

PURCHASE AND SALE AGREEMENT AND  
ESCROW INSTRUCTIONS

BY AND BETWEEN

CITY OF COACHELLA

("Seller")

and

D.R. HORTON LOS ANGELES HOLDING COMPANY, INC.

("Buyer")

## PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS ("**Agreement**") is dated for reference purposes only as of April 1, 2021, by and between CITY OF COACHELLA, a municipal corporation organized and existing under the laws of the State of California ("**Seller**"), and D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation ("**Buyer**"), with reference to the facts set forth below and constitutes (i) a contract of purchase and sale between the parties and (ii) escrow instructions to First American Title Insurance Company ("**Escrow Holder**").

### RECITALS

A. Seller owns certain real property consisting of approximately 37.3 acres ("**Land**") in the City of Coachella ("**City**"), County of Riverside, State of California, and more particularly described on **Exhibit A** attached hereto, together with all improvements thereon and all and singular rights and appurtenances pertaining thereto, including, but not limited to, (1) all easements, privileges, entitlements, rights of way and appurtenances benefiting such land; (2) development rights (including, but not limited to, all governmental licenses, permits, approvals, applications, subdivision maps, entitlements, certificates, rights under any development agreements, school fee mitigation agreements, building permit and development allocations, prepaid permits and fees, reimbursements and deposits and any other development rights relating to the Land); (3) air rights, water rights, mineral, oil and gas and other subsurface rights; (4) all right, title, and interest of Seller in and to adjacent streets, alleys, easements, and rights-of-way; and (5) to the extent within the actual possession or control of Seller, all plans and specifications relating to the Land, and all engineering, environmental, soil, seismic and geologic reports, studies and certificates and other documents relating to the Land (all of such real property, rights, and appurtenances being hereinafter referred to collectively as the "**Property**").

B. The Property is planned to consist of approximately 155 Residential Lots and other common area lots.

C. Buyer desires to purchase the Property from Seller and Seller has agreed to convey the Property to Buyer in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the recitals set forth above, the mutual agreements set forth herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

### ARTICLE 1 DEFINED TERMS

Unless the context otherwise provides, the following terms shall have the meanings set forth below.

1.1 "**Affiliate**" means any person or entity that controls, is controlled by or is under common control with another person or entity, with "control" for purposes of this sentence meaning at least fifty percent (50%) ownership of the managing equity interests in the controlled entity.

1.2 "**Agreement**" means this Purchase and Sale Agreement and Escrow Instructions between Seller and Buyer.

1.3 "**Business Day**" refers to any day other than (a) a Saturday or Sunday or legal holiday in the State of California, or (b) a day on which state, federal or municipal offices in the County are closed for the conduct of business.

1.4 **"Buyer Parties"** means the past, present and future officers, directors, partners, members, shareholders, employees, agents, contractors, consultants, representatives, agents, Affiliates of Buyer and any Land Bank Entity and their respective successors and assigns.

1.5 **"Buyer's Internal Reports"** means all financial analysis, appraisals, internally generated analysis, reports and communications, attorney work product, all environmental reports, including, without limitation, any Phase I or Phase II environmental assessment, architectural and/or house plans prepared by or for Buyer's behalf, and all other proprietary, privileged and confidential information.

1.6 **"Buyer's Materials"** means all documents, agreements, reports, studies, correspondence, drawings and other materials prepared by Buyer or on Buyer's behalf in connection with Buyer's due diligence investigations of the Property, except for Buyer's Internal Reports.

1.7 **"California Form 593"** means a California Franchise Tax Board Form 593 to satisfy the requirements of California Revenue and Taxation Code Sections 18662 *et seq.*, which is to be executed by Seller and delivered to Buyer upon and concurrently with the Close of Escrow.

1.8 **"Cash"** means (a) cashier's check(s) currently dated and payable to Escrow Holder or Seller, as required under this Agreement, drawn and paid through a California banking institution, tendered to Escrow Holder or Seller, as required under this Agreement at least one (1) additional Business Day before funds are required to be available in Escrow or (b) an amount credited by wire transfer into Escrow Holder's or Seller's bank account as required under this Agreement.

1.9 **"Certificate of Non-Foreign Status"** means a Certificate of Non-Foreign Status certifying Seller is a non-foreign person in the form attached hereto as **Exhibit D**, which is to be executed by Seller and delivered to Buyer upon and concurrently with the Close of Escrow.

1.10 **"City"** means the City of Coachella, California.

1.11 **"Claims"** means any and all claims, actions, causes of action, rights, defenses, demands, allegations, damages, fines, penalties, liabilities, losses, encumbrances, liens, obligations, settlements, judgments, awards, appeals, costs and expenses of any kind or character in law, equity or otherwise, whether direct, indirect, contingent, consequential, matured, unmatured, foreseeable or unforeseeable, including actual fees and costs of attorneys, expert witnesses and other consultants, costs of investigation and defense (whether or not such matter is ultimately defeated) and of any good faith settlement, regardless of whether any such matter results from, or is subject to, the application of the principles of strict liability or negligence of any type (active, passive, primary, secondary, ordinary or gross), breach of contract, breach of express or implied warranty, equitable indemnity, implied indemnity, express indemnity, apportionment or contribution, trespass or nuisance.

1.12 **"Close of Escrow" or "Closing"** means the consummation of the purchase of the Property by Buyer from Seller and the recordation of the Grant Deed in accordance with this Agreement.

1.13 **"Closing Date"** means the date that is fifteen (15) Business Days after Seller's receipt of the Notice of Suitability from Buyer in accordance with **Section 3.1**, which Closing Date shall be subject to extension(s) as provided herein.

1.14 **"Corporate Approval"** has the meaning set forth in **Section 15.20**.

1.15 **"County"** means the County of Riverside, California.

1.16 **"Deposit"** means collectively, the First Deposit and the Second Deposit, including all interest earned thereon.

1.17 **"Due Diligence Period"** means the period commencing on the Effective Date and terminating at 5:00 p.m. PST on the date that is the later of (a) forty-five (45) days after the Effective Date or (b) five (5) Business Days after Buyer receives written confirmation that the Buyer Conditions set forth in **Sections 4.1.11** and **4.1.12** have been or will be satisfied as of the Closing Date, which determination shall be made by Buyer in its sole and absolute discretion. The Due Diligence Period shall be automatically extended on a day-to-day basis due to Force Majeure and shall be subject to any other extensions as provided herein.

1.18 **"Effective Date"** means the later of the following dates: (a) the date of Seller's signature; (b) the date of Buyer's signature; or (c) the date of the Corporate Approval.

1.19 **"Escrow"** means the escrow opened by Escrow Holder pursuant to the terms of this Agreement.

1.20 **"Escrow Holder"** means First American Title Insurance Company.

1.21 **"Final Approval"** means approval by the applicable Governmental Agency of an action or matter and expiration of any applicable period for any appeal, challenge or referendum relating to the approval of such action or matter, with no appeal, challenge or referendum having been filed, or if an appeal, challenge or referendum has been filed, such appeal, challenge or referendum has been finally resolved in a manner acceptable to Buyer in its sole and absolute discretion.

1.22 **"First Deposit"** means a Cash deposit in an amount equal to Fifty Thousand Dollars (\$50,000) made by Buyer in accordance with the terms of **Section 2.3.1**, including any interest earned thereon.

1.23 **"Force Majeure"** means events beyond Buyer's reasonable control, including but not limited to acts of God, war, riot, civil disobedience or disturbance, weather, impracticality, accident, strike or other labor disputes, delays of suppliers, contractors or carriers, fire, flood or casualty, governmental or judicial actions, governmental shut downs and/or delays, quarantine and/or other disease control measures related to a public health crisis, and shortages of material, components, fuel, labor or facilities.

1.24 **"General Assignment"** means a General Assignment in the form attached hereto as **Exhibit C**, which is to be executed by Seller and Buyer and delivered to Buyer upon and concurrently with the Close of Escrow.

1.25 **"Governmental Agency(ies)"** means any local, city, county, state and/or federal governmental or quasi-governmental agencies, authorities or regulatory bodies administrative agencies, community facilities districts or other districts, and any public or private utility companies having jurisdiction over the Property.

1.26 **"Grant Deed"** means a Grant Deed in the form attached hereto as **Exhibit B** conveying the Property to Buyer.

1.27 **"Hazardous Materials"** means any hazardous or toxic material, substance, irritant, chemical or waste, which is (a) defined, classified, designated, listed or otherwise considered under any Hazardous Materials Law as a "hazardous waste," "hazardous substance," "hazardous material," "extremely hazardous waste," "acutely hazardous waste," "radioactive waste," "biohazardous waste," "pollutant," "toxic pollutant," "contaminant," "restricted hazardous waste," "infectious waste," "toxic substance," or any other term or expression intended to define, list, regulate or classify substances by reason of properties harmful to health, safety or the indoor or outdoor environment, (b) toxic, ignitable, corrosive, reactive, explosive, flammable, infectious, radioactive, carcinogenic or mutagenic, and which is or becomes regulated by any Governmental Agency, (c) asbestos and asbestos containing materials, (d) an oil, petroleum, petroleum based product or petroleum additive, derived substance or breakdown product, (e) urea formaldehyde foam insulation, (f) polychlorinated biphenyls (PCBs), (g) freon and other

chlorofluorocarbons, (h) any drilling fluids, produced waters and other wastes associated with the exploration, development or production of crude oil, natural gas or geothermal resources, (i) lead-based paint and (j) mold, rot, fungi and bacterial matter and includes the following substances to the extent such substances would constitute a hazardous substance under the applicable law as of the Effective Date, including: (i) the substances included within the definitions of the terms "hazardous substance" or "hazardous material" under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, and regulations promulgated thereunder, as amended, (ii) the substances included within the definitions of the terms "hazardous substance" or "hazardous material" under the California Carpenter-Presley-Tanner Hazardous Substance Account Act, California HEALTH & SAFETY CODE § 25300 *et seq.*, and regulations promulgated thereunder, as amended, (iii) the substances included within the definitions of the terms "hazardous substance" or "hazardous waste" under the Hazardous Materials Release Response Plans and Inventory Act, California HEALTH & SAFETY CODE § 25500 *et seq.*, and regulations promulgated thereunder, as amended, (iv) any waste listed as or meeting the identified characteristics of a "hazardous waste" under the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder, as amended, and (v) any waste meeting the identified characteristics of "hazardous waste", "extremely hazardous waste", or "restricted hazardous waste" under the California Hazardous Waste Control Law, California HEALTH & SAFETY CODE § 25100 *et seq.*, and regulations promulgated thereunder, as amended.

