

**REAL PROPERTY PURCHASE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

**SELLER:** Successor Agency to the Former Redevelopment  
Agency of the City of Chula Vista

**BUYER:** Tierra Del Sol Investments, a California corporation, or  
its nominee or assignee

**DATED:** This Agreement is effective upon the later date of  
approval by both the Oversight Board and the  
Successor Agency.

**BASIC TERMS**

Effective Date: This Agreement is effective upon the later date of approval by both the Oversight Board and the Successor Agency and execution of the Agreement by the Parties.

Property: Real property generally known as: Assessor Parcel No. 568-071-01

Seller: Successor Agency to the Redevelopment Agency for the City of Chula Vista

Seller's Address: 276 Fourth Avenue  
Chula Vista, CA 91910

Buyer: Tierra Del Sol Investments, a California corporation, or its nominee or assignee

Buyer's Address: Tierra Del Sol Investments, a California corporation,  
Attn.: Daniel E. Johnson, President,  
1410 Santa Barbara Street  
San Diego, CA 92107

Purchase Price: \$400,000.00

Outside Closing Date (or Closing) December 2, 2016

Title Company Fidelity National Title  
4370 La Jolla Village Dr., #860  
San Diego CA 92122  
Title Officer: Tim Noonan

## DRAFT

### REAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This REAL PROPERTY PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (“Agreement”) dated \_\_\_\_\_, 2016, for reference purposes only, is by and between the **SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY FOR THE CITY OF CHULA VISTA**, a public body, corporate, and politic (“Agency” or “Seller”), and **TIERRA DEL SOL INVESTMENTS**, a **California corporation, or its assign or nominee**, (“Buyer”), for the acquisition by Buyer of all of Seller’s rights, title, and interests, tangible and intangible, in that certain real property defined and described below. The Effective Date of this Agreement shall be the date upon which both the Agency’s governing body and that second government entity called the Oversight Board of the Successor Agency for the Chula Vista Redevelopment Agency (“Oversight Board”) have duly considered, and taken all actions as are necessary to grant binding approval of this Agreement, and Agency’s representative and Buyer have executed this Agreement.

#### RECITALS

WHEREAS, Seller owns fee title to certain vacant and undeveloped real property located in the City of Chula Vista, California, located at the street address sometimes referred to as 201 Third Avenue, Chula Vista, CA, and also commonly identified as San Diego County Assessor’s Parcel No. 568-071-01 (the “Property”). The Property is legally described in Exhibit A and depicted in Exhibit B (the Grant Deed), both attached hereto and incorporated herein by these references.

WHEREAS, Buyer desires to purchase the Property and has made a bona fide offer to the Agency to purchase the Property, and;

WHEREAS, subject to the terms and conditions herein, Agency desires to sell the Property to Buyer.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. **Purchase and Sale.** Seller hereby agrees to sell the Property to Buyer, and Buyer hereby agrees to purchase the Property from Seller, on the terms and conditions set forth in this Agreement. Seller shall convey to Buyer fee simple, marketable title with the condition of title for the Property meeting the requirements of Section 3 herein for which Seller is responsible. The term “Property” is defined inclusively and collectively for and under this Agreement as the following:
  - (a) The fee interest in the Property;
  - (b) All improvements, if any, to the Property;

- (c) All of Seller's rights, privileges, easements, licenses and interests, both tangible and intangible, appurtenant to the Property. "Property" shall be deemed to include, without limitation, all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) derived from the Property that are owned by Seller;
- (d) All moveable and immovable personal property, equipment, supplies, furniture, and fixtures owned by Seller and located at the Property, if any, as of Closing, and
- (e) All licenses, permits, authorizations and approvals issued by governmental authorities with respect to the Property and the improvements thereon.

**2. Purchase Price and Payment of Purchase Price.**

- (a) **All Inclusive Purchase Price.** Except as otherwise provided herein, the Purchase Price for the Property shall be the sum of Four Hundred Thousand Dollars (\$400,000.00). The purchase price to be paid by Buyer pursuant to this Section is hereinafter referred to as the "Purchase Price." Said Purchase Price is based on that mutually approved written Appraisal of Real Property report dated December 10, 2015 by Jeff A. Greenwald, MAI, Joseph Rizzo, and John A. Morgan, MAI, of Integra Realty Resources – San Diego (the "Appraisal").
- (b) **Payment of Purchase Price.** Buyer shall pay the Purchase Price in accordance with the Escrow Instructions included in and consistent with the provisions of this Agreement. The net amount of the Purchase Price which shall be due on the Closing Date is subject to adjustment as provided in Section 6(b)(2)(B)(ii) hereinbelow.

**3. Escrow and Title Matters.**

**(a) Escrow and Closing.**

- (i) Opening of Escrow. For the purposes of this Agreement, the escrow ("Escrow") shall be deemed opened ("Opening of Escrow") on the date that the title company holding and managing the Escrow for Buyer and Seller ("Escrow Holder") receives a copy of this Agreement fully executed by Seller and executed and attested by Buyer. Further, Buyer shall deliver to Escrow a deposit of Five Thousand Dollars (\$5,000.00) ("Buyer's Deposit") concurrently with the delivery of the signed Agreement. Should the Buyer not receive Design Review approval as described in Section 3(a)(ii) or as otherwise provided herein, the Buyer's Deposit shall be fully refundable. Buyer and Seller shall use reasonable efforts to cause the Opening of Escrow to occur on or before the date ten (10) business days after the Effective Date. Escrow Holder shall promptly notify Buyer and Seller in writing of the date of the Opening of Escrow. Buyer and Seller agree to execute, deliver and be bound by any reasonable or customary supplemental Escrow instructions or other instruments reasonably required by Escrow Holder to consummate the transaction contemplated by this Agreement; provided, however, that no instrument shall be inconsistent or in conflict with, amend or supersede any portion of this Agreement. If there is any conflict or inconsistency between the terms of an instrument and the terms of this Agreement, then the terms of

this Agreement shall control. Without limiting the generality of the foregoing, no instrument shall extinguish any obligations imposed by this Agreement or any other contract between Seller and Buyer.

