

San Gorgonio Pass Water Agency

DATE: November 14, 2022

TO: Board of Directors

FROM: Lance Eckhart, General Manager

SUBJECT: APPROVE ENTERING INTO A PURCHASE AND SALE AGREEMENT FOR THE PURCHASE OF PROPERTY LOCATED SOUTHWEST OF BEAUMONT AVENUE AND BROOKSIDE AVENUE IN THE CITY OF BEAUMONT AND AUTHORIZE THE GENERAL MANAGER TO TAKE ANY AND ALL ACTIONS NECESSARY TO IMPLEMENT THE AGREEMENT

RECOMMENDATION

It is recommended that the Board of Directors approve entering into a Purchase and Sale Agreement for the purchase of property located Southwest of Beaumont Avenue and Brookside Avenue, in the City of Beaumont, commonly known as Assessor's Parcel Nos. 400-250-010 and 400-250-012, for the purchase price of \$3,175,000.00 and authorize the General Manager to take any and all actions necessary in order to implement the Agreement.

PREVIOUS CONSIDERATION

August 15, 2022: Closed session with the General Manager, as the real property negotiator, to provide direction on price and terms of payment for the potential purchase of the subject property.

BACKGROUND

As directed by the Board, the General Manager has been seeking potential property acquisitions in order to obtain land suitable for potential future, but not-yet-designed, groundwater storage and related uses of the Agency. The General Manager has negotiated a potential Purchase and Sale Agreement ("Agreement") with Diamond Riverside LP ("Seller") for the purchase of property located Southwest of Beaumont Avenue and Brookside Avenue, in the City of Beaumont, with Assessor's Parcel Nos. 400-250-010 and 400-250-012. Said property is sometimes referred to as Noble Creek Vistas.



ANALYSIS

The Seller has agreed to the terms and conditions of the Agreement, a copy of which is enclosed. The provisions of the Agreement include, but are not limited to, the following:

1. Purchase price of \$3,175,000.00.
2. A due diligence period of 60 days during which the Agency may determine, at its discretion, the physical and economic feasibility of the property for the Agency's needs and whether to proceed to complete the transaction.
3. In the event the Agency elects to move forward after the due diligence period, the transaction will then close on the date which is 15 days after the expiration of the due diligence period,

FISCAL IMPACT

The fiscal impact of proceeding with this transaction is as follows:

- The purchase price is \$3,175,000.
- The purchase was anticipated, but not budgeted.
- The funds will come from General Fund reserves. At this time, the balance in the General Fund Reserve is approximately \$18 million.
- The Agency purchased the current recharge site directly to the east for \$3.1 million for about 52 acres or about \$60,000 an acre in 2011.
- The proposed property is about 62.5 acres, or about \$51,000 an acre.

The purchase of this property is a desirable acquisition for the overall plan of the Agency to provide water resources for the needs of the region. As the Agency increases its water supply portfolio, it will need additional recharge facilities to manage and deliver imported water. The property is adjacent to existing Agency facilities as well as local unutilized pipeline capacity. The ability to utilize this property near existing Agency facilities and take advantage of available pipeline capacity should result in material future recharge project cost savings. The Agency has adequate funds in reserves for this purchase.

CEQA COMPLIANCE

The Agreement is not subject to the California Environmental Quality Act (“CEQA”) because it does not qualify as a “project” under CEQA. State CEQA Guidelines Section 15378, subd. (a) defines a project as an activity that “has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” Here, the Agreement – i.e. a mere paperwork transition to acquire property acquisition for a potential future, but not-yet-designed, use - does not have the potential to result in either a direct or reasonably foreseeable indirect physical change in the environment. Accordingly, the Agreement 2022-0006 is not a “project” subject to CEQA. (State CEQA Guidelines, § 15060(c).)

Finally, even if the Agreement were a CEQA project, its approval is exempt from CEQA under the “common sense exemption” set forth in State CEQA Guidelines section 15061(b)(3), which provides that an activity is not subject to CEQA “where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.” Here, as noted above, the Agreement is a mere paperwork transaction to facilitate acquisition of certain property that will not result in direct or indirect physical changes in the environment, because it does not commit the Agency to building or using the property for any specific use.

ACTION

Approve entering into a Purchase and Sale Agreement with Diamond Riverside Limited Partnership for the purchase of the properties with APNs 400-250-010 and 400-250-012 for the purchase price of \$3,175,000.00 and authorize the General Manager to take any and all actions necessary in order to implement the Agreement.

ATTACHMENT

Purchase And Sale Agreement and Joint Escrow Instructions

PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Joint Escrow Instructions (this “**Agreement**”) is made as of November____, 2022 (the “**Effective Date**”), between **Diamond Riverside Limited Partnership**, a California limited partnership (“**Seller**”), and **San Geronio Pass Water Agency**, a California public agency (“**Buyer**”).

ARTICLE 1. AGREEMENT OF SALE.

Subject to and on the terms and conditions of this Agreement, Seller shall sell to Buyer and Buyer shall purchase from Seller all of the following (collectively, the “**Property**”):

1.1 Land. The real property consisting of approximately 62.5 acres located Southwest of Beaumont Avenue and Brookside Avenue, in the City of Beaumont, County of Riverside, State of California, commonly known as Assessor’s Parcel Nos. 400-250-010 and 400-250-012, which is more particularly described in Exhibit A, together with (a) all privileges, rights, easements and appurtenances belonging to the real property, including without limitation all minerals, oil, gas and other hydrocarbon substances on and under the real property, (b) all development rights, air rights, water, water rights and water stock relating to the real property, and (c) all right, title and interest of Seller in and to any streets, alleys, passages, other easements and other rights-of-way or appurtenances included in, adjacent to or used in connection with such real property, before or after the vacation thereof (collectively, the “**Land**”); and

1.2 Other Assets. To the extent owned by Seller, all tangible and intangible assets of any nature relating to the Property, including without limitation all goodwill associated with the Property, all other intellectual or intangible property used by Seller in connection with the Property; and all claims and causes of action arising out of or in connection with the Property.

ARTICLE 2. PURCHASE PRICE.

2.1 Amount. The purchase price (the “**Purchase Price**”) for the Property shall be Three Million One Hundred Seventy-Five Thousand and 00/100 Dollars (\$3,175,000.00).

2.2 Deposit/Purchase Price. Within 10 business days after the Effective Date, Buyer shall deposit the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) into Escrow (as defined below) with First American Title Insurance Company, Attn: Jeanne Gould, jgould@firstam.com, (949) 885-2405 (“**Escrow Holder**”) into an interest bearing account on behalf of Buyer (the “**Initial Deposit**”). Upon approval of Buyer’s feasibility pursuant to Section 3.1 below, Buyer shall make an additional deposit of Sixty Thousand Five Hundred and 00/100 Dollars (\$60,500.00) to Escrow Holder (the “**Additional Deposit**”). Upon delivery of the Feasibility Approval (defined below), the Initial Deposit and Additional Deposit (once deposited) (collectively, “**Deposits**” totaling One Hundred Thousand Five Hundred and 00/100 Dollars (\$100,500.00) shall become non-refundable, subject to Section 3.4, or except as otherwise provided herein. Subject to Section 3.4, below, the Deposits shall be refundable to Buyer unless and until Buyer delivers the Feasibility

Approval. If the Closing of the transaction contemplated by this transaction occurs, the Deposit shall be disbursed to Seller and applied to the Purchase Price at Closing. Buyer shall pay the Purchase Price to Seller through escrow at the Closing described in Section 9.1. On or before the Closing Date (as defined below), Buyer shall deposit into Escrow the Purchase Price, subject to adjustment by reason of any applicable prorations and the allocation of closing costs described below. The Deposit and Purchase Price shall be made by wire transfer of federal funds, cashier's check or in another immediately available form. Notwithstanding anything herein to the contrary, One Hundred Dollars (\$100.00) of the Initial Deposit (the "**Independent Consideration**") shall not be refundable to Buyer, but shall represent consideration for this Agreement and shall be paid to Seller. The Independent Consideration shall be paid to Seller within three (3) days of the Effective Date. The Independent Consideration shall serve as consideration for the granting of the time periods herein contained for Buyer to exercise Buyer's right to satisfy and approve all of Buyer's conditions herein contained. If the Deposit is refunded to Buyer for any reason pursuant to this Agreement, the Independent Consideration shall be subtracted from the Deposit pursuant to this Section.

2.3 Broker Commission. Buyer is represented by Doug Jorritsma and Ian Sinderhoff with Land Advisors (collectively, "**Land Advisors**"). Upon close of Escrow, Seller shall pay a commission equal to three percent (3%) of the Purchase Price to Land Advisors.

ARTICLE 3. DUE DILIGENCE.

3.1 Due Diligence Period; Feasibility Approval; Inspection and Access.

3.1.1 Due Diligence Period. The "**Due Diligence Period**" means the period beginning on the Effective Date and ending at 5:00 p.m. on the date which is sixty (60) days after the Effective Date.

3.1.2 Feasibility Approval. The "**Feasibility Approval**" means Buyer's delivery to Seller and Escrow Holder, on or before the expiration of the Due Diligence Period, of Buyer's written approval of the results of Buyer's due diligence and feasibility analysis to determine the physical and economic feasibility, which Feasibility Approval may be given or denied in Buyer's sole and absolute discretion. Buyer may extend the Due Diligence Period by one period of fifteen (15) days at no additional cost by giving notice five (5) days before the original Feasibility Date.

