

**PURCHASE AND SALE AGREEMENT
895 CLARK ST. LLC
(Northside Heritage Meadows Project)**

This Purchase and Sale Agreement ("Agreement") is entered into this _____ day of _____, 2020 ("Effective Date"), by and between **THE CITY OF RIVERSIDE**, a California charter city and municipal corporation ("Buyer") and **895 CLARK ST. LLC**, a California limited liability company ("Seller"). In consideration of the mutual covenants and agreements, the parties agree to the following terms and conditions:

**ARTICLE I
AGREEMENT OF SALE**

1.1 **Buyer's Status.** Buyer is a public entity with the power to acquire real and personal property for public uses and purposes. Buyer is engaged in property acquisition for a public use in connection with the Northside Heritage Meadows Project ("Northside Project").

1.2 **Property.** Seller owns certain real property located at 895 Clark Street, Riverside, California, bearing Assessor's Parcel No. 246-230-020 ("Property"), more particularly described in the legal description and on the plat attached hereto and marked as Exhibit "A" and incorporated herein by reference.

1.3 **Agreement of Purchase and Sale.** Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, upon the terms and for the considerations set forth in this Agreement, the fee interest in the Property.

1.4 **Incomplete Legal Description.** If the legal description of the Property is not complete or is inaccurate, this Agreement shall not be invalid, and the legal description shall be completed or corrected to meet the requirements of the title company to issue a title policy hereinafter described.

1.5 **Other Grants.** It is agreed that Seller, or its successors in interest, will not grant an interest in the Property, or any part thereof, including, but not limited to, a fee simple interest, easements, or any other conveyances and/or construct improvements or make changes upon or to the Property during the period between the Effective Date and the Close of Escrow, as such term is defined below.

1.6 **Possession.** Seller agrees that the Property will be available to Buyer upon the Close of Escrow, unless specifically provided otherwise, or, if applicable, the date specified in any order for possession heretofore ordered by a court.

1.7 **Compensation.** This Agreement is intended to be a resolution of all elements of "Just Compensation" to which Seller may be entitled and such other elements of damage, benefits and assistance as are authorized by law. Buyer has made an offer to purchase the Property pursuant to California Government Code section 7267.2. The parties desire by this Agreement to provide the terms and conditions for the purchase and sale of the Property.

1.8 **Compensatory Laws.** The parties hereby acknowledge that Seller, or its tenants, may be eligible to receive compensation, damages, and/or relocation benefits and assistance pursuant to the following: The Constitution of the State of California (Article I, Section 19), the Eminent Domain Law (California Code of Civil Procedure Section 1230.010, et seq.), the California Relocation Assistance Act (California Government Code Section 7260, et seq.), implementing rules and regulations (Title 25, California Code of Regulations) and/or local, state or federal ordinances, statutes, rules, regulations and decisional laws (collectively "Compensatory Laws"). Any such compensation and benefits are provided for in this Agreement.

1.9 **Tax-Deferred Exchange.** Seller may use the proceeds from the sale of the Property to effect one or more tax deferred exchanges under Internal Revenue Code §§ 1031 or 1033. Buyer agrees to accommodate Seller in effecting such tax-deferred exchange. Seller shall have the right, expressly reserved herein, to elect such tax-deferred exchange at any time before the Close of Escrow. Seller and Buyer agree, however, that consummation of the purchase and sale of the Property is not conditioned on such exchange. If Seller elects to make a tax-deferred exchange, Buyer agrees to execute such additional escrow instructions, deeds, documents, agreements, or instruments to effect this exchange, provided that Buyer shall incur no additional costs, expenses, or liabilities in this transaction as a result of or in connection with this exchange. Seller agrees to hold Buyer harmless from any liability, damages, or costs, including reasonable attorney fees, that may arise from Buyer's participation in such exchange.

1.10 **Due Diligence.** Buyer shall have forty-five (45) days from the Effective Date ("Contingency Date") to perform, in its sole discretion, its due diligence review of the condition of Property and all other matters concerning the Property, including without limitation, economic, financial, and accounting matters relating to or affecting the Property or its value, and the physical and environmental condition of the Property. Prior to the Contingency Date, Buyer shall have made such inquiries, communicated with local, state and federal government agencies as it sees fit, retained such consultants, and taken such actions as Buyer deems necessary or appropriate to enter into this Agreement. On or before the Contingency Date, Buyer shall deliver written notice to Seller accepting the Property or terminating this Agreement. If Buyer fails to give such notice on or before the Contingency Date, Buyer shall be deemed to have accepted the Property and proceed with this Agreement.

ARTICLE II PURCHASE PRICE, TITLE AND ESCROW

2.1 **Purchase Price.** Buyer shall pay to the Seller the sum of Nine Hundred Forty-Five Thousand Dollars (\$945,000) ("Purchase Price"). Seller acknowledges and agrees that any lien due to Buyer or others shall be paid out of the Purchase Price Should Buyer approve the disbursement of the lien to specific projects as requested by Seller, the parties agree the escrow instructions shall provide for that specific distribution.. Moreover, Buyer agrees to reduce the liens owed to Buyer's Code Enforcement Division by Twenty-Five Thousand Dollars (\$25,000). The Purchase Price shall represent full and complete compensation pursuant to Compensatory Laws for the rights and interests being acquired herein by Buyer, including, without limitation, real property, fixtures and equipment, loss of business goodwill, relocation assistance and such other

compensation, damages and benefits as may be permitted by law. The Purchase Price shall be payable to Seller, upon the Close of Escrow, in immediately available funds in accordance with the provisions and requirements of this Agreement.