- (ii) Closing. For purposes of this Agreement, the “Closing” or “Closing Date” shall be the date the Grant Deed (as defined below) is recorded pursuant to applicable law in the Official Records of San Diego County. Unless changed in writing by Buyer and Seller, the Closing shall occur within 60 days of the end of the City’s Design Review process described in Section 7(d)(ii). If the Closing has not, for any reason, occurred by December 2, 2016, the “Outside Closing Date” (as it may be extended pursuant to the immediately preceding sentence), then either Buyer or Seller may terminate this Agreement by delivering written notice to the other at any time after the Outside Closing Date; provided, however, that if there is a Seller Default or a Buyer Default under this Agreement at the time of the termination, then the termination shall not affect the rights and remedies of the non-defaulting party against the defaulting party. If neither party so elects to terminate this Agreement and the Escrow, Escrow Holder shall close the Escrow as soon thereafter as Buyer’s and Seller’s Conditions Precedent to Closing are satisfied pursuant to Sections 7(a) and 7(b) of this Agreement.

**(b) Title Matters.**

- (i) Buyer’s Title Policy. Concurrently with the Closing, Escrow Holder in its capacity as an insurer of title, or such other title insurance company as Buyer and Seller (the “Parties”) may hereafter mutually agree upon (the “Title Company”), shall issue to Buyer a 2006 CLTA or ALTA, at the option of Buyer, owner’s policy of title insurance (amended 6/17/06) without arbitration provisions in the amount of the Purchase Price, showing fee title to the Property vested solely in the Buyer, with all property taxes and assessments shown as paid, and free and clear of any other title exceptions not approved by Buyer as provided in Section 3(b)(ii) below. The premium for this “Buyer’s Title Policy” and any endorsements required by Buyer shall be charged to Buyer as described in Section 11, subdivisions (a) and (b). Buyer may require, as a Buyer’s Condition Precedent to the Closing, that Seller execute an estoppel agreement and/or a subordination agreement in a form acceptable to Buyer, confirming that, as of the Closing, (a) the Seller shall have no further interest in the Property or any portion thereof or any improvements thereon.
- (ii) Conditions of Title. Buyer shall cause Escrow Holder to issue a current commitment for title insurance (“Title Commitment”) respecting the Property issued by the Title Company, as well as legible copies of all documents referred to in the Title Commitment (“Underlying Documents”), and a scaled and dimensioned plot showing the location of any easements. Buyer has ten (10) business days from receipt of the Title Commitment and all Underlying Documents and said plot plan within which to satisfy itself with regard to the condition of title. Buyer also has forty-five (45) days from the later of: (a) receipt of the Title Commitment and Underlying Documents, or (b) the Effective Date, to satisfy itself with regard to any ALTA title supplement based upon a survey prepared to American Land Title Association (“ALTA”)

standards for an owner's policy by a licensed surveyor showing the legal description and boundary lines of the Property, any easements of record, and any improvements, poles, structures and things located within ten feet of either side of the Property boundary lines. Any such survey shall be prepared at Buyer's direction and expense. If Buyer has obtained a survey and approved the ALTA title supplement, Buyer may elect within the period allowed for Buyer's approval of a survey to have an ALTA extended coverage owner's form of title policy, in which event Buyer shall pay any additional premium attributable thereto.

- (iii) No New Liens or Exceptions. Buyer hereby objects to any and all liens and exceptions to title not shown on the preliminary title report procured by the Agency and prepared in relation to this Agreement by Escrow Holder ("Preliminary Title Report"). Further, during the period commencing on the Effective Date and continuing until the Closing, Seller agrees it shall not cause any new or modified lien or encumbrance to title to become of record against the Property, unless such lien or encumbrance is approved in writing by Buyer. Each and every new lien or encumbrance shall be subject to Buyer's prior written consent and unless and until approved by Buyer shall be deemed a disapproved exception to title that shall be removed by Seller at Seller's sole cost as a condition to Closing.

#### **4. Seller's Delivery of Property Documents.**

**(a) Seller's Delivery of Property Documents.** Within ten (10) days after the Effective Date, Seller shall deliver to Buyer complete, true, and legible copies of the following items (collectively, "Property Documents"):

- (i) Copies of tax bills, including assessments, if any.
- (ii) Proof of Sellers' authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.
- (iii) Each and every contract, agreement, license and lease relating to and/or affecting the Property, specifying which of such contracts, agreements, licenses, and/or leases are anticipated to bind Buyer or affect the Property following the Close of Escrow, if any.
- (iv) Copies of all environmental and other reports respecting the Property in Seller's possession.

**5. Buyer's Right of Entry and Tests of Property.** From and after the Effective Date through the earlier to occur of the termination of this Agreement or the Closing Date, Seller shall permit Buyer and Buyer's employees, agents, Buyers and contractors to enter upon the Property during normal business hours, provided twenty four (24) hours prior notice has been given to Seller, for the purpose of conducting any physical and legal inspections, investigations, assessments, tests, and studies as Buyer in its sole discretion elects to make or obtain, including, but not limited to, investigations with regard to zoning, building codes and other governmental regulations; engineering tests; surveying; soils, seismic and geologic

reports; environmental audits, inspections and studies; environmental investigation or other invasive or subsurface testing; and any other physical or legal inspections and/or investigations, including without limitation the presence, release, and/or absence of adverse soils conditions, adverse groundwater conditions, asbestos, lead based paint, and/or Hazardous Materials, as hereinafter more fully defined and described (collectively, “Tests”).

**(a) Conditions to Right of Entry for Tests.** As a condition to conducting any Tests, Buyer shall (i) prior to entry, notify Seller not less than twenty four (24) hours in advance of the purpose of the intended entry and provide to Seller the names and affiliations of the entity or person(s) entering the Property; (ii) conduct all Tests in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property; (iii) comply with applicable laws and governmental regulations in conducting such Tests; (iv) keep the Property free and clear of materialmen’s liens, lis pendens and other liens arising out of entry onto the Property for such Tests performed by or on behalf of Buyer; (v) Buyer to maintain, or Buyer to cause to be maintained by Buyer’s contractor(s), workers’ compensation insurance on all persons entering the Property for such Tests in the amounts required by the State of California; (vi) Buyer to maintain, or Buyer to cause to be maintained by Buyer’s contractor who will be entering the Property, commercial general liability insurance policy with a financially responsible insurance company (or as to Buyer its membership in a joint powers insurance authority with comparable coverage) covering any and all liability of Buyer and its agents, contractors, Buyers and employees, with respect to or arising out of the Tests conducted at the Property, written on a per occurrence and not claims made basis in a combined single limit of not less than One Million Dollars (\$1,000,000); and (vii) promptly repair any and all damage to the Property from such Tests caused by Buyer, its agents, employees, contractors, or Buyers and return the Property to its original condition (subject to the Tests conducted) following Buyer’s entry. Buyer shall indemnify, defend, and hold harmless Seller and its agents from and against any and all loss, cost, liability or expense (including reasonable attorneys’ fees) arising from the entry(ies) of Buyer, its agents, contractors, Buyers, and employees upon the Property for and related to such entry and Tests or from Buyer’s failure to comply with the conditions to Buyer’s entry onto the Property for such Tests, but not to any extent that such loss, cost, liability or expense was caused by the sole negligence or wrongful misconduct by Seller or any person or entity for which Seller is responsible. Such indemnity shall survive the Close of Escrow or the termination of this Agreement for any reason, but shall be limited to actions and inactions arising from and related to such entry onto the Property and/or the Tests.

