

9) **Purchase of Vacant Real Property for Open Space/Habitat Preservation Purposes  
(APN 371-100-015) for \$206,041.76 Plus Closing Costs**

Approve the purchase of approximately 8.91 acres of vacant property (APN 371-100-015) for \$206,041.76, plus closing costs, for open space/habitat preservation purposes consistent with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and authorize the City Manager to execute the Agreement and Escrow Instructions for the Purchase and Sale of Real Property and such other ancillary documents as may be necessary to complete the purchase, in such final form as approved by the City Attorney.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor and Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Candice Alvarez, MMC, City Clerk

**Date:** July 23, 2024

**Subject:** Purchase of Vacant Real Property for Open Space/Habitat Preservation Purposes (APN 371-100-015) for \$206,041.76 Plus Closing Costs

### **Recommendation**

Approve the purchase of approximately 8.91 acres of vacant property (APN 371-100-015) for \$206,041.76, plus closing costs, for open space/habitat preservation purposes consistent with the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) and authorize the City Manager to execute the Agreement and Escrow Instructions for the Purchase and Sale of Real Property and such other ancillary documents as may be necessary to complete the purchase, in such final form as approved by the City Attorney.

### **Background**

The property consists of approximately 8.91 acres of unimproved vacant land along the southern border of Planning Area 5 of the East Lake Specific Plan in the Back Basin area of the City of Lake Elsinore.

### **Discussion**

Acquisition of the property furthers the objectives and is consistent with the joint efforts of the City and the Western Riverside County Regional Conservation Authority (RCA) to complete the assembly of the 770 acres of habitat conservation as outlined in the 2003 East Lake Specific Plan MSHCP Consistency Analysis. The property acquisition is also consistent with the revised mitigation obligations established by the California Department of Fish and Wildlife (CDFW) in connection with the Cottages at Mission Trail and the Mission Trail Apartments projects.

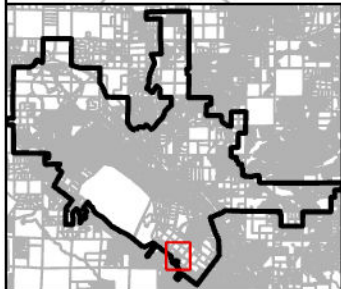
**Fiscal Impact**

The \$206,041.76 purchase price plus closing costs will be advanced by the City's General Fund subject to reimbursement upon release by CFDW of the developer's Letter of Credit securing the mitigation obligations of the Mission Trail Apartments project.

**Attachments**

Attachment 1 - Vicinity Map  
Attachment 2 - Arial Map  
Attachment 3 - Purchase Agreement

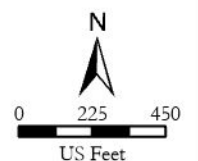
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# Vicinity Map

APN: 371-100-015

Coordinate System: NAD 1983 StatePlane California VI FIPS 0406 Feet



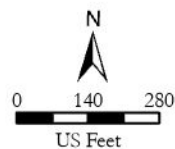




# Aerial Map

APN: 371-100-015

Coordinate System: NAD 1983 StatePlane California VI FIPS 0406 Feet



SELLER: Liberty Founders LLC  
APN: 371-100-015  
ESCROW/TITLE NO.: First American Title Insurance Company

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

**THIS AGREEMENT AND ESCROW INSTRUCTIONS FOR PURCHASE AND SALE OF REAL PROPERTY** (this “Agreement”), dated for identification purposes only as of July 23, 2024, is made by and between the **CITY OF LAKE ELSINORE**, a California municipal corporation (“Buyer”), and **LIBERTY FOUNDERS LLC**, a California limited liability company, an individual (“Seller”). This Agreement is for acquisition by the Buyer of certain real property hereinafter set forth in Attachment No. 1 to Exhibit A and is made on the basis of the following facts, intentions and understandings.

### **RECITALS**

**A.** Seller is the present owner of that certain unimproved real property comprising approximately 8.91 acres located along the southern border of Planning Area 5 of the East Lake Specific Plan in the Back Basin area of the City of Lake Elsinore, California, generally described as Assessor’s Parcel No. 371-100-015 and more particularly described in Attachment No. 1 to Exhibit A (the “Property”).

**B.** Seller has offered to sell the Property to Buyer and Buyer desires to acquire the Property from Seller in accordance with the terms and conditions of this Agreement.

