

**AGREEMENT FOR PURCHASE AND SALE**  
**OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS (“**Agreement**”) is made this 6<sup>th</sup> day of OCTOBER, 2023 (“**Agreement Date**”) by and between the CITY OF MURRIETA, a municipal corporation (“**Seller**”) and ASHDON DEVELOPMENT (“**Buyer**”) with CHICAGO TITLE INSURANCE COMPANY, a corporation as escrow holder (“**Escrow Holder**”).

**RECITALS:**

**A.** Seller owns that certain improved real property located at the Northwest corner of Clinton Keith Road and McElwain Road intersection in the City of Murrieta, County of Riverside, State of California (APN 392-270-005) more particularly described in Exhibit A attached hereto and by this reference incorporated herein (“**Property**”).

**B.** Seller desires to sell and Buyer desires to buy, the Property upon the terms and conditions more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

**TERMS AND CONDITIONS:**

**1. PURCHASE AND SALE OF PROPERTY.** Pursuant to the terms and conditions of this Agreement, Buyer hereby agrees to purchase from Seller and Seller agrees to sell to Buyer, the Property in AS-IS condition except as otherwise specifically provided herein. Seller hereby agrees to continue to maintain the Property in its current condition until the Closing (as defined in Section 5.1).

**2. OPENING OF ESCROW.** Within five (5) days after the execution of this Agreement by both Buyer and Seller, the parties shall open an escrow (“**Escrow**”) with Escrow Holder at Fidelity National Title with Mary Lou Adame (909)354-3355 Marylou.Adame@fnf.com as escrow officer (“**Escrow Officer**”) by causing an executed copy of this Agreement to be deposited with Escrow Holder together with Buyer’s Deposit (as defined in Section 3.2 below) (“**Opening of Escrow**”).

**3. PURCHASE PRICE; DEPOSIT; PAYMENT OF PURCHASE PRICE.**

**3.1 Purchase Price.** The purchase price for the Property is SEVENTY THOUSAND TWO HUNDRED Dollars (\$70,200) (“**Purchase Price**”).

**3.2 Deposit.** Buyer will provide the Seller with a deposit in the sum of Seventy Thousand Two Hundred Dollars (\$70,200.00) within seven days of the execution of this Agreement (“**Deposit**”). Buyer shall deliver the Deposit check to Escrow Holder to be held by Escrow Holder for the benefit of the parties and applied against the Purchase Price at Closing (as defined in Section 5) or released, refunded, or forfeited in accordance with the terms of this Agreement.

The Deposit shall be held by Escrow Holder in an interest-bearing account and such interest, when received by Seller, shall become part of the Deposit. The Deposit shall be fully refundable to Buyer on or before the expiration of the Due Diligence Period if Buyer provides the Termination Notice in the time and manner specified in Section 7. If the transaction is not consummated because of Buyer's default or termination of this Agreement after the expiration of the Due Diligence Period, the Escrow Holder shall disburse the Deposit to Seller as liquidated damages pursuant to Section 13 below.

**3.3 Payment of Purchase Price.** On or before 1:00 p.m. on the business day preceding the Closing Date or such earlier time as required by Escrow Holder to close Escrow on the Closing Date, Buyer shall deposit into Escrow the balance of the Purchase Price in Good Funds.

**3.4 Good Funds.** Prior to Closing, all funds deposited in Escrow shall be in "**Good Funds**" which shall mean a wire transfer of funds from a financial institution located in the State of California.

#### **4. CLOSING FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.**

**4.1 Seller.** Seller agrees that on or before 12:00 noon on the day preceding the Closing Date, Seller will deposit or cause to be deposited with Escrow Holder all of the following:

- a. The standard grant deed in the form reasonably acceptable to Seller and Buyer executed by Seller ("**Grant Deed**").
- b. A Non-Foreign Affidavit as required by federal law.
- c. Such funds and other items and instruments as may be necessary for Escrow Holder or the Title Company to comply with this Agreement.

**4.2 Buyer.** Buyer agrees that on or before 12:00 noon on the day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and all of the following:

- a. A Preliminary Change of Ownership Statement completed in the manner required in Riverside County.
- b. Such funds and other items and instruments as may be necessary for Escrow Holder or the Title Company to comply with this Agreement.