## **6. Due Diligence.**

**(a) Buyer’s Due Diligence Period.** Buyer shall have a period of ninety (90) calendar days from the Effective Date of this Agreement (the “Initial Due Diligence Period”) to conduct its due diligence with respect to the Property and determine whether it elects to terminate this Agreement pursuant to section 6(b).

**(i) Buyer’s Right to Terminate.** The Buyer shall have the right to terminate this Agreement on or before ten (10) calendar days following the termination of the Initial Due Diligence period by providing the Agency with a written notice of its exercise of

this provision to terminate. In the event that Buyer fails to deliver such notice, then such failure shall be deemed Buyer's election not to terminate this Agreement.

**(b) Environmental Review and Costs Allocation.**

**1. Environmental Review.**

(A) **[Phase I ESA]** Buyer will conduct a Phase I ESA. It shall do so during the diligence period set forth in Section 6 (ninety (90) calendar days from the Effective Date of this Agreement ), also called "Initial Review Period." If Buyer is not satisfied with the results it may terminate this Agreement as set forth in Section 6(a)(i).

(B) **[Phase II ESA]** If Buyer does not terminate the Agreement by written notice given pursuant to Section 6(a) above, and if Recognized Environmental Conditions, as defined by the American Society for Testing and Materials Standard ASTM E 1527-05 (hereinafter called "REC"), are found to exist in, on, or under the Property, then Buyer shall have an additional one hundred twenty (120) calendar days from the date of expiration of the Initial Review Period (the "Environmental Review Period") within which to complete, at Buyer's option and in Buyer's sole discretion, a Phase II ESA, development of a remedial action plan, and development of cost estimates, environmental insurance and a scope of work for remediation and related regulatory approvals respecting the Property (collectively, "Environmental Studies"); provided that Buyer's cost estimates and scope of work for remediation and related regulatory approvals shall be subject to reasonable review and approval by Seller provided to Buyer within ten (10) business days of Seller's receipt of Buyer's written notice of Buyer's proposals in such regard. If Seller exceeds the ten (10) business days to provide notice, the one hundred and twenty (120) calendar day period shall be extended by the additional time Seller spent reviewing said documents. If Seller does not approve the remediation costs, the Buyer may terminate this agreement and the remedies set forth in Section 6(b) (2) (A) shall apply. Seller agrees to promptly use Seller's reasonable best efforts to provide or arrange for Buyer and Buyer's consultants, contractors and representatives to be provided prompt access to the Property to make such inspections and to conduct such environmental investigation and testing as Buyer deems to be necessary or appropriate to evaluate conditions existing in, on, under and around the Property, all at no expense to Seller. If for any reason, Buyer is not satisfied with the results of the Environmental Studies, Buyer may send written notice to Seller of such disapproval (an "Environmental Disapproval Notice") at any time prior to expiration of the Environmental Review Period, and Buyer will thereupon be entitled to terminate the Agreement.

**2. Cost Allocations.**



A. [**Termination of Agreement.**] Should Buyer terminate this Agreement, either because it is not satisfied with the results of the Environmental Studies, including Phase I ESA, or any other reason under this Agreement, Buyer shall receive a full refund of Buyer's Deposit. Buyer shall not receive (and hereby waives) any costs for, related to, or arising from its Phase I ESA and any Environmental Studies. Buyer, at its own expense, will repair any damages to the Property caused by its inspection and/or testing of the Property, and Buyer will indemnify Seller against any claims or liability for damage to the Property resulting from willful or negligent acts or omissions of Buyer or Buyer's contractors or agents occurring during such Environmental Studies.

B. [**Agreement not Terminated-Price Reduction for Remediation.**] If REC are found to be present in, on or under the Property, and/or constituents of concern ("COC", e.g., petroleum hydrocarbons, solvents or other hazardous materials) are identified in soil vapor and/or groundwater, and any of such conditions result in Buyer terminating the purchase of the Property pursuant to this Agreement, then the Parties agree that Buyer and Seller will allocate and share certain costs of the Environmental Studies, as follows:

i. Buyer will be solely responsible for payment of fees and costs of the Phase I ESA

ii. Buyer understands that certain COCs have been released into the soil, soil vapor and groundwater at the Property; and that a "no further action" letter ("NFA") has been issued by the County of San Diego, Department of Environmental Health ("DEH") associated with such COCs. However, Buyer further understands that the NFA is specific to commercial land use only; therefore, Buyer understands that certain DEH plans and approvals will be necessary with respect to the COCs and changes in land use, and that it is possible that remediation of the Property may also be necessary. The appraised value of the Property according to the Appraisal is expressly conditioned on the Property being free from contamination, but the Property is not presently free from contamination. Therefore, with the foregoing exception of the Phase I ESA, Seller agrees that reasonable costs for remediation shall be applied solely as a credit against and adjustment of the Purchase Price at Closing, but shall not exceed the Purchase Price.

## **7. Conditions Precedent to Close of Escrow and Termination Rights.**

(a) **Buyer's Conditions Precedent.** The Closing and Buyer's obligation to buy the Property and to consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively,

“Buyer’s Conditions Precedent”) on or before the Closing Date or such earlier time as provided for herein, which are for Buyer’s benefit only.

