



## **CITY OF ELK GROVE CITY COUNCIL STAFF REPORT**

**AGENDA TITLE:** Adopt resolution ratifying the Agreement for Purchase and Sale and Joint Escrow Instructions and the First Amendment to the Agreement for Purchase and Sale and Joint Escrow Instructions for property located at Bruceville Road and Big Horn Boulevard [APN: 116-0012-064] and authorizing the close of escrow (CEQA Exempt)

**MEETING DATE:** October 23, 2019

**PREPARED BY:** Julie D. Cline, Real Estate Manager  
Sarah Bontrager, Housing and Public Services Manager

**DEPARTMENT HEAD:** Darren Wilson, P.E., Development Services Director

---

### **RECOMMENDED ACTION:**

Staff recommends that the City Council adopt a resolution ratifying the Agreement for Purchase and Sale and Joint Escrow Instructions and the First Amendment to the Agreement for Purchase and Sale and Joint Escrow Instructions (Attachments 2 and 3) with Laguna Creek Land Holdings, L.P. ("Owner") for the property located at the corner of Bruceville Road and Big Horn Boulevard [Assessor Parcel Number 116-0012-064] ("Property") and authorizing the close of escrow.

### **BACKGROUND INFORMATION:**

The Property, a ±15.14 gross acre parcel with an estimated ±9.5 acres of developable land, is adjacent to the future light rail corridor with frontage on both Bruceville Road and Big Horn Boulevard. The site was included in the City's Housing Element as a site needed to meet the lower-income Regional Housing Needs Allocation (RHNA). The Property is not contiguous to any residential neighborhood and Laguna Creek provides a

natural buffer with the northerly Sheldon Farms North planned residential development. A Property location map is provided as Attachment 4.

### **ANALYSIS/DISCUSSION:**

On May 22, 2019, the City Council authorized staff to negotiate the City's purchase of the Property along with authority to execute a Purchase and Sale Agreement for the Property. Consistent with the authority provided by the City Council, staff negotiated a purchase price of \$2,900,000, which is within the market value range for the Property. The purchase of the Property is contingent upon a review and approval of the Property during the due diligence period, which was extended in the First Amendment of the Purchase and Sale and Joint Escrow Wallace-Kuhl, reflecting no land use site restrictions on the Property. The City's environmental consultant has reviewed the reports and agreed that no additional steps are necessary to clear the site. Additionally, staff anticipates the site will be restored to its pre-excavation condition prior to October 23, 2019, and staff will verify that this work is completed.

Elk Grove Municipal Code (EGMC) Section 3.42.300(B), as established in accordance with Section 65402(a) of the California Government Code, requires the purchase of real property be submitted to and reported upon by the planning agency to the conformity with the adopted General Plan. On August 15, 2019, the Planning Commission, by its Resolution No. 2019-32, made a finding that the proposed acquisition is consistent with the City's General Plan.

Staff considers the Property to be an excellent location for transit-oriented housing development due to its close proximity to services and transit. The site location also makes it an ideal opportunity to showcase innovative design in affordable housing, and the size of the site may also offer opportunities for middle-income housing. If acquired, staff plans to conduct some preliminary visioning and design work (funded in part by the SB2 Planning Grants Program). Staff hopes to eventually choose one or more developer partners to construct projects at the site, with the intent to make use of some of the new funding being made available by the State to support housing construction. Preliminary interest from the affordable housing development community has been high.

Staff recommends authorizing the close of escrow and completing the purchase of the Property for use as one or more housing projects, at the negotiated purchase price of \$2,900,000.

### **ALTERNATIVE ACTIONS:**

As an alternative, City Council could direct staff to cancel the Purchase and Sale Agreement prior to expiration of the due diligence period on November 14, 2019. Staff does not believe the alternative action is in the City's best interest and, therefore, does not recommend this alternative action.

### **ENVIRONMENTAL REVIEW:**

Staff has reviewed the property purchase to determine the required level of review under the California Environmental Quality Act (CEQA). The proposed activity is exempt from CEQA under State CEQA Guidelines Section 15061(b)(3) (Common Sense Exemption). CEQA Guidelines section 15061(b)(3) states that an activity is covered by the common sense exemption 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.

There is no possibility that the proposed property acquisition will result in a physical change in the environment. The Property consists of vacant land within the Sheldon Farms Land Use Policy Area, which is an approximately 146-acre area planned to contain a mixed-use village, a range of residential densities, and open space uses. The acquisition of the Property does not approve any development project, nor does it disturb the physical environment. Any future development of the site would be subject to review under Title 23 of the Elk Grove Municipal Code (Zoning) and CEQA. Therefore, the proposed purchase is exempt from CEQA review.

### **FISCAL IMPACT:**

The purchase of the Property would be funded by the City's Affordable Housing Fund, which has budget appropriated for this acquisition. After the purchase of the Property, there would likely be a future need to set aside funding for future development of the site. The City is accumulating reserves that are not currently budgeted, but are expected to be sufficient for those future costs and will be requested when those development costs are better defined. During Fiscal Year 2018-19, the Affordable Housing Fund generated revenues of over \$3.8 million, the majority from impact fees on new residential development.

**ATTACHMENTS:**

1. Resolution
2. Purchase and Sale Agreement and Joint Escrow Instructions
3. First Amendment to Purchase and Sale Agreement
4. Project Location Map

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
RATIFYING THE AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW  
INSTRUCTIONS AND THE FIRST AMENDMENT TO THE AGREEMENT FOR  
PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS FOR PROPERTY  
LOCATED AT BRUCEVILLE ROAD AND BIG HORN BOULEVARD [APN: 116-0012-  
064] AND AUTHORIZING THE CLOSE OF ESCROW (CEQA EXEMPT)**

**WHEREAS**, Laguna Creek Land Holdings, L.P. (“Owner”) is the current owner of a ±15.14 gross acre parcel with an estimated ±9.5 acres of developable land located at Bruceville Road and Big Horn Boulevard [Assessor Parcel Number 116-0012-064] (the “Property”); and

**WHEREAS**, the City has identified the Property in its Housing Element as a site needed to meet its lower-income Regional Housing Needs Allocation; and

**WHEREAS**, staff considers the Property a prime location for development of one or more unique transit-oriented housing development projects; and