3.1.3 Access to Information and the Property. Buyer shall conduct its investigation of the Property during the Due Diligence Period at no cost to Seller. This investigation ("**Due Diligence Investigation**") may include, at Buyer's option: a Phase I environmental assessment ("**Phase I**"), a physical inspection of the Land and any improvements thereon, including soil, geological and other tests, engineering evaluations; review of all governmental matters affecting the Property, including zoning, environmental and building permit and occupancy matters; review and verification of all financial and other information previously provided by Seller relating to the operation of the Property; review of the condition of title to the Property; and review of such other matters pertaining to an investment in the Property as Buyer deems advisable. In addition to the Preliminary Documents delivered to Buyer pursuant to Section 3.2, Seller agrees to provide an environmental questionnaire in connection with any Phase I

environmental assessment, and Buyer and its representatives shall have the right of access during reasonable business hours to all files, books and records maintained by Seller or its agents (including, without limitation, all of the Additional Documents to be made available to Buyer at the Property pursuant to Section 3.3), wherever located, relating to the Property, including the right to copy the same. Buyer and its representatives shall also have the right of access to the Property during reasonable business hours to conduct its investigation of the physical condition of the Property. Seller shall be entitled to have a designated representative present during any entry on the Property. Buyer hereby agrees to indemnify, defend and hold harmless Seller and any agent, advisor, representative, affiliate, employee, or other person or entity (each, a “**Person**”) acting on Seller’s behalf or otherwise related to or affiliated with Seller (including Seller, collectively, the “**Seller Related Parties**”) from and against any and all claims, demands, causes of action, losses, damages, liabilities, costs and expenses (including attorneys’ fees and disbursements) (collectively, “**Claims**”), suffered or incurred by any of the Seller Related Parties and arising out of or in connection with (i) entry upon the Property by Buyer or any of Buyer’s representatives, (ii) any investigations or other activities conducted thereon by Buyer or any of Buyer’s representatives, (iii) any liens or encumbrances filed or recorded against the Property as a consequence of such investigations and/or (iv) any and all other activities undertaken by Buyer or any of the Buyer’s representatives with respect to the Property. The foregoing indemnity shall not include any Claims that result from the discovery, by Buyer or any of the Buyer’s representatives, of pre-existing conditions on the Property during investigations conducted pursuant to, and in accordance with, the terms of this Agreement and which are not exacerbated by the activities of any such Person. The foregoing indemnity provisions shall survive the Closing hereunder or termination of this Agreement. Seller further agrees that the rights granted to Buyer herein and the results of its Due Diligence Investigation shall not relieve Seller of any obligations Seller may have under any other provisions of this Agreement, or under other documents entered into concurrently herewith, or implied by law, nor shall they constitute a waiver by Buyer of the right to enforce any of the same. Seller shall cooperate with Buyer in its due diligence activities and provide access to the Property, its records, or provide information so long as it is within Seller’s control.

3.2 Delivery of Preliminary Documents. Within five (5) business days after the Effective Date, Seller shall deliver to Buyer, at Seller’s expense, all of the documents described in the remaining subsections of this Section 3.2 to the extent in Seller’s possession or control (collectively, the “**Preliminary Documents**”).

3.2.1 Title Report and Survey. A preliminary title report or commitment for title insurance (the “**Preliminary Title Report**”), dated no earlier than ten (10) days before the Effective Date, covering the Property and issued by a title insurance company or companies acceptable to Buyer (the “**Title Company**”), together with a legible copy of each document, map and survey referred to in the Preliminary Title Report. Buyer, at Buyer’s sole cost, may obtain an as-built survey of the Property (the “**Survey**”) prepared by a certified land surveyor in accordance with the most recent American Land Title Association standards, certified by such surveyor to Buyer and the Title Company in a form acceptable to the Title Company for the purpose of deleting any survey exception from the Title Policy described in Section 4.1.3.

3.2.2 Soils Report. Any soils report on the Land prepared at Seller's request or in the possession or control of Seller, including (if available) a report on compliance with any soils work recommended to be done prior to construction of the Improvements;

3.2.3 Engineers' Reports. Any environmental or geological reports concerning the Property which have been prepared at Seller's request or which are within Seller's possession or control;

3.2.4 Tax Bills. Copies of all real property tax bills, if any, for the Property for the tax years 2020-2021 and 2021-2022.

3.2.5 Licenses, Etc. Copies of any licenses, permits or certificates required by governmental authorities including, without limitation, any environmental permits and licenses;

3.2.6 Inspection Reports. Copies of all written reports received by Seller within three (3) years prior to the Effective Date from Seller's insurance companies, any governmental agency or any other person or entity, which requires or demands correction of any condition, or requests modification in or termination of any uses of the Property.

3.3 Additional Documents and Information. From the Effective Date through the Closing Date, Seller shall make available to Buyer at the Property in accordance with Section 3.1, the documents and information described in this Section 3.3 to the extent in Seller's possession (collectively, the "**Additional Documents**");

3.3.1 Agreements. Copies of written, and written descriptions of oral, easements, covenants, restrictions, agreements and contracts, whether existing or, to the knowledge of Seller, proposed as of the Effective Date, including without limitation any agreements relating to the insurance, service, operation, repair, supply, advertising, promotion, sale, leasing or management of the Property, which (a) affect the Property, (b) are not disclosed by the Preliminary Title Report, and (c) have not been delivered to Buyer pursuant to Section 3.2. If no such documents exist, Seller shall furnish its certification to that effect.

3.3.2 Insurance Policies. Copies of certificates evidencing the insurance carried by Seller of the Property;

3.3.3 Other Documents. All data, correspondence, documents, agreements, waivers, notices, applications and other records with respect to the Property relating to transactions with taxing authorities, governmental agencies, utilities, vendors, and others, all from the three (3) years preceding the Effective Date, with whom Buyer may be dealing from and after the Closing Date; and

3.3.4 Requested Information. Such other documents and information concerning the Property as Buyer may reasonably request.

3.4 Approval/Disapproval of Due Diligence Investigations. Buyer shall approve or disapprove the results of Buyer's Due Diligence Investigation, in the exercise of Buyer's sole discretion, by written notice delivered to Seller no later than the expiration of the Due Diligence Period. Buyer's disapproval shall terminate this Agreement, in which case neither party shall have

any further rights or obligations hereunder except for those provisions which expressly survive the termination of this Agreement. If Buyer fails to deliver to Seller notice of its approval or disapproval of the results of its Due Diligence Investigation, Buyer shall be deemed to have disapproved such results. If Buyer elects to terminate the Agreement or otherwise fails to deliver the Feasibility Approval prior to the expiration of the Due Diligence Period, Buyer shall return to Seller all of the Preliminary Documents and Additional Documents previously delivered by Seller to Buyer within five (5) business days of such termination.

3.5 Title Review.

3.5.1 Owner's Affidavit/Monetary Liens. Seller agrees to provide Title Company's customary form of owner's affidavit, and at its expense, Seller shall remove all liens or other monetary encumbrances on the Property at or prior to the Closing (collectively, "**Monetary Liens**"), including, without limitation: (i) all delinquent taxes, bonds and assessments and interest and penalties thereon (it being agreed that Seller shall not be required to remove any non-delinquent taxes, bonds and assessments imposed by any governmental agency that are paid with the property taxes for the Property); and (ii) all other monetary liens, including without limitation all those shown on the Preliminary Title Report (including judgment and mechanics' liens, whether or not liquidated, and mortgages and deeds of trust, with Seller being fully responsible for any fees or penalties incurred in connection therewith), except Seller shall not be obligated to remove any liens arising from the actions of Buyer, its consultants or representatives.

3.5.2 Approval/Disapproval of Title Review. Buyer shall approve or disapprove of the Preliminary Title Report, the Survey and any exceptions to title shown thereon (other than the Monetary Liens) in the exercise of Buyer's sole discretion, within thirty (30) days after the later of (i) the Effective Date or (ii) Buyer's receipt of the Preliminary Title Report. If Buyer disapproves, Buyer may either (a) terminate this Agreement by giving Seller written notice of termination or (b) give Seller a written notice ("**Disapproval Notice**") identifying the disapproved title matters ("**Disapproved Title Matters**"). With respect to any Disapproved Title Matters, other than the Monetary Liens, Seller shall notify Buyer in writing within ten (10) days after Seller's receipt of the Disapproval Notice whether Seller will cause the Disapproved Title Matters to be removed or cured at or prior to Closing. If Seller elects not to remove or cure all Disapproved Title Matters, Buyer may, at its option: (i) subject to satisfaction of the other conditions to Closing, close the purchase of the Property and take title subject to the Disapproved Title Matters which Seller elects not to remove or cure, which matters shall then be deemed to have been approved by Buyer; or (ii) terminate this Agreement in accordance with Section 9.6.1. Seller shall not be obligated to cure any title matters except (i) Monetary Liens and (ii) matters that Seller agrees in writing to cure.

3.5.3 Buyer's Options. If any Disapproved Title Matters (including the Monetary Liens that Buyer has agreed in writing to cure) have not been removed at least five (5) days prior to Closing or provision for their removal at the Closing (including by application by Seller of the proceeds of sale, by bonding over, or by endorsement by the Title Company) has not been made to Buyer's reasonable satisfaction (with such enumerated provisions to be deemed satisfactory), Buyer may, at its option: (i) close the purchase of the Property and take title subject to the Disapproved Title Matters which have not been removed; or (ii) terminate this Agreement in accordance with Section 9.6.1.

