

**PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS BETWEEN LAM NGO & HUYEN LAM TRAN AND THE CITY OF TEMECULA IN CONNECTION WITH THE CALLE GIRASOL/NICOLAS ROAD CONNECTION STREET AND DRAINAGE IMPROVEMENTS (PORTIONS OF APN 957-090-022)**

This Purchase and Sale Agreement and Joint Escrow Instructions Between Lam Ngo, Huyen Lam Tran, and the City of Temecula in connection with the Calle Girasol/Nicolas Road Connection Street and Drainage Improvements (Portions of APN 957-090-022) (“Agreement”) is entered into by and between LAM NGO and HUYEN LAM TRAN (“Seller”) and the CITY OF TEMECULA, a municipal corporation (“Buyer” or “City”), and constitutes an agreement to purchase and sell real property between Seller and Buyer and the joint escrow instructions directed to First American title Insurance Company (Escrow Holder). Seller and Buyer are referred to below collectively as the “Parties”. The Agreement is effective on the date it is fully executed by the Parties (Effective Date).

**RECITALS**

A. Seller is the record fee owner of certain real property located at 31249 Indian Summer Road, Temecula, California, and identified as Riverside County Tax Assessor’s Parcel Number (APN) 957-090-022 (“Property”). The Property is approximately 198,198 square feet in size and is zoned Very Low Density Residential (VL).

B. The City originally approved that certain Development Agreement between the City of Temecula and Ashby USA, LLC pursuant to Ordinance No. 02-14. The Development Agreement was recorded on January 9, 2003 as Document No. 2003-018567 in the Official Records of the County of Riverside. The Development Agreement was amended pursuant to: (1) the First Amendment to the Development Agreement Between the City of Temecula and Ashby USA, LLC, dated February 14, 2006 and recorded on March 7, 2006 in the Official Records of Riverside County as Document No. 2006-0162268; (2) the Second Amendment to the Development Agreement Between the City of Temecula and Ashby USA, LLC, dated April 23, 2013 and recorded on July 3, 2013 in the Official Records of Riverside County as Document No. 2013-0324057, and (3) the Third Amendment to the Development Agreement dated March 8, 2016, and recorded on April 20, 2016 in the Official Records of Riverside County as Document No. 2016-0156276. Developer Woodside 05S, LP, a California limited partnership and Wingsweep Corporation, a California corporation are the successors to certain of these approved applications for development and propose to construct the Sommers Bend Project.

C. To facilitate the Sommers Bend Project’s orderly development, the Development Agreement contained a condition of approval requiring Developer to construct certain public street, drainage and related improvements for the extension of Nicolas Road from Butterfield Stage Road to the Calle Girasol/Nicolas Road Connection, Project Number LD 19-4050 (Project). The Developer is required to construct certain street improvements on Nicolas Road within the existing right of way. The Project will construct certain permanent improvements consisting of rip-rap slope-erosion protection to protect the street improvements and mitigate flooding. Further, the Developer was required to acquire certain land for conservation purposes for unavoidable impacts associated with the Project pursuant to the requirements of state and federal approvals.

D. The City seeks to acquire on the Property the real property interests described below for public use, namely public street, drainage, conservation purposes, and all uses necessary or convenient thereto in connection with the Project:

- (i) An approximate 51,003 square foot permanent easement for conservation purposes, and all uses necessary and convenient thereto in connection with the Project dedicated by Seller in favor of the City and for the benefit of Fallbrook Land Conservancy, a California non-profit corporation pursuant to that certain Irrevocable Offer of Dedication of Conservation Easement Pursuant to Government Code Section 7050 (“Irrevocable Offer of Conservation Easement”). The approximate 51,003 square foot permanent conservation easement area is described more particularly on EXHIBIT B and depicted on EXHIBIT C to the form of Irrevocable Offer of Conservation Easement attached as EXHIBIT 1 hereto and incorporated herein by this reference (“Conservation Easement”).
- (ii) An approximate 83,324 square foot Temporary Construction Easement with a term of twelve months and covenant that would authorize the City to construct certain permanent drainage improvements within portions of the approximate 83,324 square foot area. The approximate 83,324 square foot TCE is described more particularly on EXHIBIT A and depicted on EXHIBIT B to the form of the Grant of the Temporary Construction Easement and Covenant attached as EXHIBIT 2 hereto and incorporated herein by this reference (“TCE Agreement and Covenant”). The approximate 83,324 square foot area described in EXHIBIT A and depicted on EXHIBIT B to EXHIBIT 2 is referred to below as the “TCE Area”.