**WHEREAS**, on May 22, 2019, City Council authorized staff to negotiate for and enter into a purchase and sale agreement with Owner for the purchase of the Property for future development of housing uses, including those affordable to lower-income households; and

**WHEREAS**, consistent with the authority provided by City Council, staff negotiated a purchase price of \$2,900,000 for the Property; and

**WHEREAS**, the proposed purchase of the Property is consistent with the City’s General Plan pursuant to California Government Code Section 65402(a), and in compliance with Elk Grove Municipal Code Section 3.42.300(B), as determined by the Planning Commission on August 15, 2019, by its Resolution No. 2019-32; and

**WHEREAS**, staff has reviewed Owner-provided due diligence documents and the City has completed a Phase II Environmental Site Assessment which found a small area of lead contamination from the location of the old homestead site and Owner has remediated the lead and provided a Soil and Excavation and Confirmation Analyses Report prepared by Wallace-Kuhl which has been reviewed by City environmental consultant staff who concur no additional steps are necessary to clear the site; and

**WHEREAS**, staff recommends the purchase of the Property pursuant to the Purchase and Sale Agreement and Joint Escrow Instructions and the First Amendment to the Agreement for Purchase and Sale and Joint Escrow Instructions; and

**WHEREAS**, the purchase of the Property would be funded by the City’s Affordable Housing Fund.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Elk Grove hereby finds the purchase of the Property exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) (Common Sense Exemption); ratifies the Purchase and Sale Agreement and Joint Escrow Instructions and the First Amendment to the Agreement for Purchase and Sale and Joint Escrow Instructions, including all associated documents, necessary to complete the purchase of the property located at Bruceville Road and Big Horn Boulevard, Sacramento County Assessor's Parcel Number 116-0012-064, in the amount of \$2,900,000, together with associated costs, not expected to exceed \$5,000, all in a total amount not expected to exceed \$2,905,000; and authorizes the City Manager to take all actions and execute all documents reasonably necessary to close escrow on the sale of the Property.

**PASSED AND ADOPTED** by the City Council of the City of Elk Grove this 23<sup>rd</sup> day of October 2019

---

STEVE LY, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

APPROVED AS TO FORM:

---

JASON LINDGREN, CITY CLERK

---

JONATHAN P. HOBBS,  
CITY ATTORNEY

**Seller:** LAGUNA CREEK LAND HOLDINGS, L.P., a California limited partnership

**Buyer:** CITY OF ELK GROVE, a municipal corporation

**AGREEMENT FOR PURCHASE AND SALE AND JOINT ESCROW INSTRUCTIONS**

This Agreement for Purchase and Sale and Joint Escrow Instructions ("Agreement") is made this 16<sup>th</sup> day of August, 2019, by and between the CITY OF ELK GROVE, a municipal corporation ("CITY"), and LAGUNA CREEK LAND HOLDINGS, L.P., a California limited partnership ("SELLER"), collectively referred to as ("Parties").

**RECITALS**

**WHEREAS**, Seller is the owner of certain real property located at the northeast corner of Bruceville Road and Big Horn Boulevard, Elk Grove, California, identified as Sacramento County Assessor Parcel Number 116-0012-064, consisting of approximately 15.14± gross acres ("**Purchase Property**"); and

**WHEREAS**, Seller intends to convey to CITY, and CITY intends to acquire from SELLER all of Seller's right, title and interest in and to the Purchase Property, described in the Exhibits "A" and "A-1", attached hereto and incorporated herein by reference; and

**WHEREAS**, SELLER and CITY prefer to reach a mutually acceptable agreement for the acquisition of the Purchase Property in lieu of CITY seeking to acquire the Purchase Property through the exercise of CITY's power of eminent domain; and

**WHEREAS**, SELLER agrees to sell, and CITY agrees to buy the Purchase Property pursuant to the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the payment and other obligations set forth below, SELLER and CITY mutually agree as follows:

**1. Recitals**

The above recitals are true and correct and incorporated into this Agreement by reference.

**2. Execution and Delivery to Escrow**

CITY shall open an escrow with Fidelity National Title Company ("**Escrow Holder**") by delivery of a fully-executed copy of this Agreement. The date on which the last required signature for this Agreement is obtained shall be the effective date ("**Effective Date**") for this Agreement. SELLER shall execute, notarize and deliver to Escrow Holder the Grant Deed ("**Grant Deed**") in the form of Exhibit "A" within three business days of receiving notice that Escrow Holder holds the Purchase Price, as defined below.

**3. Payment and Consideration**

**A. Purchase Price**

CITY shall tender payment to Escrow Holder in the amount of **Two Million Nine Hundred Thousand Dollars (\$2,900,000.00)** ("**Purchase Price**"), including the Deposit as defined in

Section 3B, which is specifically agreed to by the Parties to be the full amount of just compensation for conveyance of the Purchase Property to the CITY.

**B. Deposit**

Within ten (10) business days following the full execution of this Agreement, CITY shall deposit with Escrow Holder the sum of Ten Thousand Dollars (\$10,000.00), as a deposit toward the Purchase Price ("Deposit"). The Deposit will be applied toward the Purchase Price at the Close of Escrow (as defined in Section 6.) and will become nonrefundable upon the expiration of the Due Diligence Period (as defined in Section 4), except in the event of a material default by SELLER, or the failure of a condition precedent to CITY'S obligations hereunder, or termination of this Agreement pursuant to Section 4.