2.2 Just Compensation. Payment of the Purchase Price and compensation under this Agreement shall be deemed Just Compensation and shall include fair market value, damages of whatever kind or nature arising out of Buyer's acquisition of Seller's interest in realty, improvements, fixtures and equipment, and business interests including, without limitation, loss of business goodwill, loss of rent, bonus value, loss of inventory, equipment, patronage, and loss of opportunities.

2.3 Escrow. Upon execution of this Agreement by the parties, Buyer shall open an escrow ("Escrow") with First American Title (Mike Arnett, Vice President Sales (213) 271-1781 ("Escrow Holder")) for the purpose of consummating this Agreement. The parties hereto shall execute and deliver to Escrow Holder such escrow instructions prepared by Escrow Holder as may be required to complete this transaction. Any such instructions shall not conflict with, amend, or supersede any provision of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control.

2.4 Escrow Trust Accounts. All funds received in this Escrow may be deposited with other escrow funds in a general escrow trust account and may be transferred to any other similar escrow trust account, and all disbursements shall be made by check of Escrow Holder from such accounts. Escrow Holder shall deposit all of Buyer's money into an interest-bearing account with all interest accruing to Buyer until the Close of Escrow. At the option of Buyer, said interest may be used toward the Purchase Price.

2.5 Conduct of Escrow. Escrow Holder is hereby authorized and instructed to conduct the Escrow in accordance with this Agreement, applicable law, custom and practice of the community in which Escrow Holder is located, including any reporting requirements of the State of California and the Internal Revenue Service.

2.6 Condition of Title.

2.6.1 Within five (5) business days after the Effective Date, Seller shall deliver to Buyer a copy of a current standard coverage preliminary title report issued by First American Title: Mike Arnett, Vice President Sales (213) 271-1781 ("Title Company") showing the condition of title to the Property, accompanied by copies of all documents referred to in the report (collectively, "PTR").

2.6.2 Buyer shall have forty-five (45) days following the Effective Date within which to deliver to Seller written notice of Buyer's disapproval or conditional approval of title as shown on the PTR ("Disapproved Exceptions"). Buyer's failure to provide the notice on or before such date shall constitute Buyer's approval of the condition of title as shown on the PTR.

2.6.3 If Buyer timely notifies Seller of its Disapproved Exceptions, Seller shall notify Buyer in writing on or before the fifty-fifth (55th) day after the Effective Date that:

(a) Seller has removed the Disapproved Exceptions from title (or met Buyer's conditions for approval of a title exception); or (b) Seller is covenanting to do so as of or before Closing; or (c) Seller will not remove (or will not meet the conditions of approval of) specified Disapproved Exceptions. Failure to address Disapproved Exceptions in any notice, or failure to give such a notice, shall constitute Seller's statement that it will not remove or otherwise address the Disapproved Exceptions.

2.6.4 If Seller does not remove or covenant to remove (or does not meet or covenant to meet the conditions of approval of any Disapproved Exceptions), Buyer shall have the right to terminate this Agreement on or before the Contingency Date or to waive its objection to the Disapproved Exceptions in question and proceed to Closing as Buyer's sole and exclusive remedy. Buyer's failure to provide written notice of termination on or before the Contingency Date shall constitute Buyer's waiver of its disapproval of the Disapproved Exceptions. In the case of Buyer's waiver (or deemed waiver) of Disapproved Exceptions, Seller shall have no obligation to remove or otherwise address the Disapproved Exceptions from title and such waived Disapproved Exceptions shall be deemed approved.

2.6.5 In this Agreement, the term "Permitted Exceptions" means: (a) installments of general and special real property taxes and assessments not then delinquent, (b) any encumbrance arising from the acts or omissions of Buyer, (c) any liens due to Buyer or affiliated or related agencies ("Buyer's Liens") described in Section 2.1, and (d) any other exception showing on the PTR other than the Disapproved Exceptions that Seller removes or covenants to remove.

2.6.6 At Closing, Buyer shall receive a CLTA Owner's Coverage Policy of Title Insurance ("Title Policy"), together with all endorsements requested by Buyer, issued by the Title Company, in the amount of the Purchase Price. The Title Policy shall show title to the Property vested in the Buyer free and clear of all liens, encumbrances, easements, assessment, taxes and leases (recorded and/or unrecorded), other than permitted exceptions. Any exceptions to title representing monetary liens or encumbrances are hereby disapproved by Buyer and Escrow Holder is hereby authorized and instructed to cause the reconveyance of any such monetary exceptions at or prior to the Close of Escrow. If a supplemental report is issued prior to the Close of Escrow which shows new matters, Buyer reserves the right to request any new matters removed from the Title Policy in accordance with the provisions of this Section 2.6.

2.7 Reports, Studies and Agreements. Within fifteen (15) calendar days of the Effective Date, Seller will provide Buyer with copies of any reports, studies, maps or agreements affecting the Property, if any, in Seller's possession, including but not limited to geotechnical and soils reports, surveys, environmental reports, flood hazard or earthquake seismic studies and other reports, studies, maps or agreements affecting the Property.

ARTICLE III CLOSING

3.1 **Closing.** Subject to the satisfaction of any contingencies described herein, Escrow Holder shall close this Escrow by recording the deed(s) and other documents required to be recorded and by disbursing the funds and documents in accordance with this Agreement.

