allows PCH to undertake those obligations except 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.

15. 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.

16. 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.

17. 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. Facsimile signatures shall be treated the same as original signatures.

18. 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 the Party 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.

19. Severability.

If any provision of this License Agreement is held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision 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 _____, 2020.

PCH:

Pacific Coast Homes,
a California corporation

By: _____

Its: _____

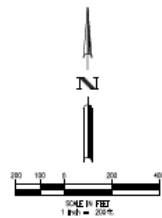
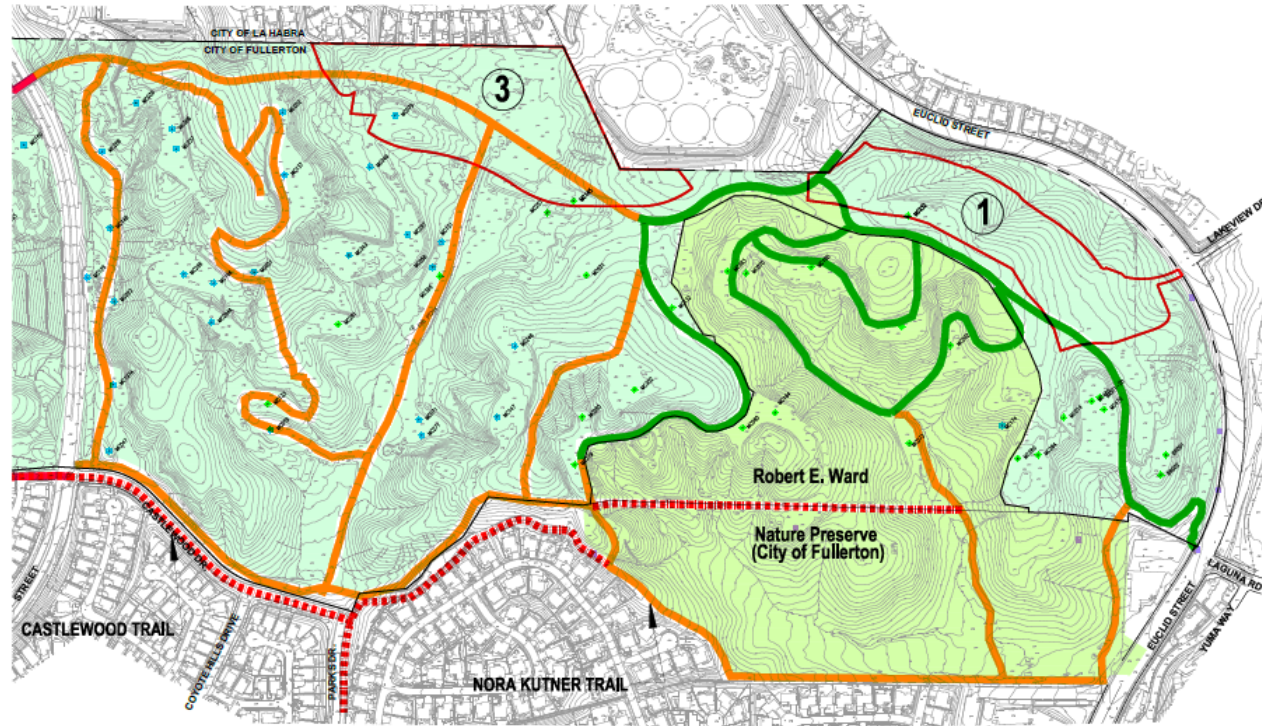
City:

City of Fullerton,
a California municipal corporation

By: _____

Its: _____

EXHIBIT A LICENSE AGREEMENT TRAIL LOCATIONS



OPEN SPACE AREAS

- NATURE PRESERVE
- OPEN SPACE AREAS

LEGEND:

- ① NEIGHBORHOOD NUMBER PER THE SPECIFIC PLAN

RECREATIONAL TRAILS

- INITIAL TRAILS
- NEIGHBORHOOD TRAIL PHASE 1A
- NEIGHBORHOOD 1 & 3 BOUNDARIES TO BE ABANDONED

WALDEN & ASSOCIATES
2000 WHITE OAK DRIVE, SUITE 100, WEST COYOTE HILLS, CA 92686
(949) 880-0100 FAX: (949) 880-0101

EXHIBIT A
LICENSE AGREEMENT TRAIL LOCATIONS
WEST COYOTE HILLS
FULLERTON, CA

JOB NUMBER:
10700-001-000
DATE: 11/10/2010
DRAWN: M.D.
CHECKED: J.C.
SHEET:
1
OF
1