3.5.4 Failure to Disapprove. If Buyer fails to notify Seller of its approval or disapproval of the Preliminary Title Report, the Survey or the exceptions shown thereon by the end of the Due Diligence Period, then Buyer shall be deemed to have disapproved the same and this Agreement shall terminate, and neither party shall have any further rights or obligations hereunder except for those provisions which expressly survive the termination of this Agreement.

ARTICLE 4. CONDITIONS PRECEDENT.

4.1 Buyer's Conditions. Buyer's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.1 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or in part by Buyer by written notice to Seller.

4.1.1 Due Diligence. Buyer having approved of the results of its Due Diligence Investigation pursuant to Section 3.4;

4.1.2 Title Review. Buyer having approved of the results of its review of title pursuant to Section 3.5.

4.1.3 Title Policy. Title Company shall be committed to deliver to Buyer (a) a CLTA or ALTA Standard Owner's policy of title insurance ("**Title Policy**") (or at Buyer's election a binder therefor) for the Property, with liability equal to the Purchase Price showing fee title to the Property vested in Buyer and subject only to: (i) the matters and exceptions which were approved or deemed approved by Buyer pursuant to Section 3.5; and (ii) the standard printed exceptions for standard coverage (collectively, "**Conditions of Title**"). Buyer may obtain an ALTA Extended Coverage Owner's Policy if Buyer pays the incremental premium for ALTA Extended coverage, provides Title Company a survey as required by the Title Company and satisfies all other requirements of the Title Company for extended coverage and may obtain such other coverage (including coinsurance, reinsurance and endorsements as Buyer shall desire); provided, however, obtaining such extended and other coverages shall not be a condition to Closing.

4.1.4 Performance of Covenants. Seller performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Seller prior to or at the Closing.

4.1.5 Representations and Warranties. The representations and warranties of Seller set forth in Article 5 being true and accurate in all material respects on the Closing Date as if made on such date.

4.1.6 Non-Foreign Certification. Seller having executed and delivered to Buyer on or prior to the Closing Date a certification (the "**Non-Foreign Certification**"), substantially in the form of Exhibit C.

4.1.7 California Certification. Seller having furnished the residency certification required pursuant to Sections 18805 and 26131 of the California Revenue and Taxation Code or having authorized Escrow Holder in writing to withhold from the Purchase Price the amounts required to be withheld by such Sections.

4.2 Seller's Conditions. Seller's obligations under this Agreement are expressly subject to the timely fulfillment of the conditions set forth in this Section 4.2 on or before the Closing Date, or such earlier date as is set forth below. Each condition may be waived in whole or part by Seller by written notice to Buyer.

4.2.1 Covenants. Buyer performing and complying in all material respects with all of the terms of this Agreement to be performed and complied with by Buyer prior to or at the Closing.

4.2.2 Representations and Warranties. The representations of Buyer set forth in Article 4.6 being true and accurate on the Closing Date, as if made on such date.

4.3 Effect of Failure of Closing Conditions. In the event any of the conditions set forth in Sections 4.1 or 4.2 are not fulfilled or waived, the party benefited by such conditions may, by written notice to the other party, terminate this Agreement, whereupon all rights and obligations hereunder of each party shall terminate except those that expressly survive any termination. Either party may, at its election, at any time or times on or before the date specified for the satisfaction of the condition, waive in writing the benefit of any of the conditions in favor of such party set forth in Sections 4.1 and 4.2 above. In the event this Agreement is terminated as a result of the failure of any condition set forth in Section 4.1, Buyer, as its sole and exclusive remedy, shall be entitled to a refund of the Deposits; provided that if such failure is the result of a default by Buyer or Seller, then Section 9.6.4 shall apply. In any event, Buyer's election to close Escrow pursuant to this Agreement shall waive any remaining unfulfilled conditions and any liability on the part of Seller for breaches of covenants, representations and warranties, if any, of which Buyer had actual (as opposed to constructive) knowledge as of the Closing. For purposes of this Agreement, Buyer shall be deemed to have actual knowledge of the following: (a) all facts regarding the Property disclosed by Seller in any Schedule attached hereto (collectively, the "**Disclosure Schedules**"); (b) all facts disclosed in the Preliminary Title Report; (c) all facts disclosed in the Preliminary Documents and Additional Documents delivered by Seller to Buyer pursuant to Sections 3.2 and 3.3, above; (d); all facts disclosed on any Survey or Phase I obtained by Buyer during the Due Diligence Period; and (e) any information disclosed by Seller in an official notice sent to Buyer pursuant to Section 11.1, below.

ARTICLE 5. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller hereby makes the following representations and warranties to Buyer with the understanding that each such representation and warranty is material and is being relied upon by Buyer:

5.1 Intentionally Omitted.

5.2 Compliance. To Seller's knowledge, as of the Effective Date, the Property, and the operation thereof, are in compliance with all applicable laws, ordinances, rules, regulations, judgments, orders, covenants, conditions, restrictions, whether federal, state, local, foreign or private, and Seller will not take any action to cause any such failure of compliance as of the Closing Date.

5.3 Intentionally Omitted.

5.4 Taxes and Condemnation. As of the Effective Date, except as shown on the current tax bills or as may be contemplated in the Settlement Agreement or the Specific Plan described on Schedule 5.7, there are no presently pending or, to Seller's knowledge, contemplated special taxes or assessments which will affect the Property, and Seller will take no action to cause any special taxes or assessments to affect the Property as of the Closing Date. As of the Effective Date, there are no presently pending or, to Seller's knowledge, contemplated proceedings to condemn or demolish the Property or any part of it.

5.5 Contracts/Leases/Occupancy Rights. There are no service contracts or agreements ("**Service Contracts**") or other obligations to which Seller is a party to which they or the Property is bound which may affect the current use of the Property (except as described in Section 5.7 below), nor are there any current leases, occupancy or operating agreements in force. Seller has not granted any party a right to occupancy, tenancy, or a license to use or enter the Property.

5.6 Litigation. To Seller's knowledge, as of the Effective Date, there are no actions, suits, proceedings, judgments, orders, decrees or governmental investigations pending or threatened against the Property or Seller which could affect the Property or the purchase, use or enjoyment thereof by Buyer. Seller will not take any action to cause any actions, suits, proceedings, judgments, orders, decrees or governmental investigations to affect the Property or the purchase, use or enjoyment thereof as of the Closing Date.

5.7 Agreements with Governmental Authorities. Except as set forth in Schedule 5.7, there are no agreements with governmental authorities, agencies, utilities or quasi-governmental entities which affect the Property except those agreements which are identified in the Preliminary Title Report and those matters which are disclosed by the Survey.

5.8 Hazardous Materials.

5.8.1 Definitions. For purposes of this Agreement:

(a) "**Environmental Law(s)**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901 et seq., the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et. seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., the Clean Water Act, 33 U.S.C. Sections 1251 et seq., [The Safe Drinking Water and Toxic Enforcement Act of 1986 (Cal. H&S Code Sections 25249.5-25249.13), the Carpenter-Preseley-Tanner Hazardous Substance Account Act (Cal. H&S Code Sections 25300 et seq.), and the California Water Code Sections 1300, et seq.], as said laws have been supplemented or amended to date, the regulations promulgated pursuant to said laws and any other federal, state or local law, statute, rule, regulation or ordinance which regulates or proscribes the use, storage, disposal, presence, cleanup, transportation or Release or threatened Release into the environment of Hazardous Material.

(b) "**Hazardous Material**" means any substance which is (i) designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any Environmental Law, as currently in effect or as hereafter amended or enacted, (ii) a petroleum hydrocarbon, including crude oil or any fraction

thereof and all petroleum products, (iii) PCBs, (iv) lead, (v) asbestos, (vi) flammable explosives, (vii) infectious materials or (viii) radioactive materials.

(c) “**Release**” means any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposing into the environment of any Hazardous Material (including the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Material).

5.8.2 Representations. Except as otherwise disclosed in Schedule 5.10.2:

(a) To Seller’s knowledge, as of the Effective Date, the Property is in compliance with all applicable Environmental Laws, and Seller has not received any written notice of violation issued pursuant to any Environmental Law with respect to the Property or any use or condition thereof. Seller will not take any action to cause a failure of the Property to comply with applicable Environmental Law as of the Closing Date

(b) Seller has not used, handled, stored, transported, released or disposed of any Hazardous Material on, under or from the Property in violation of any Environmental Law.

(c) To Seller’s knowledge, as of the Effective Date there is no Release of any Hazardous Material existing on beneath or from or in the surface or ground water associated with the Property, and Seller will not take any action to cause a Release of Hazardous Substances on, beneath or from or in the surface or ground water associated with the Property.

(d) To Seller’s knowledge, as of the Effective Date, there exists no writ, injunction, decree, order or judgment outstanding, nor any lawsuit, claim, proceeding, citation, directive, summons or investigation pending or, to Seller’s knowledge, threatened pursuant to any Environmental Law relating to (i) the ownership, occupancy or use of any portion of the Property by Seller or occupant or user of any portion of the Property or any former owner of any portion of the Property, (ii) any alleged violation of any Environmental Law by Seller or occupant or user of any portion of the Property or any former owner of any portion of the Property or (iii) the suspected presence, Release or threatened Release of any Hazardous Material on, under, in or from any portion of the Property.