The approximate 51,003 square foot Conservation Easement and the approximate 83,324 square foot TCE Area are referred to below collectively as the “Subject Property Interests”. The Parties expressly acknowledge that the 51,003 square foot Conservation Easement is located within the 83,324 square foot TCE Area.

E. The City seeks to acquire the approximate 51,003 square foot Conservation Easement for conservation easement purposes pursuant to the Irrevocable Offer of Conservation Easement. The Irrevocable Offer of Dedication of Conservation Easement is made by the Seller pursuant to Government Code Section 7050 in favor of the City for the benefit of Rivers & Land Conservancy, a California non-profit corporation. The Conservation Easement is located on the southern portion of the Property along Nicolas Road. The purpose of the Conservation Easement is to ensure the area will be managed and preserved in a natural condition, in perpetuity, and to prevent any use of the easement area that will impair or interfere with the conservation easement. Pursuant to the terms of the Conservation Easement, said area is and will remain in a natural condition and intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values. Under the Conservation Easement, the owner’s use is limited to uses consistent with open space purposes, including preservation, restoration, and enhancement of native species and their habitats. The City would consent to the recordation of the Irrevocable Offer of Dedication at Close of Escrow. The City can accept the Dedication of the Conservation Easement offered in the Irrevocable Offer of Dedication in the

manner provided in Government Code Section 7050. Pursuant to Government Code Section 7050, the City may accept the Irrevocable Offer at any time by adoption of a Resolution by the City Council accepting the dedication of the Conservation Easement (the “Resolution of Acceptance”). The Conservation Easement shall become effective upon the adoption of the Resolution of Acceptance and shall remain in perpetuity unless and until it is terminated by vacation thereof in accordance with applicable law. The Resolution of Acceptance will authorize the City to execute a Certificate of Acceptance in substantially the form attached hereto as EXHIBIT D to the Irrevocable Offer of Conservation Easement. The City has informed Seller that it intends to consider the Resolution of Acceptance after the construction of the Project and that it intends to transfer or assign all of its rights in the Conservation Easement to Rivers & Land Conservancy, a California non-profit corporation after the construction of the Project. The Irrevocable Offer of Dedication expressly acknowledges the City’s rights to assign or transfer its interest in the Conservation Easement to Rivers & Land Conservancy, a California non-profit corporation.

F. The City seeks to acquire the approximate 83,324 square foot TCE Area to facilitate the construction of the Project. The TCE Agreement and Covenant would authorize the City to use the 83,324 square foot TCE Area for a twelve-month period to facilitate the construction of the Project, including construction staging purposes and storage of equipment and material in connection with the construction of the Project. Further, because the approximate 83,324 square foot TCE Area is located on portions of the Property within the Long Valley Wash, a natural flood control channel, the TCE Agreement and Covenant would also authorize the City to construct in the portions of the TCE Area certain permanent improvements consisting of rip-rap and slope-erosion protection in the portions of the TCE Area shown on EXHIBIT C to EXHIBIT 2. These permanent rip-rap and slope-erosion protection improvements are necessary to protect the street improvements that will be constructed within the existing right of way and to mitigate flooding in this area of the Property.

G. In accordance with Government Code Section 7267.2, the City extended to Seller a written offer dated September 20, 2022 to purchase the Subject Property Interests for a public use; namely for public street, drainage, and related improvements and for conservation purposes in connection with the Project. The Parties negotiated in good faith and have reached an agreement regarding the City’s purchase of the Conservation Easement and use of the TCE Area pursuant to the terms of the TCE Agreement and Covenant, subject to ratification by the City Council.