3.2 **Closing Date.** Escrow shall close on or before sixty (60) days following the Effective Date ("Close of Escrow"). If the Escrow is not in a condition to close by the Close of Escrow, any party who is not then in default, upon notice in writing to the Escrow Holder and the other party, may demand the return of their documents and/or money and cancellation of the Escrow. Unless objected to in writing within ten (10) days from the receipt of the notice of cancellation, the Escrow will automatically be canceled. If no demand for cancellation is made, then Escrow will close as soon as possible.

3.3 **Closing Documents.**

3.3.1 Seller, prior to the Close of Escrow, shall deliver to Escrow Holder each of the following items, the delivery of each of which shall be a condition to the performance by Buyer of its obligations under this Agreement:

- (a) a grant deed sufficient for recording, conveying the Property; and
- (b) all additional documents, instruments and sums which may be reasonably necessary for the Close of Escrow and to consummate the sale of the Property in accordance with the terms of this Agreement.

3.3.2 Buyer, prior to the Close of Escrow, shall deliver to Escrow Holder each of the following items, the delivery of each of which shall be a condition to the performance by Seller of its obligations under this Agreement:

- (a) the Purchase Price to be paid to Seller and other cash charges provided for in this Agreement; and
- (b) all additional documents, escrow disbursement instructions and instruments which may be reasonably necessary for the Close of Escrow and to consummate the sale of the Property in accordance with the terms of this Agreement.

Since Buyer is a public entity, Escrow Holder must secure from Buyer and attach to any deed a certificate of acceptance executed by Buyer or its authorized employees, officers or agents prior to the recording of any deed.

3.4 Mortgages and Deeds of Trust. Any and all monies payable under this Agreement, up to and including the total amount of unpaid principal and interest on any note secured by a mortgage or deed of trust, or other security instrument if any, shall, upon demand, be made payable to the mortgagee or beneficiary entitled thereunder; and such mortgagee or beneficiary shall be required to furnish Buyer with good and sufficient receipt showing said monies were credited against the indebtedness secured by said mortgage, deed of trust, or other security instrument. Escrow Holder shall notify the Title Company of such payments and secure and cause any necessary full or partial conveyances to be prepared, signed and recorded as required by the Title Company to eliminate any encumbrances or exceptions from the Title Policy issued pursuant to this Agreement.

3.5 Taxes and Other Liens. Escrow Holder is authorized and instructed to comply with the following tax proration procedures:

3.5.1 Payment of Unpaid Taxes: Pay and charge Seller for any unpaid delinquent taxes and/or any penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds against the Property subject to the provisions of Section 2.1 above.

3.5.2 Tax Proration: For purposes of tax proration, Escrow Holder will apportion all current taxes at "the date of apportionment" for public agency acquisitions as defined in California Revenue and Taxation Code Section 5082. Since possession is being granted pursuant to this Agreement at the Close of Escrow that date will be the "date of apportionment."

3.5.3 Ad Valorem Taxes: Seller understands and agrees pursuant to California Revenue and Taxation Code Section 5083 that when property is acquired by Buyer (a public entity) that any lien on the property for ad valorem taxes is extinguished as a matter of law upon the final acquisition of the property and the lien immediately transfers and attaches to the proceeds constituting the Purchase Price.

3.5.4 No Cancellation of Unpaid Taxes and Penalties: Subject to the provisions of Section 2.1 above, Seller understands and agrees pursuant to California Revenue and Taxation Code Section 5084 that no cancellation shall be made of all or any portion of any unpaid taxes or any penalties or costs levied for prior tax years that constitute a lien at the time of acquisition of the Property. Such unpaid taxes, penalties, and costs shall be paid through Escrow, or if unpaid for any reason, shall be transferred to the unsecured tax roll pursuant to Section 5090 of the California Revenue and Taxation Code and are collectible solely from Seller.

3.5.5 Proration of Current Taxes: From the date that tax information is available, that portion of the current taxes and any penalties and costs that are allocable during Seller's ownership of the Property up to and including the date of apportionment, if unpaid, shall be paid through Escrow. If such taxes are not paid, Buyer shall not in any event be responsible or liable for such taxes and such taxes shall be transferred to the unsecured roll and be solely collectable from Seller.

3.5.6 Notice to County Tax Collector: Buyer shall be solely responsible for providing notice of this acquisition to the County Tax Collector and to any public entities, whose taxes are not collected by the County Tax Collector but who at this time exercise the right of assessment and taxation pursuant to California Revenue and Taxation Code Section 5091.

3.5.7 Liens. Subject to the provisions of Section 2.1 and 2.6 above, any and all liens assessed against the Property shall be deducted from and paid out of the Purchase Price.

3.6 **Title and Escrow Costs**. Seller shall pay all the costs for a CLTA standard form title policy, one-half of the escrow fees, and all recording costs incurred herein, all reconveyance fees, trustees fees, or forwarding fees, and prepayment charges for any full or partial reconveyance or full or partial release of any mortgage or deed of trust. Buyer shall be responsible for one-half the escrow fees, the additional cost for an ALTA owner's title policy and associated costs if obtained by Buyer. The parties acknowledge that Buyer is exempt from the payment of documentary transfer tax.

3.7 **Brokerage Commissions**. The parties acknowledge that neither party has been represented by a broker, with respect to this transaction. The parties hereby agree to indemnify, defend and hold the other party harmless from any and all claims that may arise in regard to any commission that may be claimed to be owed.

3.8 **Closing Statement**. Each of the parties hereto hereby authorizes and instructs Escrow Holder to release a copy of such party's closing statement to the other party, the purpose being to provide full disclosure to the other party of all disbursements made on behalf of such party.