**a. Deposit as Liquidated Damages**

IN THE EVENT THE SALE OF THE PURCHASE PROPERTY IS NOT CONSUMMATED BECAUSE OF A GROSS DEFAULT (AS DEFINED BY NOT CLOSING ESCROW FOR NO REASON AT ALL) UNDER THIS AGREEMENT ON THE PART OF CITY, ESCROW HOLDER MAY BE INSTRUCTED BY CITY TO CANCEL THE ESCROW. IF ESCROW IS CANCELLED DUE TO CITY'S DEFAULT, THEN SELLER WILL THEREUPON BE RELEASED FROM ITS OBLIGATIONS UNDER THIS AGREEMENT, THE DEPOSIT WILL BE RETAINED BY SELLER AS LIQUIDATED DAMAGES, AND ESCROW HOLDER IS HEREBY AUTHORIZED AND INSTRUCTED TO RELEASE THE DEPOSIT TO SELLER. ESCROW HOLDER IS HEREBY RELIEVED OF LIABILITY FOR SO RELEASING THE DEPOSIT TO SELLER. IF CITY ATTEMPTS TO INTERFERE WITH THE RELEASE OF THE DEPOSIT BY ESCROW HOLDER TO SELLER, THEN SELLER WILL NOT BE LIMITED IN THE AMOUNT OF DAMAGES IT MAY RECOVER FROM CITY. IN THE EVENT OF A DEFAULT BY CITY AS SET FORTH HEREIN, CITY SHALL PAY ALL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY CITY WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE, THEREFORE, BY PLACING THEIR SIGNATURES OR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT, AND THE ACTUAL TITLE, SURVEY AND ESCROW CANCELLATION CHARGES HAVE BEEN AGREED UPON, AFTER NEGOTIATION, AS REASONABLE LIQUIDATED DAMAGES PURSUANT TO THE TERMS HEREOF AND CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677 AND WILL CONSTITUTE SELLER'S EXCLUSIVE REMEDY AGAINST CITY IN THE EVENT OF A DEFAULT ON THE PART OF CITY PROVIDED THE DEPOSIT IS RELEASED TO SELLER AS SET FORTH HEREIN. THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, 1676 AND 1677.



SELLER:



CITY:



**C. Title and Removal of Encumbrances**

The Close of Escrow, defined below, is conditioned on the Purchase Property being granted to the CITY free and clear of any monetary encumbrances, except for the lien of current real estate taxes and assessments. As for any non-monetary encumbrances, CITY shall have the right to approve any and all matters of, and exceptions to, title of the Purchase Property. Upon receipt of the preliminary title report, CITY shall have ten (10) business days to give SELLER and Escrow Holder written notice ("City's Title Notice") of CITY's approval or disapproval of the legal description and every non-monetary item or exception disclosed by the preliminary title report. The failure of CITY to give City's Title Notice to SELLER within the specified time period shall not be deemed CITY's approval of title to the Purchase Property. If CITY does not provide a Title Notice within the 10-business day period, then either party may elect to cancel the Agreement. In the event that City's Title Notice disapproves of any matter of title shown in the preliminary title report, SELLER shall, within five (5) business days after City's Title Notice is received by SELLER, give CITY written notice ("Seller's Title Notice") of those disapproved title matters, if any, which SELLER is unwilling or unable after reasonable and good faith efforts to have eliminated from title to the Purchase Property by Close of Escrow. In the event that SELLER is unable or unwilling to remove all of the title matters objected to by CITY in City's Title Notice, CITY shall have five (5) business days from receipt of Seller's Title Notice to notify SELLER in writing that either of the following: (A) CITY is willing to purchase the Purchase Property subject to such disapproved exceptions, or (B) CITY elects to cancel this transaction. In the event this Agreement is canceled pursuant to this Subsection (B) above, except as otherwise provided herein, the Parties shall have no further obligations under this Agreement, any documents or funds shall be returned by the Escrow Holder to the originating party, and any costs incurred through the escrow process shall be paid by CITY.

**D. Taxes**

CITY is exempt from real estate taxes and certain assessments and charges pursuant to the California Constitution. All ad valorem real property taxes on the Purchase Property shall be apportioned and paid at Close of Escrow as provided in California Revenue and Taxation Code Section 5086. If Seller has prepaid any of the ad valorem real property taxes, which are cancelled pursuant to Section 5086, SELLER may seek and retain any funds to which it is entitled from such taxing agencies. City shall be responsible for its pro-rata share of any non-exempt assessments and charges. For purposes of this section, the term the "Proration Date" shall be defined as 11:59 p.m. on the day preceding the Close of Escrow. All prorations shall be made on the basis of the actual number of days of the year and month which have elapsed as of the Proration Date.

**4. Due Diligence**

SELLER shall deliver to CITY copies of such documents and information as set forth in this section ("Property Documents") within five (5) business days after the Effective Date and CITY shall have thirty (30) days (the "Due Diligence Period") from the Effective Date to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as CITY may elect. The Property Documents shall include:

- i. Plans and specifications, engineering reports, surveys, permits, environmental studies, toxic/hazardous material reports, geological studies, easements, liens, approvals, entitlements, licenses, leases and contracts regarding the Purchase Property in SELLER's possession; and
- ii. Such other information as CITY may reasonably request, provided that it is in SELLER's possession, or reasonably available to SELLER, without cost to SELLER.

During the Due Diligence Period, CITY, and its representatives, shall have the right to enter upon and inspect the Purchase Property and to conduct such tests and assessments as CITY may reasonably require. CITY shall provide SELLER with at least one day advance notice of such entry, including the nature and purpose of such entry. CITY agrees to hold harmless and indemnify SELLER against claims arising from the CITY's entry onto the Purchase Property during this Due Diligence Period excepting those claims arising from SELLER's willful misconduct or negligent acts.

CITY's obligation to purchase the Purchase Property is conditioned upon CITY's review and approval of the condition of the Purchase Property and the Property Documents pursuant to this Section. Should CITY, in its sole and absolute discretion, fail to approve the condition of the Purchase Property, or any matters related to the Purchase Property, or its use or intended use, at any time prior to the end of the Due Diligence Period, CITY shall have the right, exercisable by giving written notice to SELLER, to cancel the escrow, terminate this Agreement, and recover any and all other amounts paid by CITY to SELLER, or deposited with the Escrow Holder, by or on behalf of the CITY. The exercise of this right by CITY shall not constitute a waiver by CITY of any other rights CITY may have at law or in equity.