H. The parties acknowledge that the City is authorized to acquire real property by eminent domain for a public use, including conservation purposes, public street, drainage purposes, and all uses necessary or convenient thereto, pursuant to the authority conferred upon the City of Temecula by Section 19 of Article 1 of the California Constitution, Government Code Sections 6950 et seq., 37350, 37350.5, 37351, 40404, 51097, and 66462.5, California Code of Civil Procedure Section 1230.010 et seq. (Eminent Domain Law), including but not limited to Sections 1240.010, 1240.020, 1240.110, 1240.120, 1240.240, 1240.510, 1240.610, 1240.650 and by other provisions of law. Code of Civil Procedure, Section 1240.010 provides that “[t]he power of eminent domain may be exercised to acquire property only for a public use. Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use.” Government Code Section 66462.5(c) authorizes the City and the developer of a project for which the construction of offsite

improvements are required to enter into an agreement requiring the developer to complete the improvements pursuant to Government Code Section 66462 at such time as the City acquires an interest in the land that will permit such improvements to be constructed. Government Code Section 66462.5(a) provides that a city or county may “acquire by negotiation or commence eminent domain proceedings pursuant to Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure to acquire an interest in the land which will permit the improvements to be made, including proceedings for immediate possession of the property under Article (commencing with Section 1255.410) of Chapter 6 of that title.” If Seller and the City had not reached an agreement for the City’s purchase of the TCE, City staff would have recommended to the City Council that it consider the adoption of a resolution of necessity authorizing the initiation of eminent domain proceedings to acquire the TCE in accordance with the Eminent Domain Law. The City Council however has the exclusive and sole discretion to make the findings required by Code of Civil Procedure section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). This Agreement is not a commitment or an announcement of intent to acquire any other real property interests that the City may need for the Project. Seller is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Seller’s sale of the TCE to the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

I. Seller desires to sell, and Buyer desires to buy, the Subject Property Interests on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference, and for other valuable consideration, the receipt of which is hereby acknowledged, Buyer and Seller agree to the following:

1. **Purchase and Sale.** On the Close of Escrow, as defined in Section 2 below, Seller agrees to sell to City and City agrees to purchase from Seller the approximate 51,003 Conservation Easement described in EXHIBIT B and depicted on EXHIBIT C to the Irrevocable Offer of Dedication of Conservation Easement attached as EXHIBIT 1 hereto, subject to the terms set forth therein. Seller also agrees to authorize the City to use the approximate 83,324 square foot TCE Area described in EXHIBIT A and depicted on EXHIBIT B to the TCE Agreement and Covenant attached as EXHIBIT 2 hereto, and to authorize the City to install the permanent improvements in the TCE Area roughly shown in EXHIBIT C to EXHIBIT 2, subject to the terms and conditions of the TCE Agreement and Covenant.

2. **Opening and Close of Escrow.** Within five (5) business days after the Effective Date, City will deliver a copy of the fully-executed Agreement to Escrow Holder. Opening of Escrow means the date on which Escrow Holder receives a copy of the fully-executed Agreement. The Parties can execute the Agreement in counterparts as set forth in Section 17.d. below. This Agreement shall serve as the instructions to Escrow Holder for consummation of the transactions contemplated hereby. City and Seller agree to execute such additional and supplementary escrow instructions as may be appropriate to enable Escrow Holder to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any supplementary escrow instructions, the

terms and provisions of this Agreement shall control. For the purposes of this Agreement, “Close of Escrow” shall be the date on which the Irrevocable Offer of Dedication and Grant of Temporary Construction Easement and Covenant in favor of City are recorded in the Official Records of the County of Riverside. Provided that all of Seller’s and City’s obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close thirty (30) calendar days after the Opening of Escrow (“Closing Date”).