1.28 **"Including"** and any similar term means "including, without limitation."

1.29 **"Land Bank Entity"** means a land bank entity or other entity that facilitates the acquisition, development or disposition of all or a portion of the Property, or a joint venture in which Buyer or an Affiliate of Buyer is a member.

1.30 **"Opening of Escrow"** means the date Escrow Holder executes the consent of Escrow Holder which consent shall be executed by Escrow Holder within two (2) Business Days after delivery of this Agreement to Escrow Holder by the parties.

1.31 **"Permitted Deadline/Closing Day"** means a Tuesday, Wednesday or Thursday which is a Business Day.

1.32 **"Permitted Exceptions"** has the meaning set forth in **Section 3.4**.

1.33 **"Property Documents"** means the documents and information described in **Section 3.2**.

1.34 **"Purchase Price"** means the Purchase Price for the Property calculated pursuant to **Section 2.2**.

1.35 **"Residential Lot(s)"** means a single family residential lot within the Property upon which Buyer intends to construct a residential dwelling unit.

1.36 **"Second Deposit"** means a Cash deposit in an amount equal to One Hundred Thousand Dollars (\$100,000) made by Buyer in accordance with the terms of **Section 2.3.2**, including any interest earned thereon.

1.37 **"Seller Parties"** means the past, present and future officers, directors, partners, members, shareholders, employees, agents, representatives and Affiliates of Seller, and their respective successors and assigns.

1.38 **"Title Company"** means First American Title Company.

1.39 **"Title Policy"** means the Title Company's standard coverage form of ALTA Owner's Policy of title insurance in favor of Buyer insuring Buyer as the fee owner of the Property in the amount of the Purchase Price, subject only to the Permitted Exceptions.

## **ARTICLE 2**

### **AGREEMENT OF PURCHASE AND SALE**

2.1 **Sale of Property.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller all of Seller's right, title and interest in and to the Property, pursuant to the terms and conditions set forth in this Agreement.

2.2 **Purchase Price.** The Purchase Price for the Property shall be an amount equal to Three Million Eight Hundred Seventy Thousand Dollars (\$3,870,000).

2.3 **Deposit.**

2.3.1 **First Deposit.** Within three (3) Business Days after the Opening of Escrow, Buyer shall deliver to Escrow Holder the First Deposit. If Buyer delivers the Notice of Suitability pursuant to **Section 3.1**, the First Deposit shall be non-refundable to Buyer and shall remain in Escrow until the Closing, except as otherwise provided herein. If Escrow closes for the Property, the First Deposit shall be applicable to the Purchase Price for the Property. If Buyer fails to deliver the First Deposit as and when required, Buyer shall not be deemed in default, but this Agreement shall automatically terminate, and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement.

2.3.2 **Second Deposit.** Within three (3) Business Days after the delivery of the Notice of Suitability, Buyer shall deliver to Escrow Holder the Second Deposit, which along with the First Deposit shall be non-refundable to Buyer and shall remain in Escrow until the Closing, except as otherwise provided herein. If Escrow closes for the Property, the Second Deposit shall be applicable to the Purchase Price for the Property.

2.4 **Balance of Purchase Price.** On or before the Closing Date, Buyer shall deposit into Escrow an amount equal to the Purchase Price less the amount of the Deposit.

2.5 **Independent Consideration.** A portion of the First Deposit in the amount of Five Thousand Dollars (\$5,000) shall be paid to Seller as consideration for having entered into this Agreement ("**Independent Consideration**"). The Independent Consideration shall be non-refundable to Buyer as independent consideration for the rights and options extended to Buyer under this Agreement, including, without limitation, the right and options to terminate the Agreement as provided herein. The Independent Consideration shall be released to Seller immediately following Buyer's deposit of such funds into Escrow. The Independent Consideration is non-refundable under all circumstances, except in the event of a default by Seller, and is applicable to the Purchase Price.

## **ARTICLE 3**

### **DUE DILIGENCE PERIOD AND REVIEW OF TITLE**

3.1 **Due Diligence Period.** During the Due Diligence Period, Buyer shall investigate and approve all matters relevant to its ownership, use, occupancy, maintenance, enjoyment, entitlement, development, construction, marketing, leasing and sale of the Property. Such investigations shall include, subject to the provisions of this **ARTICLE 3**, an investigation and review of all matters that Buyer deems relevant to its proposed acquisition of the Property, including:

- (a) the status of title, as set forth in **Section 3.4**;
- (b) the physical condition of the Property, including applicable geologic, environmental, physical and seismic conditions and all other aspects regarding the condition of the Property and any work performed by Seller;

(c) the condition and adequacy of any existing improvements on and to the Property, including any construction or design defects that may exist, and the need for additional improvements to complete the development, construction, marketing, leasing and sale of the Property;

(d) the status of any existing entitlements, permits or approvals for the Property and the need for additional entitlements, approvals and permits;

(e) the permit and approval status of the Property;

(f) the economic feasibility of owning and/or marketing the Property for residential purposes or another use;

(g) applicable laws and ordinances;

(h) the results of any reports and studies commissioned by Buyer;

(i) the content of the Property Documents;

(j) the value or use of the Property;

(k) any owners associations and any assessments thereof;

(l) any assessment districts and any special taxes or assessments thereof;

(m) the existence of any Hazardous Materials or any threatened or endangered species or archeological artifacts; and

(n) the imposition or increase of any fees, exactions or conditions of approval by any Governmental Agency.

In the event a Phase I environmental assessment of the Property recommends a Phase II environmental assessment or further investigations and/or reports as Buyer may require due to the recommendation and conclusion obtained in Buyer's Phase I environmental assessment or other environmental reports, Buyer may, by written request, extend the Due Diligence Period for the period of time necessary for Buyer to obtain such additional assessments, investigations or reports not to exceed an additional forty-five (45) days.

Buyer shall have the right to satisfy itself regarding the suitability of the Property at its sole and absolute discretion. Prior to expiration of the Due Diligence Period, Buyer may deliver a notice of its approval ("**Notice of Suitability**") of its due diligence investigations. Notwithstanding anything contained herein to the contrary, **the Notice of Suitability, if delivered by Buyer explicitly named in this Agreement or an Affiliate of said Buyer, shall not be effective unless such Notice of Suitability shall have been signed by any one of Donald R. Horton, David V. Auld, Michael J. Murray, Bill W. Wheat, or J. Matt Farris.** If (1) Buyer fails to send Seller the Notice of Suitability on or before the last day of the Due Diligence Period and such failure continues for a period of three (3) Business Days after written notice from Seller, or (2) if Buyer sends to Seller a notice terminating this Agreement prior to Buyer's delivery of a Notice of Suitability, this Agreement shall automatically terminate, the Deposit, together with all interest thereon, will be returned to Buyer and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement.

**3.2 Property Documents.** To the extent in Seller's possession, all documents related to the Property shall be delivered to Buyer electronically (e.g., via flash drive or sharefile) within five (5) Business Days after the Effective Date and (to the extent applicable and within Seller's possession) Seller shall also provide access to or copies of all documents and information regarding (i) all tax bills and notices of appraised value relating to the Property, including, without limitation, real property, personal property, and

special assessment notices and property valuation statements for the current year and the prior years of Seller's ownership; (ii) the soils and geological condition of the Property, including, without limitation, all engineering and soil tests and reports, hydrology studies, and hydraulic analyses; (iii) the availability and status of utilities, including, without limitation, water or other utility contracts or will-serve letters; (iv) preliminary plans or maps, including, without limitation, all permits, zoning approvals, minutes of hearings, correspondence, instructions, improvement agreements, conditions of approval; (v) environmental issues (including, without limitation, any Phase I assessments); (vi) any prior land or title surveys, topographical surveys, and other surveys; (vii) status of title; and (viii) all improvements for the Property (collectively, "**Property Documents**"). Seller makes no representation whatsoever about the content, accuracy, completeness or value of any of Property Documents. All Property Documents will be provided to Buyer without warranty from Seller regarding the accuracy or completeness of the information contained therein, and such documents may or may not be assignable to Buyer. The delivery of such reports and studies shall be subject to the proprietary rights of any engineer or other consultant preparing the same and any limitations on use imposed by them. Buyer assumes all risk of reviewing and understanding any and all information contained in Property Documents. Buyer acknowledges the delivery of such Property Documents is without any representation or warranty from Seller, and, thus, Seller shall have no liability, and is hereby released from any liability, to Buyer its successors and/or assigns, with respect to the Property Documents, including, without limitation any liability for misrepresentations, misstatements, mistakes, errors or other inaccuracies contained in the Property Documents.

### 3.3 **Due Diligence Investigations.**

3.3.1 **Right of Access.** Buyer and the Buyer Parties shall have the right of access to the Property from and after the Effective Date of this Agreement and during the term of the Escrow for the purpose of conducting due diligence investigations, and Buyer shall have the right to conduct tests of the soils and obtain core samples. Buyer shall, in all activities undertaken pursuant to this **Section 3.3.1**, comply with and cause the Buyer Parties to comply with all federal, state and local laws, statutes, orders, codes, ordinances, rules, regulations, plans, policies and decrees. Except as provided below, Buyer agrees to indemnify, protect, defend and hold Seller harmless from and against any and all Claims to the extent directly caused by the acts of Buyer or any of the Buyer Parties in connection with the performance of any investigation or other activities upon the Property contemplated herein; provided, however, that the foregoing obligations to indemnify, protect, defend and hold Seller harmless shall not extend to any Claim to the extent arising out of (i) the acts or omissions of Seller, any of the Seller Parties, or Seller's consultants, contractors, subcontractors, tenants or invitees, (ii) any diminution in value in the Property arising from or relating to matters discovered by Buyer or any of the Buyer Parties during Buyer's investigation of the Property; (iii) any defects in the Property discovered by Buyer or any of the Buyer Parties; (iv) the existence of any Hazardous Materials discovered (but not deposited) on or under the Property by Buyer or any of the Buyer Parties; and (v) any government action which results from such tests, studies or reports. Buyer's indemnity obligations under this **Section 3.3.1** shall survive Buyer's termination of this Agreement. Buyer agrees to pay promptly all costs associated with its investigations of the Property and to not permit any lien or encumbrance to be asserted against the Property because of Buyer's activities.