**5. Waiver under Section 1542**

The Parties intend that this Agreement will result in a full, complete, and final resolution and settlement of any and all claims, causes of action or disputes which exist, or may exist, between them as to the acquisition, possession and/or use of the Purchase Property by the CITY, except as expressly provided herein. It is therefore understood that the waiver, under this Agreement, of any rights, damages, compensation or benefits to which a party is, or may be, entitled is intended to be full and complete. Accordingly,

- A. SELLER hereby waives any and all rights or benefits arising from and/or related to the CITY's acquisition, possession and/or use of the Purchase Property that it may have under section 1542 of the Civil Code of the State of California which provides:**

**"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."**

- B. SELLER represents and warrants that it understands the effect of this waiver of section 1542 and has had the opportunity to discuss the effect of this waiver with legal counsel of its choice.**

**6. Escrow**

Unless extended by the mutual agreement of the Parties, the escrow shall close no later than fifteen (15) calendar days after the expiration of the Due Diligence Period or the date the Deeds are recorded in the Recorder's Office for Sacramento County ("Close of Escrow"), whichever occurs first. This Agreement will serve as escrow instructions ("Escrow Instructions"). The Parties will execute any additional and supplementary instructions required or appropriate to enable the Escrow Holder to comply with the terms of this Agreement. The Parties shall submit to the Escrow Holder all closing statements, non-foreign affidavits and withholding certificates and other documents as required by the Escrow Holder prior to the Close of Escrow. This Agreement controls if there is any conflict between this Agreement and additional or supplementary instructions.

**A. Closing Costs.**

- i. Borne by SELLER. SELLER shall pay one-half of the escrow fee; the premium for the CLTA Owner's Policy in the amount of the Purchase Price including the costs of any endorsements required to cure an objected title exception, if any; and any sales, use, and ad valorem taxes connected with the Close of Escrow. Seller shall pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.
- ii. Borne by CITY. CITY shall pay the one-half of the escrow fee; any transfer and similar taxes imposed on the Grant Deed; the title insurance premium for any ALTA Standard Coverage or ALTA Extended Coverage desired by CITY; and any public hearing publication costs. CITY shall pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.

**B.** The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Purchase Property, including, but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs to be borne by SELLER as provided by in this Agreement other than those specified in Section 6.ii. hereof to be borne by the CITY. The Escrow Holder shall release payment to SELLER, return any credited amounts to CITY, and record the Grant Deed in the Recorder's Office for Sacramento County upon the Close of Escrow. Title to the Purchase Property shall pass to CITY immediately upon Close of Escrow.

**C.** If for any reason escrow fails to close as set forth herein, including termination of this Agreement, Escrow Holder shall return all funds and documents to the party that submitted such funds or documents except for such amount that SELLER is entitled to retain pursuant to Section 3B of this Agreement.

**7. Eminent Domain**

**A.** It is mutually understood that the acquisition of the Purchase Property by CITY is for a public purpose, and therefore, the CITY can acquire the Purchase Property through the exercise of the power of eminent domain. The acquisition by and through this Agreement is in lieu of CITY's exercise of the power of eminent domain. Both SELLER and CITY recognize the expense, time, effort and risk to both SELLER and CITY in resolving a dispute over compensation for acquisition of the Purchase Property by eminent domain litigation. The compensation set forth herein is in compromise and settlement, in lieu of such litigation.

- B. To the extent such provisions are applicable to this transaction; the Parties waive any notice or right of first refusal pursuant to Code of Civil Procedure §1245.245 and any lease back rights under Code of Civil Procedure §1263.615.

**8. Amendment**

This Agreement may be modified, changed or rescinded only by an instrument in writing executed by the Parties hereto.

**9. Leases**

SELLER warrants that there are no leases on all or any portion of the Purchase Property and the SELLER further agrees to hold the CITY harmless and reimburse the CITY for any of its losses and expenses occasioned by reason of any lease of all or a portion of the Purchase Property. SELLER agrees not to assign, transfer or sell to any third party any right, title or interest SELLER has in the Purchase Property.

SELLER will not voluntarily create or cause any lien or encumbrance to attach to the Purchase Property between execution of the Agreement and prior to the Close of Escrow except as approved by the CITY in advance; and if there exists any such lien or encumbrance which the CITY has not approved, the Parties agree that at CITY's sole discretion, escrow shall not close and this Agreement shall become null and void.

**10. Seller's Representations**

**A. SELLER makes the following representations and warranties:**

- i. SELLER owns full legal title to the Purchase Property and has full power and authority to convey all property rights described herein to CITY.
- ii. This Agreement constitutes a legal, valid, and binding obligation of SELLER enforceable in accordance with its terms.
- iii. There is no suit, action, arbitration, legal, administrative or other proceeding or inquiry pending or threatened against the Purchase Property, or any portion thereof, or pending or threatened against SELLER which could (a) affect SELLER's title to the Purchase Property, or any portion thereof, (b) affect the value of the Purchase Property, or any portion thereof, or (c) subject any buyer of the Purchase Property, or any portion thereof, to liability.
- iv. There are no uncured notices, which have been served upon SELLER from any governmental agency notifying SELLER of any violations of law, ordinance, rule, or regulation, which would affect the Purchase Property, or any portion thereof.
- v. To the best of SELLER's knowledge there are no Hazardous Substances (as defined below), or storage tanks containing Hazardous Substances, in, on, under, or about the Purchase Property except as to any matters disclosed by the September 7, 2017 Phase 1 Environmental Site Assessment report prepared by Wallace & Kuhl.
- vi. To the best of SELLER's knowledge, there has been no production, storage, disposal, presence, observance, or release of any Hazardous Substances in, on, under, or about

the Purchase Property except as to any matters disclosed by the September 7, 2017 Phase 1 Environmental Site Assessment report prepared by Wallace & Kuhl.

vii. To the best of SELLER's knowledge there are no violations, notices or other information of any federal, state or local law, statute, ordinance, regulation, rule, order, decree, or other governmental requirement that pertains to the regulation of Hazardous Substances and/or the protection of public health and safety or the environment, including, but not limited to, the ambient air, soil, soil vapor, groundwater, surface water or land use, nor of any legal, administrative or other action or proceeding, pending or threatened, affecting the Purchase Property and relating to Hazardous Substances and/or environmental compliance except as to any matters disclosed by the September 7, 2017 Phase 1 Environmental Site Assessment report prepared by Wallace & Kuhl.

viii. There is no license, permit, option, right of first refusal, or other agreement, written or oral, which affects the Purchase Property or any portion thereof, except as per Due Diligence documents provided and/or the preliminary title report.

ix. Conveyance of the property rights described herein shall not constitute a breach or default under any agreement to which SELLER is bound and/or to which the Purchase Property is subject.