ARTICLE IV RIGHT OF ENTRY AND DAMAGE TO PROPERTY

4.1 **Right of Entry**. After Seller's execution of this Agreement by the parties, and during Escrow, Seller grants to Buyer, its agents, employees or nominees, the right to enter into and upon the Property for the purpose of conducting Phase I Environmental Site Assessment, soil testing, environmental and engineering studies, and such further engineering, grading, archeological, geological or survey work as may be required for the preparation by Buyer of its development plans for the Property. Buyer shall give Seller reasonable notice of such entry, and shall not unreasonably interfere with any occupant's use of the Property or any of Seller's other operations on the Property. Buyer shall keep the Property free and clear of any liens or encumbrances that may arise out of Buyer's inspection of and activities on the Property. All costs, expenses, liabilities or charges incurred in or related to the performance of any and all of such studies and work on the Property, the preparation by Buyer of any plans or maps for the development or use of the Property, and the cost of filing, recording reports, plans, maps or other documents related thereto shall be at the sole cost and expense of and shall be paid by Buyer. Buyer hereby agrees to repair any damage done to the Property by Buyer, its agents, employees, servants or nominees, and Buyer shall restore the Property to the same or similar condition as

existed on the date of Buyer first exercised this right of entry, if this transaction is terminated. Buyer shall not have any such obligation if Escrow closes and title to the Property vests in Buyer. The right to enter the Property shall be co-extensive with the period during which Escrow is open, or any extension thereof.

4.1.1 Notwithstanding the foregoing, without first obtaining Seller's prior written consent, Buyer shall only conduct a visual inspection, with no right to conduct any physical testing, boring, sampling or removal of any portion of the Property (collectively, the "Physical Testing"). If Buyer wishes to conduct any Physical Testing of the Property, Buyer shall submit a work plan to Seller for Seller's prior written approval, which Seller may modify, limit or disapprove in its sole and absolute discretion. If Seller approves a work plan, all Physical Testing shall comply strictly with the work plan that has been approved by Seller, and if Seller does not approve a work plan, Buyer shall not conduct any Physical Testing of the Property. If Buyer intends to conduct any Physical Testing, Buyer shall, prior to commencing any such Physical Testing, provide Seller with sufficient evidence to show that Buyer and Buyer's agents who are to enter upon the Property are adequately covered by policies of insurance insuring Buyer and Seller against any and all liability arising out of Buyer's or Buyer's agents' entry upon and Physical Testing of the Property, including without limitation any loss or damage to the Property, with coverage in the amount not less than \$1,000,000 per occurrence. If Buyer or Buyer's agents conduct any Physical Testing, except pursuant to a work plan approved by Seller in accordance with this Section 4.1.1, that shall be a material breach of this Agreement and Seller may terminate this Agreement.

4.2 **Material Change, Destruction or Damage.** The closing of this Escrow is contingent upon the fact that no material change shall have occurred with respect to the Property that has not been approved in writing by Buyer. For purposes of this Agreement, a "material change" shall be a change in the status of the use, occupancy, tenants or condition of the Property that occurs subsequent to the Effective Date of this Agreement. In the event there is a material change to the Property after the Effective Date, Buyer shall be required to purchase the Property with a credit against the Purchase Price otherwise due hereunder equal to the amount of any insurance proceeds actually collected by Seller prior to the Close of Escrow as a result of any such material change. Seller agrees that they will maintain a casualty insurance policy with respect to the Property in full force and effect until the Close of Escrow.

ARTICLE V WAIVER AND RELEASE

5.1 **Acknowledgment of Full Benefits.** By execution of this Agreement, Seller, on behalf of itself and its heirs, executors, administrators, successors and assigns, hereby acknowledges that this Agreement provides full payment for the acquisition of the Property by the Buyer, and Seller hereby expressly and unconditionally waives any and all claims for damages, improvements, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than as already expressly provided for in this Agreement, it being understood that this is a complete and full settlement of all acquisitions claims, liabilities, or benefits of any type or nature whatsoever relating to or in connection with the acquisition of the Property.

5.2 **Acknowledgment of Just Compensation.** This Agreement arose out of the Buyer's efforts to acquire the Property through its public entity authority. The parties acknowledge and agree that the consideration paid to Seller shall be deemed the fair market value and total amount of "Just Compensation" for the Property. Seller, on behalf of itself and its heirs, executors, administrators, successors and assigns, hereby fully releases the Buyer, its successors, agents, representatives, and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage which has been sustained, or may be sustained, as a result of Buyer's efforts to acquire the Property or to construct works of improvement thereon, or any preliminary steps thereto.

5.3 **Waiver and Release.** The Parties hereby acknowledge that they have had the opportunity to speak with or have been advised by an attorney and are familiar with the provisions of California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

Seller and Buyer each acknowledge that they may have sustained damage, loss, costs or expenses which are presently unknown and unsuspected, and such damage, loss, costs or expenses which may have been sustained, may give rise to additional damage, loss, costs or expenses in the future. Nevertheless, Seller and Buyer each hereby acknowledge that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights which they may have under California Civil Code Section 1542, or under any statute or common law or equitable principal of similar effect. This waiver shall not supersede any of the provisions of this Agreement or the rights of the parties hereto to enforce this Agreement in law or equity.