3.3.2 **Insurance.** Prior to any entry onto the Property contemplated by this **Section 3.3**, Buyer and/or any of the Buyer Parties shall secure and maintain, at no expense to Seller, a commercial general liability insurance policy the combined single limit not less than \$1,000,000.00 per occurrence and general aggregate limit of not less than \$3,000,000.00 for bodily injury and property damage, covering all Claims which may arise out of or from Buyer's actions during Buyer's due diligence investigations. Such insurance policies shall name Seller as an additional insured, and Buyer shall promptly notify Seller upon receiving any notice of termination with respect to such policy.

3.3.3 **Restoration.** Should Buyer's right to purchase the Property terminate, Buyer shall, at its expense, restore any damage to the Property or such portion thereof directly caused by the conduct of any such investigations so as to restore the Property (or such portion thereof) to a condition as close as possible to the same condition in which it was prior to Buyer's entry onto the Property. In case Buyer shall fail to restore the Property (or such portion thereof) to its prior condition within ten (10) Business Days after written notice from Seller, Seller may proceed with such restoration work at the expense of Buyer. Costs

and expenses so incurred by Seller shall be reimbursed by Buyer within thirty (30) days of written demand therefor.

3.4 **Title Commitment.** Within five (5) Business Days after the Opening of Escrow, Seller shall cooperate with Buyer to cause the Title Company to furnish to Buyer a title commitment ("**Title Commitment**") for issuance of an ALTA Extended Owner's Policy of Title Insurance covering all of the Property to be purchased by this Agreement in an amount equal to the Purchase Price, issued by the Title Company together with certified copies of all instruments reflected as exceptions therein, including, but not limited to, any easements, restrictions, reservations, terms, covenants, or conditions which may be applicable to or enforceable against any of the Property. The Title Commitment will show Seller to be owner of fee simple title and will contain the "standard printed exceptions." Within ten (10) days after receipt of the Title Commitment ("**Title Review Period**"), Buyer shall notify Seller in writing of Buyer's disapproval of any exception shown on the Title Commitment ("**Disapproved Exception**"). Any mortgage, deed of trust, mechanic's lien, delinquent tax lien, judgment lien or other monetary lien shown on the Title Commitment, if any, shall be removed by Seller at its expense before or at the Closing ("**Monetary Liens**"). Any exception not approved by Buyer in writing within the Title Review Period shall be deemed a Disapproved Exception. Only exceptions accepted by Buyer or to which Buyer waives its objection by written notice shall be deemed accepted by Buyer ("**Permitted Exceptions**"). Within five (5) Business Days after receiving timely notice of any Disapproved Exception from Buyer, Seller shall deliver written notice to Buyer specifying whether Seller will remove the Disapproved Exception from the Title Commitment, except that Seller shall be required to remove all Monetary Liens as provided above. If Seller does not agree to remove any Disapproved Exception or fails to deliver such notice to Buyer, then Buyer may (i) waive Buyer's prior disapproval and proceed to close Escrow, or (ii) terminate this Agreement, in which event Escrow Holder shall cancel the Escrow and promptly return the Deposit to Buyer and all other documents and funds to the depositing party, and except as otherwise specified in this Agreement, the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement. Possession shall be delivered at Closing free and clear of all matters, except the Permitted Exceptions. Seller shall not cause or permit any new exceptions to be recorded with respect to the Property that are not reflected in the Title Commitment unless approved by Buyer in writing. Seller agrees to provide such affidavits and other documents as the Title Company may require to delete all exceptions for rights of possession or for mechanic's liens from the Title Policy.

#### **ARTICLE 4** **CLOSING CONDITIONS**

4.1 **Buyer Conditions.** Buyer's obligation to proceed to Closing shall be conditioned and contingent upon the satisfaction or written waiver by Buyer, not later than the Closing Date, of each of the following conditions (collectively, "**Buyer Conditions**"):

4.1.1 **Title Policy.** The Title Company issuing the Title Policy to Buyer.

4.1.2 **Notice of Suitability.** Buyer's delivery of the Notice of Suitability pursuant to

#### **Section 3.1.**

4.1.3 **No Change.** From delivery of the Notice of the Suitability to the Close of Escrow, there shall have been no material adverse changes in the condition, status or fitness of any portion of the Property for Buyer's intended use or in the facts or circumstances concerning the Property.

4.1.4 **Hazardous Materials.** As of the Close of Escrow, there shall be no known Hazardous Materials brought onto the Property by Seller which would prevent the development of the Property.

4.1.5 **Litigation.** As of the Close of Escrow, there shall be no litigation pending or threatened relating to or affecting the Property or the performance of this Agreement.

4.1.6 **No Moratorium, Etc.** As of the Close of Escrow, there shall be no moratorium, prohibition or any other measure, rule, regulation or restriction, including without limitation, any moratorium on the provision of or hook-up to public utilities, which was not in force as of the date of this Agreement and whose effect would be to preclude any inspections, or the issuance of any building or other permits, or construction, sale and occupancy of single family homes as contemplated by Buyer on any portion of the Property.

4.1.7 **Environmental Condition.** As of the Close of Escrow, there shall be no recognized environmental hazards on any portion of the Property and the Property shall be in compliance, in all material respects, with the Phase I site assessment completed for the Property by Buyer.

4.1.8 **Possession of the Property.** Seller delivering possession of the Property free of parties in possession, including, without limitation, any lessees, tenants at sufferance, or trespassers.

4.1.9 **Seller's Representations and Warranties.** All of Seller's representations and warranties as set forth in this Agreement shall be true and correct as of the Closing.

4.1.10 **Seller's Deliveries and Performance.** Seller shall have deposited with Escrow all of Seller's Deliveries as required by the terms of this Agreement, and Seller shall not be in default in performing Seller's obligations under this Agreement.

4.1.11 **General Plan Amendment.** Seller shall, at Seller's cost and expense, have obtained Final Approval of an amendment to the General Plan for the City of Coachella allowing the Property to be used for Buyer's contemplated use.

4.1.12 **Surplus Land Act Compliance.** Buyer shall have approved any affordability covenant or other similar restriction on the Property imposed by the Department of Housing and Community Development pursuant to the Surplus Land Act. Within five (5) business days of a determination by the Department of Housing and Community Development, the parties shall meet and confer to address any restrictions imposed and solutions to ensure compliance with the Surplus Land Act.

Upon the failure of any of the above Buyer Conditions, prior to the Closing, and except as otherwise set forth above, Buyer may, in Buyer's sole discretion, either (1) waive any such failed Buyer Condition in writing and proceed with the transaction, (2) extend the Closing Date until ten (10) Business Days after such failed Buyer Condition is satisfied (but in no event beyond nine (9) months after the Opening of Escrow ("**Outside Buyer Condition Satisfaction Date**")) and thereafter proceed with the transaction, or (3) terminate this Agreement by written notification to Seller at any time prior to the Closing. If Buyer extends the Closing Date pursuant to clause (2) above and any failed Buyer Condition remains unsatisfied by the Outside Buyer Condition Satisfaction Date, then Buyer shall have the right to proceed under either option in clause (1) or (3) above. If Buyer terminates this Agreement pursuant to clause (3) above, then the Deposit and any other sums deposited by Buyer, and all accrued interest thereon, shall be immediately refunded to Buyer, and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement. If the failure of any of the above Buyer Conditions is due to Seller's material breach or default, then Buyer shall also have the rights and remedies set forth in **Section 13.2**.

4.2 **Seller Conditions.** Seller's obligations hereunder, including, but not limited to, its obligation to consummate the purchase transaction provided for herein, are subject to the satisfaction of each of the following conditions (collectively, "**Seller Conditions**"), each of which is for the sole benefit of Seller and may be waived by Seller in writing in Seller's sole and absolute discretion:

4.2.1 **Buyer's Representations and Warranties.** All of Buyer's representations and warranties as set forth in this Agreement shall be true and correct in all material respects at the time as of which the same is made and as of the Close of Escrow.

4.2.2 **Buyer's Deliveries and Performance.** Buyer shall have deposited with Escrow all of Buyer's Deliveries as required by the terms of this Agreement, and Buyer shall not be in default in performing Buyer's obligations under this Agreement.

4.2.3 **Surplus Land Act Compliance.** In the reasonable opinion of Seller's counsel, this Agreement's compliance with the Surplus Land Act and any applicable requirements imposed by the Department of Housing and Community Development. If, in the reasonable opinion of Seller's counsel Seller's conveyance of the Property would violate the Surplus Land Act, the parties shall meet and confer to address the cause of such potential non-compliance and to address potential alternatives.

4.2.4 **Quimby Act Compliance.** In the reasonable opinion of Seller's counsel, this Agreement's compliance with the Quimby Act, it being understood that Seller shall have no obligation to proceed to Closing if the transfer of the Property would cause Seller to incur liability under the Quimby Act.

Upon the failure of any of the above Seller Conditions, prior to the Closing, and except as otherwise set forth above, Seller may, in Seller's sole discretion, either (1) waive any such failed Seller Condition in writing and proceed with the transaction, (2) extend the Closing Date until ten (10) Business Days after such failed Seller Condition is satisfied (but in no event beyond nine (9) months after the Opening of Escrow ("**Outside Seller Condition Satisfaction Date**")) and thereafter proceed with the transaction, or (3) terminate this Agreement by written notification to Buyer at any time prior to the Closing. If Seller extends the Closing Date pursuant to clause (2) above and any failed Seller Condition remains unsatisfied by the Outside Seller Condition Satisfaction Date, then Seller shall have the right to proceed under either option in clause (1) or (3) above. If Seller terminates this Agreement pursuant to clause (3) above, then the Deposit and any other sums deposited by Buyer, and all accrued interest thereon, shall be immediately refunded to Buyer, and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement. If the failure of any of the above Seller Conditions is due to Buyer's material breach or default, then Seller shall also have the rights and remedies set forth in **Section 13.1**.

## **ARTICLE 5**

### **COVENANTS AND AGREEMENTS**

5.1 **Cooperation.** Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to herein to complete the acquisition of the Property. Both Buyer and Seller hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary to complete this transaction in accordance with the intent of the parties as evidenced in this Agreement, provided that neither party will be required to incur any additional liability or cost.