**4.3 Recordation, Completion and Distribution of Documents.** Escrow Holder shall confirm that any documents signed in counterpart are matching documents and shall combine the signature pages thereof so as to create fully executed documents. Escrow Holder will date all the documents with the date of Close of Escrow. Escrow Holder will cause the Grant Deed to be recorded when it can issue the Owner's Title Policy in accordance with Section 6.2 and holds for the account of Buyer and Seller, respectively, the funds and items described above to be delivered to Buyer and Seller, respectively, through Escrow, less costs, expenses and disbursements chargeable to the parties pursuant to this Agreement.

#### **5. CLOSING DATE; OPTIONS TO EXTEND CLOSING; TIME IS OF ESSENCE.**

**5.1 Closing Date.** Unless extended by (i) the mutual written agreement of the Buyer and Seller, or (ii) Seller pursuant to Section 5.2, Escrow shall close upon satisfaction of the Buyer's

Conditions Precedent (as defined in Section 8.1) and Seller's Conditions Precedent (as defined in Section 8.2), within sixty (60) days of the approval of this Agreement ("**Closing Date**").

**5.2 Definition of Closing.** The terms "**Close of Escrow**" and/or "**Closing**" mean the time Grant Deed is recorded in the Official Records of the County Recorder of Riverside County, California.

**5.3 Time is of Essence.** The parties specifically agree that time is of the essence of this Agreement.

**5.4 Possession.** Upon the Close of Escrow, possession of the Property shall be delivered to Buyer and all interest in remaining personal property shall transfer to Buyer.

## **6. TITLE POLICY.**

### **6.1 Approval of Title.**

(a) Promptly following execution of this Agreement but in no event later than five (5) days following Opening of Escrow, a preliminary title report shall be issued by Fidelity National Title ("**Title Company**"), describing the state of title of the Property, together with legible copies of all exceptions and a map plotting all easements ("**Preliminary Title Report**"). The title officer shall be Amy Adries at Fidelity National Title (213)452-7100 Amy.Andries@fnf.com. Within fifteen (15) business days after Buyer's receipt of the Preliminary Title Report, Buyer shall notify Seller in writing ("**Buyer's Title Notice**") of Buyer's disapproval of any matters contained in the Preliminary Title Report ("**Disapproved Exceptions**").

(b) In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of fifteen (15) days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions ("**Seller's Notice**"). If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, or if Seller is unable to remove the Disapproved Exceptions (other than any obligations of Buyer under Section 7), Buyer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within seven (7) days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller declines to remove such Disapproved Exception(s).

(c) Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement; provided, however, that Buyer's initial period of review and approval or disapproval of any such additional exceptions shall be limited to five (5) days following receipt of notice of such additional exceptions.

(d) Nothing to the contrary herein withstanding, Buyer shall be deemed to have automatically objected to all leases, deeds of trust, mortgages, judgment liens, federal and state income tax liens, delinquent general and special real property taxes and assessments and similar monetary encumbrances affecting the Property (excluding any such items caused by Buyer), and Seller shall discharge any such non-permitted title matter of record prior to or concurrently with the Close of Escrow except as otherwise specifically provided in this Agreement.

**6.2 Owner's Title Policy.** At the Close of Escrow, Escrow Holder shall furnish Buyer with a CLTA owner's non-extended policy of title insurance ("**Owner's Title Policy**") insuring title to the Property vested in Buyer, containing only (i) non-delinquent real property taxes and assessments; (ii) exceptions approved by Buyer in accordance with Section 6.1; and (iii) exceptions caused solely by the acts of Buyer. The amount of the insurance coverage shall be in the amount of the Purchase Price. If Buyer elects to obtain an extended ALTA owner's policy, Buyer shall be responsible to secure a survey at its own cost and expense which shall be delivered to the Title Company not less than thirty (30) days prior to Closing and Buyer shall be responsible to pay for any additional premium. The Title Policy shall include extended coverage or endorsements that Buyer may request but at Buyer's expense.