5.4 **Waivers.** Seller hereby waives the right to further and greater compensation and to have the adequacy of compensation determined in a court of law or equity, by a judge or a jury. Seller understands and knowingly agrees that this waiver shall extend to constitutional claims of whatever kind or nature that may be brought under the California and United States Constitutions and the federal civil rights statutes including, without limitation, claims arising under 42 U.S.C. Section 1983. Seller hereby further waives the right to raise affirmative defenses and to attack by way of answer, complaint or collaterally, the Buyer's right to acquire the property for public uses and purposes, and to challenge the findings made in any resolution of necessity.

These acknowledgments, waivers and releases shall survive the Close of Escrow.

**ARTICLE VI
REPRESENTATIONS AND WARRANTIES**

6.1 **Seller Representations, Warranties and Covenants.** Seller hereby represents, warrants and covenants to Buyer as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive until December 1, 2022, unless otherwise stated below:

6.1.1 Authority: Seller is the owner of the Property and has the full right, power and authority to sell, convey and transfer the Property to Buyer as provided herein, and to perform Seller's obligations hereunder. The person signing this Agreement and any documents and instruments in connection herewith on behalf of Seller has full power and authority to do so.

6.1.2 Bankruptcy: There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Seller or filed by Seller, or to the best of Seller's knowledge, pending in any current judicial or administrative proceeding against Seller. Further, Seller has no notice or knowledge that any tenant of the Property is the subject of a bankruptcy proceeding.

6.1.3 Other Agreements: Seller has not entered into any other written contracts or agreements for the sale or transfer of any portion of the Property.

6.1.4 Condition of Property: Seller warrants and covenants, through Close of Escrow, that through the date possession is made available to Buyer, the Property, shall be maintained in the same condition as upon the Effective Date of this Agreement.

6.1.5 Violation of Codes: Other than the code violations being paid by the Purchase Price, Seller warrants that Seller has no knowledge of any notice of any violations of city, county, state, federal, building, zoning, fire, health codes or ordinances, or other governmental regulations filed or issued against the Property. Seller further warrants that it has no knowledge of any aspect or condition of the Property which violates applicable laws, rules, regulations, codes, or covenants, conditions or restrictions, or of improvements or alterations made to the Property without a permit where one was required, or of any unfulfilled order or directive of any applicable governmental agency, or of any casualty insurance company that any work, investigation, remediation, repair, maintenance or improvement is to be performed on the Property.

6.1.6 Zoning Changes: Intentionally deleted.

6.1.7 Geologic Condition: Seller represents that it has no actual knowledge of surface cracking or subsidence or other geologic condition in the immediate vicinity of the Property that would have a material adverse effect on Buyer's acquisition of the Property. Further, Seller has no actual knowledge of any report prepared by any governmental agency relating to such geologic conditions as to the Property or the proximate area around the Property.

6.1.8 Maintenance of the Property: Except as provided in other provisions hereof dealing with destruction, damage or loss, Seller shall maintain the Property until the Close of Escrow in its present condition, ordinary wear and tear excepted.

6.1.9 Changes in Agreements: Prior to Close of Escrow, Seller will not violate or modify, orally or in writing, any existing lease or other agreement, or create any new leases or other agreements affecting the Property without Buyer's prior written consent.

6.1.10 Possessory Rights: Seller warrants that no one will, at the Close of Escrow, have any right to possession of the Property superior to the right of the Buyer, except as disclosed by this Agreement, or otherwise in writing to Buyer.

6.1.11 Mechanics' Liens: To Seller's actual knowledge there are no unsatisfied mechanic's or materialman's lien rights concerning the Property.

6.1.12 Actions: To the best of Seller's knowledge, no actions suits, or proceedings are pending or threatened before any governmental department, commission, board, bureau, agency, court, or instrumentality that would affect the Property or the right to occupy or utilize the Property, which has not been disclosed to Buyer.

6.1.13 Notice of Changes: Seller will promptly notify Buyer in writing of any material change affecting the Property that becomes known to Seller prior to the Close of Escrow.

The material truth and accuracy of the foregoing representations and warranties shall be a condition of Buyer's obligations hereunder. At least five (5) calendar days prior to the Close of Escrow, Seller shall notify Buyer of any facts or circumstances which are contrary to the foregoing representations and warranties.

6.2 **Seller's Indemnity.** Notwithstanding anything contained in this Agreement to the contrary, Seller's liability for all claims, including related costs and expenses, made against Seller on or before December 1, 2022, for breach of any and all representations, warranties and/or covenants set forth in Section 6.1, 9.5, 10.2 and 10.5 of this Agreement shall be limited in total and in the aggregate to One Hundred Thousand and 00/100 Dollars (\$100,000.00).

ARTICLE VII BUYER'S REPRESENTATIONS AND WARRANTIES

7.1 **Buyer's Representations and Warranties.** Buyer hereby represents warrants and covenants to Seller as of the date of this Agreement, and upon the Close of Escrow, as follows, all of which shall survive the Close of Escrow:

7.1.1 Authority: Buyer is a municipal corporation and has the full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated

by this Agreement. The persons signing this Agreement and any documents and instruments in connection herewith on behalf of Buyer have full power and authority to do so.

7.1.2 Bankruptcy: There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or to the best of Buyer's knowledge, pending in any current judicial or administrative proceeding against Buyer.