5.2 **Return of Property Documents and Other Documents.** If this Agreement is terminated after Buyer's delivery of the Notice of Suitability for any reason other than solely due to a breach or default by Seller, then Buyer shall immediately, at no cost to Seller, return to Seller, within five (5) Business Days after the date of termination of this Agreement, all of the Property Documents and provide to Seller copies of the Buyer's Materials; provided that Buyer may retain such portions of the Property Documents as may be required by Legal Process (as defined below) or as part of Buyer's computer back up procedures. With respect to any of the Buyer's Materials provided to Seller, Seller acknowledges and agrees that (i) Buyer makes no covenant, representation or warranty whatsoever as to the Buyer's Materials, including, without limitation, its content, reliability, accuracy or completeness, (ii) if Seller uses or relies on any of the Buyer's Materials, Seller shall do so solely at Seller's own risk, and Buyer makes no representation, warranty or assurance as to whether Seller has any right to use or rely thereon, (iii) the parties preparing any of the Buyer's Materials are not the agents of Buyer, (iv) Buyer shall have no duty to advise Seller of any misrepresentations, misstatements, mistakes, errors or other inaccuracies contained in the Buyer's Materials, and (v) Buyer shall have no liability, and is hereby released from all liability, to Seller, its successors and/or assigns, with respect to the Buyer's Materials, including, without limitation any liability for misrepresentations, misstatements, mistakes, errors or other inaccuracies contained in the Buyer's Materials. Following Buyer's delivery of the Buyer's Materials, Seller shall indemnify, defend, protect and

hold Buyer harmless from any and all Claims arising out of any use of the Buyer's Materials by Seller or anyone obtaining any of the Buyer's Materials, directly or indirectly, from or through Seller. The delivery of the Buyer's Materials shall be subject to the proprietary rights of any engineer or other consultant preparing the same and any limitations on use imposed by them. For purposes of this Agreement, "**Legal Process**" means any law, regulation, the rules of any stock exchange or market, order, subpoena or similar requirement.

5.3 **Natural Hazards Disclosures.** The term "**Natural Hazard Area**" means those areas identified as natural hazards in the Natural Hazard Disclosure Act, California GOVERNMENT CODE §§ 8589.3, 8589.4, and 51183.5, and California PUBLIC RESOURCES CODE §§ 2621.9, 2694, and 4136, and any successor statutes or laws ("**Act**"). Seller will cause a third-party service to provide Buyer with a Natural Hazard Disclosure Statement ("**Disclosure Statement**") in a form required by the Act. Buyer acknowledges and agrees that nothing contained in the Disclosure Statement shall release Buyer from its obligation to fully investigate the condition of the Property, including whether the Property is in any Natural Hazard Area. Buyer further acknowledges and agrees that the matters set forth in the Disclosure Statement may change on or prior to the Closing and that Seller has no obligation to update, modify or supplement the Disclosure Statement. Buyer shall be solely responsible for preparing and delivering its own Natural Hazard Disclosure Statement to subsequent prospective buyers of the Property.

## **ARTICLE 6** **AS-IS PURCHASE AND RELEASE**

6.1 **AS-IS Purchase** Except for Seller's express representations and warranties set forth in this Agreement and any other document executed by Seller in connection with this transaction and Seller's covenants, in entering into this Agreement, Buyer is relying, and will rely, solely upon its own inspection, investigation and analyses of the Property including without limitation the title condition of the Property and is not relying in any way upon any representations, statements, agreements, warranties, studies, reports, descriptions, guidelines or other information or material furnished by Seller or its representatives, whether oral or written, express or implied, of any nature whatsoever regarding any such matters.

Except for Seller's representations and warranties set forth in in this Agreement and any other document executed by Seller in connection with this transaction and Seller's express covenants in this Agreement, Buyer will acquire the Property, if at all, "AS IS" "WHERE IS," in its condition existing at the Close of Escrow, and without representation or warranty by Seller or its representatives as to any matter, whether or not expressly mentioned herein, including, without limitation, including (without limitation) the feasibility of developing the Property for the purposes intended by Buyer, the size and dimensions of the Property, the availability, costs and adequacy of water, sewage and any utilities serving or required to serve the Property; the presence and adequacy of current or required infrastructure or other improvements on, near or affecting the Property ; any surface, soil, subsoil, fill or other physical conditions of or affecting the Property such as climate, geological, drainage, air, water, or mineral conditions; the condition of title to the Property; the existence of governmental laws, statutes, rules, regulations, ordinances, limitations, restrictions or requirements concerning the use, density, location or suitability of the Property for any existing or proposed development thereof including but not limited to zoning, building, subdivision, environmental, or other such regulations; the necessity or availability of any general or specific plan amendments, rezoning, zoning variances, conditional use permits, building permits, environmental impact reports, parcel or subdivision maps and public reports, and requirements of any improvement agreements; requirements of the California Department of Real Estate, the California Subdivided Lands Act, the California Subdivision Map Act, Buyer's post-Closing obligations under the Quimby Act, Surplus Land Act compliance, and other governmental permits approvals or acts; the necessity or existence of any dedications, taxes, fees, charges, costs or assessments which may be imposed in connection with any governmental regulations or the obtaining of any required governmental permits; the presence of endangered plant or animal species upon the Property; and all of the matters concerning the condition, use, development or sale of the Property. No patent or latent condition affecting the Property in any way, whether known or discoverable or hereafter discovered, shall affect Buyer's obligations contained in this

Agreement, or shall give rise to any cause of action whether for damages, rescission or otherwise against Seller or the Seller Parties.

If, notwithstanding the nonsatisfaction of any condition set forth herein, the Closing occurs, there shall be no liability on the part of the Seller for breaches of representations and warranties or for any other matter or claim of which Buyer had actual knowledge prior to the Closing. Buyer shall be deemed to have knowledge of all matters disclosed in (a) the Property Documents that are actually delivered by Seller to Buyer, (b) official notices sent from Seller to Buyer following the Effective Date, and (c) all other final studies and reports prepared by or on behalf of Buyer.

**6.2 RELEASE** Subject to and effective upon the Closing, to the maximum extent permitted by law, Seller and the other Seller Parties shall not be liable for any Claims arising from, caused by or relating to the development of the Property and the construction or sale or other conveyance of residences or other improvements thereon by Buyer (collectively, "**Released Matters**"). Furthermore, as a material part of the consideration of this Agreement, subject to and effective as of the Close of Escrow, Buyer waives on its behalf all Claims against Seller and the other Seller Parties to the extent arising out of the Released Matters. The foregoing waiver shall apply to any Claim brought by a private party or by a Governmental Agency under any statute or common law now or hereinafter in effect and is intended to apply with respect to any Claim arising before or after the construction and sale of any improvements on the Property. Notwithstanding the foregoing, such release and waiver shall not include any Claims incurred by Buyer arising out of (i) a breach by Seller of any covenant, representation, warranty or obligation set forth in this Agreement or in any other document executed by Seller in connection with this transaction, (ii) the fraud or willful misconduct of Seller, (iii) any personal injury or tort claims brought by any third party arising or occurring prior to the Closing, provided such personal injury or tort does not arise from and is not caused by the actions or omissions of Buyer or any of the Buyer Parties, (iv) any matters relating to Hazardous Materials existing on or under the Property prior to the Closing, except to the extent caused by Buyer or any of the Buyer Parties, or (v) any acts of Seller or the Seller Parties occurring after the Closing. Notwithstanding the foregoing, Buyer is not releasing any Claims it may have against any third-party consultant, contractor or subcontractor.

BUYER ACKNOWLEDGES THAT IT IS FAMILIAR WITH CALIFORNIA CIVIL CODE § 1542 AND HEREBY WAIVES AND RELINQUISHES ANY RIGHTS AND BENEFITS WHICH IT MAY HAVE UNDER CALIFORNIA CIVIL CODE § 1542, WHICH SECTION 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."

  
 BUYER'S INITIALS

**6.3 Survival** All provisions of this **ARTICLE 6** shall survive the Close of Escrow or any termination of this Agreement and shall not be merged with the Grant Deed or any other closing document.

## **ARTICLE 7**

### **NOTICE AND RIGHT TO CURE**

Unless otherwise specified herein, each party shall be entitled to written notice of any default and shall have thirty (30) days from receipt of such notice to cure such default prior to the exercise of any remedy provided herein, except with respect to **Sections 2.4** and **9.2.1(a)** for which the cure period shall

be five (5) Business Days after receipt of such notice in the event Buyer fails to deliver the balance of the Purchase Price by the Closing Date as required under **Sections 2.4** and **9.2.1(a)**. The parties agree to reasonably cooperate with each other in any and all attempts by each other to cure any default within any applicable default cure period.

## **ARTICLE 8**

### **REPRESENTATIONS AND WARRANTIES**

8.1 **Representations and Warranties of Seller** Seller hereby represents, warrants and covenants the following to Buyer for the purpose of inducing Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof and as of the Closing Date:

(a) Seller has the power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of Seller have the power, right and authority to bind Seller.

(b) All requisite action has been taken by Seller and all requisite consents have been obtained in connection with Seller's execution, delivery and performance of this Agreement and the instruments and documents referenced herein, and the consummation of the transaction contemplated hereby, and no consent of any other party is required.

(c) Subject to the approval of the City Council pursuant to **Section 15.21**, below, this Agreement is, and all agreements, instruments and documents to be executed by Seller pursuant to this Agreement shall be, duly executed by Seller and are, or shall be, valid and legally binding upon Seller and enforceable in accordance with their respective terms subject to the effect of applicable bankruptcy, insolvency, reorganization or other similar laws affecting the rights of creditors generally.

(d) Seller is not a party to any leases of any portion of the Property.

(e) Seller has not granted to any party other than Buyer any option, contract or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

(f) Seller is not a "foreign person," as defined in recent amendments to the Internal Revenue Code and, at or prior to the Closing contemplated under this Agreement, agrees to provide to Buyer an affidavit to that effect.

(g) There are no representations, agreements, arrangements, or circumstances, oral or written, between the parties relating to the subject matter contained in this Agreement that are not fully expressed in the Agreement, and Seller has not made and does not make any representation or warranty concerning any matter or thing affecting or relating to the Property, including but not limited to its fitness for a particular use, its physical condition or any other matter.

As used in this Agreement, the term "**Seller's knowledge**" or any other similar term means the current, actual knowledge of William Pattison and Luis Lopez without investigation or inquiry or duty of investigation or inquiry. Seller represents and warrants that William Pattison and Luis Lopez are the representatives of Seller with the most knowledge of the Property and the subject matter of Seller's representations and warranties set forth in this Agreement. All representations and warranties of Seller in this Agreement shall survive the Closing for a period of twelve (12) months.