- (1) No Termination as a Result of Buyer’s Due Diligence Review. This Agreement shall not have terminated pursuant to Section 6 as a result of Buyer’s review and inspection of the Preliminary Title Report, the Property Documents, the Tests and/or the Environmental Studies respecting the Property.
- (2) Seller Title. Seller shall have fee title to the Property free and clear of any exceptions disapproved under or otherwise contrary to the provisions of Section 3(b).
- (3) Buyer’s Title Policy. The Title Company shall, upon payment of Title Company’s regularly scheduled premium, have agreed to provide Buyer’s Title Policy for the Property upon the Closing, in accordance with Section 3(b).
- (4) Representations and Warranties. All representations and warranties of Seller contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.
- (5) No Seller Default. As of the Closing, there shall be no Seller Default under this Agreement.
- (6) Delivery of Funds and Documents. Seller shall have delivered all documents and other items described in Section 8.
- (7) Satisfaction of Entitlements Contingency. Buyer shall have received from all applicable governmental agencies all land use, zoning (including without limitation, variances and amendments to any applicable General Plan), permits, designations, and final Design Review approvals as may be necessary for Buyer’s intended development and uses of the Project on the Property (collectively, the “Entitlements”). Buyer’s proposed land use for the Property is a mixed-use commercial/residential project. Buyer’s obligation to purchase the Property shall be conditioned upon Buyer obtaining confirmation on or before Closing that the Entitlements are final and nonappealable, each on terms and conditions acceptable to Buyer in Buyer’s sole discretion (the “Entitlement Contingency”). This Entitlement Contingency is for the benefit of, and may be waived, solely by Buyer. Buyer understands and agrees that the Successor Agency, City, and Oversight Board make no warranties or representations that said entitlements shall be approved and Buyer agrees to hold harmless and waive any claims against the Successor Agency, City, and Oversight Board should they not be approved.

**(b) Seller’s Conditions Precedent.** The Closing and Seller’s obligation to sell the Property and consummate the transaction contemplated by this Agreement are subject to the timely satisfaction or written waiver of the following conditions precedent (collectively, “Seller’s Conditions Precedent”) on or before the Closing Date or such earlier time as provided for herein, which are for Seller’s benefit only:

(1) No Buyer Default. As of the Closing, there shall be no Buyer Default under this Agreement.

(2) Buyer's Status. As of Buyer's signing/execution of this Agreement, Buyer represents and warrants that Tierra Del Sol Investments is a corporation with an "active status" in good standing under the laws of the State of California and that it may lawfully conduct business in the State of California, including, but not limited to, the purchase and development of the Property.

(3) Representations and Warranties. All representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects as of the Effective Date and as of the Closing.

(4) Delivery of Funds and Documents. Buyer shall have delivered all funds and documents and other items described in Section 9.

(c) **Waiver.** Buyer may at any time or times, at its election in its sole and absolute discretion, waive any of the Buyer's Conditions Precedent set forth in Section 7(a), but any such waiver shall be effective only if contained in a writing signed by Buyer and delivered to Seller and Escrow Holder. Seller may at any time or times, at its election in its sole and absolute discretion, waive any of the Seller's Conditions Precedent set forth in Section 7(b) above, but any such waiver shall be effective only if contained in a writing signed by Seller and delivered to Buyer and Escrow Holder.

(d) **Termination.** In the event that each of the Buyer's Conditions Precedent set forth in Section 7(a) is not fulfilled by the Outside Closing Date, or such earlier time period as provided for herein or waived by Buyer pursuant to Section 7(c), and provided there is no Buyer Default under this Agreement, Buyer may at its option terminate this Agreement and the Escrow opened hereunder. In the event each of the Seller's Conditions Precedent set forth in Section 7(b) is not fulfilled by the Outside Closing Date, or such earlier time period as provided for herein or waived by Seller pursuant to Section 7(c), and provided there is no Seller Default under this Agreement, Seller may at its option terminate this Agreement and the Escrow opened hereunder. Notwithstanding the foregoing, if Escrow is not in a position to close due to a party's failure to deposit into Escrow any documents or funds required for the Closing of Escrow, the non-defaulting party shall not have the right to terminate this Agreement without first having given the defaulting party notice of the default and five (5) days to cure the default, with the understanding that it is the parties' desire that this Agreement not terminate as a result of a technicality such as a party's inadvertent failure to timely make a deposit of a document or money into Escrow. No termination under this Agreement shall release either party then in default from liability for such default. In the event this Agreement is terminated, (i) all documents and funds delivered by Seller to Buyer or Escrow Holder shall be returned immediately to Seller, provided there is no Seller Default, and likewise (ii) all documents and funds delivered by Buyer to Seller or Escrow Holder shall be returned immediately to Buyer.

(i) If Escrow fails to close due to a party's default or breach, the defaulting or breaching party shall pay all Escrow Cancellation Charges. If Escrow fails to close for any

other reason, the Buyer shall pay all Escrow Cancellation Charges. The term “Escrow Cancellation Charges” shall mean all fees, charges and expenses actually charged by Escrow Holder and the Title Company to the parties in connection with the cancellation of the Escrow and the title order, if any, to the extent expressly authorized under a written agreement with Escrow Holder signed by the party to be charged.

- (ii) This sale of property shall be subject to review and approval by the Agency and the Oversight Board pursuant to redevelopment agency dissolution laws, including, but not limited to, AB 26, 1484, and SB 107. In addition, the real estate development project that Buyer plans to implement at the Property (“Project”) is subject to approval *via* the Design Review process administered by City staff, and reviewed by City’s Planning Commission (in the aggregate, the “Design Reviewers”). City’s Design Review process will end upon City’s Planning Commission approving or denying Buyer’s plans for the Project, subject only to the right of appeal as to any denial to the City Council. The City, including but not limited to its staff, Planning Commission, and City Council, retains any and all discretion to approve or not approve the Project. Furthermore, this Agreement cannot and does not directly or indirectly limit the exercise of the City’s discretion with respect to the Project. If the Agency, or the Oversight Board does not approve the sale of Property, or if the Design Reviewers do not approve Buyer’s Project, the Agency may terminate this Agreement and sale, with each party bearing their own costs, but the Successor Agency shall pay Escrow Cancellation charges. Buyer understands and agrees that it shall hold the Agency, the Oversight Board, and the City, including their elected and appointed officials, directors, officers, employees, Board and Commission members (including Planning Commission), agents, contractors, and invitees (in the aggregate, “Related Parties) harmless for such termination. Further, Buyer shall not pursue and waives any and all causes of action or claims against the Successor Agency, Oversight Board, and the City or any of their respective Related Parties.

**8. Seller’s Deliveries to Escrow Holder.** At least two (2) business days prior to the Closing Date, except as to possession of the Property which shall be delivered as of Closing, Seller shall deposit or cause to be deposited with Escrow Holder the following items, duly executed and, where appropriate, acknowledged:

(a) **Grant Deed.** The Grant Deed in the form attached hereto as Exhibit B (“Grant Deed”), duly executed by Seller and acknowledged.