B. Each of the above warranties and representations is material and is relied upon by CITY separately and collectively. Each of the above representations shall be deemed to have been made as of the date that the Grant Deed is recorded and shall survive the recording of the Grant Deed by a period of two years following the date that the Grant Deed is recorded. If, before the recording of the Grant Deed, SELLER discovers any information or facts that would materially change any of these warranties and representations, SELLER shall immediately give notice in writing to CITY of such facts and information. If any of the foregoing warranties and representations cease to be true before the recording of the Grant Deed, the CITY may, at its unfettered discretion, either cancel and terminate this Agreement or give the SELLER the option to remedy the problem before the recording of the Grant Deed or deduct from the payments required by Section 3A, above, as a credit to CITY, in an amount as determined by the CITY reasonably required to remedy the problem.

#### **11. Liability for Hazardous Substances**

The Parties acknowledge, understand, and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or below any portion of the Purchase Property shall be governed by applicable law, regardless of whether any inspection, examination, sampling, testing, assessment, or other investigation is conducted by CITY.

"Hazardous Substance(s)" includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:

- (i) Regulated by any local governmental agency, the State of California or the United States Government;
- (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the Purchase Property, including, without limitation, the Comprehensive

Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25330.2-25395), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25);

- (iii) listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302);
- (iv) asbestos or asbestos containing material;
- (v) radon gas;
- (vi) petroleum or petroleum fractions;
- (vii) any explosive substances;
- (viii) polychlorinated biphenyl;
- (ix) a radioactive material; and
- (x) per chlorate.

#### **12. Indemnification**

SELLER agrees to hold harmless, indemnify, and defend (with counsel acceptable to the CITY which consent shall not be unreasonably withheld) CITY, its officers elected and appointed, officials, agents, employees, and volunteers (hereinafter "Indemnified Party"), and hold the Indemnified Party harmless from and against any and all liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments that arise by reason of any death, bodily injury, personal injury, property or economic damage, or violation of any law or regulation, or damage to the environment, including ambient air, soil, soil vapor, groundwater, or surface water, and resulting from or in any way connected with: (i) any acts or omissions related to the performance of this Agreement, (ii) any breach of this Agreement, or (iii) the occupancy or use of the Purchase Property (including, but not limited to, the use, storage, treatment, transportation, release, or disposal of Hazardous Substances on or about any portion of the Purchase Property), by the SELLER, its officers, employees, agents, engineers, contractors or subcontractors, or any other person or entity employed by or acting on their behalf.

#### **13. Notices**

Any notice that either party may or is required to give the other shall be in writing, and shall be either (1) personally delivered or (2) sent by regular U.S. Mail with a copy also transmitted via email, to the following address:

**To City:**  
City of Elk Grove

**To Seller:**  
Laguna Creek Land Holdings, L.P.

Public Works Department  
8401 Laguna Palms Way  
Elk Grove, CA 95758  
Attention: Real Property Manager  
Email: jcline@elkgrovecity.org

3400 Douglas Blvd. Ste. 270  
Roseville, CA 95661  
Attention: Paul Eblen  
Email: peblen@silveradohomes.com

Copy To:  
Tom Evancie  
Laguna Creek Land Holdings, L.P.  
3400 Douglas Blvd. Ste. 270  
Roseville, CA 95661  
Email: tevancie@silveradohomes.com

**14. Binding on Successors**

This Agreement shall be binding on and shall inure to the benefit of the CITY and SELLER, and their respective successors, assigns, and their past, present and future officers, employees and agents; provided that this Agreement may only be assigned with the written consent of both Parties, and any attempt to assign this Agreement without such consent shall be void.

**15. Brokers**

CITY's Real Estate staff is affiliated with a California Licensed Real Estate Broker and is acting as the CITY's agent only. SELLER shall be responsible for SELLER's brokerage commissions, if any. If any broker or finder makes any claim for a commission or finder's fee, the party through which the broker or finder makes such claim shall indemnify, defend and hold the other party harmless from all liabilities, expenses, losses, damages or claims (including the indemnified party's reasonable attorneys' fees) arising out of such broker's or finder's claims.

**16. Time of Essence**

Time is of the essence for each condition, term, and provision in this Agreement.

**17. Waivers**

No waiver of any breach of any covenant or provision in this Agreement shall be deemed a waiver of any other covenant or provision in this Agreement and no waiver shall be valid unless in writing and executed by the waiving party.

**18. Severability**

If any term or provision of this Agreement shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement shall not be affected, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either party. Upon such determination that any term or provision is illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the greatest extent possible.

**19. Construction**

Parties agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as substantive portion of this Agreement.

**20. Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action arising under or related to this Agreement shall be brought and prosecuted in the Sacramento County Superior Court.

**21. Entire Agreement**

The Parties have herein set forth the whole of their Agreement with regard to acquisition of the Purchase Property by CITY. All prior oral discussions, representations, and/or agreements, if any, are specifically superseded by this Agreement, which is intended by the Parties to contain all of the terms and conditions agreed to by them with regard to acquisition of the Purchase Property by CITY.

**22. Counterparts**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, when signed by all of the Parties hereto, shall constitute one and the same instrument. Photocopied or electronic signatures shall be enforceable as originals.

**23. Future Rights**

SELLER waives any notice or right of first refusal pursuant to Code of Civil Procedure section 1245.245 and any lease-back rights under Code of Civil Procedure section 1263.615

**24. Authority**

Each individual executing this Agreement on behalf of an entity represents and warrants that he or she has been authorized to do so by the entity on whose behalf he or she executes this Agreement and that said entity will thereby be obligated to perform the terms of this Agreement.