## 8.2 **Representations and Warranties of Buyer.**

(a) Buyer warrants and represents that it is duly formed, validly existing and in good standing in its state of formation; and is registered to transact business and is in good standing in the state in which the Property is located. Buyer has the power, right and authority to enter into this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. Subject to Buyer's Corporate Approval as set forth in **Section 15.20**, the individuals executing this Agreement and the instruments referenced herein on behalf of Buyer have the power, right and authority to bind Buyer.

(b) Buyer warrants that Buyer is a sophisticated owner and buyer of real property, familiar and experienced with requirements for the development of real property. Buyer has examined the Property or will have done so by Closing, is or will be familiar with its physical condition, and accepts the Property in an "AS-IS" condition.

(c) Buyer has conducted or will conduct an independent investigation with respect to zoning and subdivision laws, ordinances, resolutions, and regulations of all governmental authorities having jurisdiction over the Property, and the use and improvement of the Property and is, or at Closing will be, satisfied with the results of such investigation.

(d) Subject to **Section 6.1**, the Property is being sold "AS-IS" and with all faults.

All representations and warranties of Buyer in this Agreement shall survive the Closing for a period of twelve (12) months.

## **ARTICLE 9** **THE CLOSING**

9.1 **Closing Date.** The Closing shall take place in the offices of the Title Company. Notwithstanding any other provision herein, the Closing under this Agreement must occur on a Permitted Deadline/Closing Day, and if the scheduled Closing Date would otherwise occur on a day that is not a Permitted Deadline/Closing Day, then the Closing Date shall be extended automatically to the next day that is a Permitted Deadline/Closing Day.

## 9.2 **Deliveries to Escrow Holder.**

9.2.1 **Buyer's Deliveries.** Unless an earlier date for delivery is required under the terms of this Agreement, Buyer shall on or before the Closing Date, deliver to Escrow Holder each of the following items, executed and acknowledged as appropriate (collectively, "**Buyer's Deliveries**"):

(a) **Purchase Price.** Cash in an amount equal to the balance of the Purchase Price;

(b) **General Assignment.** One (1) counterpart copy of the General Assignment;

(c) **Prorations, Fees and Costs.** The amounts, if any, required of Buyer under **ARTICLE 10** and any other amounts required to be paid by Buyer prior to or on the Close of Escrow under this Agreement; and

(d) **Other Documents.** Other documents as may be reasonably required by Escrow Holder or the Title Company to effect the Close of Escrow and issue the Title Policy.

9.2.2 **Seller's Deliveries.** Unless an earlier date for delivery is required under the terms of this Agreement, Seller shall on or before the Closing Date, deliver to Escrow Holder each of the following items, executed and acknowledged as appropriate (collectively, "**Seller's Deliveries**"):

- (a) **Grant Deed.** One (1) original of the Grant Deed;
- (b) **General Assignment.** One (1) counterpart copy of the General Assignment;
- (c) **Certificate of Non-Foreign Status.** One (1) original of the Certificate of Non-Foreign Status;
- (d) **California Form 593.** One (1) original of the California Form 593;
- (e) **Prorations, Fees and Costs.** The amounts, if any, required of Seller under **ARTICLE 10** and any other amounts required to be paid by Seller prior to or on the Close of Escrow under this Agreement; and
- (f) **Other Documents.** Other documents as may be reasonably required by Escrow Holder or the Title Company to effect the Close of Escrow and issue the Title Policy.

9.3 **Dating Documents.** Escrow Holder shall date any of the documents deposited into Escrow under **Sections 9.2.1** and **9.2.2** as of the date of the Close of Escrow.

9.4 **Close of Escrow.** Escrow Holder shall close the Escrow on or before the Closing Date by (a) filing for record the Grant Deed and such other documents as may be necessary to procure the Title Policy and (b) delivering funds and documents as set forth in **ARTICLE 11** WHEN AND ONLY WHEN each of the conditions set forth below has been satisfied.

9.4.1 **Funds and Instruments.** All of Buyer's Deliveries and Seller's Deliveries required under **Sections 9.2.1** and **9.2.2**, respectively, have been delivered to Escrow Holder.

9.4.2 **Satisfaction of Conditions Precedent.** Escrow Holder has received written or telephone confirmation from Buyer that each of the Buyer Conditions set forth in **ARTICLE 4** has been, or upon the Close of Escrow shall be, satisfied.

9.5 **Recordation.** Escrow Holder shall record the Grant Deed and any other documents that the parties may mutually direct to be recorded pursuant to this Agreement.

## **ARTICLE 10**

### **PRORATION, FEES AND COSTS**

10.1 **Prorations.** The following items shall be prorated between Seller and Buyer at the Closing by increasing or decreasing, as the case may be, the funds to be delivered by Buyer at the Closing.

10.1.1 **Taxes and Assessments.** Real property taxes and assessments shall be prorated based upon the latest available tax information such that Seller shall be responsible for all such taxes and assessments levied against the Property to and including the day prior to the Close of Escrow, and Buyer shall be responsible for all such taxes and assessments levied against the Property on and after the Close of Escrow. Any real property taxes and assessments arising out of the sale of the Property, a subsequent sale or change in ownership thereafter and arising out of any construction pertaining to the Property following the Close of Escrow, shall be paid by Buyer when assessed.

10.1.2 **Operating Expenses.** All assessments of any homeowners associations and all utility service charges for electricity, water, and the like shall be prorated on an accrual basis. Seller shall

pay all such expenses that accrue prior to the Close of Escrow and Buyer shall pay all such expenses accruing on the Close of Escrow and thereafter. To the extent possible, Seller and Buyer shall obtain billings and meter readings as of the Close of Escrow to aid in such prorations.

10.2 **Thirty Day Month**. All prorations and/or adjustments called for in this Agreement are to be made based on a thirty (30) day month, unless otherwise specifically instructed in writing.

10.3 **Seller's Fees and Costs**. Seller will pay (a) the premiums for a CLTA Title Policy for the Property, (b) one-half of Escrow Holder's escrow fee, (c) Seller's own attorneys' fees and (d) usual Seller's document-drafting and recording charges.

10.4 **Buyer's Fees and Costs**. Buyer will pay (a) if Buyer has requested an ALTA Title Policy, the difference between the premiums of an CLTA Title Policy and an ALTA Title Policy, (b) the fee for any ALTA Survey obtained by Buyer, (c) any fee for any title endorsements requested by Buyer in connection with the Title Policy, (d) one-half of Escrow Holder's escrow fee, (e) Buyer's own attorneys' fees, (f) usual Buyer's document-drafting and recording charges; and (g) the County Documentary Transfer Tax in the amount Escrow Holder determines to be required by law.

10.5 **Other Fees and Costs**. All other fees and costs of Escrow shall be paid by the parties as is customary in the County.

## **ARTICLE 11 DISTRIBUTION OF FUNDS AND DOCUMENTS**

11.1 **Deposit of Funds and Interest**. All funds required to be delivered or paid hereunder shall be paid in Cash. All Cash, if any, while held hereunder by Escrow Holder shall be kept on deposit in an interest-bearing account reasonably acceptable to Buyer.

11.2 **Recorded Documents**. Escrow Holder will cause the County Recorder of the County to mail the Grant Deed (and each other document which is herein expressed to be, or by general usage is, recorded) after recordation, to the grantee, beneficiary or person (a) acquiring rights under said document or (b) for whose benefit said document was acquired.

11.3 **Other Documents**. No later than two (2) Business Days after the Closing, Escrow Holder shall combine any original counterparts of a document into fully executed originals and deliver (a) to Buyer, the original Certificate of Non-Foreign Status and the California Form 593 and (b) to Seller and Buyer, originals (or if applicable copies) of any other nonrecorded document deposited into Escrow at any time during the Escrow and to each party conformed copies of all recorded documents.

11.4 **Payment of Funds at Closing**. Escrow Holder will, at the Closing, wire (a) to Seller's account, or order, in accordance with instructions of Seller, or will hold for personal pickup, if requested, the Cash, plus any proration or other credits to which Seller will be entitled less any appropriate proration or other charges and (b) to Buyer, or order, any excess funds theretofore delivered to Escrow Holder by Buyer.

## **ARTICLE 12 ASSIGNABILITY**

12.1 **Assignment by Buyer**. Neither party shall assign to any person(s) any or all of that party's rights in this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that Buyer shall have the right without Seller's consent to assign all or a portion of this Agreement to (i) any Affiliate of Buyer, (ii) a partnership in which Buyer is one of the general partners, (iii) a successor by way of merger or consolidation or the acquisition of all or substantially all of Buyer's assets, (iv) an entity formed by Buyer for the purpose of acquiring title to all or a portion of the Property pursuant to the terms of this Agreement, or (v) a Land Bank Entity. Any permitted assignment may be

exercised only by written assignment executed by the assigning party and accepted in writing by the assignee (which must, in such written acceptance, obligate itself to perform the assignor's obligations under this Agreement), and delivered to Escrow Holder and the other party prior to the Close of Escrow. Any assignment of a party's rights made or attempted without such written assignment and acceptance shall be void. In the event of any assignment by Buyer, the assignee will be and become: (a) the grantee of the Grant Deed for the applicable portion of the Property; (b) the insured owner under the Title Policy for the applicable portion of the Property; and (c) the person(s) having the right or obligation to (1) deliver statements, (2) deliver documents, (3) give approvals, (4) waive conditions, or (5) make demands, all as may be permitted or required by this Agreement and not then already accomplished by Buyer or another approved assignee, and Buyer shall have no further liability for the obligations of "Buyer" hereunder, provided that such assignee expressly assumes all obligations of "Buyer" under this Agreement.

### **ARTICLE 13** **REMEDIES**

13.1 **Seller's Remedies.** If, after Buyer delivers the Notice of Suitability, Escrow fails to close solely as a result of Buyer's default of any term of this Agreement, which default continues after the expiration of any applicable notice and cure period specified in **ARTICLE 7**, and provided Seller is not in default of any of its obligations hereunder, Seller shall be entitled, as Seller's sole and exclusive remedy, to elect (i) without waiving any other remedies or rights, to waive the contractual obligations of Buyer in writing or extend the time for performance by such period of time as may be mutually agreed upon in writing by the parties hereto; or (ii) to terminate this Agreement and retain the Deposit then in Escrow as liquidated damages for such default and not as a penalty, and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement.