(b) **[Reserved.]**

(c) **Licenses, Certificates, and Permits.** To the extent the same are within the actual or constructive knowledge of, or in the possession, custody or control of, Seller and are applicable and/or transferable to Buyer, all original licenses, certificates and permits pertaining to the Property and beneficial for, or necessary for, or affecting the use or occupancy thereof.

- (d) **FIRPTA/Tax Exemption Forms.** Transferor's Certification of Non Foreign Status in the form attached hereto as **Exhibit C** ("FIRPTA Certificate") (unless Seller is a "foreign person," as defined in Section 1445 in the Internal Revenue Code of 1986), together with any necessary tax withholding forms, and a duly executed California Form 593-C, as applicable ("California Exemption Certificate").
- (e) **Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and to consummate this transaction as may be reasonably requested by Buyer and the Title Company.
- (f) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.
9. **Buyer's Deliveries to Escrow.** At least two (2) business days prior to the Closing Date, Buyer shall deposit or cause to be deposited with Escrow Holder the following, each duly executed and acknowledged, by Buyer as appropriate:
- (a) **Purchase Price.** The Purchase Price (as provided in Section 2), and any additional funds necessary to pay Buyer's Charges identified in Section 11. In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code, as evidenced by the delivery at Closing of the California Exemption Certificate duly executed by Seller, Title Company shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer for payment to the California Franchise Tax Board in accordance with Section 11(d) hereof. In the event Seller is not exempt from such withholding or does not otherwise deliver the California Exemption Certificate at Closing, Buyer shall execute and deliver three (3) originals of California Form 597 to Title Company at or immediately after Closing.
- (b) **Final Escrow Instructions.** Buyer's final written Escrow instructions to close Escrow in accordance with the terms of this Agreement.
- (c) **Further Documents or Items.** Any other documents or items reasonably required to cause the Closing of the transaction contemplated by this Agreement as determined by the Escrow Holder.
10. **Tax Adjustment Procedure.** Escrow Holder is authorized and is instructed to comply with the following tax adjustment procedure:
- (a) **Delinquent Taxes.** Pay and charge Seller for any unpaid delinquent property taxes and/or penalties and interest thereon, and for any delinquent assessments or bonds against the Property.
- (b) **Proration.** Escrow is not to be concerned with proration of Seller's taxes for the current fiscal year. Seller's *pro rata* portion of taxes due at close of Escrow, shall be cleared and paid by Seller, outside Escrow, pursuant to provisions of Section 5082 through 5090 of the Revenue and Taxation Code of the State of California.

(c) **Refund of Taxes.** After the Closing of the Escrow, Seller shall have the right in Seller's sole discretion to apply to the San Diego County Tax Collector for refund of any excess property taxes paid by Seller with respect to the Property, so long as no proration or credit for such taxes was provided to Seller through the Escrow. This refund would apply to the period after the Closing Date and Buyer's acquisition of the Property pursuant to Revenue and Taxation Code Section 5096.7.

11. **Escrow Holder Authorization.** Escrow Holder is authorized to and shall pay, charge and perform the following:

(a) **Buyer Charges.** Charge Buyer for all Escrow fees, charges and costs, including all charges for recording the Grant Deed, transfer taxes, if any, and any additional title coverage requested by Buyer, including the difference between a CLTA standard owner's policy (which CLTA policy and the endorsements described in Section 3(b)(i)) are and shall remain Seller's Charges) and an ALTA extended owner's policy (collectively, "Buyer's Charges").

(b) **Tax Requirements.** Escrow Holder shall prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099 S form, and be responsible for withholding taxes, if any such forms and/or withholding is provided for or required by law.

(i) **California Withholding.** In the event Seller does not qualify for an exemption from California withholding tax under Section 18662 of the California Revenue and Taxation Code ("Tax Code") as evidenced by the delivery to Buyer at Closing of the California Exemption Certificate duly executed by Seller, (i) Escrow Holder shall withhold three and one-third percent (3 1/3%) of the Purchase Price on behalf of Buyer at Closing for payment to the California Franchise Tax Board in accordance with the Tax Code, (ii) Buyer shall deliver three (3) duly executed originals of California Form 597 to Escrow Holder at or immediately after Closing, (iii) two (2) executed originals of California Form 597 shall be delivered by Escrow Holder to Seller, and (iv) on or before the 20th day of the month following the month title to the Property is transferred to Buyer (as evidenced by the recording of the Grant Deed), Escrow Holder shall remit such funds withheld from the Purchase Price, together with one (1) executed original of California Form 597 to the California Franchise Tax Board on behalf of Buyer. Buyer and Seller hereby appoint Escrow Holder as a reporting entity under the Tax Code, authorized to withhold and remit the withholding tax contemplated under the Tax Code, together with such other documents required by the Tax Code (including, without limitation, California Form 597), to the California Franchise Tax Board.

(ii) **FIRPTA Withholding.** If Seller is a "foreign person" under the Foreign Investment in Real Property Transfer Act or an exemption applies, the Escrow Holder shall deduct and withhold from Seller's proceeds ten percent (10%) of the gross sales price and shall otherwise comply with all applicable provisions of the Foreign Investment in Real Property Act and any similar state act. Seller agrees to execute and deliver **Exhibit C**, as directed by Escrow Holder, or any instrument, affidavit, and statement,

and to perform any act reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act and any similar state act and regulation promulgated thereunder.

(c) **Closing Statement.** Escrow Holder is instructed to prepare and provide copies of a proposed closing statement and thereafter the final closing statement (“Closing Statement”) to both Seller and Buyer. Escrow Holder shall deliver the estimated Closing Statement to Seller and Buyer for their respective prior written approvals no later than three (3) business days prior to the Closing Date.

(d) **Escrow Holder Responsibility.** The responsibility of the Escrow Holder under this Agreement is limited to Sections 1 through 12, and 18(b) and (c), and to its liability under any policy of title insurance issued in regard to this transaction.

**12. Closing Procedure.** On the Closing Date, and provided all of the Buyer’s Conditions Precedent and Seller’s Conditions Precedent set forth in Sections 7(a) and 7(b), respectively, of this Agreement have been satisfied or waived in writing by the appropriate party (per Section 7(c)), Escrow Holder shall immediately close Escrow in the manner and order provided below.