7.1.3 Buyer's Investigation; "As Is" Purchase.

- (a) Except as set forth herein, there are no representations or warranties of any kind whatsoever, express or implied, made by Seller in connection with this Agreement, the purchase of the Property by Buyer, the physical condition of the Property, the status of zoning or whether the Property is appropriate for Buyer's intended use.
- (b) On or prior to the Contingency Date Buyer will have (or will have chosen not to have) fully investigated the Property and all matters pertaining thereto.
- (c) Buyer is not relying on any statement or representation of Seller, its agents or its representatives nor on any information supplied by Seller, its agents or its representatives, except as expressly provided in this Agreement.
- (d) Buyer, in entering into this Agreement and in completing its purchase of the Property, is relying entirely on its own investigation of the Property based on its extensive experience in and knowledge of real property in Southern California.
- (e) On or before the Contingency Date, Buyer will be aware (or will have chosen not to be aware) of all title matters; zoning regulations; other governmental requirements; site and physical conditions; status of entitlements; potential costs and procedures for developing the Property; physical conditions of the Property; Hazardous Substances or environmental condition of the Property; soils conditions; status of permits or licenses for the Property; the suitability of the Property for Buyer's intended use; other matters affecting the use and condition of the Property; and any other contingency or other matter whatsoever;
- (f) Buyer shall purchase the Property in its "AS IS, WHERE-IS, WITH ALL FAULTS" condition as of the date of Closing; and
- (g) Buyer acknowledges the limited indemnity by the Seller in Section 6.2 above and the 1542 waiver in Section 5.3 above.

7.1.4 Ratification: This Agreement may be subject to the approval and ratification by the City Council of the City of Riverside. In the event the City Council fails to approve this Agreement, there shall be no liability on the part of the Buyers and this Agreement shall become null and void and of no further force and effect and Escrow Holder shall cancel the Escrow immediately and return all money and/or documents to the respective party.

The material truth and accuracy of the foregoing representations and warranties shall be a condition of Seller's obligations hereunder. At least five (5) calendar days prior to the Close of Escrow, Buyer shall notify Seller of any facts or circumstances which are contrary to the foregoing representations and warranties.

ARTICLE VIII DEFAULT AND TERMINATION

8.1 **Default.** A party shall be deemed in default hereunder if it fails to meet, comply with, or perform any covenant, agreement, or obligation on its part required within the time limits and in the manner required in this Agreement for any reason other than a default by the other party hereunder or termination of this Agreement prior to Close of Escrow.

8.2 **Opportunity to Cure.** No act, failure to act, event or circumstance which might be deemed to be a default by either party shall be deemed to be a default under any of the provisions of this Agreement, unless and until, notice thereof is first given by the non-defaulting party to the party alleged to be in default and said party fails to cure the alleged default within fifteen (15) calendar days in the case of a non-monetary default, or five (5) calendar days in the case of a monetary default.

8.3 **Termination upon Default.** After notice and an opportunity to cure, if the defaulting party fails to cure the default, the non-defaulting party may terminate this acquisition by giving written notice to the defaulting party and the Escrow Holder. Upon receipt of the notice to terminate, the Escrow Holder shall immediately cancel the Escrow and return all money and/or documents to the respective party.

8.4 **Buyer's Termination.** If Buyer exercises its rights under this Agreement to terminate this acquisition, Buyer shall provide written notice to the Sellers and Escrow Holder. Upon receipt of said notice, Escrow Holder shall immediately cancel the Escrow and return all money and/or documents to the respective party. Upon receipt of said notice, Escrow Holder shall immediately cancel the Escrow and return all money and/or documents to the respective party.

8.5 **Seller's Termination.** Seller may not terminate or rescind this Agreement unless such termination or rescission is in writing to Buyer and Buyer has, in writing agreed to such termination or rescission which agreement shall not be unreasonably withheld and may not be withheld in the case of Buyer's breach of its obligation to timely close the transactions contemplated under this Agreement.

**ARTICLE IX
MUTUAL AGREEMENTS**

9.1 **Studies.** Seller hereby authorizes Buyer, its agents, employees, contractors and representatives, at Buyer's sole cost and expense, to conduct such necessary cultural, environmental phase I, lead base paint and asbestos studies as Buyer may require. In connection with such studies, Seller hereby grants to Buyer, its agents, employees, contractors and representatives, a right of entry as more specifically set forth in Section 4.1 above.

9.2 **CEQA Compliance.** Buyer and Seller understand, acknowledge and agree that purchase of the Property is contingent upon Buyer's compliance with the California Environmental Quality Act ("CEQA").

9.3 **Soil Inspection.** Subject to Section 4.1, Buyer shall have the right to obtain a soil test report concerning the Property. Said report shall be obtained at Buyer's discretion and expense. Buyer agrees to keep the property free from any liens, including mechanics liens, arising from persons or agents authorized to perform such soils investigation on behalf of Buyer.

9.4 **Abandonment of Personal Property.** Unless special arrangements have been made by the parties, any personal property left on the Property at the Close of Escrow shall be deemed abandoned and the property of the Buyer. Seller shall reimburse Buyer upon receipt from Buyer of an invoice evidencing the cost of said removal, less any offsets, if any. Seller agrees that Buyer may dispose of the personal property without notice to the Seller and without sale at a public auction. Seller expressly waives the requirements of California Civil Code Section 1980, et seq., relating to the disposition of personal property remaining on the premises at the termination of a tenancy, and to the extent applicable, the provisions of California Code of Civil Procedure Section 1174.

9.5 **Other Agreements Affecting Property.** Seller and Buyer have made this Agreement upon the belief that there are no other agreements except this Agreement which will affect the Property beyond the Close of Escrow. If Seller determines that such agreements or exceptions exist which are not revealed herein, Seller shall provide Buyer with a copy immediately upon Seller's learning of its existence. Buyer may thereafter, prior to the Close of Escrow, either terminate this acquisition or modify the offered Purchase Price. After Close of Escrow, Seller shall be liable to Buyer for any damage or expense including attorney's fees and costs incurred by Buyer by reason of such undisclosed agreements, but expressly subject to the limitations set forth in Section 6.2 of this Agreement.