3. **Purchase Price.** The total purchase price that City will pay to Seller for the Subject Property Interests is the sum of \$170,500.00 (One Hundred Seventy Thousand Five Hundred Dollars and no/100) (“Purchase Price”) for the fair market values of the Conservation Easement and TCE Area and authorization to use the TCE Area for the construction of certain rip-rap and slope-erosion protection improvements as provided in the TCE Agreement and Covenant. No attempt has been made to assign value to the lesser interest in the Subject Property Interests. Thus, the Purchase Price is the total price for the Subject Property Interests without distinction or separation for various interests that may be held in the Subject Property Interests. Seller is responsible for any apportionment or allocation of the Purchase Price if required for any separately held interests that may exist in the Subject Property Interests.

4. **Title and Title Insurance.**

a. **Title Insurance.** Upon the Opening of Escrow, Escrow Holder will obtain and issue title commitments for the Conservation Easement. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitments. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and title commitments to City and Seller. Escrow Holder will insure City’s easement interest in the Conservation Easement described in EXHIBIT A and EXHIBIT B to the form of Irrevocable Offer of Dedication (EXHIBIT 1 hereto) at the Close of Escrow by a CLTA Standard Coverage Policy of Title Insurance (or an ALTA Extended Coverage Form of Title Policy (“Alta Extended Policy”) if the City elects such coverage as provided below in Section 4.b., in the amount of the Purchase Price (“Title Policy”), with liability in the full amount of the Purchase Price, insuring the City’s easement interest in the Conservation Easement free and clear of all monetary liens and encumbrances and other matters affecting title to the Conservation Easement, except for the permitted title exceptions defined below and any permitted conditions of title that the City approves in writing (collectively “Permitted Title Exceptions”):

i. General and special real property taxes and assessments for the then current tax fiscal year which are a lien not then due and payable;

ii. The applicable zoning, building, and development regulations of any municipality, county, state, or federal jurisdiction affecting the Conservation Easement;

iii. Such other non-monetary exceptions listed in the Preliminary Title Report that City has approved within ten (10) business days after the date the City receives the title commitments and legible copies of instruments noted as exceptions therein. If City conditionally disapproves any exceptions, then Seller will use good faith efforts to seek to cause such exceptions to be removed by the Close of Escrow. In no event will Seller be required to file

any legal action to seek to remove any exception conditionally disapproved by the City. If such conditionally disapproved non-monetary exceptions are not removed by the Close of Escrow, the City may, at the City's option, either consent to the recordation of the Irrevocable Offer of Dedication of Conservation Easement attached as EXHIBIT 1 hereto, subject to such encumbrances, or terminate the Escrow. In the event Escrow is terminated, within ten (10) business days of the written notice of termination to Escrow, Escrow will disburse the City any funds deposited into Escrow by City less any escrow cancellation charges.

b. Option to Obtain ALTA Extended Policy. The City will have the option of obtaining an ALTA Extended Policy or a CLTA Standard Coverage Policy of Title Insurance. If the City, in its sole discretion, determines to obtain an ALTA Extended Policy, the City will, at its expense, procure an ALTA survey. The City will also pay for the cost of any such ALTA Extended Policy.

c. Acts After Date of Agreement. During the period from the date of this Agreement through the Close of Escrow, Seller shall not encumber the Subject Property Interests, record or permit to be recorded any document or instrument relating to the Subject Property Interests, or physically alter the Subject Property Interests or permit or cause to be altered without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion.

## 5. **Escrow.**

a. Deposit of Funds in Escrow. City covenants and agrees to deposit with Escrow Holder the Purchase Price and any such escrow funds as are required for Close of Escrow within five (5) business days of receiving written notice from Escrow holder regarding the confirmation of the completion of the conditions required herein for the Close of Escrow.

b. Deposit of Documents in Escrow by Seller. Seller covenants and agrees to deposit with Escrow Holder the following documents within ten (10) business days of the Opening of Escrow:

i. *Irrevocable Offer of Dedication of Conservation Easement.* The Irrevocable Offer of Dedication of Conservation Easement in the form attached as EXHIBIT 1 hereto ("Irrevocable Offer of Dedication") duly executed and acknowledged by Seller. EXHIBIT 1 is attached hereto and incorporated herein by this reference.

ii. *Grant of Temporary Construction Easement and Covenant.* The Grant of Temporary Construction Easement and Covenant in the form attached as EXHIBIT 2 hereto ("TCE Agreement and Covenant") duly executed and acknowledged by Seller. EXHIBIT 2 is attached hereto and incorporated herein by this reference.

iii. A California 593 certificate and federal non-foreign affidavit.