5.9 Title to the Property. Except as may be set forth in the Preliminary Title Report, there are no outstanding rights of first refusal or first look, options to purchase, rights of reverter, or claim of right relating to the transfer or sale of the Property or any interest therein. No person holding a security interest in the Property or any part thereof has the right to consent or deny consent to the sale of the Property as contemplated herein, and Seller has the right to pay off such person and to remove all such liens as of the Closing Date.

5.10 Seller’s Authority. Seller has the requisite power and authority to own and operate the Property and conduct its business where the same is now owned or operated. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Seller (or its board of directors or shareholders) in order to consummate the transactions contemplated herein. This Agreement and the other documents executed by Seller in connection

herewith are legal, valid and binding obligations of Seller, enforceable in accordance with their respective terms. Neither the execution and delivery of this Agreement by Seller, nor performance of any of its obligations hereunder, nor consummation of the transactions contemplated hereby, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Seller was organized, or any indenture, mortgage, deed of trust, agreement, undertaking, instrument or document to which Seller or any affiliate thereof is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Seller.

5.11 Foreign Person. Seller is not a “foreign person” within the meaning of Section 1445(f) of the Internal Revenue Code.

5.12 No Employees. There are no on-site employees of Seller at the Property and Buyer shall have no obligation to employ any individual employed by Seller or its affiliates in connection with the Property.

5.13 Intentionally Omitted.

5.14 Misstatements and Omissions. The representations and warranties made by Seller in this Article 5 do not contain any untrue statement.

References in this Agreement to the “knowledge” of Seller or words of similar import shall refer only to the current actual (as opposed to implied or constructive) knowledge of Chet Diamond and shall not be construed, by imputation or otherwise, to refer to the knowledge of Seller or any parent, subsidiary, or affiliate of Seller or to any other officer, agent, manager, representative or employee of Seller or to impose upon Chet Diamond any duty to investigate the matter to which such actual knowledge, or the absence thereof, pertains. Notwithstanding anything to the contrary contained in this Agreement, Chet Diamond shall have no personal liability hereunder.

ARTICLE 6. BUYER’S REPRESENTATIONS AND WARRANTIES.

Buyer makes the following representation and warranties to Seller with the understanding that each such representation and warranty is material and is being relied upon by Seller:

6.1 Buyer’s Authority. The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary action and proceedings, and no further action or authorization is necessary on the part of Buyer in order to consummate the transactions contemplated herein.

6.2 No Conflict. Neither the execution nor delivery of this Agreement by Buyer, nor performance of any of its obligations hereunder, nor consummation of the transactions contemplated hereby, shall conflict with, result in a breach of, or constitute a default under, the terms and conditions of the organizational documents pursuant to which Buyer was organized, or any agreement to which Buyer is a party or is bound, or any order or regulation of any court, regulatory body, administrative agency or governmental body having jurisdiction over Buyer.

ARTICLE 7. SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION.

7.1 Survival of Warranties. Buyer and Seller agree that each representation and warranty, covenant by the respective parties contained herein or made in writing pursuant to this Agreement are intended to and shall be deemed made as of the date of this Agreement or such writing and again at the Closing, shall be deemed to be material, and unless expressly provided to the contrary shall survive the execution and delivery of this Agreement, the Deed and the Closing for a period of twelve (12) months from the date of the Closing.

7.2 Notice of Changed Circumstances. If either party becomes aware of any fact or circumstances which would render false or misleading a representation or warranty made by such party, then it shall promptly give notice of such fact or circumstance to the other party within five (5) business days after the date of such discovery, but such notice shall not relieve any party of any liabilities or obligations with respect to any representation or warranty.

7.3 AS-IS, WHERE-IS SALE / BUYER'S RELIANCE ON ITS INVESTIGATIONS; RELEASE. **SUBJECT TO THE REPRESENTATIONS AND WARRANTIES OF SELLER IN ARTICLE 5, BUYER AGREES (I) THAT IT IS PURCHASING THE PROPERTY ON AN "AS-IS, WHERE-IS" BASIS AND BASED EXCLUSIVELY ON ITS OWN INVESTIGATION AND EXAMINATION OF THE PROPERTY, (II) THAT, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER SELLER NOR SELLER'S EMPLOYEES, OFFICERS, DIRECTORS, TRUSTEES, PRINCIPALS, AGENTS, CONSULTANTS, PARENTS, SUBSIDIARIES, AFFILIATES, BROKERS, PROPERTY MANAGERS, ASSET MANAGERS, ATTORNEYS, CONTRACTORS, AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS (COLLECTIVELY, "SELLER'S REPRESENTATIVES") HAVE MADE, AND SELLER AND SELLER'S REPRESENTATIVES DO NOT MAKE AND SPECIFICALLY NEGATE AND DISCLAIM ANY WARRANTY, REPRESENTATION, COVENANT, AGREEMENT OR GUARANTEE OF ANY KIND OR CHARACTER WHETHER EXPRESS, IMPLIED OR STATUTORY, WRITTEN OR ORAL, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO ANY MATTER PERTAINING TO THE PROPERTY. BUYER ACKNOWLEDGES THAT THE PURCHASE PRICE REFLECTS THE "AS-IS, WHERE-IS" NATURE OF THIS SALE AND ANY FAULTS, LIABILITIES, DEFECTS OR OTHER ADVERSE MATTERS THAT MAY BE ASSOCIATED WITH THE PROPERTY AND BUYER'S AGREEMENT TO PURCHASE THE PROPERTY "AS-IS" IS A MATERIAL INDUCEMENT TO SELLER TO AGREE TO SELL THE PROPERTY AT THE PURCHASE PRICE PROVIDED HEREIN.**

WITHOUT LIMITING THE FOREGOING OR ANY OTHER PROVISION OF THIS AGREEMENT, THE GRANT DEED CONVEYING THE PROPERTY PURSUANT HERETO IS MADE SUBJECT TO ALL ZONING ORDINANCES AND REGULATIONS AND ANY OTHER LAWS, ORDINANCES, OR GOVERNMENTAL REGULATIONS OR RESTRICTIONS AFFECTING THE USE, OCCUPANCY, OR ENJOYMENT OF THE PROPERTY.

WITHOUT LIMITING THE FOREGOING, EXCEPT FOR OBLIGATIONS OF SELLER HEREUNDER THAT EXPRESSLY SURVIVE THE CLOSING, OR SELLER'S FRAUD, INTENTIONAL MISREPRESENTATION, OR FAILURE TO DISCLOSE KNOWN MATERIAL FACTS REGARDING THE PROPERTY WHICH ARE NOT WITHIN THE REACH OF THE DILIGENT ATTENTION AND OBSERVATION OF BUYER ("NON-RELEASED CLAIMS"), BUYER, FOR ITSELF AND ITS AGENTS, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, WAIVES ITS RIGHT TO RECOVER FROM AND RELEASES AND FOREVER DISCHARGES SELLER AND SELLER'S REPRESENTATIVES FROM ANY AND ALL CLAIMS, DEMANDS, LIABILITIES, LOSSES, DAMAGES, PENALTIES, FINES, LIENS, JUDGMENTS, COSTS OR EXPENSES (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND DISBURSEMENTS) WHATSOEVER (COLLECTIVELY "CLAIMS"), WHETHER AT LAW OR IN EQUITY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THIS AGREEMENT, WHICH BUYER HAS OR MAY HAVE IN THE FUTURE, ARISING OUT OF THE PHYSICAL (INCLUDING WITHOUT LIMITATION, DESIGN AND CONSTRUCTION DEFECTS), ENVIRONMENTAL, HEALTH, SAFETY, ECONOMIC OR LEGAL CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, ALL CLAIMS IN TORT OR CONTRACT AND ANY CLAIM FOR INDEMNIFICATION OR CONTRIBUTION ARISING UNDER ANY ENVIRONMENTAL LAWS OR ANY SIMILAR FEDERAL, STATE OR LOCAL STATUTE, RULE OR REGULATION (INCLUDING ANY SUBSEQUENT AMENDMENT OR ADDITION THERETO AND JUDICIAL INTERPRETATIONS THEREOF). EXCEPT WITH RESPECT TO NON-RELEASED CLAIMS, BUYER, FOR ITSELF AND ITS AGENTS, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER AND SELLER'S REPRESENTATIVES FROM AND AGAINST ANY AND ALL MATTERS AFFECTING THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER HAS BEEN REPRESENTED BY INDEPENDENT LEGAL COUNSEL OF BUYER'S SELECTION AND BUYER IS GRANTING THIS WAIVER AND RELEASE OF ITS OWN VOLITION AND AFTER CONSULTATION WITH BUYER'S COUNSEL.