9.6 **Condition of Property.** Upon Close of Escrow, Seller shall deliver the Property, and the yard in a clean condition, with all trash, debris and personal property removed.

**ARTICLE X
HAZARDOUS SUBSTANCES**

10.1 **Hazardous Substances Disclosure.** The Property is subject to a disclosure as designated under Section 25359.7 of the Health and Safety Code, whereby Sellers are required to disclose if there are any hazardous substances, as defined in Health and Safety Code Section 25316, et seq., located on or beneath the property or adjacent thereto. It is understood and agreed between Buyer and Seller that closing of this Escrow is subject to and contingent upon receipt and approval of a written disclosure by Buyer. Said review and approval will not be unreasonably withheld or delayed by Buyer.

10.2 **Hazardous Substances.** Seller represents and warrants that it does not have knowledge of the existence or prior existence of any hazardous substances on the Property. In addition, Seller has no actual knowledge of the existence or prior existence of any above or below ground storage tank or tanks on the Property except as described in Section 10.5 below.

10.3 **Hazardous Substance Conditions Report.** Buyer has obtained a Hazardous Substance Conditions report(s) or other environmental studies concerning the Property and relevant adjoining properties. Such report(s) has been obtained at Buyer's discretion and expense. Seller has no knowledge of any hazardous substance condition report that was prepared by any other person or entity including any governmental agency.

10.4 **Hazardous Substance Defined.** A "Hazardous Substance" for purposes of this Agreement shall mean and refer to any (a) hazardous or toxic wastes, materials or substances or chemicals and other pollutants or contaminants which are or become regulated by applicable local, state, regional and/or federal orders, ordinances, statutes, rules, regulations (as interpreted by judicial and administrative decisions) and laws, (b) asbestos, asbestos-containing materials or urea formaldehyde, (c) polychlorinated biphenyls, (d) flammable, explosive, corrosive or radioactive materials, (e) medical waste and biochemical, (f) gasoline, diesel, petroleum or petroleum by-products, (g) lead-based paint or (h) any substance set forth in Health and Safety Code Section 25316, et seq., or whose nature and/or quality of existence, use, manufacture or effect, render it subject to federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Agreement is defined as the existence on, under or relevantly adjacent to the Property or a Hazardous Substance that would or could require remediation and/or removal under applicable federal, state or local law.

10.5 **Hazardous Substances Indemnity.** Subject to the limitations set forth in this Section 10.5, Seller expressly agrees, but expressly subject to the limitation set forth in Section 6.2 of this Agreement, to indemnify, defend, and hold Buyer, and its respective officials, officers, employees, agents, successors and assigns, harmless from and against any claim, action, liability, loss, damage, entry, judgment, order, lien, encumbrance, and costs and expenses that, foreseeable or unforeseeably, directly, arises from, or is in any way related to, the existence or release of Hazardous Substances from an underground fuel storage tank in the northeast area of the Property which storage tank Seller believes may not have been more than 10 feet underground and more than likely was removed. For the purposes of this Section 10.5, "costs and expenses" include, but

are not limited to, the cost of any necessary, ordered, adjudicated, or otherwise required remediation or removal of Hazardous Substances, any cost of repair of improvements on the Property or adjacent property necessitated by or related to the remediation or removal of Hazardous Substances, the cost of any tests, samples, studies, investigations, or other preparation reasonably undertaken in preparation or furtherance of remediation or removal of Hazardous Substances, and the cost of preparing plans for the remediation or removal of Hazardous Substances. Notwithstanding the foregoing, Seller expressly agrees to, at its sole expense, and with legal counsel of the Buyer's choice, defend the Buyer and its respective officials, officers, employees, agents, successors and assigns in any action in which the Buyer or its respective officials, officers, employees, agents, successors and assigns become or may become involved as a result of the existence, release, treatment, use, generation, transportation, storage, or disposal in, on, under to, or from the Property of any Hazardous Substances. Seller's obligations under this Section 10.5 shall survive until December 1, 2022.

ARTICLE XI MISCELLANEOUS

11.1 **Exhibits.** All Exhibits attached hereto are a part of this Agreement for all purposes and are incorporated herein.

11.2 **Assignment.** Neither this Agreement nor any rights under this Agreement may be assigned by any party without the prior written consent of the other party.

11.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of Seller and Buyer, and their respective successors, heirs, agents and permitted assigns.

11.4 **Captions.** The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify, or modify the terms and provisions hereof.

11.5 **Number and Gender of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

11.6 **Governing Law and Venue.** The laws of the State of California shall govern the validity, construction, enforcement, and interpretation of this Agreement. All claims, disputes and other matters in question arising out of or relating to this Agreement, or the breach thereof, shall be decided by proceedings instituted and litigated in the state court in the County of Riverside, and the parties hereby waive all provisions of law providing for a change of venue in such proceedings to any other county.

11.7 **Amendments.** This Agreement may be amended or supplemented only by written documents signed by the parties.