**7. DUE DILIGENCE AND DUE DILIGENCE PERIOD.** Buyer has been provided with a copy of the Appraisal Report for the Property which is in the City's possession. The City makes no representations about the contents of these documents. For a period of thirty (30) days following the Opening of Escrow or the date of Seller's compliance with subdivision (c) and (d) of Section 8.2 herein, whichever is greater ("**Due Diligence Period**"), Buyer shall have the right to perform any investigations or inspections as Buyer may reasonably determine to assess its willingness to purchase the Property pursuant to the terms of this Agreement.

**7.1 Review and Approval of Documents and Materials.**

**7.2 Buyer's Due Diligence.** During the Due Diligence Period, Buyer and its agents may, at Buyer's sole expense, conduct tests and physical inspections of the Property, including environmental site assessments desired by Buyer. Buyer shall also conduct such investigations with regard to zoning, building codes, and availability of permits and approvals for its intended construction and use of the Property, as it deems prudent in its sole discretion. Prior to entering the Property Buyer shall provide evidence to Seller that Buyer has procured and paid premiums for an all-risk public liability insurance policy written on a per occurrence and not claims made basis in a combined single limit of not less than ONE MILLION DOLLARS (\$1,000,000) which insurance names Seller as additional insured. Buyer shall keep the Property free and clear of all mechanic liens, lis pendens, and other liens arising out of the entry and work performed under this paragraph and shall maintain or assure maintenance of workers' compensation insurance (or state-approved self-insurance) on all persons entering the Property in the amounts required by the State of California. Buyer shall promptly restore the Property to the condition that it was in prior to those tests and inspections and shall indemnify, defend and hold Seller harmless from all damages, costs, loss, expense (including attorney fees) and liability resulting from Buyer's activities, acts, and omissions on the Property, including, but not limited to, mechanic liens. Notwithstanding anything to the contrary contained in this Agreement, (i) the defense, indemnity, and hold harmless provision contained in this Section shall not apply to the extent such liabilities arise in connection with the sole negligence or willful misconduct of Seller, its employees, agents, contractors, licensees or invitees and (ii) provided further that Buyer shall have no liability to Seller or to its employees, agents, or contractors by reason of, nor shall Buyer have any duty to indemnify, defend, or hold any person or entity harmless from or against, any liabilities, including, without limitation, any claim for diminution in value of the Property or for environmental remediation or clean-up costs, resulting directly from Buyer having merely discovered and/or reported (to the extent required by applicable law) any adverse physical condition, title condition, environmental condition, or other defect with respect to the Property. The foregoing provisions shall survive the Closing or any termination of this Agreement. At Closing, Buyer shall take the Property subject to any title exceptions caused by Buyer exercising this license to enter the Property.

Copies of any final non-privileged, non-attorney-client work product reports and any survey prepared pursuant to this Agreement shall be delivered to Seller (at no cost to Seller) which Seller shall be entitled to use if the Closing does not occur.

**7.3 Buyer's Termination Right.** Buyer shall have the right at any time on or before the expiration of the Due Diligence Period to terminate this Agreement if, during the course of Buyer's due diligence investigations of the Property, Buyer determines in its sole and absolute discretion that the Property is not acceptable to Buyer. Buyer may exercise its right to terminate by delivering written notice of termination to Seller and Escrow Agent ("**Termination Notice**") on or before the expiration of the Due Diligence Period. Upon the timely delivery of such Termination Notice, (i) Escrow Agent shall immediately return the Deposit to Buyer without the need for further instruction or approval of the parties, and (ii) this Agreement shall automatically terminate and be of no further force or effect and neither party shall have any further rights or obligations hereunder. Notwithstanding anything contained herein to the contrary, if Buyer fails to provide a Termination Notice, then Buyer shall be deemed to have elected to approve its Due Diligence.

**7.4 Disclaimer of Warranties.** Buyer shall acquire the Property in its "AS IS" condition and shall be responsible for any and all defects in the Property, whether patent or latent, including, without limitation, the physical, environmental, and geotechnical condition of the Property, and the existence of any contamination, hazardous materials, vaults, debris, pipelines, wells, or other structures located on, under, or about the Property. Except as expressly set forth in Section 9, Seller makes no representation or warranty concerning the physical, environmental, geotechnical or other condition of the Property. Buyer acknowledges that, once Buyer obtains title to the Property, any liability of Seller for the environmental condition of the Property shall be extinguished, and that Seller shall have no liability for remediating any environmental condition of the Property. Buyer shall indemnify Seller against any claim or liability relating to the environmental condition of the Property; provided, however, that Seller shall remain liable for, and shall indemnify Buyer from and against, and shall pay the cost of (1) any third party claim that arose during Seller's ownership of the Property; (2) Seller's fraud or willful misconduct in connection with this Agreement; and (3) breach of Seller's Representation and Warranties (subject to Section 9). The foregoing Seller indemnity obligations shall survive the Closing for a period of one (1) year.