IF SELLER ELECTS THE REMEDY SET FORTH IN CLAUSE (ii) ABOVE, SELLER WILL BE DAMAGED AND WILL BE ENTITLED TO COMPENSATION FOR THOSE DAMAGES. SUCH DAMAGES WILL, HOWEVER, BE EXTREMELY DIFFICULT AND IMPRACTICAL TO ASCERTAIN FOR THE FOLLOWING REASONS: (A) THE DAMAGES TO WHICH SELLER WOULD BE ENTITLED IN A COURT OF LAW WILL BE BASED IN PART ON THE DIFFERENCE BETWEEN THE ACTUAL VALUE OF THE PROPERTY AT THE TIME SET FOR THE CLOSE OF ESCROW AND THE PURCHASE PRICE AS SET FORTH IN THIS AGREEMENT; (B) PROOF OF THE AMOUNT OF SUCH DAMAGES WILL BE BASED ON OPINIONS OF VALUE OF THE PROPERTY, WHICH CAN VARY IN SIGNIFICANT AMOUNTS; AND (C) IT IS IMPOSSIBLE TO PREDICT AS OF THE DATE ON WHICH THIS AGREEMENT IS MADE WHETHER THE VALUE OF THE PROPERTY WILL INCREASE OR DECREASE AS OF THE DATE SET FOR THE CLOSE OF ESCROW. THE PARTIES DESIRE TO LIMIT THE AMOUNT OF DAMAGES FOR WHICH BUYER MIGHT BE LIABLE SHOULD BUYER BREACH THIS AGREEMENT AND TO AVOID THE COSTS AND LENGTHY DELAYS WHICH WOULD RESULT IF SELLER FILED A LAWSUIT TO COLLECT ITS DAMAGES FOR A BREACH OF THIS AGREEMENT. THEREFORE, IF, AFTER BUYER DELIVERS THE NOTICE OF SUITABILITY, ESCROW FAILS TO CLOSE DUE SOLELY TO BUYER'S DEFAULT, THE DEPOSIT TOGETHER WITH ACCRUED INTEREST THEREON SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CIVIL CODE, AND SELLER'S SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF THE FAILURE TO CLOSE ESCROW RESULTING FROM BUYER'S DEFAULT SHALL BE LIMITED TO RECOVERING SUCH AMOUNT AS LIQUIDATED DAMAGES AND SELLER SHALL HAVE NO RIGHT TO RECOVER ANY ADDITIONAL DAMAGES OR TO PURSUE ACTION FOR SPECIFIC PERFORMANCE OF ANY PROVISIONS OF THIS AGREEMENT. IN CONSIDERATION OF THE PAYMENT OF LIQUIDATED DAMAGES, SELLER WILL BE DEEMED TO HAVE WAIVED ALL OTHER CLAIMS FOR DAMAGES OR RELIEF AT LAW OR IN EQUITY INCLUDING ANY RIGHTS SELLER MAY HAVE PURSUANT TO SECTION 1680 OR SECTION 3389 OF THE CALIFORNIA CIVIL CODE RELATING TO BUYER'S DEFAULT RESULTING IN ESCROW NOT CLOSING AS PROVIDED UNDER THIS AGREEMENT. BY INITIALING THIS PROVISION IN THE SPACES BELOW, SELLER AND BUYER EACH SPECIFICALLY AFFIRM THEIR RESPECTIVE AGREEMENTS CONTAINED IN THIS **SECTION 13.1** AND AGREE THAT SUCH SUMS ARE REASONABLE SUMS CONSIDERING THE FACTS AND CIRCUMSTANCES AS THEY EXIST ON THE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF HARM TO SELLER THAT COULD BE

ANTICIPATED, AND THE ANTICIPATION THAT PROOF OF CAUSATION, FORESEEABILITY AND ACTUAL DAMAGES WOULD BE COSTLY AND/OR IMPRACTICAL. BY INITIALING THIS PROVISION BELOW, THE PARTIES SPECIFICALLY CONFIRM THE ACCURACY OF SUCH FACTS, THE FACT THAT THEY POSSESS APPROXIMATELY EQUAL BARGAINING STRENGTH AND SOPHISTICATION AND THE FACT THAT EACH OF THEM WAS REPRESENTED BY COUNSEL WHEN ENTERING INTO THIS AGREEMENT, WHICH COUNSEL EXPLAINED THE CONSEQUENCES OF THIS SECTION TO THEM AT THE TIME THIS AGREEMENT WAS MADE.

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BUYER'S INITIALS

SELLER'S INITIALS

13.2 **Buyer's Remedies.** In the event Escrow fails to close solely as a result of Seller's default of any term of this Agreement, which default continues after the expiration of any applicable notice and cure period specified in **ARTICLE 7**, Buyer may elect, as the sole and exclusive remedy of Buyer, either: (i) to terminate this Agreement, receive the Deposit and all accrued interest thereon, plus reimbursement of documented out-of-pocket expenses incurred by Buyer in connection with its investigations of the Property, in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00); or (ii) to enforce specific performance of Seller's obligations, without adjustment to, or credit against, the Purchase Price; provided, however, that if the remedy of specific performance is not available due to Seller conveying or encumbering the Property, Buyer shall be entitled to seek any remedies available at law or in equity.

13.3 **Post-Closing Remedies.** In the event of a breach of any of Seller's representations and warranties expressly set forth in this Agreement or in any other document executed by Seller in connection with this transaction, except as otherwise limited under the terms of this Agreement, or a breach or default by Seller of any covenant which occurs or is to be performed by Seller subsequent to the Close of Escrow, Buyer shall be entitled to recover actual damages with respect to such breach or default. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Buyer be entitled to pursue a Claim against Seller for a breach of representation or warranty unless and until Buyer has incurred actual damages in excess of Fifty Thousand Dollars (\$50,000.00) and only then for damages in excess of such amount and in no event shall Seller be liable to Seller for amounts in excess of Two Hundred Fifty Thousand Dollars (\$250,000.00) (provided such cap shall not apply to Claims relating to Seller's fraud, intentional misrepresentation, or intentional misconduct).

13.4 **Force Majeure.** In the event of Force Majeure, neither party shall be in default under this Agreement and the time periods and deadlines for performance of a party's obligations hereunder shall be extended for the amount of time that such party is delayed as a result of such Force Majeure event. Notwithstanding anything to the contrary contained herein, if any such event of Force Majeure shall last longer than ninety (90) *consecutive* days, Buyer shall have the right, but not the obligation, to terminate this Agreement, in which event the Deposit (to the extent delivered) shall be fully refunded to Buyer, and the parties hereto shall have no further obligation to each other except for those obligations which expressly survive termination of this Agreement.

#### **ARTICLE 14** **CASUALTY OR CONDEMNATION PRIOR TO CLOSE OF ESCROW**

If any of the Property is taken by condemnation, or damaged and/or destroyed by fire or other casualty prior to the Closing, Seller shall promptly notify Buyer of such event and this Agreement shall nevertheless continue in full force and effect without reduction in the Purchase Price, and Seller shall, at Closing, assign to Buyer any and all rights under any of Seller's insurance policies that provide coverage for such casualty, and Buyer shall be entitled to receive and keep, any and all awards made or to be made in connection with the condemnation; provided, however, that if the casualty is not covered by Seller's insurance and the costs to remediate exceed One Hundred Thousand Dollars (\$100,000), Buyer may

terminate this Agreement and the Deposit (to the extent delivered) shall be fully refunded to Buyer less ordinary escrow and title cancellation fees.

## **ARTICLE 15**

### **GENERAL PROVISIONS**

15.1 **Construction of Agreement.** The agreement contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement. The parties acknowledge that they have been represented, or have had the opportunity to be represented, by counsel of their own choice. Neither party is relying upon any legal advice from the other party's counsel regarding the subject matter thereof. Both parties acknowledge that they understand the terms and conditions of this Agreement and the terms and conditions of all other documents and agreements executed in connection herewith and that they sign the same freely. Neither party shall deny the enforceability of any provision of this Agreement or any of the other documents or agreements executed in connection herewith on the basis that it did not have legal counsel or that it did not understand any such term or condition. This Agreement and any ambiguities or uncertainties contained in this Agreement shall be equally and fairly interpreted for the benefit of and against all parties to this Agreement and shall further be construed and interpreted without reference to the identity of the party or parties preparing this document, it being expressly understood and agreed that the parties hereto participated equally in the negotiation and preparation of this Agreement or have had equal opportunity to do so. Accordingly, the parties hereby waive the legal effect of California CIVIL CODE § 1654 or any successor and/or amended statute which in part states that in cases of uncertainty, the language of the contract should be interpreted most strongly against the party who caused the uncertainty to exist.

15.2 **Captions.** The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

15.3 **Governing Law.** This Agreement and the documents in the form attached as exhibits hereto shall be governed by and construed under the internal laws of the State of California without regard to choice of law rules.

15.4 **Time of the Essence.** Time is of the essence of each and every provision of this Agreement.

15.5 **Successors and Assigns.** Subject to the restrictions and prohibitions on assignment set forth in **ARTICLE 12**, each and all of the covenants and conditions of this Agreement shall inure to the benefit of and shall be binding upon the successors in interest of Seller and Buyer. As used in the foregoing, "**successors**" shall refer both to the parties' interest in the Property and to the successors to all or substantially all of their assets and to their successors by merger or consolidation.

15.6 **Waiver.** No waiver by Seller or Buyer of a breach of any of the terms, covenants or conditions of this Agreement by Seller or Buyer shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in such waiver. The consent or approval by Seller or Buyer to or of any act by the other party requiring consent or approval shall not be deemed to waive or render unnecessary consent or approval to or of any subsequent similar acts.

15.7 **Attorneys' Fees.** If any action or proceeding shall be instituted in connection with this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' fees and costs incurred in bringing or defending such action or proceeding and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or proceeding and shall be paid whether or not such action or proceeding is prosecuted to final judgment. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs, separate from the judgment, incurred in enforcing such judgment. The prevailing

party shall be determined by the trier of fact based upon an assessment of which party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other party's major arguments or positions on major disputed issues. For the purposes of this section, attorneys' fees shall include fees incurred in the following: (a) post-judgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third-party examinations; (d) discovery; and (e) bankruptcy litigation. All indemnity obligations under this Agreement shall also include the costs of enforcing any indemnity. This Section is intended to be expressly severable from the other provisions of this Agreement, is intended to survive any judgment and is not to be deemed merged into the judgment.

15.8 **Severability**. If, in any action to enforce this Agreement, any one or more of the covenants, agreements, conditions, provisions, or terms of this Agreement is, in any respect or to any extent (in whole or in part), held to be invalid, illegal, or unenforceable for any reason, all remaining portions thereof which are not so held, and all other covenants, agreements, conditions, provisions and terms of this Agreement, will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

15.9 **Gender and Number**. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural include one another.