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

c. Deposit of Documents in Escrow by City.

i. *Consent to Recordation.* The Consent to Recordation attached to the Irrevocable Offer of Dedication (attached hereto as EXHIBIT 1).

ii. *Certificate of Acceptance.* The executed TCE Agreement and Covenant in the form attached as EXHIBIT 2 hereto.

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

d. Recordation of Irrevocable Offer of Dedication of Conservation Easement and TCE Agreement and Covenant; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in Section 5, Escrow Holder shall cause the Irrevocable Offer of Conservation Easement and TCE Agreement and Covenant to be recorded in the Official Records of the County of Riverside. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by City and Seller) to Seller, and Seller shall deliver possession of the Subject Property Interests to City free and clear of all occupants.

e. Prorations. Real property taxes for the Subject Property Interests shall not be prorated, but must be paid by Seller for the current tax period. Seller may apply for a refund of property taxes in the event any property taxes paid are allocable to the period after the Close of Escrow and City shall reasonably cooperate therewith. City, as a municipal corporation acquiring property for the Project, is exempt from property taxes pursuant to Revenue and Taxation Code Section 11922, and other provisions of law. All property assessments shall be prorated between Buyer and Seller as of the Close of Escrow based on the latest available tax information. All prorations for such assessments shall be determined on the basis of a 365-day year. Escrow Holder is authorized to pay from the Purchase Price any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds recorded against the Subject Property Interests.

f. Costs of Escrow. City will pay for the cost of the Title Policy (or ALTA Extended Policy if City elects to obtain such extended coverage). City will also pay for escrow fees and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone calls, etc. City will pay for recording the Irrevocable Offer of Conservation Easement and TCE Agreement and Covenant, and any documentary or other local transfer taxes, if any, and for any recording costs (if any). City will also pay for the costs of an ALTA survey if it determines to obtain an ALTA Extended Policy.

g. Escrow Cancellation Charges. If escrow fails to close through no fault of either party, City will pay all escrow and title cancellation charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges.

6. **Conditions to the Close of Escrow.** Escrow shall not close unless and until both Parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in Section 5. Additionally, City's obligation to proceed with the transaction

contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for City's benefit and may be waived only by City:

a. Seller shall have performed all obligations to be performed by Seller hereunder.

b. If any of the conditions to Close of Escrow are not timely satisfied for a reason other than a default of City or Seller under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder will promptly return to City all funds (and all interest accrued thereon, if any) and documents deposited by City in escrow and return to Seller the documents deposited by Seller in escrow that are held by Escrow Holder on the date of the termination (less any escrow cancellation charges).

7. **Representation and Warranties of Seller.** Seller hereby represents and warrants to City the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

a. That to the best of Seller's knowledge on the Close of Escrow (i) the TCE Area will be free and clear of Hazardous Materials (defined in Section 12.a. below) or toxic substances and waste, including, but not limited to, asbestos, and (ii) Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the TCE Area or alleged violation of Environmental Laws (defined in Section 12.b. below), health or safety statutes, ordinance, or regulations.

b. That Seller is the record fee owner of the Property and no other party has a fee interest in the Subject Property Interests. Seller will not further encumber the Subject Property Interests to be further encumbered prior to the Close of Escrow.

c. Neither this Agreement nor anything provided to be done hereunder, including the Irrevocable Offer of Dedication of Easement and TCE Agreement and Covenant to City, violates or will violate any contract, agreement, or instrument to which Seller is a party, or which affects the Conservation Easement described in the Irrevocable Offer of Dedication or TCE Area, and the Seller's grant to City of the Subject Property Interests pursuant to this Agreement does not require the consent of any party not a signatory hereto.

d. There are no claims or liens presently claimed or that will be claimed against the Subject Property Interests by contractors, subcontractors, or suppliers, engineers, architects, surveyors or others that may have lien rights for work performed or commenced prior to the Effective Date. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including reasonable attorneys' fees, arising from or relating to any such lien or any similar lien claimed against the Subject Property Interests and arising from work performed or commenced prior to the Close of Escrow.

e. There are no written or oral leases or contractual rights or options to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the Subject Property Interests, or any part thereof, and no persons have any right of possession to the Subject Property Interests, or any part thereof. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by

any person or entity claiming rights to possession of any portion of the Subject Property Interests.