## **8. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.**

**8.1 Conditions to Buyer's Obligations.** The obligations of Buyer under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent ("**Buyer's Conditions Precedent**"):

- (a) Title Company will issue the Owner's Title Policy as specified in Section 6.2.
- (b) Buyer has not issued a Termination Notice in accordance with Section 7.3.
- (c) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (e) Seller is not in default of its obligations under this Agreement.

**8.2 Conditions to Seller's Obligations.** The obligations of Seller under this Agreement are subject to the satisfaction or written waiver, in whole or in part, by Seller of the following conditions precedent (“**Seller’s Conditions Precedent**”):

- (a) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (b) Buyer is not in default of its obligations under this Agreement.
- (c) A period of at least 30 days has lapsed from the time that the City sent the California Department of Housing and Community Development (“HCD”) a notice of the City Council’s determination that the Property is exempt surplus land and HCD has not objected to said determination.

**9. REPRESENTATIONS AND WARRANTIES.** Seller represents and warrants to Buyer that, to the actual knowledge of Seller’s current senior staff without investigation, as of the Agreement Date that:

- a. This Agreement has been duly authorized and executed on behalf of Seller. As of the Opening of Escrow, this Agreement constitutes a valid and binding agreement, enforceable in accordance with its terms.
- b. Seller is not a party to any contract, agreement or commitment to sell, convey, assign, transfer, or otherwise dispose of any portion or portions of the Property.
- c. To Seller’s actual knowledge, there is no litigation pending or to the actual knowledge of Seller, threatened against or by Seller or the Property which relates to, or if decided adversely, could have a material adverse effect upon, the Property (including condemnation or similar proceedings).
- d. Except as disclosed to Buyer by Seller as part of the Materials, the Property is not subject to any operating, maintenance, or repair contract or other agreements that will bind the Property or Buyer after the Closing.
- e. Seller covenants that, as the owner, it will not add any new bonds, assessments or charges solely applicable to the Property. This covenant shall not extend to any such matters which are of general applicability to the properties in the area.
- f. No representation, statement, or warranty by Seller in this Agreement contains or will contain any untrue statements or omits, or will omit, a material fact necessary to make the statement of fact therein recited not misleading. If, after Seller’s execution of this Agreement and prior to the Closing, any event occurs or condition exists of which Seller becomes aware which renders any of the representations contained herein untrue or misleading, Seller shall promptly notify Buyer in writing.

Buyer acknowledges that Seller has not made any affirmative investigation as to environmental issues affecting the Property in connection with this Agreement.

All representations and warranties contained in this Agreement shall be deemed remade as of the Closing Date, except (i) for matters caused by Buyer, and (ii) in the event of a change in circumstances not within the control of Seller affecting any representations or warranties set forth herein, in which case Seller shall provide written notice to Buyer regarding such changed circumstances within a reasonable time following such change (not to exceed five (5) business days following the date the Seller's City Manager obtains actual knowledge of the changed circumstance), and prior to the Closing. As used herein, "actual knowledge" of Seller refers to the actual knowledge of Seller's employees and agents directly involved in the negotiation and/or drafting of this Agreement, those responsible for the acquisition or maintenance of the Property, the Seller's City Attorney and the Seller's City Clerk. Seller's representations and warranties in this Section 9 shall survive Closing for six (6) months.

## **10. ESCROW PROVISIONS.**

**10.1 Escrow Instructions.** Sections 1 through 6, inclusive; 8, 10, 14, and 16 constitute the escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail. The terms and conditions in sections of this Agreement not specifically referenced above are additional matters for information of Escrow Holder, but about which Escrow Holder need not be concerned. Buyer and Seller will receive Escrow Holder's general provisions directly from Escrow Holder and will execute such provision upon Escrow Holder's request. To the extent that the general provisions are inconsistent or conflict with this Agreement, the general provisions will control as to the duties and obligations of Escrow Holder only. Buyer and Seller agree to execute additional instructions, documents and forms provided by Escrow Holder that are reasonably necessary to close Escrow.