15.10 **No Real Estate Brokerage Commission**. Except for any commission payable by Seller to Jim Towery of Johnson Commercial Real Estate pursuant to a separate agreement, each party represents and warrants to the other that it has not dealt with any broker, finder or other party, whether or not licensed, who may be entitled to a commission, finder's fee or similar payment, and hereby indemnifies, protects, defends (with legal counsel acceptable to the other party) and holds the other party free and harmless from and against any and all Claims relating to any 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 such party in connection with this transaction. This indemnification and defense obligation shall survive the Close of Escrow.

15.11 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations and understandings of the parties hereto, oral or written, are hereby superseded and merged herein. The foregoing sentence shall in no way affect the validity of any instruments executed by the parties in the form of the exhibits attached to this Agreement or otherwise contemplated by this Agreement.

15.12 **Notices**. All notices which are required or permitted hereunder must be in writing and shall be deemed to have been given, delivered or made, as the case may be, (a) when delivered by personal delivery, (b) upon receipt, refusal of delivery or other inability to deliver by United States mail, certified or registered, return receipt requested, sufficient postage affixed and prepaid or by FedEx or a similar overnight courier service, or (c) when received by e-mail as indicated by confirmation of successful delivery by sender's e-mail system. All notices shall be addressed as follows:

Seller:	City of Coachella 1515 Sixth Street Coachella, CA 92236 Attn: Mr. William Pattison, City Manager E-mail: pattison@coachella.org
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With copies to

Best Best & Krieger, LLP  
Attn: Carlos Campos  
74-760 Highway 111, Suite 100  
Indian Wells, CA 92210  
E-mail: Carlos.Campos@bbklaw.com

Best Best & Krieger, LLP  
Attn: Seth Merewitz  
300 South Grand Ave., 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
E-mail: Seth.merewitz@bbklaw.com

Buyer:

D.R. Horton Los Angeles Holding Company, Inc.  
2280 Wardlow Circle, Suite 100  
Corona, CA 92878  
Attn: Messrs. Jonathan R. Smith, Todd Funk and Douglas  
Stowell and Marianne F. Adriatico, Esq.  
E-mail: JRSmith@drhorton.com; TFunk@drhorton.com;  
DStowell@drhorton.com; MFAdriatico@drhorton.com

With copies to:

D.R. Horton, America's Builder (California)  
2260 Douglas Boulevard, Suite 110  
Roseville, CA 95661  
Attn: Kristin Hock, Esq.  
E-mail: KristinHock@drhorton.com

D.R. Horton, America's Builder (West Region)  
11241 Slater Avenue NE, Suite 120  
Kirkland, WA 98033  
Attn: Mr. J. Matt Farris and Melissa Trunnell, Esq.  
E-mail: MFarris@drhorton.com; MTrunnell@drhorton.com

D.R. Horton, Inc.  
1341 Horton Circle  
Arlington, TX 76011  
Attn: Ted I. Harbour, Esq. and Mark Karnes, Esq.  
E-mail: THarbour@drhorton.com; MKarnes@drhorton.com

Escrow Holder:

First American Title Insurance Company  
18500 Von Karman Avenue, Suite 600  
Irvine, CA 92612  
Attn: Ms. Jeanne Gould  
Telephone No.: (949) 885-2405  
Facsimile No.: (714) 913-6372  
E-mail: jagould@firstam.com

Any party may change the address to which its notices are sent by giving the other party written notice of any such change in the manner provided in this Section, but notice of change of address is effective only upon receipt.

**15.13 No Partnership or Joint Venture.** Seller and Buyer shall not, by virtue of this Agreement, in any way or for any reason be deemed to have become a partner of the other in the conduct of its business or otherwise, or a joint venturer. In addition, by virtue of this Agreement there shall not be deemed to have occurred a merger or any joint enterprise between Buyer and Seller. Buyer has made its own independent investigation regarding the Property and is not relying on any statement or representation made by Seller, its employees or agents, except as set forth in this Agreement.

15.14 **Modification.** No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party, including Buyer's Corporate Approval, against which the enforcement of such modification, waiver, amendment, discharge or change is or may be sought.

15.15 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. In addition, if any party uses signed documents which have been electronically scanned and transmitted by e-mail, Escrow Holder and the other party are authorized to rely upon such documents as if they bore original signatures.

15.16 **Limited Liability.** Seller on its own behalf and on behalf of the Seller Parties hereby agrees that in no event shall any of the Buyer Parties, and their respective successors and assigns shareholders, have any personal liability under this Agreement to Seller, the Seller Parties, or to any of Seller's creditors.

15.17 **Damages.** Notwithstanding anything to the contrary set forth in this Agreement, in no event shall Seller or Buyer be liable for any special, consequential, exemplary, or punitive damages of any kind. This limitation shall survive the Close of Escrow.

15.18 **Exhibits and Schedules.** All exhibits and schedules attached hereto are incorporated herein by reference.

15.19 **Electronic Signatures.** Except as otherwise expressly set forth in this **Section 15.19**, this Agreement may only be amended, modified, or changed by a traditional written document properly executed by Seller and Buyer (including Buyer's Corporate Approval). Such amendment may be transmitted by e-mail or other method permitted by the provisions for giving notice in this Agreement. Except as otherwise expressly set forth in this **Section 15.19** with respect to execution by an authorized officer of Buyer or by an authorized representative in Buyer's local Division, (1) Buyer does not assent or agree to and will not be bound by any electronic signature or other electronic record, and (2) Buyer and Seller agree that the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act, and any other laws applicable to contracting electronically do not and shall not apply to the execution of this Agreement, any amendment hereto, or the Notice of Suitability. The Parties acknowledge and agree that execution of the Notice of Suitability by an authorized officer of Buyer and execution of this Agreement or any amendment to this Agreement by an authorized officer of Buyer for the purpose of Corporate Approval or by an authorized representative in Buyer's local Division may be accomplished by electronic signature utilizing DocuSign or any similar technology.

15.20 **BUYER'S CORPORATE APPROVAL.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN, NEITHER THIS AGREEMENT NOR ANY AMENDMENT HERETO EXECUTED BY BUYER EXPLICITLY NAMED IN THIS AGREEMENT OR BY AN AFFILIATE OF SAID BUYER SHALL BE A VALID OR ENFORCEABLE OBLIGATION OF BUYER UNLESS THIS AGREEMENT OR SUCH AMENDMENT IS EXECUTED BY ANY ONE OF DONALD R. HORTON, DAVID V. AULD, MICHAEL J. MURRAY, BILL W. WHEAT, OR J. MATT FARRIS, EACH AN OFFICER OF BUYER ("**CORPORATE APPROVAL**"), WITHIN TEN (10) BUSINESS DAYS OF THE EXECUTION OF THIS AGREEMENT OR SUCH AMENDMENT BY SELLER AND BUYER'S REPRESENTATIVES.

15.21 **CITY'S AUTHORITY.** BUYER ACKNOWLEDGES SELLER IS ENTERING INTO THIS AGREEMENT IN ITS PROPRIETARY CAPACITY AND NOT IN ITS REGULATORY OR GOVERNMENTAL CAPACITY. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS RESTRAINING, IMPAIRING OR RESTRICTING THE CITY OF COACHELLA IN ITS REGULATORY CAPACITY, OR GRANTING ANY RIGHTS UPON THE BUYER WITH RESPECT TO THE USE, OCCUPANCY, DEVELOPMENT, OR OPERATION OF THE PROPERTY IN A MANNER INCONSISTENT WITH ANY LAWS OR APPLICABLE REQUIREMENTS.

15.22 **CITY COUNCIL APPROVAL OF AGREEMENT.** NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN, NEITHER THIS AGREEMENT NOR ANY AMENDMENT HERETO EXECUTED BY SELLER SHALL BE A VALID OR ENFORCEABLE OBLIGATION OF SELLER UNLESS THIS AGREEMENT OR SUCH AMENDMENT IS APPROVED BY THE CITY COUNCIL FOR THE CITY OF COACHELLA. IF THIS AGREEMENT IS NOT APPROVED BY THE COACHELLA CITY COUNCIL, THE PARTIES WILL HAVE NO FURTHER OBLIGATION UNDER THIS AGREEMENT.

**[SIGNATURES ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the last date set forth below.

**SELLER:**

CITY OF COACHELLA, a municipal corporation organized and existing under the laws of the State of California


By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_, 2021

**BUYER:**


D.R. HORTON LOS ANGELES HOLDING COMPANY, INC., a California corporation

By:   
Todd Funk, Vice President and  
City Manager SCIE North

Date of Execution: April 6, 2021

**BUYER'S CORPORATE APPROVAL:**

DocuSigned by:

By:   
Name: Bin W. Wheat  
Title: Chief Financial Officer

As an Officer of Buyer and Not in His/Her Individual Capacity

Date of Execution: 4-15, 2021

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Holder under said Agreement and (iii) be bound by said Agreement in the performance of its duties as Escrow Holder.

DATED: \_\_\_\_\_, 2021

FIRST AMERICAN TITLE INSURANCE COMPANY

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**"Escrow Holder"**

EXHIBITS

Exhibit A ..... Legal Description of Property

Exhibit B ..... Grant Deed

Exhibit C ..... General Assignment

Exhibit D ..... Certificate of Non-Foreign Status

## EXHIBIT A

### Legal Description of Property

All that certain real property situated in the City of Coachella, County of Riverside, State of California, described as follows:

**PARCEL 1:** (APN'S: 779-272-001 THROUGH 779-272-016, 779-301-001 THROUGH 779-301-007, 779-300-001 THROUGH 779-300-007, 779-271-039 THROUGH 779-271-052, 779-300-008 THROUGH 779-300-014, 779-301-008, 779-300-015 AND 779-301-009)

LOTS 1 THROUGH 52 AND LOTS G AND H, OF TRACT MAP NO. 32074-2, AS PER MAP RECORDED IN BOOK 394, PAGES 24 THROUGH 27, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 2:** (APN'S: 779-270-001 THROUGH 779-270-019, 779-271-001 THROUGH 779-271-036, 779-271-037 AND 779-271-038)

LOTS 1 THROUGH 55 AND LOTS G AND H, OF TRACT MAP NO. 32074-1, AS PER MAP RECORDED IN BOOK 390, PAGES 88 THROUGH 91, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 3:** (APN'S: 779-300-016 THROUGH 779-300-050, 779-301-010 THROUGH 779-301-022, 779-300-051, 779-300-052, 779-301-023 AND 779-301-024)

LOTS 1 THROUGH 48 AND LOTS F THROUGH I, OF TRACT MAP NO. 32074, AS PER MAP RECORDED IN BOOK 394, PAGES 28 THROUGH 31, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**EXHIBIT B**

Grant Deed

RECORDING REQUESTED BY:

First American Title Company

WHEN RECORDED RETURN TO  
AND MAIL TAX STATEMENTS TO:

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

APN: \_\_\_\_\_

Above Space for Recorder's Use

The undersigned Grantor(s) declare(s): DOCUMENTARY TRANSFER TAX \$ \_\_\_\_\_; CITY TRANSFER TAX \$ \_\_\_\_\_;

- ☐ computed on the consideration or full value of property conveyed, OR  
☐ computed on the consideration or full value less value of liens and/or encumbrances remaining at time of sale,  
☐ unincorporated area of County of Riverside; ☒ City of Coachella

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, CITY OF COACHELLA, a municipal corporation organized and existing under the laws of the State of California ("**Grantor**"), hereby grants to \_\_\_\_\_, a \_\_\_\_\_ ("**Grantee**"), all that real property situated in the City of Coachella, County of Riverside, State of California, described on **Exhibit 1** attached hereto and incorporated herein by this reference.