(a) **Recording.** Escrow Holder shall cause the Grant Deed to be recorded pursuant to applicable law in San Diego County and obtain conformed copies thereof for distribution to Seller and Buyer.

(b) **Disburse Funds.** Escrow Holder shall debit or credit (as provided herein) all charges to Buyer and Seller and withhold funds pursuant to Section 11. The Purchase Price (less any amounts required to be withheld as provided in Section 11(d)) shall be distributed by check payable to Seller unless Escrow Holder is instructed otherwise in writing signed by Seller (and, in such event, in accordance with such instructions).

(c) **Documents to Seller.** Escrow Holder shall deliver to Seller, a conformed copy of the Grant Deed, and a copy of all other documents deposited into Escrow by Buyer pursuant to this Agreement.

(d) **Documents to Buyer.** Escrow Holder shall deliver to Buyer the original FIRPTA Certificate, the original California Exemption Certificate (as applicable), a conformed copy of the Grant Deed, a “Title Report” consistent with Buyer’s Title Policy, and each other document (or copies thereof) deposited into Escrow by Seller pursuant hereto, including, without limitation, those documents referenced in Section 8.

(e) **Title Company.** Escrow Holder shall cause the Title Company to issue the Buyer’s Title Policy to Buyer.

(f) **Closing Statement.** Escrow Holder shall forward to both Buyer and Seller a separate accounting of all funds received and disbursed for each party in the form of the Closing Statement prepared pursuant to Section 11(e).

(g) **Informational Reports.** Escrow Holder shall file any informational reports required by Internal Revenue Code Section 6045(e), as amended.

(h) **Possession.** Possession of the Property shall be delivered to Buyer at the Closing.

### **13. DISCLAIMERS, WAIVERS, AND RELEASES**

(a) BUYER ACKNOWLEDGES AND AGREES THAT AGENCY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES AND AGENCY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY NEGATES AND DISCLAIMS ANY OBLIGATIONS OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT, OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE VALUE, NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (B) THE INCOME TO BE DERIVED FROM THE PROPERTY; (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH BUYER MAY CONDUCT THEREON; (D) THE COMPLIANCE OF OR BY THE PROPERTY OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY; (E) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, ECONOMIC FEASIBILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY; (F) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PROPERTY; (G) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PROPERTY; OR (H) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, THAT AGENCY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ENVIRONMENTAL CONDITION OF THE PROPERTY; COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE, ZONING OR DEVELOPMENT OR REGIONAL IMPACT LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS.

(b) BUYER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN SUFFICIENT TIME AND OPPORTUNITY TO INSPECT THE PROPERTY AND PERFORM ITS DUE DILIGENCE, BUYER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT AGENCY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION. AGENCY IS NOT LIABLE OR BOUND IN ANY MANNER BY ANY VERBAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY, OR THE OPERATION THEREOF, FURNISHED BY ANY REAL ESTATE BROKER,



AGENT, EMPLOYEE, SERVANT OR OTHER PERSON. BUYER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS", "WHERE IS" AND, "WITH ALL FAULTS" CONDITION AND BASIS.

BUYER's Initials: \_\_\_\_\_

(c) **Waiver and Release.** Effective as of the close of escrow, Buyer shall, and by the execution of the Agreement, hereby does, forever release Agency, City, Oversight Board, and any of their respective Related Parties of and from any and all losses, liabilities, damages, claims, demands, causes of action, costs and expenses, whether known or unknown, to the extent arising out of or in any way connected with the Property after the close of escrow, including, without limitation, the condition of title to the Property and the environmental and structural condition of the Property. Buyer agrees never to commence, aid in any way, or prosecute against Agency, any action or other proceeding based upon any losses, liabilities, damages, claims, demands, causes of action, costs and expenses, covered in this paragraph. Notwithstanding any provision to the contrary contained herein, nothing in this Section 13 shall be deemed to constitute a waiver of any rights or remedies arising from Agency's intentional fraud or misrepresentation of any material fact with an intent to mislead.

Buyer hereby fully and forever releases and discharges Agency, City, Oversight Board, and all of their Related Parties from any and all claims, rights, actions, damages, and/or liabilities, of any nature whatsoever, fixed or contingent, existing now or arising in the future, known or unknown, in any way relating to the Property, excluding only claims arising under this Agreement. Buyer acknowledges Buyer may later learn of circumstances bearing upon the rights released in this Agreement. Buyer specifically waives the rights afforded by Section 1542 of the California Civil Code which provides:

**“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her, must have materially affected his or her settlement with the debtor.”**

BUYER's Initials: \_\_\_\_\_

**14. Buyer's Representations and Warranties.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property, Buyer makes the following representations and warranties as of the date hereof and at and as of the Closing, each of which is material and is being relied upon by Seller, the truth and accuracy of which shall constitute a condition precedent to Seller's obligations hereunder, and all of which shall survive Closing:

- (a) Subject only to approval by Agency's governing body and the Oversight Board, Buyer has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transaction contemplated hereby.
- (b) Subject to (a) above, as of the Effective Date, the individuals executing and attesting this Agreement and the instruments referenced herein on behalf of Buyer have the legal power, right and actual authority to bind Buyer to the terms and conditions hereof and thereof.
- (c) Subsequent Changes to Buyer's Representations and Warranties. If, prior to the Closing, Seller or Buyer should learn, discover or become aware of any existing or new item, fact or circumstance which renders a representation or warranty of Buyer set forth herein incorrect or untrue in any respect (collectively, the "Buyer's Representation Matter"), then the party who has learned, discovered or become aware of such Buyer's Representation Matter shall promptly give written notice thereof to the other party and Buyer's representations and warranties shall be automatically limited to account for the Buyer's Representation Matter. Seller shall have the right to approve or disapprove any such change and to terminate this Agreement by written notice to Buyer if Seller reasonably disapproves any such change; provided, however Buyer shall first have the opportunity to cure the Buyer's Representation Matter. If Seller does not elect to terminate this Agreement, Buyer's representation shall be qualified by such Buyer's Representation Matter and Buyer shall have no obligation to Seller for such Buyer's Representation Matter.
- (d) Indemnity. To the extent permitted by law, Buyer hereby agrees to defend, indemnify, protect, and hold harmless the Agency, Oversight Board, and City, including their elected and appointed officials, directors, officers, agents and employees (collectively the "Related Parties"), from and against any and all (including those by third parties) claims, demands, causes of action, costs, expenses (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to the condition of Property at the time of its sale, including the presence of any hazardous substances that may exist on, under, or across the Property, whether or not such condition was known or unknown, latent or patent, or caused by any acts, omissions, or negligence of Agency, the City, the Oversight Board, and any of their respective Related Parties.
- (i) Costs of Defense and Award. Included in the obligations in Section 14(d), above, is the Buyer's obligation to defend, at Buyer's own cost, expense and risk, any and all suits, actions or other legal proceedings, that may be brought or instituted against the Agency the City, the Oversight Board or any of their respective Related Parties as a result of the conditions described in Section 14(d). Buyer shall pay and satisfy any judgment, award or decree that may be rendered against the Agency, the City, the Oversight Board or any of their respective Related Parties, and pay any and all related legal expenses and costs incurred by each of them as a result of the conditions described in Section 14(d).