**10.2 General Escrow Provisions.** Escrow Holder shall deliver the Owner's Title Policy to the Buyer and instruct the Riverside County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 14 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Riverside County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be according to that party's instructions.

### **10.3 Real Property Taxes; Utilities.**

**a. Real Property Taxes.** Seller is exempt from real property taxes. All general and special real property taxes and assessments shall be prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty-day (360) year.

**b. Utilities.** The Property does not currently have utility service.

### **10.4 Payment of Costs.**

**a. Cost Allocation.** Seller shall pay the costs for the Owner's Title Policy, documentary transfer taxes, and one-half (1/2) of the escrow costs ("**Seller's Charges**"). Buyer shall pay one-half (1/2) of the escrow costs and be responsible for any recording charges ("**Buyer's Charges**"). All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the

custom and usage of Escrow Holder for major commercial real estate transactions in Southern California.

- b. Closing Statement.** At least three (3) business days prior to the Closing Date, Escrow Holder shall furnish Buyer and Seller with a preliminary escrow closing statement which shall include each party's respective shares of costs. The preliminary closing statement shall be approved in writing by the parties. As soon as reasonably possible following the Close of Escrow, Escrow Holder shall deliver a copy of the final Escrow closing statement to the parties.

**10.5 Termination and Cancellation of Escrow.** If Escrow fails to close as provided above, either party may elect to cancel this Escrow upon written notice to the other party and Escrow Holder. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

**10.6 Information Report.** Escrow Holder shall file and Buyer and Seller agree to cooperate with Escrow Holder and with each other in completing any report ("**Information Report**") and/or other information required to be delivered to the Internal Revenue Service pursuant to Internal Revenue Code Section 6045(e) regarding the real estate sales transaction contemplated by this Agreement, including without limitation, Internal Revenue Service Form 1099-B as such may be hereinafter modified or amended by the Internal Revenue Service, or as may be required pursuant to any regulation now or hereinafter promulgated by the Treasury Department with respect thereto. Buyer and Seller also agree that Buyer and Seller, their respective employees and attorneys, and escrow Holder and its employees, may disclose to the Internal Revenue Service, whether pursuant to such Information Report or otherwise, any information regarding this Agreement or the transactions contemplated herein as such party reasonably deems to be required to be disclosed to the Internal Revenue Service by such party pursuant to Internal Revenue Code Section 6045(e), and further agree that neither Buyer nor Seller shall seek to hold any such party liable for the disclosure to the Internal Revenue Service of any such information.

**10.7 No Withholding as Foreign Seller.** Seller represents and warrants to Buyer that Seller is not, and as of the Close of Escrow will not be, a foreign person within the meaning of Internal Revenue Code Section 1445 or an out-of-state seller under California Revenue and Tax Code Section 18805 and that it will deliver to Buyer on or before the Close of Escrow a non-foreign affidavit on Escrow Holder's standard form pursuant to Internal Revenue Code Section 1445(b)(2) and the Regulations promulgated thereunder and a California Form 590-RE.

**10.8 Brokerage Commission.** Buyer and Seller each represent and warrant to the other party that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other party harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

**11. RISK OF PHYSICAL LOSS.** Prior to the Closing, no destruction of, or damage or loss to, the Property or any portion thereof, from any cause whatsoever, shall have occurred which would cost more than Twenty-Five Thousand Dollars (\$25,000) to repair or cure ("**Damage Threshold**"). If the cost of repair or cure is the Damage Threshold or less, Seller shall have the option to either repair or cure the loss prior to the Closing or provide any insurance proceeds applicable to such loss to Buyer at the



Closing. Buyer shall have the option, within ten (10) days after receipt of written notice of a loss costing more than the Damage Threshold to repair or cure, to either terminate this Agreement or to purchase the Property notwithstanding such loss, but without deduction or offset against the Purchase Price. If the cost to repair or cure is more than the Damage Threshold, and Buyer does not elect to terminate this Agreement in the time and manner specified above, Buyer shall be entitled to any insurance proceeds applicable to such loss. Unless otherwise notified in writing, Escrow Holder shall assume no such destruction, damage or loss has occurred prior to Closing. Seller shall provide to Buyer as part of the due diligence items a copy of current insurance policy covering the Property. Seller shall hold such proceeds until the Close of Escrow at which time they shall be delivered to Buyer as part of the Closing. In the event this Agreement is terminated for any reason, Buyer shall have no right to any insurance proceeds.