AS PART OF THE PROVISIONS OF THIS SECTION 7.3, BUT NOT AS A LIMITATION THEREON, BUYER HEREBY AGREES, REPRESENTS AND WARRANTS THAT THE MATTERS RELEASED HEREIN ARE NOT LIMITED TO MATTERS WHICH ARE KNOWN OR DISCLOSED, AND BUYER, FOR ITSELF AND ITS AGENTS, PARENTS, SUBSIDIARIES, AFFILIATES, SUCCESSORS AND ASSIGNS, HEREBY WAIVES ANY AND ALL RIGHTS AND BENEFITS WHICH IT NOW HAS, OR IN THE FUTURE MAY HAVE CONFERRED UPON IT, BY VIRTUE OF THE PROVISIONS OF FEDERAL, STATE OR LOCAL LAW, RULES OR REGULATIONS, INCLUDING WITHOUT LIMITATION, SECTION 1542 OF THE CIVIL CODE OF THE STATE OF CALIFORNIA, WHICH BUYER ACKNOWLEDGES THAT IT HAS READ AND IS FAMILIAR WITH AND WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN

HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”

BY INITIALING BELOW, BUYER WAIVES THE PROVISIONS OF SECTION 1542 SOLELY IN CONNECTION WITH THE MATTERS WHICH ARE THE SUBJECT OF THE FOREGOING WAIVERS AND RELEASES.

Buyer's Initials

ARTICLE 8. SELLER'S PRE-CLOSING COVENANTS.

Seller shall comply with the covenants contained in this Article 8 from the Effective Date through the Closing Date unless Buyer consents otherwise in writing. Buyer may grant or withhold any such consent requested by Seller in Buyer's sole discretion.

8.1 Contracts and Documents. Seller shall not, without Buyer's approval, not to be unreasonably withheld or delayed, enter into any material agreement of any type affecting the Property that would survive the Closing Date.

8.2 Insurance. Seller shall maintain or cause to be maintained in full force and effect its present insurance policies for the Property.

8.3 Compliance with Obligations. Seller shall fully and timely comply with all obligations to be performed by it under the Conditions of Title and all permits, licenses, approvals and laws, regulations and orders applicable to the Property.

8.4 No Transfers. Seller shall not sell, encumber or otherwise transfer any interest in all or any portion of the Property, or agree to do so.

8.5 Termination of Contracts. Seller at its sole cost and expense shall terminate all of the Service Contracts described in Section 5.5 at or before the Closing Date, except for those contracts which Buyer expressly agrees to assume and which are actually assumed by Buyer pursuant to Section 9.3.3.

8.6 Maintenance. At its sole cost and expense, Seller shall operate and maintain the Property such that on the Closing Date the Property shall be in at least as good a condition and repair as on the Effective Date, reasonable wear and tear excepted. Seller shall not make any material alterations to the Property.

8.7 Best Efforts. Seller shall use its best efforts to cause the conditions set forth in Sections 4.1.4, 4.1.5, 4.1.6, 4.1.7 to be satisfied by the Closing Date, and Seller shall not take or permit any action that would result in any of the representations and warranties set forth in Article 5 becoming false or incorrect.

ARTICLE 9. CLOSING.

9.1 Time. Provided all conditions set forth in Article 4 have been either satisfied or waived, the parties shall close this transaction (the “**Closing**”), on the date which is fifteen (15) days after the expiration of the Due Diligence Period (the “**Closing Date**”), as such date may be extended by the provisions of Article 10.

9.2 Escrow. This Article 9, together with such additional instructions as First American Title Insurance Company, Attention: Jeanne Gould, jgould@firstam.com, (949) 885-2405 (“**Escrow Holder**”), shall reasonably request and the parties shall agree to, shall constitute the escrow instructions to Escrow Holder. If there is any inconsistency between this Agreement and the Escrow Holder’s additional escrow instructions, this Agreement shall control unless the intent to amend this Agreement is clearly stated in said additional instructions. Buyer and Seller shall cause Escrow Holder to execute and deliver a counterpart of this Agreement to each of them. If the Title Company does not serve as the Escrow Holder, the Title Company shall provide a letter to Buyer, in form and content acceptable to Buyer, pursuant to which the Title Company accepts responsibility and liability for the acts and omissions of Escrow Holder in discharging Escrow Holder’s obligations hereunder, including, without limitation, any acts or omissions of Escrow Holder relating to the Title Company’s commitment to issue the Title Policy, the receipt, recordation or delivery of any documents placed into escrow, and the receipt and disbursement of any funds placed into escrow.

9.3 Seller’s Deposit of Documents and Funds Into Escrow. Seller shall deposit into escrow on or before Closing the following documents:

9.3.1 A duly executed and acknowledged grant deed, in the form acceptable to Buyer, conveying the Property to Buyer (“**Grant Deed**”) in the form attached as Exhibit D;

9.3.2 A duly executed assignment, in the form of Exhibit C, assigning to Buyer all of Seller’s interest in all intangible assets of the Property and in all warranties of which Seller is the beneficiary with respect to the Property (the “**General Assignment**”);

9.3.3 All costs of Closing to be paid by Seller pursuant to Section 9.8.1, below, which costs may be offset against the Purchase Price rather than deposited into escrow;

9.3.4 Seller’s Non-foreign Certification;

9.3.5 All records and files relating to the management or operation of the Property, including, without limitation, property tax bills, insurance, and property taxes; and

9.3.6 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.4 Deliveries Outside of Escrow. Notwithstanding Section 9.3, Seller and Buyer may elect to deliver the documents described in Section 9.3 outside of escrow (other than documents which are to be recorded) by giving Escrow Holder a joint written notice of such election,

specifying the documents which will be so delivered outside of escrow. Upon receipt of such notice, Escrow Holder shall have no further obligation concerning such specified documents.

9.5 Buyer's Deposit of Documents and Funds. Buyer shall deposit into escrow:

9.5.1 The Purchase Price in accordance with the provisions of Article 2, plus or minus prorations and closing costs as provided in Section 9.8, by cashier's or certified check or electronic transfer of federal funds to Escrow Holder, on or before the Closing Date; and

9.5.2 Such additional documents, including written escrow instructions consistent with this Agreement, as may be necessary or desirable for conveyance of the Property in accordance with this Agreement.

9.6 Default, Termination and Remedies.

9.6.1 Buyer's Termination. This Agreement shall automatically terminate without further notice or action by Buyer upon the occurrence of any of the following events, provided that Buyer is not then in material breach of this Agreement: (a) any condition to Closing contained in Section 4.1 has not been satisfied or waived by Buyer by the Closing Date; or (b) Buyer having exercised its right to terminate this Agreement pursuant to Section 3.4 (disapproval of Due Diligence Investigation), Section 3.5 (disapproval of title) or Article 10 (damage or condemnation). In such event, the parties shall have no further obligation to each other except for those obligations that specifically survive the termination of this Agreement. If this Agreement terminates as a result of Seller's material breach of this Agreement, Buyer shall have the remedies set forth below in Section 9.6.4(a) as its exclusive remedies.

9.6.2 Seller's Termination. Provided that Seller is not then in material breach of this Agreement, this Agreement shall automatically terminate without further notice or action by Seller if any condition to Closing contained in Section 4.2 has not been satisfied or waived by Seller by the Closing Date.

9.6.3 Release from Escrow. Upon termination of this Agreement pursuant to Section 9.6.1 or 9.6.2, Escrow Holder shall promptly return to Buyer and Seller, respectively, all documents and monies deposited by them into escrow without prejudice to their rights and remedies hereunder.

9.6.4 Remedies.

(a) Buyer's Remedies. If Seller fails to comply with or perform Seller's obligations under this Agreement, and does not cure such failure within three (3) business days after Buyer's written notice of such failure, Buyer shall have as its sole and exclusive remedies (all other rights and/or remedies, whether available at law or in equity, being irrevocably waived, except as provided below) the right to either (a) terminate this Agreement (in which event the Deposit shall be returned to Buyer, neither party hereto shall have any further obligation or liability to the other except for obligations that expressly survive termination hereof, and Seller shall reimburse Buyer for its out-of-pocket expenses in connection with the transaction contemplated hereby, not to exceed \$25,000, Buyer hereby waiving any right to claim to damages for Seller's breach or default, or (b) specifically enforce Seller's obligation to convey the Property, provided

that any action by Buyer for specific performance must be filed, if at all, within sixty (60) days of Seller's breach or default, and the failure to file within such period shall constitute a waiver by Buyer of such right and remedy. No termination of the escrow by Buyer following a breach by Seller shall be deemed to waive such breach or any remedy otherwise available to Buyer.

(b) Seller's Remedies/Liquidated Damages. If before the close of escrow Buyer fails to comply with or perform Buyer's obligations under this agreement and (except as otherwise provided in Section 9.6) does not cure such failure within three (3) business days after Seller's written notice of such failure, then Seller may thereafter: (i) terminate this Agreement; (ii) receive and retain the deposit as liquidated damages if such default occurs after the expiration of the Due Diligence Period; and (iii) exercise the other rights and remedies reserved by Seller as provided in this paragraph. In the event Seller terminates this Agreement by reason of Buyer's default, the Deposit shall be returned to Seller and Buyer and Seller shall be relieved of any further obligation to each other with respect to this Agreement and the Property except for any obligations which expressly survive. It is expressly understood and agreed by Buyer and Seller: that Seller will incur substantial damages as a result of any failure by Buyer to comply with or perform Buyer's obligations under this Agreement; that it is extremely difficult and impractical to calculate and ascertain as of the effective date of this agreement the actual damages which would be suffered in such event by seller; and that the deposit is a reasonable estimate of the extent to which Seller may be damaged by Buyer's default in light of the difficulty the parties would have in determining Seller's actual damages as a result of such default by Buyer.