*[Signatures on following page]*



IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**SELLER:**

**Laguna Creek Land Holdings, L.P.,  
a California limited partnership**

**By: Flagstone Investment Management, Inc.,  
a California corporation**

**Its: General Partner** Silverado Homes, Inc.

Name: EDWARD JOHANN By: JW  
for Jason Behrmann, City Manager

Title: President

Date: 8/28/19

Date: 8/16/19

**RECOMMENDED FOR APPROVAL:**

By: Jule Cline

Jule Cline, Real Estate Manager

Date: 8/22/19

**APPROVED AS TO FORM:**

By: Jonathan P. Hobbs

Jonathan P. Hobbs, City Attorney

Date: 8-28-19

**ATTEST:**

By: Jason Rolf Lindgren

Jason Lindgren, City Clerk

Date: August 29, 2019



**EXHIBIT "A"**  
**Grant Deed**

No Fee Document – Per Government Code §6103 & §27383  
No Documentary Transfer Tax – Per R&T Code §11922

RECORDING REQUESTED BY AND WHEN RECORDED  
RETURN TO AND MAIL TAX STATEMENTS TO:

**CITY OF ELK GROVE**  
Attn: City Clerk  
8401 Laguna Palms Way  
Elk Grove, CA 95758

Address: Big Horn Blvd.  
APN: 116-0012-064

The Above Space For Recorder's Use Only

**GRANT DEED**

The undersigned hereby declare Documentary transfer tax is \$ 0.00

[ ] Unincorporated Area [X] City of Elk Grove R&T Code §11922 Governmental agency acquiring title

FOR VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, the **LAGUNA CREEK LAND HOLDINGS, L.P., a California limited partnership** ("GRANTOR"), hereby grants to the **CITY OF ELK GROVE, a municipal corporation** ("GRANTEE"), all that certain real property situated in the City of Elk Grove, County of Sacramento, State of California, described as follows:

**See Exhibit "A", legal description, attached hereto and made a part hereof.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

GRANTOR: **LAGUNA CREEK LAND HOLDINGS, L.P., a California limited partnership**

By: **Flagstone Investment Management, Inc.,**  
a California corporation

Its: **General Partner**

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

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

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTIONS 6103 and 27383 OF THE CALIFORNIA GOVERNMENT CODE.

**EXHIBIT "A-1"**  
**Legal Description**

The land described herein is situated in the State of California, County of Sacramento, City of Elk Grove, described as follows:

Being all of the Lands of Brodovsky Sheldon Rd, LLC, Quan and Sons, Herzl Friedlander and Betty Friedlander, Sheldon LAS, LLC, Carol Ann Brodovsky Pinto and Sarah B. Arsone as described in those certain Grant Deeds recorded on April 15, 1998, in Book 19980415, at Page 1397, Official Records of Sacramento County, on April 4, 2001, in Book 20010822, at Page 1087, Official Records of Sacramento County, on September 7, 2001 in Book 20010907, at Page 0456, Official Records of Sacramento County, and on April 18, 2005 in Book 20050418, at Page 1314, Official Records of Sacramento County situate in the Northeast One-Quarter of Section 27, Township 7 North, Range 5 East, Mount Diablo Meridian In the City of Elk Grove, County of Sacramento, State of California, more particularly described as follows:

Commencing at a found two-inch (2") brass disc stamped L.S. 5854 marking the East One-Quarter corner of said Section 27 as shown on that certain Parcel Map filed for record in Book 154 of Parcel Maps, at Page 7, Sacramento County Records; thence along the South line of said Northeast One-Quarter of Section 27, South 89°02'14" West a distance of 2626.06 feet to the True Point of Beginning, being the Center of said Section 27, from which a found three-quarter inch (3/4") iron pipe marking the centerline intersection of Bruceville Road and Big Horn Boulevard as shown on that certain Parcel Map entitled "Revised Parcel Map of a Portion of Amended Parcel Map of Laguna Business Park (89 P.M. 17)" filed for record in Book 98 of Parcel Maps, at Page 31, Sacramento County Records bears South 20°34'03" East a distance of 60.51 feet; thence from said TRUE POINT OF BEGINNING, along the centerline of that certain County Road known as Bruceville Road as described by Deed dated March 27, 1959 in Volume 3737, Page 279 filed in the Office of the Recorder of the County of Sacramento, North 05°12'40" East a distance of 989.90 feet to the Southerly line of Parcel 14 as described in that certain Quitclaim Deed to the City of Elk Grove recorded in Book 20040809, at Page 1729, Official Records of Sacramento County; thence along said Southerly line of said Parcel 14, South 52°14'38" East a distance of 1573.39 feet to said South line of the Northeast One-Quarter of Section 27; thence along said South line of the Northeast One-Quarter of Section 27, South 89°02'14" West a distance of 1334.06 feet to the True Point of Beginning.

**TOGETHER WITH**

That portion of said Lot B, described herein as Transfer Area 2, more particularly described as follows:

Commencing at a found two-inch (2") brass disc stamped L.S. 5854 marking the East One-Quarter corner of said Section 27 as shown on that certain Parcel Map filed for record in Book 154 of Parcel Maps, at Page 7, Sacramento County Records; thence along the South line of said Northeast One-Quarter of Section 27, South 89°02'14" West a distance of 1662.60 feet to the True Point of Beginning; thence from said TRUE POINT OF BEGINNING, leaving said South line of the Northeast One-Quarter of Section 27, South 17°42'48" West a distance of 129.34 to the Northerly Right-of-Way of Big Horn Boulevard as shown on said "Revised Parcel Map of a Portion of Amended Parcel Map of Laguna Business Park (89 P.M. 17)"; thence along said centerline of Big Horn Boulevard for the following four (4) arcs, courses and distances:

1. from a radial line which bears North 17°42'48" East, 546.37 feet along the arc of a non-tangent 2042.00 foot radius curve to the left through a central angle of 15°19'50";
2. North 84°48'52" West a distance of 125.86 feet;
3. South 89°02'14" West a distance of 156.35 feet; and

**EXHIBIT "A-1"**

**Page 2 of 2**

4. North 72°31'40" West a distance of 15.82 feet to the South line of the Northeast One-Quarter of said Section 27;  
thence along said South line of the Northeast One-Quarter of Section 27, North 89°02'14" East a distance of 872.62 feet to the True Point of Beginning.