- (ii) Insurance Proceeds. Buyer's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Agency, City, Oversight Board, or any of their respective Related Parties.
- (iii) Declarations. Buyer's obligations under Section 14(d) shall not be limited by any prior or subsequent declaration by or to the Buyer.
- (iv) Enforcement Costs. Buyer agrees to pay any and all costs the Agency, City, Oversight Board, or any of their respective Related Parties incurs enforcing the indemnity and defense provisions set forth in Section 14(d).
- (v) Survival. Buyer's obligations under Section 14(d) shall survive the termination of this Agreement.
- (vi) No Alteration of Other Obligations. This Section 14(d) shall in no way alter, affect or modify any of the Buyer's other obligations and duties under this Agreement.

**15. Seller's Covenants during Escrow Period.**

- (a) **New Liens or Encumbrances.** Seller shall not further encumber or place any further liens or encumbrances on the Property from the Effective Date and during the Escrow period to the Closing Date without the express, prior written authorization of Buyer in its sole and complete discretion. Further, if the Buyer does consent to a new lien or encumbrance, then such lien or encumbrance on the Property shall not survive the Closing Date, including, but not limited to, right of entry, covenants, conditions, restrictions, easements, liens, options to purchase, options to lease, leases, tenancies, or other possessory interests or rights of use or rights of entry relating to or affecting the Property without the prior written consent of Buyer which consent may be withheld by Buyer in its sole and complete discretion.
- (b) **Hazardous Materials.** Seller shall not cause or permit the presence, use, generation, release, discharge, storage, or disposal of any Hazardous Materials on, under, in, or about, or the transportation of any Hazardous Materials to or from, the Property; provided, however, the foregoing shall not apply to existing Hazardous Materials and those that migrate onto the Property from other property or from sources other than Seller or a party acting under the direction or control of Seller or Hazardous Materials present on the Effective Date of this Agreement. Seller shall comply with all applicable Environmental Laws in Seller's use, ownership and operation of the Property.
  - (i) As used in this Agreement, the term "Hazardous Materials" or "Hazardous Material" shall mean any substance, material, or waste which is, or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Sections 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health

and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a “hazardous material,” “hazardous substance,” or “hazardous waste” under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a “hazardous substance” under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) lead based paint (viii) polychlorinated biphenyls, (ix) methyl tertiary butyl ether, (x) designated as “hazardous substances” pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a “hazardous waste” pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as “hazardous substances” pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

- (ii) As used in this Agreement, the term “Environmental Laws” shall mean any state or local law, statute, ordinance or regulation pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation: (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Section 311 of the Clean Water Act (33 U.S.C. Section 1317), (vi) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 *et seq.* (42 U.S.C. Section 6903), (vii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 *et seq.*, or (viii) any state or federal lien or “superlien” law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

## **16. Default and Remedies.**

- (a) Seller Default.** The term “Seller Default” shall mean Seller’s failure to timely perform a material obligation of Seller under this Agreement prior to the earlier of five (5) business days following written notice from Buyer describing Seller’s failure to perform or prior to Closing. In the event of a Seller Default, Buyer, as its sole and exclusive remedies: (i) may terminate this Agreement by delivery of written notice of termination to buyer and escrow holder, and this Agreement and the rights and obligations, other than those rights and obligations that expressly survive the termination of this Agreement, of the Buyer and Seller hereunder shall terminate or (ii) specifically enforce Seller’s performance. Notwithstanding any provision to the contrary contained herein, nothing in this Section 16(a) shall be deemed to constitute a waiver of any rights or remedies arising from Agency’s intentional fraud or misrepresentation of any material fact with an intent to mislead.

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

Buyer's Initials: \_\_\_\_\_

**(b) Buyer Default.** The term "Buyer Default" shall mean Buyer's failure to timely perform a material obligation of Buyer under this Agreement prior to the earlier of five (5) business days following written notice from Seller describing Buyer's failure to perform or prior to Closing. In the event of a Buyer Default, Seller, as its sole and exclusive remedy, may terminate this Agreement.

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

Buyer's Initials: \_\_\_\_\_

## **17. General Provisions.**

**(a) Notices.** All notices, demands, requests or other communications required or permitted hereunder (collectively, "Notices") shall be in writing, shall be addressed to the receiving party, and shall be personally delivered, sent by overnight mail (Federal Express or another carrier that provides receipts for all deliveries), or sent by certified mail, postage prepaid, return receipt requested, to the address listed below:

If to Seller:           City of Chula Vista  
276 Fourth Avenue, Chula Vista CA 91910  
Attention: Eric Crockett

If to Buyer:           Tierra Del Sol Investments  
Attn.: Daniel E. Johnson, President  
c/o Timothy J. Truxaw, Esq.  
Slater & Truxaw, LLP  
15373 Innovation Drive, Suite 210  
San Diego, CA 92128

All Notices shall be effective upon receipt at the appropriate address. Notice of change of address shall be given by written Notice in the manner detailed in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice in accordance with this Section was given shall be deemed to constitute receipt of such Notice.

**(b) Brokers.** Buyer and Seller each represent to the other that, except as otherwise expressly provided in this Section 17(b) to the contrary: (i) no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with this Agreement; and (ii) each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities or causes of action or proceedings which may be instituted by any broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party

in connection with this Agreement. The sole exception to the foregoing provision is that: ((a)) Seller's sole and exclusive representative respecting the purchase and sale of the Property under this Agreement is **South Coast Commercial, Inc.** ("Seller's Broker"); ((b)) subject to Closing of Escrow in accordance with the provisions of this Agreement, Buyer agrees to cause the payment at Closing of a commission to Seller's Broker in an amount equal to four (4%) percent of the Purchase Price (the "Commission"); and ((c)) the parties agree that Buyer's payment of the Commission will be Buyer's sole liability for any brokerage commission, finder's fee or other compensation respecting Buyer's purchase of the Property.