SELLER'S INITIALS: 

BUYER'S INITIALS: _____

(c) Waiver of Specific Performance. Seller hereby waives the right to maintain an action for specific performance of Buyer's obligation to purchase the Property and Seller agrees that Seller can be adequately compensated in money damages if Buyer fails to purchase the Property in breach of this Agreement. Seller acknowledges that the provisions of this paragraph are a material part of the consideration being given to Buyer for entering into this Agreement and that Buyer would be unwilling to enter into this Agreement in the absence of the provisions of this paragraph.

SELLER'S INITIALS: 

BUYER'S INITIALS: _____

9.7 Closing. When, on or prior to the Closing Date, subject to Section 9.6.4, Escrow Holder has received all documents and funds identified in Sections 9.3 and 9.5, has received notification from Buyer and Seller that all conditions to Closing to be satisfied outside of escrow have been satisfied or waived and Title Company is irrevocably committed to issue the Title Policy, then, and only then, Escrow Holder shall:

9.7.1 Record the Grant Deed;

9.7.2 Cause the Title Company to issue the Title Policy to Buyer;

9.7.3 To the extent not otherwise delivered to Buyer outside of escrow, deliver to both Buyer and Seller: (a) a conformed copy (showing all recording information thereon) of the Grant Deed; (b) fully executed original counterparts of the Bill of Sale, and the General

Assignment; and to be delivered only to Buyer, (c) the Seller's Certificate, the Service Contracts referred to in Section 9.3.6, the Non-foreign Certification;

9.7.4 Deliver the Purchase Price (as adjusted pursuant to Section 9.8) to Seller.

Escrow Holder shall prepare and sign closing statements showing all receipts and disbursements and deliver copies to Buyer and Seller and, if applicable, shall file with the Internal Revenue Service (with copies to Buyer and Seller) the reporting statement required under Section 6045(e) of the Internal Revenue Code.

9.8 Closing Costs/Prorations.

9.8.1 Closing Costs. The following are to be paid by Buyer or Seller or apportioned as of the Closing Date as follows:

(a) Seller shall pay for the cost of preparing the Preliminary Title Report, and the CLTA/ALTA Standard increment for the Title Policy;

(b) Seller shall pay for the cost of any endorsements to the Title Policy required to cure any Monetary Liens, or to cure any other Disapproved Title Matters which Seller is obligated hereunder to cure or otherwise agrees to cure ("**Corrective Endorsements**");

(c) Buyer shall pay for the ALTA Extended Coverage increment for the Title Policy (if Buyer elects to obtain ALTA Extended Coverage) and the cost of any endorsements, other than Corrective Endorsements;

(d) Buyer is a public agency and is exempt from any City or County transfer taxes and recording fees;

(e) Buyer and Seller shall pay one-half the cost of the Escrow Fees;

(f) All other costs of Escrow shall be allocated between Buyer and Seller in accordance with the custom in the County in which the Property is located;

(g) Subject to Section 9.6, Buyer and Seller shall bear their own attorneys' fees and costs in connection with the negotiation and preparation of this Agreement and the transactions completed by this Agreement.

9.8.2 Prorations. Subject to the other provisions of this Section 9.8, all receipts and disbursements of the Property will be prorated as of 11:59 p.m. on the day immediately preceding the Closing Date. Not less than five (5) business days prior to the Closing, Seller shall submit to Buyer for its approval a tentative prorations schedule showing the categories and amounts of all prorations proposed. The parties shall agree on a final prorations schedule prior to the Closing and shall deliver the same to Escrow Holder. If following the Closing either party discovers an error in the prorations statement, it shall notify the other party and the parties shall promptly make any adjustment required.

9.8.3 Capital Expenditures and Accounts Payable. All capital and other improvements (including labor and material) which have been performed or contracted for, by or on behalf of Seller prior to the Closing Date, and all sums due for accounts payable which have been incurred with respect to the Property prior to the Closing Date shall be paid by Seller and shall be subject to the indemnification provisions of Section 7.3. Buyer shall furnish to Seller for payment any bills for such period received after the Closing Date, and Buyer shall have no further obligation with respect thereto.

9.8.4 Property Taxes. All real and personal property ad valorem taxes and special assessments, if any, whether payable in installments or not, including without limitation, all supplemental taxes attributable to the period prior to the Closing Date for the calendar year in which the Closing occurs, shall be prorated to the Closing Date, based on the latest available tax rate and assessed valuation. Notwithstanding the foregoing, Buyer is a tax exempt entity, not subject to ad valorem taxes within its jurisdiction, prorated or not, and shall not prepay or reimburse any portion of real estate taxes to Seller if Seller has prepaid any installment of such real estate taxes within Buyer's jurisdiction. Buyer shall cooperate, at no cost to Buyer, in any refund request Seller submits to the tax assessor.

9.8.5 Utility Charges. All utility charges shall be prorated as of the Closing Date and Seller shall obtain a final billing therefor. All utility security deposits, if any, shall be retained by Seller.

9.9 Possession. Seller shall deliver exclusive right of possession of the Property to Buyer on the Closing Date, subject only to the Conditions of Title.

9.10 Limitations. Except with respect to fraud, intentional misrepresentation or failure to disclose known material facts regarding the Property which are not within the reach of the diligent attention and observation of the Buyer ("**Non-Limited Claims**"), Seller's covenants, indemnities, warranties and representations, if any, contained in this Agreement and in any document executed by Seller pursuant to this Agreement shall survive Buyer's purchase of the Property only for a period commencing on the Closing Date and ending on six (6) months after the Closing Date (the "**Limitation Period**"). In furtherance thereof, Buyer acknowledges and agrees that, except with respect to any Non-Limited Claim(s), it shall have no right to make any claim against Seller on account of any breach of the foregoing unless an action on account thereof shall be filed in a court of competent jurisdiction prior to the expiration of the Limitation Period set forth in this paragraph. Any liability of Seller under this Agreement, or a breach by Seller of any of its obligations under this Agreement, shall be limited solely to the assets of Seller, and in no event shall any liability be asserted against Seller's employees, members, partners, representatives, officers, directors, trustees, principals, agents, consultants, affiliates, parents, brokers, property managers, asset managers, or any of their successors or assigns in connection with is this Agreement. Except with respect to any Non-Limited Claims, Seller's aggregate liability for claims arising out of such covenants, indemnities, representations and warranties, if any, with respect to the Property shall not exceed \$150,000.00 ("**Liability Cap**"). Notwithstanding anything to the contrary contained in this Agreement, and except with respect to any Non-Limited Claims, Seller shall not be liable for consequential, punitive and/or exemplary damages of any nature whatsoever. Buyer shall provide written notice to Seller prior to the expiration of the Limitation Period of any alleged breach of such covenants, indemnities,

warranties or representations, if any, and shall allow Seller thirty (30) days within which to cure such breach, or, if such breach cannot reasonably be cured within thirty (30) days, an additional reasonable time period, so long as such cure has been commenced within such thirty (30) days and is being diligently pursued, provided however the Limitation Period shall be tolled for a number of days equal to the duration of any notice and cure period afforded to Seller hereunder. If Seller fails to cure such breach after written notice and within such cure period, Buyer's sole remedy shall be an action at law which must be commenced, if at all, within the Limitation Period (as such period may be extended). The Limitation Period and the Liability Cap shall apply to known as well as unknown breach of such covenants, indemnities, warranties or representations, provided, however, they shall not apply to any Non-Limited Claims. The provisions of this Section 9.10 shall not alter, amend, affect, limit or supersede the provisions of Paragraph 7.4 of this Agreement. Buyer specifically acknowledges that such termination of liability represents a material element of the consideration to Seller. The limitation as to Seller's liability in this Section 9.10 does not apply to Seller's liability with respect to prorations and adjustments under Article 9. The provisions of this Section 9.10 shall survive indefinitely the Closing or earlier termination of this Agreement and shall not be merged into the Deed or other closing documents.

ARTICLE 10. DAMAGE, DESTRUCTION AND CONDEMNATION.

This Agreement shall be governed by the Uniform Vendor and Purchaser Risk Act as set forth in Section 1662 of the California Civil Code as supplemented and modified by this Article 10. Seller shall promptly notify Buyer in writing of any material damage to the Property and of any taking or (when Seller receives written notice) threatened taking of all or any portion of the Property. Within a reasonable period of time after receipt of such notice, Buyer shall determine whether a material part of the Property has been damaged or whether such taking or threatened taking has affected or will affect a material part of the Property. As used herein, (a) the destruction of a **"material part"** of the Property shall be deemed to mean an insured or uninsured casualty to the Property having an estimated cost of repair which in the reasonable judgment of Buyer equals or exceeds One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) and (b) a taking by eminent domain of a portion of the Property shall be deemed to affect a **"material part"** of the Property if in the reasonable judgment of Buyer the estimated value of the portion of the Property taken exceeds One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00). Upon making its determination, Buyer shall notify Seller in writing of the results of such determination. Buyer may elect, by written notice delivered to Seller within ten (10) days after giving Seller notice of such determination, to terminate this Agreement in accordance with Section 9.6.1 if a material part of the Property has been damaged or if such taking has affected or will affect a material part of the Property. If Buyer does not so terminate, (i) in the case of damage to a material part of the Property, Seller shall assign to Buyer at the Closing its right to recover under any insurance policies covering such damage and shall pay Buyer at the Closing the amount of the deductible, if any, and (ii) in the case of a threatened or actual taking of a material part of the Property, Seller shall assign to Buyer at the Closing Seller's entire right, title and interest in the proceeds thereof. If between the Effective Date, if feasible, and the Closing Date the Property suffers damage which is not material, Seller shall repair such damage at its expense prior to the Closing, and the Closing Date shall be extended for a reasonable period of time not to exceed 30 days to allow for completion of such repairs. The Closing Date shall be extended as necessary to permit Buyer to exercise its rights under this Article 10.