11.8 **Notices.** All notices, terminations, waivers and other communications hereunder shall be in writing and shall be delivered personally, by facsimile or shall be sent by registered or

certified United States mail or a nationally recognized, overnight courier service, postage prepaid, and addressed as follows:

Seller: 895 Clark St. LLC
2568 El Molino Avenue
Altadena, CA 91001

Buyer: City of Riverside
Community & Economic Development Director
3900 Main Street
Riverside, CA 92522

Any notice in accordance herewith shall be deemed received when delivery is received or refused, as the case may be. Notices may be given by telephone facsimile transmission, provided that an original of said transmission shall be delivered to the addressee by a nationally recognized overnight delivery service on the business day following such transmission. Telephone facsimiles shall be deemed delivered on the date of such transmission.

11.9 **Entirety.** This Agreement embodies the entire agreement between the parties and supersedes all prior written or oral agreements and understandings, if any, between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the parties hereto, relating to the subject matter contained in this Agreement which are not fully expressed herein.

11.10 **Severability.** If any of the provisions of this Agreement, or its application to any party or circumstance, is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable. This Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. In lieu of such illegal, invalid, or unenforceable provision, there shall be added automatically as a part of this Agreement, a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible to make such provision legal, valid, and enforceable.

11.11 **Further Acts.** In addition to the acts and deeds recited herein and contemplated and performed, executed and/or delivered by Sellers and Buyer, Sellers and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at the Close of Escrow or after the Close of Escrow any and all such further acts, deeds, and assurances as may be necessary to consummate the transactions contemplated herein.

11.12 **Construction.** No provision of this Agreement shall be construed in favor of, or against, any particular party by reason of any presumption with respect to the drafting of this Agreement; both parties, having the opportunity to consult legal counsel, having fully participated in the negotiation of this Agreement.

11.13 **Time of the Essence.** It is expressly agreed by the parties hereto that time is of the essence with respect to each and every provision of this Agreement.

11.14 **Waiver of Covenants, Conditions or Remedies.** The waiver by one party of the performance of any covenant, condition or promise, or of the time for performing any act under this Agreement shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition or promise, or of the time for performing any other act required under this Agreement. The exercise of any remedy provided in this Agreement shall not be a waiver of any other remedy provided by law, and the provisions of this Agreement for any remedy shall not exclude any other remedies unless they are expressly excluded.

11.15 **Nondiscrimination.** The parties shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical or mental disability, medical conditions, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, genetic information, gender, gender identity, gender expression, sex, sexual orientation, or military or veterans status in connection with the performance of this Agreement. The parties further agree to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

11.16 **Date of Agreement.** The date of the Agreement as used in this Agreement shall refer to the date this Agreement is signed and approved by the governing body of Buyer. It is understood and agreed that no employee, officer or director(s) of Buyer has any authority to bind Buyer, which is a public entity, except upon prior approval by the governing body of Buyer.

11.17 **Survival of Warranties.** All of the warranties, representations, covenants and agreements of the parties hereto contained in this Agreement shall survive the Close of Escrow.

11.18 **Counterparts.** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts shall, collectively, constitute one original agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

11.20 **Agreement Not to Rent, Lease or License Property.** Seller agrees that there are no existing leases and agrees not to rent, lease, license or allow any person to take possession of the Property, or any portion of the Property, or any building or structures that maybe located thereon, beyond the Close of Escrow.

[SIGNATURES ON FOLLOWING PAGE.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

CITY OF RIVERSIDE,
a California charter city and

895 CLARK ST. LLC,
a California limited liability company

By _____
Name:
Its:

By: _____
Name: Thomas T. Kawakami
Its: Manager

Attested to:

By:  _____
Name: Gerald Ito
Its: Manager

By _____
Colleen J. Nicol
City Clerk

By: _____
Name: Shirley E. Sanematsu
Its: Manager

Approved as to form:

By _____
Kristi J. Smith
Chief Assistant City Attorney

By: _____
Name: Carol Inouye-Matthews
Its: Manager

CERTIFIED AS TO FUNDS AVAILABILITY:

BY:  _____
Chief Financial Officer/City Treasurer

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Colleen J. Nicol
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Approved as to form:

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Its: Manager

By _____
Kristi J. Smith
Chief Assistant City Attorney

By: _____
Name: Carol Inouye-Matthews
Its: Manager

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: [Signature]
Chief Financial Officer/City Treasurer

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Kristi J. Smith
Chief Assistant City Attorney

By: Carol Inouye-Matthews
Name: Carol Inouye-Matthews
Its: Manager

CERTIFIED AS TO FUNDS AVAILABILITY:

BY: [Signature]
Chief Financial Officer/ City Treasurer

EXHIBIT "A"
LEGAL DESCRIPTION

EXHIBIT "A"
LEGAL DESCRIPTION

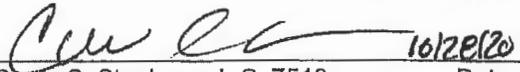
Address: 895 Clark Street
A.P.N.: 246-230-020

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

Lot 8 of the Rose Tract, as shown by map on file in Book 6, Page 6 of Maps, Records of Riverside County, California.

Area – 3.76 Acres more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

 10/28/20 Prep. 
Curtis C. Stephens, L.S. 7519 Date





103

S.C.C.A.
M.B. 7/3 S.B. CO

7

THE ROSE TRACT

M.B. 6/6

8

APN 246-230-020

AREA - 3.76 AC.

RIVERSIDE WATER COMPANY LOWER CANAL

CLARK

STREET

TO CHASE ROAD

9

104

BOWMAN ST (VACATED)

3

2/11

• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

SCALE: 1"=100'

DRAWN BY: CURT

DATE: 2/25/2019

SUBJECT: 895 CLARK STREET - APN 246-230-020