8. **Representations and Warranties of City.** City hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

a. City has taken all required action to permit it to execute, deliver, and perform its obligations under this Agreement.

b. City has the power and authority to execute and deliver this Agreement and carry out its obligations hereunder and consummate the transaction contemplated herein.

9. **Total Consideration.**

a. The Parties agree that City's payment to Seller of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of and rights to the Conservation Easement described in the Irrevocable Offer of Dedication of Conservation Easement and rights to use the TCE Area to facilitate the construction of the Project under the terms of the TCE Agreement and Covenant, including the authorization to install the permanent improvements consisting of rip-rap slope-erosion protection improvements in the location of the TCE Area shown on EXHIBIT C to EXHIBIT 2 hereto, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, any future maintenance costs of Seller relating to maintaining the rip-rap and related drainage and slope-erosion improvements, any obligations of Seller under the Conservation Easement, any other damages of every kind and nature suffered by Seller by reason of City's acquisition of the Subject Property Interests, the Project for which City is acquiring the Subject Property Interests, and all costs and expenses whatever in connection therewith.

b. Business Goodwill and Relocation Assistance.

(i) No Loss of Business Goodwill. Seller agrees and acknowledges that Seller will not suffer any loss of business goodwill under Code of Civil Procedure Section 1263.510 as a result of City's acquisition of the Subject Property Interests or the construction of the Project. There is no business operating on the Property. Under Code of Civil Procedure Section 1263.510, the owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, will be compensated for loss of goodwill if the owner proves that (i) the loss is caused by City's acquisition of the property or the injury to the remainder; (ii) the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill; (iii) compensation for the loss will not be included in payments under Government Code Section 7262; and (iv) compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(ii) No Relocation Assistance. City is acquiring the authorization to use the approximate 83,324 square foot TCE Area to facilitate the construction of the Project and to install certain rip-rap and slope-erosion protection improvements on the portions of the TCE Area shown roughly on EXHIBIT C to EXHIBIT 2 pursuant to the terms of the TCE Agreement and

Covenant. The City's use of the TCE Area and installation of permanent rip-rap slope erosion protection improvements in accordance with the terms of the TCE Agreement and Covenant will not result in the displacement of any person or business from the Property. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of City's use of the TCE Area under the terms of the TCE Agreement and Covenant in connection with the Project.

10. **Releases.**

a. This Agreement is a voluntary agreement and Seller on the Close of Escrow, on behalf of Seller, Seller's successors and assigns, fully releases City, its Councilmembers, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Subject Property Interests, or any preliminary steps thereto. Seller further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Subject Property Interests.

b. California Civil Code Section 1542. Seller acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Seller hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Seller may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 10, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

“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.”

Seller's Initials: \_\_\_\_\_ City's Initials: \_\_\_\_\_

Seller's waiver of rights and release of claims set forth above in Section 10.a. and Section 10.b. will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 10 will survive the Close of Escrow.

11. **City's Contingencies.** For the benefit of City, the Close of Escrow and City's obligation to consummate the purchase of the Subject Property Interests is contingent upon and subject to the occurrence of all of the following (or City's written waiver thereof, it being agreed that City can waive any or all such contingencies) on or before the Close of Escrow:

a. That as of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct;

b. The delivery to Escrow Holder of all documents pursuant to Section 5 of this Agreement;

c. Escrow Holder's commitment to issue, in favor of City, the Title Policy with liability equal to the Purchase Price showing City's interest in the Conservation Easement Area, subject only to the Permitted Title Exceptions; and

d. City's approval prior to the Close of Escrow of any due diligence testing, environmental site assessment, soils or geological reports, or other physical inspections of the Subject Property Interests that City might perform prior to the Close of Escrow.