ARTICLE 11. GENERAL.

11.1 Notices. All notices, demands, approvals, and other communications provided for in this Agreement shall be in writing and shall be effective (a) when personally delivered to the recipient at the recipient's address set forth below; (b) five business days after deposit in a sealed envelope in the United States mail, postage prepaid, by registered or certified mail, return receipt requested, addressed to the recipient as set forth below; or (c) one business day after deposit with a recognized overnight courier or delivery service, addressed to the recipient as set forth below, whichever is earlier; or (d) when sent via email, delivered upon transmission if sent before 6:00 p.m. Pacific Time or the next business day, if sent after 6:00 p.m. Pacific Time, provided, however a copy of any notice sent via email shall be delivered via recognized overnight courier or delivery service. If the date on which any notice to be given hereunder falls on a Saturday, Sunday or legal holiday, then such date shall automatically be extended to the next business day immediately following such Saturday, Sunday or legal holiday.

The addresses for notice are:

SELLER: Diamond Riverside Limited Partnership
Chet H. Diamond
Trustee, The Chet Diamond Irrevocable
Trust of 2022
General Partner
459 Spalding Drive
Beverly Hills, California 90212
Phone: (310) 927-3905
Email: cd1857@yahoo.com

With a copy to: Stroock & Stroock & Lavan LLP
2029 Century Park East, 18th Floor
Los Angeles, CA 90067
Attn: Loryn D. Arkow, Esq.
Phone: (310) 556-5985
Email: larkow@stroock.com

BUYER: **San Gorgonio Pass Water Agency**
Attn: Lance Eckhart
General Manager
1210 Beaumont Ave.
Beaumont, CA 92223
Phone: (951) 845-2577
Email: leckhart@sgpwa.com

With a copy to: Best Best & Krieger LLP
Attn: Todd M. Gee
500 Capitol Mall, Suite 1700
Sacramento, CA 95814
Phone: (916) 551-2088
Email: todd.gee@bbklaw.com

Either party may change its address by written notice to the other given in the manner set forth above.

11.2 Entire Agreement. This Agreement and the Schedules and Exhibits hereto contain the entire agreement and understanding between Buyer and Seller concerning the subject matter of this Agreement and supersede all prior agreements, including any previous letter of intent or terms, understandings, conditions, representations and warranties, whether written or oral, made by Buyer or Seller concerning the Property or the other matters which are the subject of this Agreement.

11.3 Amendments and Waivers. No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party.

11.4 Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this Agreement as a whole.

11.5 References. Unless otherwise indicated, (a) all Article, Section, Schedule and Exhibit references are to the articles, sections, schedules and exhibits of this Agreement, and (b) all references to days are to calendar days. All the Schedules and Exhibits attached hereto are incorporated herein by this reference. Whenever under the terms of this Agreement the time for performance of a covenant or condition falls upon a Saturday, Sunday or California state holiday, such time for performance shall be extended to the next business day. The headings used in this Agreement are provided for convenience only and this Agreement shall be interpreted without reference to any headings. The masculine, feminine or neuter gender and the singular or plural number shall be deemed to include the others whenever the context so indicates or requires.

11.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

11.7 Confidentiality and Publicity. Buyer is a public entity and as such, this Agreement, upon its presentation for approval with Buyer's Board of Directors at a duly called and agendized public meeting, shall be subject to the Public Records Act and the Freedom of Information Act

(collectively, the “**Disclosure Acts**”). No press release or other public disclosure may be made by Seller or any of its agents regarding Buyer’s intent for this Property this transaction without the prior consent of Buyer.

11.8 Time. Time is of the essence in the performance of the parties’ respective obligations under this Agreement.

11.9 Attorneys’ Fees. In the event of any legal or equitable proceeding to enforce any of the terms or conditions of this Agreement, or any alleged disputes, breaches, defaults or misrepresentations in connection with any provision of this Agreement, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses, including, without limitation, reasonable attorneys’ fees and costs of defense paid or incurred in good faith.

11.10 Backup Offers. Seller shall be prohibited from seeking backup offers for the Property during the term of this Agreement.

11.11 Assignment. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. However, Seller shall not have the right to assign all or any portion of its interest in this Agreement without Buyer’s prior written consent. Buyer shall have the right to assign all or any portion of its interest in this Agreement, or substitute for itself a nominee, upon notice to Seller not later than three days prior to the Closing Date.

11.12 Further Assurances. Seller, at any time before or after Closing, shall, at its own expense, execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer reasonably requested by Buyer and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of transferring and confirming to Buyer, or reducing to Buyer’s possession, any or all of the Property or otherwise carrying out the terms of this Agreement.

11.13 Cooperation With Exchange. Each party agrees to cooperate with the other if such party intends to accomplish a tax-deferred exchange pursuant to Section 1031 of the Internal Revenue Code of 1986. Buyer and/or Seller may assign this Agreement to an exchange intermediary for the purpose of facilitating such an exchange by the assigning party. Buyer’s duty to cooperate shall be limited to the transfer of money to Seller or Seller’s designee in exchange for the Property, and in no event shall Buyer act as purchaser or acquirer of any exchange property. Seller’s duty to cooperate shall be limited to the transfer of the Property to Buyer or Buyer’s designee and in no event will Seller exchange the Purchase Property for any exchange property designated by Buyer. The requesting party shall indemnify and defend and hold the other party harmless from any claims, loss, damages or liability arising out of participation in an exchange.

11.14 No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the parties to it and their respective permitted successors and assigns, nor is anything in this Agreement intended to relieve or discharge any obligation of any third person to any party hereto or give any third person any right of subrogation or action over against any party to this Agreement.

11.15 Remedies Cumulative. The remedies set forth in this Agreement are cumulative and not exclusive to any other legal or equitable remedy available to a party.

11.16 Commissions, Indemnity, Disclosure. Seller is represented by Jake Plewa of Taksa Investment Group. Buyer is represented by Doug Jorritsma and Ian Sinderhoff of Land Advisors Organization. Except for the foregoing, each party represents to the other party that there is no broker representing such party in the current transaction, and that the representing party has incurred no liability for any brokerage commission or finder's fee arising from or relating to the transactions contemplated by this Agreement. Seller shall be responsible for both broker commissions enumerated in the first sentence of this section. Each party hereby indemnifies and agrees to protect, defend and hold harmless the other party from and against all liability, cost, damage or expense (including without limitation attorneys' fees and costs incurred in connection therewith) on account of any brokerage commission or finder's fee which the indemnifying party has agreed to pay or which is claimed to be due as a result of the actions of the indemnifying party. This Section 11.15 is intended to be solely for the benefit of the parties hereto and is not intended to benefit, nor may it be relied upon by, any person or entity not a party to this Agreement.

11.17 Counterparts/Facsimile/PDF Signatures. This Agreement may be executed in counterparts and when so executed by the parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument that shall be binding upon the parties, notwithstanding that the parties may not be signatories to the same counterpart or counterparts. The parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In order to expedite the transaction contemplated herein, facsimile or .pdf or other electronic signatures (including but not limited to DocuSign) may be used in place of original signatures on this Agreement. Seller and Buyer intend to be bound by the signatures on the facsimile or .pdf document, are aware that the other party will rely on the facsimile or .pdf signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

[signatures begin on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUYER:

San Geronio Pass Water Agency, a California public agency

By: _____
Name: Lance Eckhart
Its: General Manager

ATTEST:

By: _____
City Clerk

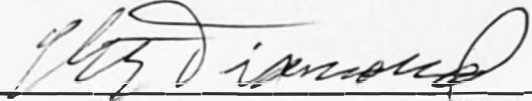
APPROVED AS TO FORM:
BEST BEST & KRIEGER LLP

By: _____
General Counsel

[signatures continue on next page]

SELLER:

Diamond Riverside Limited Partnership, a
California limited partnership

By: _____

Name: Chet H. Diamond, Trustee, The Chet
Diamond Irrevocable Trust of 2002

Its: General Partner

[signatures continue on next page]

Acceptance by Escrow Holder

Escrow Holder acknowledges receipt of the foregoing Agreement and accepts the instructions contained therein.