Together with all and singular tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

This Grant Deed is made and accepted subject to all covenants, conditions, restrictions, reservations, easements and other matters of record.

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

Dated: \_\_\_\_\_, 2021

**GRANTOR:**

CITY OF COACHELLA, a municipal corporation  
organized and existing under the laws of the State  
of California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

EXHIBIT 1 TO EXHIBIT B

Legal Description

All that certain real property situated in the City of Coachella, County of Riverside, State of California, described as follows:

**PARCEL 1:** (APN'S: 779-272-001 THROUGH 779-272-016, 779-301-001 THROUGH 779-301-007, 779-300-001 THROUGH 779-300-007, 779-271-039 THROUGH 779-271-052, 779-300-008 THROUGH 779-300-014, 779-301-008, 779-300-015 AND 779-301-009)

LOTS 1 THROUGH 52 AND LOTS G AND H, OF TRACT MAP NO. 32074-2, AS PER MAP RECORDED IN BOOK 394, PAGES 24 THROUGH 27, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 2:** (APN'S: 779-270-001 THROUGH 779-270-019, 779-271-001 THROUGH 779-271-036, 779-271-037 AND 779-271-038)

LOTS 1 THROUGH 55 AND LOTS G AND H, OF TRACT MAP NO. 32074-1, AS PER MAP RECORDED IN BOOK 390, PAGES 88 THROUGH 91, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 3:** (APN'S: 779-300-016 THROUGH 779-300-050, 779-301-010 THROUGH 779-301-022, 779-300-051, 779-300-052, 779-301-023 AND 779-301-024)

LOTS 1 THROUGH 48 AND LOTS F THROUGH I, OF TRACT MAP NO. 32074, AS PER MAP RECORDED IN BOOK 394, PAGES 28 THROUGH 31, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

## EXHIBIT C

### General Assignment

#### GENERAL ASSIGNMENT

THIS GENERAL ASSIGNMENT ("**Assignment**") is made this \_\_\_\_ day of \_\_\_\_\_ 2021, by and between CITY OF COACHELLA, a municipal corporation organized and existing under the laws of the State of California ("**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

#### RECITALS

Assignor and Assignee entered into that certain Purchase and Sale Agreement and Escrow Instructions, dated for reference purposes as of April 1, 2021 (as amended and assigned from time to time, "**Agreement**"), respecting the sale of certain property described in **Exhibit 1** attached hereto ("**Property**"). All capitalized terms not defined in this Assignment shall have the meanings set forth in the Agreement.

Pursuant to the Agreement, Assignor, as the seller, and Assignee, as the buyer, intend that Assignor also convey to Assignee all of the Conveyed Property Rights (as hereinafter defined).

#### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Assignor has GRANTED, BARGAINED, SOLD, CONVEYED and ASSIGNED, and by these present does hereby GRANT, BARGAIN, SELL, CONVEY and ASSIGN to Assignee all of Assignor's right, title and interest in and to the following, except as provided otherwise in the Agreement (collectively, "**Conveyed Property Rights**"):

(a) all prepaid impact or development fees attributable to the Property and all development rights benefiting the Property, all rights, or claims to any deposits, on account with any governmental jurisdiction, all rights, claims, actions, defenses, or awards benefiting the Property, and all rights to receive a reimbursement, sewer credits, fee credit, fee reduction or refund from any applicable agency or entity, including any deposits or fees paid by any party with respect to the Property or any property appurtenant to or for the benefit of the Property;

(b) all surveys, engineering, soils, seismic, geological, environmental, reports, studies and certificates and other technical descriptions and all plans (including without limitation improvement plans and architectural plans), specifications, maps, drawings and other renderings to the extent relating to the Property;

(c) all warranties, guaranties and indemnities received from third parties, and all claims, demands and causes of action against third parties, but only to the extent they are for the benefit of, and applicable to, the Property or the owner thereof, including, without limitation, any warranties, guaranties, indemnities, contractual rights, claims, demands and causes of action pertaining to the development, construction, design or completion of the Property and/or the common areas, streets, utilities or other subdivision infrastructure;

(d) all licenses, permits, governmental approvals, entitlements, utility commitments, utility rights (including rights to capacity or service), drainage and detention rights or other similar rights;

(e) all rights under any subdivision maps (preliminary or final) of any portion of the Property or any rights-of-way abutting the Property or any portion thereof, including any boundary plats and any right-of-way plats, submitted, approved or recorded;

(f) all unpaid awards or proceeds, including awards in connection with insurance and any eminent domain taking; and

(g) all other rights, powers, privileges, options, or other benefits associated with, that pertain to, are attributable to, are appurtenant to, apply to, or which otherwise benefit the Property, including all intangible rights, personal property, reimbursements, fee credits and prepaid fees to the extent benefiting the Property.

The Conveyed Property Rights shall include, but not be limited to, all of the rights described hereinabove that are assignable to Assignee from the municipality in which the Property is located and from the following entities and/or agencies, as such may be applicable to the Property:

- (1) All City or County Departments, Agencies and Utilities
- (2) All Federal or State Department and Agencies
- (3) All Community Facilities Districts and Other Districts
- (4) California Division of Environmental Protection
- (5) California Division of Water Resources
- (6) California Department of Transportation

TO HAVE AND TO HOLD the Conveyed Property Rights unto Assignee and Assignee's successors and assigns forever.

2. This Assignment shall be binding on Assignor, its successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

3. This Assignment does not constitute an assumption of any liability or obligation by Assignee, nor shall it be deemed to impose on Assignee any liability or obligation. This Assignment is made WITHOUT RECOURSE. Furthermore, Assignor assigns the Conveyed Property Rights only to the extent they may exist and in fact be assignable, and without any representation or warranty whatsoever, except that Assignor hereby represents and warrants to Assignee that Assignor has not assigned, sold, mortgaged, pledged or otherwise transferred all or any of Assignor's right, title or interest in and to the Conveyed Property Rights to any party other than Assignee and that at the time of such assignment Assignor owns the Conveyed Property Rights free and clear from any and all liens, encumbrances and security interests.

4. Assignor and Assignee will each cooperate with each other, their employees, and agents to facilitate the purpose and intent of this Assignment including, without limitation, the providing of information and documentation that may be reasonably required for the enforcement of the rights and interests assigned hereby.

5. This Assignment may be executed in several counterparts, each of which shall be fully effective as an original and all of which together shall constitute one and the same instrument.

6. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California, without giving effect to the principles of the conflicts of laws.

**ASSIGNOR:**

CITY OF COACHELLA, a municipal corporation  
organized and existing under the laws of the State of  
California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ASSIGNEE:**

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT 1 TO EXHIBIT C

Legal Description

All that certain real property situated in the City of Coachella, County of Riverside, State of California, described as follows:

**PARCEL 1:** (APN'S: 779-272-001 THROUGH 779-272-016, 779-301-001 THROUGH 779-301-007, 779-300-001 THROUGH 779-300-007, 779-271-039 THROUGH 779-271-052, 779-300-008 THROUGH 779-300-014, 779-301-008, 779-300-015 AND 779-301-009)

LOTS 1 THROUGH 52 AND LOTS G AND H, OF TRACT MAP NO. 32074-2, AS PER MAP RECORDED IN BOOK 394, PAGES 24 THROUGH 27, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 2:** (APN'S: 779-270-001 THROUGH 779-270-019, 779-271-001 THROUGH 779-271-036, 779-271-037 AND 779-271-038)

LOTS 1 THROUGH 55 AND LOTS G AND H, OF TRACT MAP NO. 32074-1, AS PER MAP RECORDED IN BOOK 390, PAGES 88 THROUGH 91, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**PARCEL 3:** (APN'S: 779-300-016 THROUGH 779-300-050, 779-301-010 THROUGH 779-301-022, 779-300-051, 779-300-052, 779-301-023 AND 779-301-024)

LOTS 1 THROUGH 48 AND LOTS F THROUGH I, OF TRACT MAP NO. 32074, AS PER MAP RECORDED IN BOOK 394, PAGES 28 THROUGH 31, INCLUSIVE, OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA.

**EXHIBIT D**

Certificate of Non-Foreign Status

**CERTIFICATE OF NON-FOREIGN STATUS**  
(U.S. Transferor)

Section 1445 of the INTERNAL REVENUE CODE of 1986, as amended ("**Code**"), provides that a transferee (buyer) of a U.S. real property interest must withhold tax if the transferor (seller) is a foreign person.

To inform \_\_\_\_\_,  
a \_\_\_\_\_ ("**Transferee**"), that withholding of tax under Section 1445 of the Code is not required upon disposition of certain real property to Transferee by CITY OF COACHELLA, a municipal corporation organized and existing under the laws of the State of California ("**Transferor**"), Transferor hereby warrants, represents and certifies the following:

1. The undersigned is a duly authorized officer of Transferor.
2. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and Income Tax Regulations), but rather is a municipal corporation formed under the laws of one of the states of the United States;
3. Transferor's employer identification number is \_\_\_\_\_; and
4. Transferor's office address is 1515 Sixth Street, Coachella, California 92236.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, Transferor declares that it has examined this certificate and to the best of its knowledge and belief it is true, correct and complete.

**TRANSFEROR:**

CITY OF COACHELLA, a municipal corporation  
organized and existing under the laws of the State of  
California

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_