**12. NON-COLLUSION.** No official, officer, or employee of the Seller has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of the Seller participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of “financial interest” shall be consistent with State law and shall not include interest found to be “remote” or “non-interest” pursuant to California Government Code Sections 1091 and 1091.5. Seller warrants and represents that (s)he/it has not paid or given, and will not pay or give, to any third party including, but not limited to, any official, officer, or employee of Buyer, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded this Agreement. Seller further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any official, officer, or employee of Buyer, as a result or consequence of obtaining or being awarded any agreement. Seller is aware of and understands that any such act(s), omission(s) or other conduct resulting in the payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

**Seller’s Initials:** \_\_\_\_\_

**13. DEFAULT**

**13.1. DEFAULT OF BUYER; LIQUIDATED DAMAGES. IF BUYER SHOULD DEFAULT UNDER THIS AGREEMENT, THEN BUYER AND SELLER AGREE THAT SELLER WILL INCUR DAMAGES BY REASON OF SUCH DEFAULT BY BUYER OR FAILURE OF ESCROW TO CLOSE ON OR BEFORE THE CLOSING DATE, WHICH DAMAGES SHALL BE IMPRACTICAL AND EXTREMELY DIFFICULT, IF NOT IMPOSSIBLE, TO ASCERTAIN. BUYER AND SELLER, IN A REASONABLE EFFORT TO ASCERTAIN WHAT SELLER'S DAMAGES WOULD BE IN THE EVENT OF SUCH DEFAULT BY BUYER HAVE AGREED BY PLACING THEIR INITIALS BELOW THAT THE DEPOSIT SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLER'S DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. IN THE EVENT OF AND FOR SUCH DEFAULT BY BUYER, THE DEPOSIT SHALL BE SELLER'S SOLE MONETARY REMEDY THEREFOR,**

**UNLESS BUYER WRONGFULLY REFUSES TO CAUSE ESCROW HOLDER TO CANCEL THE ESCROW, IN WHICH INSTANCE SELLER SHALL ALSO BE ENTITLED TO ALL COSTS AND EXPENSES, INCLUDING ACTUAL ATTORNEYS' FEES INCURRED BY SELLER WHICH MAY RESULT FROM BUYER'S WRONGFUL FAILURE TO CANCEL THE ESCROW AND THIS AGREEMENT. FURTHERMORE, THE FOREGOING LIMITATION OF DAMAGES SHALL NOT APPLY TO ANY INDEMNIFICATION OBLIGATIONS OF BUYER.**

\_\_\_\_\_  
**Seller's Initials**

\_\_\_\_\_  
**Buyer's Initials**

**13.2 Default by Seller.** If all conditions precedent to Seller's obligations to sell the Property have occurred but Seller fails to Close under this Agreement for any reason other than the default by Buyer under this Agreement, Buyer shall have the right to either (i) terminate this Agreement and receive the return of the Deposit; or (ii) bring an action for specific performance.

**14. NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be served on the parties at the addresses set forth below. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the party to be notified, with return receipt requested, (ii) by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, and (iv) via email. Notice deposited in the mail in the manner hereinabove described shall be effective upon receipt or rejection of such notice. Notice given in any other manner shall be effective only if and when received (or rejected) by the party to be notified between the hours of 8:00 a.m. and 5:00 p.m. California time of any business day with delivery made after such hours to be deemed received the following business day. A party's address may be changed by written notice to the other party; however, no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice. Notices given by counsel to the Buyer shall be deemed given by Buyer and notices given by counsel to the Seller shall be deemed given by Seller.