Dated: _____, 2022

First American Title Insurance Company

By: _____
Jeanne Gould
Escrow Holder

EXHIBIT A
LAND DESCRIPTION

Assessor's Parcel Nos. 400-250-010 and 400-250-012

LEGAL DESCRIPTION

Real property in the City of Beaumont, County of Riverside, State of California, described as follows:

THAT PORTION OF SECTION 33, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SECTION 33; THENCE NORTH 89° 47' 40" WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 1891.90 FEET TO A POINT THEREIN; THENCE SOUTH 00° 49' 41" WEST, PARALLEL WITH THE EAST LINE OF SAID NORTHEAST QUARTER AND ITS SOUTHERLY PROLONGATION, A DISTANCE OF 3388.98 FEET TO AN INTERSECTION WITH THE CENTERLINE OF PARCEL 5020-4, AS SHOWN BY MAP ON FILE IN [BOOK 51, PAGES 88 THROUGH 98](#) OF RECORD OF SURVEYS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, CALIFORNIA, SAID POINT BEING ON A CURVE IN SAID CENTERLINE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 3000.00 FEET, THE RADIAL BEARING TO SAID POINT BEARS NORTH 58° 39' 13" WEST; THENCE NORTHEASTERLY ALONG SAID CENTERLINE AND ALONG SAID CURVE, TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 03° 40' 28", AN ARC DISTANCE OF 192.39 FEET TO THE END THEREOF; THENCE NORTH 35° 01' 15" EAST ALONG SAID CENTERLINE, A DISTANCE OF 2448.33 FEET TO THE BEGINNING OF A TANGENT CURVE IN SAID CENTERLINE, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 3000.00 FEET; THENCE NORTHEASTERLY ALONG SAID CENTERLINE AND ALONG SAID CURVE, TO THE RIGHT, THROUGH A CENTRAL ANGLE OF 12° 12' 58", AN ARC DISTANCE OF 636.63 FEET TO AN INTERSECTION WITH THE EAST LINE OF SAID NORTHEAST QUARTER OF SAID SECTION 33, DISTANT THEREON SOUTH 00° 49' 41" WEST, 735.00 FEET FROM THE NORTHEAST CORNER OF SAID SECTION 33, THE RADIAL BEARING TO SAID POINT BEARS NORTH 42° 45' 47" WEST; THENCE NORTH 00° 49' 41" EAST ALONG SAID EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 735.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE NORTH 30 FEET THEREOF, INCLUDED IN BROOKSIDE AVENUE.

ALSO EXCEPTING THEREFROM ONE-HALF OF ALL OIL, GAS AND MINERAL RIGHTS AS RESERVED IN DEED FROM R. J. STRUTHERS AND MARGARET E. STRUTHERS, RECORDED AUGUST 28, 1946 IN [BOOK 768, PAGE 240](#), OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION AS DEEDED TO BEAUMONT UNIFIED SCHOOL DISTRICT BY DEED RECORDED SEPTEMBER 22, 2003 AS INSTRUMENT NO. [03-737051](#) OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION AS DEEDED TO THE CITY OF BEAUMONT BY DEED RECORDED NOVEMBER 20, 2008 AS INSTRUMENT NO. [2008-0614844](#) AND RE-RECORDED MAY 11, 2009 AS INSTRUMENT NO. [2009-0233247](#) BOTH OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

APN: 400-250-010 and 400-250-012

Exhibit "A"

EXHIBIT B

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

Section 1445 of the Internal Revenue Code of 1986, as amended (the "Code"), provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the San Geronio Pass Water Agency, a California public agency (the "Transferee"), that withholding of tax under Section 1445 of the Code will not be required upon the transfer of a U.S. real property interest to the Transferee by Diamond Riverside Limited Partnership (the "Transferor"), the undersigned hereby certifies the following on behalf of the Transferor:

1. The Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder);
2. The Transferor's U.S. tax identification number is _____; and
3. The Transferor's mailing address is [_____].

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

Under penalty of perjury I declare that I have examined this Certification and, to the best of my knowledge and belief, it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of the Transferor.

DATED: _____, 2022.

Diamond Riverside Limited Partnership, a
California limited partnership

By: _____
Name: Chet H. Diamond, Trustee, The Chet
Diamond Irrevocable Trust of 2002
Its: General Partner

EXHIBIT C

GENERAL ASSIGNMENT

This Assignment (the "Assignment") is made as of _____, by Diamond Riverside Limited Partnership, a California limited partnership ("Assignor").

FOR VALUABLE CONSIDERATION, as set forth in that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated _____, 2022 (the "Agreement"), Assignor hereby assigns and transfers to San Gorgonio Pass Water Agency, a California public agency ("Assignee"), following:

A. All permits, licenses, consents, registrations and other similar approvals applicable to the Real Property (collectively, the "Approvals");

B. All warranties of which Assignor is the beneficiary (the "Warranties") with respect to the Improvements or Personal Property.

C. All tangible and intangible assets of any nature relating to the Property, including without limitation all goodwill associated with the Property, all other intellectual or intangible property used by Seller in connection with the Property; and all claims and causes of action arising out of or in connection with the Property.

This Assignment shall not supersede the Agreement and, in the event of conflict between this Assignment and the Agreement, the Agreement shall control.

This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first above written.

ASSIGNOR:

Diamond Riverside Limited Partnership, a
California limited partnership

By: _____
Name: Chet H. Diamond, Trustee, The Chet
Diamond Irrevocable Trust of 2002
Its: General Partner

Exhibit "C"

EXHIBIT D
GRANT DEED

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO

San Gorgonio Pass Water Agency
Attn: Lance Eckhart
Its: General Manager
1210 Beaumont Ave.
Beaumont, California 92223

EXEMPT FROM RECORDING FEES PURSUANT
TO GOVERNMENT CODE SECTION 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN: _____

Grant Deed

The undersigned Grantor(s) declare(s): San Gorgonio Pass Water Agency is exempt from property taxes
Documentary transfer tax is \$0.

- ☐ Computed on full value of property conveyed, or
☐ Computed on full value less value of liens and encumbrances remaining at time of sale.
☐ Unincorporated area ☒ City of Riverside and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Diamond Riverside Limited Partnership, a California limited partnership

hereby GRANT(S) to

San Gorgonio Pass Water Agency, a California public agency

the following described real property in the City of Beaumont
County of Riverside
State of California:

SEE ATTACHED EXHIBIT A

Dated: _____, 2022

Diamond Riverside Limited Partnership, a California limited
partnership

By: _____
Name: Chet H. Diamond, Trustee, The Chet Diamond Irrevocable
Trust of 2002
Its: General Partner

Exhibit "D"

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, 2022 before me, _____, Notary Public,
personally appeared _____, who proved to me on the
basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or
the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (seal)

CERTIFICATE OF ACCEPTANCE

Pursuant to Section 27281 of the
California Government Code

This is to certify that the interest in real property conveyed by the Grant Deed dated _____, 2022, from **Diamond Riverside Limited Partnership**, a California limited partnership, to **San Gorgonio Pass Water Agency**, a California public agency, is hereby accepted by the undersigned officer on behalf of the San Gorgonio Pass Water Agency, pursuant to the authority conferred by Resolution No. _____, adopted by the Board of Directors of San Gorgonio Pass Water Agency on _____, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2022

San Gorgonio Pass Water Agency, a
California public agency

By: _____
Lance Eckhart
General Manager

SCHEDULE 5.7

AGREEMENTS

1. Settlement Agreement and Final Stipulated Judgment, entered by the Riverside County Superior Court on June 21, 2006 (Case No. 427282)
2. Noble Creek Vistas Final Specific Plan revised June 2014.



Consider Purchase and
Sale Agreement for
Property APNs:
400-250-010 &
400-250-012

Background

SGPWA has recently acquired an additional 10,000 acre-feet of Table A

There is an increased need to add additional recharge locations in the Pass Region

As directed by the Board, the General Manager has been seeking potential property acquisitions to obtain land suitable for Agency needs



SGPWA currently owns 2 parcels alongside Brookside Ave

- 52 total acres
- Bought in 2011 for \$3.1M
- \$60k per acre



SGPWA is looking at acquiring two additional parcels

- APN's: 400-250-010 and 400-250-012
- 62.5 total acres
- \$3.175M negotiated price
- \$51K per acre



There are benefits to adding these properties to our Brookside Recharge Facility



Additional water could be recharged



Operational flexibility allowing for more streamlined pond maintenance



Risk mitigation utilizing alternate infrastructure from BCVWD



Additional capacity for peaking recharge to take advantage of the higher high's in the State Water Project



Potential additional capacity for local conjunctive use projects such as recharging recycled water



Partnering with local agencies/districts to construct facilities such as production wells

The General Manager has negotiated a potential Purchase and Sale Agreement with Diamond Riverside LP for the purchase of property with Assessors Parcel Nos. 400-250-010 and 400-250-012 (aka Noble Creek Vistas)

The seller has agreed to the terms and conditions of the Purchase and Sale Agreement for the properties. The provisions include, but are not limited to:



Purchase price of
\$3,175,000.00



A due diligence period of 60
days



A closing period of 15 days
after the due diligence period
has ended

Review of Funds

"The Bucket List"

Other Funds

Unrestricted
Unitary Tax

Debt Service

SGPWA Special Tax

We Control Income

We DON'T Control Income

We DON'T Control Income

Unrestricted
General
Fund

County Taxes to Pass Agency

~18M

Consigned
SWP Support
Fund

County Debt Service Unitary

~4.3M

Restricted
Debt Service
Fund

SGPWA Special Tax

~61.2M

Restricted
Debt Service
Fund

SGPWA Special Tax





Staff Recommendation

It is recommended that the Board of Directors approve entering into a Purchase and Sale Agreement with Diamond Riverside Limited Partnership for the purchase of the properties with APNs 400-250-010 and 400-250-012 for the purchase price of \$3,175,000.00 and authorize the General Manager to take any and all actions necessary in order to implement the Agreement.