**EXCEPTING THEREFROM**

That portion of the Northeast One-Quarter of said Section 27, described herein as Transfer Area 1, more particularly described as follows:

Commencing at a found two-Inch (2") brass disc stamped L.S. 5854 marking the East One-Quarter corner of said Section 27 as shown on that certain Parcel Map filed for record in Book 154 of Parcel Maps, at Page 7, Sacramento County Records; thence along the South line of said Northeast One-Quarter of Section 27, South 89°02'14" West a distance of 1662.60 feet to the True Point of Beginning; thence from said TRUE POINT OF BEGINNING, leaving said South line of the Northeast One-Quarter of Section 27 for the following four (4) courses and distances:

1. North 17°42'48" East a distance of 154.12 feet;
2. South 66°13'39" East a distance of 137.61 feet;
3. North 20°27'31" East a distance of 56.32 feet to the Southerly line of Parcel 14 as described in that certain Quitclaim Deed to the City of Elk Grove recorded in Book 20040809, at Page 1729, Official Records of Sacramento County; and
4. along said Southerly line of Parcel 14, South 52°14'38" East a distance of 225.19 feet to a point on the South line of said Northeast One-Quarter of Section 27, from which the found two-Inch (2") brass disc stamped L.S. 5854 marking the East One-Quarter corner of said Section 27 as shown on that certain Parcel Map filed for record in Book 154 of Parcel Maps, at Page 7, Sacramento County Records, bears North 89°02'14" East a distance of 1292.00 feet; thence along said South line of the Northeast One-Quarter of Section 27, South 89°02'14" West a distance of 370.60 feet to the True Point of Beginning, as described in that certain Boundary Line Adjustment recorded August 7, 2007, in Book 20070807, Page 1334 Official Records.

Also excepting therefrom all mineral, oil, gas and other hydrocarbon substances lying below a depth of 500 feet from the surface of a portion of said land as reserved in the deed from Laguna High Tech Development Corporation, recorded January 27, 1984, in Book 840127, Page 1863, Official Records.

APN: 116-0012-064-0000

**ATTACHMENT 3**

**FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE AND JOINT  
ESCROW INSTRUCTIONS**

**THIS FIRST AMENDMENT TO AGREEMENT FOR PURCHASE AND SALE  
AND JOINT ESCROW INSTRUCTIONS** (“Amendment”) dated as of September 26, 2019 (“Effective Date”), is executed by and between the **CITY OF  
ELK GROVE**, a California municipal corporation (“CITY”) and **LAGUNA CREEK LAND  
HOLDINGS, L.P.**, a California limited partnership (“SELLER”), collectively referred to as  
“Parties.”

**WHEREAS**, CITY and SELLER entered into that certain Agreement for Purchase and Sale and Joint Escrow Instructions dated as of August 16, 2019, City contract number C-19-467 (“Original Agreement”) pursuant to which SELLER agreed to sell to CITY and CITY agreed to purchase from SELLER that certain real property located at the northeast corner of Bruceville Road and Big Horn Boulevard, Elk Grove, California, identified as Sacramento County Assessor Parcel Number 116-0012-064, in accordance with the terms and conditions set forth in the Original Agreement; and

**WHEREAS**, CITY and SELLER desire to modify the Original Agreement by entering into this Amendment for the purposes set forth herein.

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

1. **Original Agreement Remains in Effect.** Except as set forth in this Amendment, the Original Agreement remains unchanged and in full force and effect. All terms defined in the Original Agreement shall have the same meaning here.
2. **Section 4. Due Diligence.** Section 4 (Due Diligence) is replaced in its entirety by the following:

SELLER shall deliver to CITY copies of documents and information as set forth in this section related to the Purchase Property (“Property Documents”) within five (5) business days after the Effective Date unless otherwise specified below. City commissioned a Phase II Environmental Site Assessment with environmental consultant Wallace-Kuhl, which found an area of lead contamination from one boring located near the old homestead site on the Property. Owner has agreed to remediate lead at their cost and has initiated the clean-up with Wallace-Kuhl. Upon completion of the remediation, a Phase II Remediation Report (“Report”) must state the site has been remediated to a lead concentration level below 80mg/kg to meet allowable lead concentration standards set by the California Environmental Protection Agency, California Department of Toxic Substances Control, State Water Resources Control Board, and California Office of Environmental Health Hazard Assessment. The Report must explicitly state these standards have been met.

If CITY receives the Report from SELLER, written by Wallace-Kuhl, by close-of-business (5:00 P.M.) on September 25, 2019, which meets the standards listed herein, the CITY

shall have until the close-of-business on October 10, 2019 (“Due Diligence Period Option 1”), to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as CITY may elect.

However, if the CITY has not received the Report which meets the standards herein by September 25, 2019, SELLER must deliver a Phase II Remediation Report by October 9, 2019, in which the CITY shall have until the close-of-business on October 24, 2019 (“Due Diligence Period Option 2”), to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as CITY may elect..

Furthermore, if the CITY has not received the Report which meets the standards herein by October 9, 2019, SELLER must deliver a Phase II Remediation Report by October 30, 2019, in which the CITY shall have until the close-of-business on November 14, 2019 (“Due Diligence Period Option 3”), to satisfy itself in its complete discretion of the feasibility of the transaction contemplated herein and to make such inspections and to obtain such information as CITY may elect.

The Property Documents shall include:

- i. Plans and specifications, engineering reports, surveys, permits, environmental studies, toxic/hazardous material reports, geological studies, easements, liens, approvals, entitlements, licenses, leases and contracts regarding the Purchase Property in SELLER’s possession;
- ii. A Phase II Report specifying remediation within the legal limits listed herein; and
- iii. Such other information as CITY may reasonably request, provided that it is in SELLER’s possession, or is reasonably available to SELLER.

During the Due Diligence Period, CITY, and its representatives, shall have the right to enter upon and inspect the Purchase Property and to conduct such tests and assessments as CITY may reasonably require. CITY shall provide Seller with at least one (1) day advance notice of such entry, including the nature and purpose of such entry. CITY agrees to hold harmless and indemnify SELLER against claims arising from the CITY’s entry onto the Purchase Property during this Due Diligence Period excepting those claims arising from SELLER’s willful misconduct or negligent acts.

CITY’s obligation to purchase the Purchase Property is conditioned upon CITY’s review and approval of the condition of the Purchase Property and the Property Documents pursuant to this Section. Should CITY, in its sole and absolute discretion, fail to approve the condition of the Purchase Property, or any matters related to the Purchase Property, or its use or intended use, at any time prior to the end of the Due Diligence Period, CITY shall have the right, exercisable by giving written notice to SELLER, to cancel the escrow,

terminate this Agreement, and recover any and all other amounts paid by CITY to SELLER, or deposited with the Escrow Holder, by or on behalf of the CITY. The exercise of this right by CITY shall not constitute a waiver by CITY of any other rights CITY may have at law or in equity.