**To Buyer:**

**To Seller:**

City of Murrieta  
Attention: Development Services Director  
1 Town Square  
Murrieta, CA 92562

**With a copy to:**

Aleshire & Wynder, LLP  
1 Park Plaza, Suite 1000  
Irvine, CA 92614  
Attention: Tiffany J. Israel  
[tisrael@awattorneys.com](mailto:tisrael@awattorneys.com)  
(o) 949-250-5411

**To Escrow Holder:**

**15. ADDITIONAL BUSINESS TERMS.**

**14.1 No Marketing of Property.** So long as this Agreement is in effect, Seller agrees that it will not market the Property to any other party in any manner.

**14.2 No Impairing of Title.** Until the Closing, Seller shall not do anything which would impair Seller's title to the Property.

**16. GENERAL PROVISIONS.**

**16.1 Assignment.** Neither party shall have the right to assign this Agreement or any interest or right hereunder or under the Escrow without the prior written consent of the other party. Any assignee, if approved by the Seller in its sole discretion, must execute an assignment and assumption agreement in a form acceptable to Seller. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of Buyer and Seller and their respective heirs, personal representatives, successors and assigns.

**16.2 Attorney's Fees.** In any action between the parties hereto, seeking enforcement of any of the terms and provisions of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled, to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding, in addition to its recoverable court costs.

**16.3 Interpretation; Governing Law.** This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

**16.4 No Waiver.** No delay or omission by either party in exercising any right or power accruing upon the compliance or failure of performance by the other party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party of a breach of any of the covenants, conditions or agreements hereof to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions hereof.

**16.5 Modifications.** Any alteration, change or modification of or to this Agreement, to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

**16.6 Severability.** If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this instrument, or the application of such term, provisions, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**16.7 Merger.** This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior to contemporaneous agreements, understandings, representations and statements (including letters of intent), oral or written, are merged herein and shall be of no further force or effect.

**16.8 Execution of Documents.** The parties agree to execute such instructions to Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

**16.9 Inducement.** The making, execution and delivery of this Agreement by the parties hereto have been induced by no representations, statements, warranties or agreements other than those expressly set forth herein.

**16.10 Relationship of Parties.** Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed as contemplated hereby.

**16.11 No Personal Liability.** No member, official, employee, agent or contractor of Seller shall be personally liable to Buyer in the event of any default or breach by Seller or for any amount which may become due to Buyer or on any obligations under the terms of the Agreement.

**16.12 Force Majeure.** If either party is delayed or prevented from performing any act required in this Agreement by reason of any event beyond the reasonable control of either party, including without limitation, by labor disputes, fire, unusual delay in deliveries, weather or acts of God, terrorism, delay in the issuance of permits or approvals, acts of governmental entities, unavoidable casualties or any other such causes beyond such party's control, then the time herein fixed for completion of such obligation(s) shall be extended by the number of days that such party has been delayed.

**16.13 Representation by Counsel.** Each party hereto represents and agrees with each other that it has been represented by or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s), that to the extent, if any, that it desired, it availed itself of this right and opportunity, that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement in its entirety and have had it fully explained to them by such party's respective counsel, that each is fully aware of the contents thereof and its meaning, intent and legal effect, and that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

**16.14 Exhibits.** Exhibit A is attached hereto and incorporated herein by reference.

**16.15 Execution in Counterparts.** This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Purchase and Sale of Real Property and Joint Escrow Instructions as of the Agreement Date.

**Note: Sections 12 and 13.1 need to be separately initialed by the parties.**

**BUYER:**

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

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

**Accepted and Agreed to:**

**ESCROW HOLDER:**

FIDELITY NATIONAL TITLE

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

Mary Lou Adame, Commerical Escrow Officer

**SELLER:**

CITY OF MURRIETA,  
a municipal corporation

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

**ATTEST:**

\_\_\_\_\_  
Cristal McDonald, City Clerk

**APPROVED AS TO FORM:**

Aleshire & Wynder, LLP

By: \_\_\_\_\_  
Tiffany J. Israel, City Attorney

**EXHIBIT A**  
**LEGAL DESCRIPTION OF THE PROPERTY**

Parcel 1 of Parcel Map No. 32893, in the City of Murrieta, County of Riverside, State of California, as per Parcel Map recorded in Book 217, Pages 75 through 80 inclusive of Parcel Maps, records of said County.