**(c) Waivers and Consents.** Each provision of this Agreement to be performed by Buyer and Seller shall be deemed both a covenant and a condition and shall be a material consideration for Seller's and Buyer's performance hereunder, as appropriate, and any breach thereof by Buyer or Seller shall be deemed a material default hereunder. Either party may specifically and expressly waive in writing any portion of this Agreement or any breach thereof, but no such waiver shall constitute a further or continuing waiver of a preceding or succeeding breach of the same or any other provision. A waiving party may at any time thereafter require further compliance by the other party with any breach or provision so waived. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement. All rights, remedies, undertakings, obligations, options, covenants, conditions and agreements contained in this Agreement shall be cumulative and no one of them shall be exclusive of any other.

**(d) Construction.** The parties acknowledge and agree that (a) each party is of equal bargaining strength; (b) each party has actively participated in the drafting, preparation and negotiation of this Agreement; (c) each party has consulted with such party's own independent counsel and such other professional advisors, if at all, as each party has deemed appropriate, relating to any and all matters contemplated under this Agreement; (d) each party and such party's counsel and advisors, if so elected by the party, have reviewed this Agreement; (e) each party has agreed to enter into this Agreement following such review and the rendering of such advice, if so elected by the party; and (f) any rule of construction to the effect that ambiguities are to be resolved against the drafting parties shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

**(e) Cooperation.** Buyer and Seller agree to execute such instruments and documents and to diligently undertake such actions as may be required in order to consummate the purchase and sale herein contemplated and shall use all reasonable efforts to accomplish the Closing in accordance with the provisions hereof.

**(f) Attorney's Fees.** In the event any declaratory or other legal or equitable action is instituted between Seller, Buyer and/or Escrow Holder in connection with this Agreement, then as between Buyer and Seller the prevailing party shall be entitled to recover from the losing party all of its costs and expenses including court costs and

reasonable attorney's fees, and all fees, costs and expenses incurred on any appeal or in collection of any judgment.

- (g) **Time.** Time is of the essence of every provision herein contained. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which said period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday, or legal holiday, in which case the period shall be deemed to run until 5:00 p.m. of the next day that is not a Saturday, Sunday, or legal holiday. Except as otherwise expressly provided herein, all time periods expiring on a specified date or period herein shall be deemed to expire at 5:00 p.m. on such specified date or period.
- (h) **Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument. A facsimile signature shall be deemed an original signature.
- (i) **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.
- (j) **No Obligations to Third Parties.** Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate any of the parties to this Agreement to, any person or entity other than the parties hereto.
- (k) **Amendment to this Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.
- (l) **Agency Designee Authority.** The Agency may designate a representative and grant such representative the authority to sign closing documents, issue interpretations, waive provisions, and enter into amendments of or supplements to this Agreement on behalf of Agency, so long as such actions do not substantially or substantively change the terms and conditions of the purchase and sale of the Property as set forth herein and as agreed to by the Agency in its approval of this Agreement. All other waivers or amendments shall require the consideration and written consent of Agency's governing board.

**Agency Designee:** \_\_\_\_\_

- (m) **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- (n) **Exhibits and Schedules.** The exhibits and schedules attached hereto are incorporated herein by this reference for all purposes.

**Exhibit A**                      Legal Description

**Exhibit B** Grant Deed

**Exhibit C** FIRPTA Certificate

- (o) **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between, and the final expression of, Buyer and Seller with respect to the subject matter hereof. The parties hereto expressly agree and confirm that this Agreement (along with the Exhibits hereto) is executed without reliance on any oral or written statements, representations or promises of any kind, which are not expressly contained in this Agreement. No subsequent agreement, representation or promise made by either party hereto, or by or to an employee, officer, agent or representative of either party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.
- (p) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.
- (q) **Assignment.** Buyer warrants and covenants to the Agency that Buyer will take all reasonable efforts necessary to pursue and implement the Project at the Property. Subject to Seller's prior written consent (which consent shall not be unreasonably delayed, limited or withheld), Buyer may assign or otherwise transfer its rights under this Agreement to a nominee or assignee designated in writing not later than five (5) days before the Closing.
- (r) **Like-Kind Exchange.** If either party desires to enter into a like kind exchange pursuant to Internal Revenue Code Section 1031, the other party agrees to reasonably cooperate with same, provided that the party desiring such exchange bears all costs related thereto.

**[THE SIGNATURE PAGE FOLLOWS]**



**SIGNATURE PAGE TO  
REAL PROPERTY PURCHASE AGREEMENT  
AND  
JOINT ESCROW INSTRUCTIONS**

**IN WITNESS WHEREOF**, the parties hereto have executed this Real Property Purchase Agreement and Joint Escrow Instructions as of the day and year first written above.

**“SELLER”**

Successor Agency to the Former Redevelopment  
Agency of the City of Chula Vista

By: \_\_\_\_\_  
**Gary Halbert, City Manager, in his  
capacity as Executive Officer for the  
Successor Agency**

Attest:

\_\_\_\_\_  
**Donna Norris, City Clerk, in her capacity as  
Secretary for the Successor Agency**

Approved as to form:

\_\_\_\_\_  
**Glen R. Googins, City Attorney, in his capacity as  
General Counsel for the Successor Agency**

**“BUYER”**

Tierra Del Sol Investments, a California corporation

By: \_\_\_\_\_  
**Daniel E. Johnson, President**

Acceptance by Escrow Holder:

I, \_\_\_\_\_, on behalf of Escrow Holder, hereby acknowledges that Escrow Holder has received a fully executed copy of the foregoing Purchase and Sale Agreement and Joint Escrow Instructions by and between Successor Agency to the Former Redevelopment Agency of the City of Chula Vista, as Seller, and, Tierra Del Sol Investments, a California corporation (or its nominee or assignee), as Buyer, and agrees to act as Escrow Holder thereunder and to be bound by and strictly perform the terms thereof as such terms apply to Escrow Holder.

Dated: \_\_\_\_\_, 2016

By: \_\_\_\_\_  
\_\_\_\_\_, Fidelity National Title

[Escrow Holder]

Exhibit A  
“Legal Description”

Exhibit B  
“Grant Deed”

Exhibit C  
“FIRPTA”