3. **Section 6. Escrow.** Section 6 (Escrow) is replaced in its entirety by the following:

Unless extended by the mutual agreement of the Parties, the escrow shall close no later than five (5) calendar days after the expiration of the Due Diligence Period or the date the Deeds are recorded in the Recorder's Office for Sacramento County ("Close of Escrow"), whichever occurs first. This Agreement will serve as escrow instructions ("Escrow Instructions"). The Parties will execute any additional and supplementary instructions required or appropriate to enable the Escrow Holder to comply with the terms of this Agreement. The Parties shall submit to the Escrow Holder all closing statements, non-foreign affidavits and withholding certificates and other documents as required by the Escrow Holder prior to the Close of Escrow. This Agreement controls if there is any conflict between this Agreement and additional or supplementary instructions.

A. Closing Costs.

- i. Borne by SELLER. SELLER shall pay one-half (½) of the escrow fee; the premium for the CLTA Owner's Policy in the amount of the Purchase Price including the costs of any endorsements required to cure an objected title exception, if any; and any sales, use, and ad valorem taxes connected with the Close of Escrow. SELLER shall pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.
- ii. Borne by CITY. CITY shall pay one-half (½) of the escrow fee; any transfer and similar taxes imposed on the Grant Deed; the title insurance premium for any ALTA Standard Coverage or ALTA Extended Coverage desired by CITY; and any public hearing publication costs. CITY shall pay its own legal and professional fees and fees of other consultants incurred with regard to this transaction.

- B. The Escrow Holder may expend any or all monies payable under this Agreement and deposited into escrow to discharge any obligations which are liens upon the Purchase Property, including but not limited to, those arising from judgments, assessments, delinquent taxes for other than the fiscal year in which the escrow closes, or debts secured by deeds of trust or mortgages, and/or to defray any other incidental costs to be borne by SELLER as provided by in this Agreement other than those specified in Section 6.ii. hereof to be borne by the CITY. The Escrow Holder shall release payment to SELLER, return any credited amounts to CITY, and record the Grant Deed in the Recorder's Office for Sacramento County upon the Close of Escrow. Title to the Purchase Property shall pass to CITY immediately upon Close of Escrow.

- C. If for any reason escrow fails to close as set forth herein, including termination of this Agreement, Escrow Holder shall return all funds and documents to the party that submitted such funds or documents except for such amount that SELLER is entitled to retain pursuant to Section 3.B. of this Agreement.

4. **Section 11. Liability for Hazardous Substances.** Section 11. (Liability for Hazardous Substances) is replaced in its entirety by the following:

The Parties acknowledge, understand, and agree that any liability associated with the presence of any Hazardous Substances, as defined below, on or below any portion of the Purchase Property shall be governed by applicable law, regardless of whether any inspection, examination, sampling, testing, assessment, or other investigation is conducted by CITY.

Due to the presence of lead found in the soil located near the old homestead site on the Property during the Phase II testing from Wallace-Kuhl, if the City ever has a claim, settlement, or judgment made against it regarding the preexisting lead contamination, SELLER shall defend, indemnify, and hold harmless, the CITY for any funds the CITY must expend in relation to such claim, settlement, or judgment.

“Hazardous Substance(s)” includes, but is not limited to, any hazardous or toxic substance, material or waste, or any solid waste, pollutant, or contaminant that is:

- (i) Regulated by any local governmental agency, the State of California or the United States Government;
- (ii) defined as such in any federal, State, or local statute, ordinance, rule, or regulation applicable to the Purchase Property, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (Title 42 United States Code sections 9601-9675), the Resource Conservation and Recovery Act (Title 42 United States Code sections 6901-6992k), the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health and Safety Code sections 25330.2-25395), and the Hazardous Waste Control Law (California Health and Safety Code sections 25100-25250.25);
- (iii) listed in the United States Department of Transportation Table (49 CFR § 172.101) or by the Environmental Protection Agency, or listed as hazardous substances by any equivalent State of California or local governmental agency, or any successor agency (40 CFR Part 302);
- (iv) asbestos or asbestos containing material;
- (v) radon gas;
- (vi) petroleum or petroleum fractions;



- (vii) any explosive substances;
  - (viii) polychlorinated biphenyl;
  - (ix) a radioactive material; and
  - (x) per chlorate.
5. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall constitute one and the same transaction.
6. **Authority to Execute.** The person or persons executing this Amendment on behalf of the Parties warrant and represents that they have the authority to execute this Amendment on behalf of their respective Party and further warrant and represent that they have the authority to bind that Party to the performance of its obligations hereunder.
7. **Entire Agreement.** The Original Agreement, this Amendment, and any attachments and/or Exhibits contained in either document, constitute the entire agreement between CITY and SELLER concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.
8. **Construction and Interpretation.** CITY and SELLER agree and acknowledge that the provisions of this Amendment have been arrived at through negotiation and that each Party has had a full and fair opportunity to revise the provisions of this Amendment and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Amendment shall not be resolved against the drafting party. The titles of the various sections are merely information and shall not be construed as a substantive portion of this Amendment and/or used to construe or interpret the meaning of the Amendment.

*[Signatures of Parties on following page]*

IN WITNESS WHEREOF, the Parties have executed this First Amendment to Agreement for Purchase and Sale and Joint Escrow Instructions as of the date first set forth above.

**SELLER:**

**LAGUNA CREEK LAND HOLDINGS,  
L.P., a California limited partnership**

By: *Paul H. Ellen*

Name: *Paul H. Ellen*

Title: *Pres. Silverado Homes Inc.  
General Partner*

Date: *for Flagstone Investment Management  
Inc.*

*General Partner*

*9/24/19*

**CITY:**

**CITY OF ELK GROVE, a municipal  
corporation**

By: *[Signature]*  
Jason Behrmann, City Manager

Date: *9/26/19*

**APPROVED AS TO FORM:**

By: *Jonathan P. Hobbs*  
Jonathan P. Hobbs, City Attorney

Date: \_\_\_\_\_

**ATTEST:**

By: *Jason Lindgren*  
Jason Lindgren, City Clerk

Dated: *September 26, 2019*



## ATTACHMENT 4 Location Map