12. **Certain Definitions.**

a. The term "Hazardous Materials" will mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 *et seq.*; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; any substance defined as a "hazardous substance" in California Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

b. The term "Environmental Laws" will mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on or prior to the Effective Date relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901

*et seq.*; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local environmental statutes and ordinances, with implementing regulations and rules in effect on or prior to the Effective Date.

13. **Evidence in Court Proceeding.** The Parties agree that the total Purchase Price of \$170,500.00 or any inference of per square foot value of the approximate 83,324 square foot Conservation Easement or 51,003 square foot Temporary Construction Easement on said Purchase Price will not be admissible as evidence of the fair market value of the Subject Property Interests in an eminent domain or other proceeding or litigation concerning the Subject Property Interests, or any portion thereof.

14. **Default.** In the event of a breach or default under this Agreement by either City or Seller, the non-defaulting party will have, in addition to all rights available at law or equity, the right to terminate this Agreement and the Escrow for the purchase and sale of the Subject Property Interests by delivering written notice thereof to the defaulting party and to Escrow Holder, and if City is the non-defaulting party, City will thereupon promptly receive a refund of all of the deposits it deposited with Escrow Holder, if any, less City's share of any escrow cancellation charges. Such termination of the escrow by a non-defaulting party will be without prejudice to the non-defaulting party's rights and remedies at law or equity.

15. **Notices.** All notices and demands will be given in writing by personal delivery, certified mail, postage prepaid, and return receipt requested, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one (1) business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER: City of Temecula  
41000 Main Street  
Temecula, California 92590  
Attention: Aaron Adams, City Manager

COPY TO: Richards, Watson & Gershon  
350 South Grand Avenue, 37th Floor  
Los Angeles, California 90071  
Attention: Peter M. Thorson, City Attorney

SELLER: Lam Ngo and Huyen Lam Tran  
13341 Wilson Street  
Garden Grove, California 92844

ESCROW

HOLDER: First American Title Insurance Company  
One Ridgeway Drive, Suite 225  
Temecula, California 92590  
Attention: Debbie Fritz, Escrow Officer  
Electronic Mail: [dfritz@firstam.com](mailto:dfritz@firstam.com)

16. **Broker Commissions.** No brokers represented the Parties in connection with this transaction. Seller will be solely responsible for the payment of any and all broker's commissions or similar compensation due to any broker representing Seller, if any, and Seller will defend, indemnify and hold the City harmless from and against any and all claims for any broker's commissions or similar compensation that may be payable to any broker claiming it represented Seller in connection with this transaction. Each party will defend, indemnify and hold harmless the other party from and against all claims of any agent, broker, finder or other similar party based upon such party's own acts in connection with this transaction. The provisions of this Section 16 will survive the Close of Escrow.

17. **Miscellaneous.**

a. Amendments. Any amendments to this Agreement will be effective only when duly executed by both City and Seller and deposited with Escrow Holder.

b. Entire Agreement. This Agreement contains all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose.

c. Counterparts, Facsimile, and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

d. Time of the Essence. Time is of the essence of this Agreement.

e. Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

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

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

h. Authority of City Manager. The City Manager may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager may execute the Agreement, Consent to Recordation, Certificate of Acceptance, TCE Agreement and Covenant, escrow documents, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

i. Interpretation and Construction. Each of the Parties has reviewed the Agreement and each has had the opportunity to have its respective counsel and real estate advisors review and revise this Agreement and any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendments or exhibits thereto. The recitals and captions of the Sections and Subsections of this Agreement are for convenience and reference only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Agreement.

j. Remedies Not Exclusive and Waivers. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

k. Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.

l. Exhibits. The Exhibits attached hereto are incorporated in this Agreement by this reference.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

**SELLER**  
**Lam Ngo and Huyen Lam Tran**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Lam Ngo

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Huyen Lam Tran

**BUYER**  
**City of Temecula, a municipal corporation**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Aaron Adams, City Manager

ATTEST:

By: \_\_\_\_\_  
Randi Johl, City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Peter M. Thorson, City Attorney