### **AGREEMENT**

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

#### **ARTICLE I**

##### **PURCHASE AND SALE; PURCHASE PRICE; PUBLIC PURPOSE**

**1.1 Purchase and Sale.** Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, on and subject to the conditions, covenants and terms contained in this Agreement.

**1.2 Purchase Price.** The total purchase price is Two Hundred Six Thousand Forty One Dollars and Seventy Six cents (\$206,041.76) (the “Purchase Price”), payable in cash, certified or cashier's check payable to the Escrow Agent, or by electronic transfer of federal funds through escrow at the Closing.

#### **ARTICLE II**

##### **ESCROW**

**2.1 Open Escrow.** Within five (5) days after the execution of this Agreement by both parties, Seller and Buyer shall open escrow (“Escrow”) with First American Title Insurance



Company (the “Escrow/Title Company”) located at 43620 Ridge Park Drive, Suite 200, Temecula, CA 92590, Attention: Debbie Fritz.

**2.2 Close of Escrow.** The “Close of Escrow” or “Closing” shall mean the time and day the Grant Deed is filed for record with the Riverside County Recorder, which shall be on or before thirty (30) days after the opening of Escrow (“Closing Date”). The Close of Escrow shall be in accordance with Article IV of this Agreement.

**2.3 Escrow Instructions.** This Agreement shall constitute joint primary escrow instructions to the Escrow/Title Company; provided, however, that the parties shall execute such additional instructions as requested by the Escrow/Title Company not inconsistent with the provisions hereof. In the event of any inconsistency between such escrow instructions and this Agreement, this Agreement shall control the rights and obligations of the parties.

### **ARTICLE III CONDITIONS PRECEDENT**

**3.1 Conditions Precedent.** The purchase and sale under this Agreement shall be subject to the satisfaction of the conditions precedent set forth in this Article III (unless waived in writing by the party to whom the benefit of such condition runs) on or before the Closing Date or such earlier date as is specified in this Agreement, each of which conditions shall be a covenant of the party required to perform such condition.

**3.2 Conditions to Buyer’s Obligations and Due Diligence Period.**

A. Delivery of Title and Title Insurance. Seller shall convey title to the Property to Buyer at the Close of Escrow, subject only to Permitted Exceptions. The term “Permitted Exceptions” shall mean: (i) liens for real property taxes shown as exceptions in the Title Report provided that the taxes are not delinquent; (ii) the standard exclusions to coverage under Escrow/Title Company’s ALTA Extended Coverage Owner’s Policy of Title Insurance (“Title Policy”); and (iii) any other lien, encumbrance, title exception or defect that appears in the Title Report which Buyer has approved or which is caused by Buyer prior to the Close of Escrow. Notwithstanding the foregoing, in no event shall the following be considered Permitted Exceptions: deeds of trust or mortgages; judgments; mechanics' and materialmen's liens; tax liens; or liens, encumbrances or other title matters created by Seller after the date of this Agreement without the prior written consent of Buyer. Buyer agrees that Seller’s obligation to convey title to Buyer shall be deemed satisfied upon Escrow/Title Company’s willingness to issue the Title Policy subject only to the Permitted Exceptions.

B. Delivery of Title Report; Delivery of Natural Hazard Zone Disclosure Report.

(i) Within five (5) days following the opening of Escrow and at Buyer’s expense, Escrow/Title Company shall deliver to Buyer a preliminary title report for the Property (“Title Report”) together with copies of any exceptions referred to in Schedule B of the Title Report.

(ii) Buyer waives delivery of a Natural Hazard Zone Disclosure Report.

C. Due Diligence Period. Buyer shall have twenty (20) days after the delivery of the Title Report (the “Due Diligence Period”) to (i) review the exceptions, legal descriptions and other matters contained in the Title Report and (ii) conduct or review such surveys, investigations, studies and inspections and make or review such geologic, environmental and soils tests and other studies of the Property which Buyer deems necessary and appropriate in its sole and absolute discretion, including any “Phase 1” and/or “Phase 2” investigations of the Property and such soils, geological, toxic waste, hazardous substance, and/or any other kind of soil or water contamination tests and analyses. Buyer shall promptly provide to Seller a copy of all reports and test results. Seller shall deliver to Buyer during the Due Diligence Period any other documents relating to the Property that are reasonably available to Seller, including without limitation, deeds, surveys, title policies, engineering and environmental reports, studies, tests, monitoring results, easements, licenses, and service or maintenance contracts. If the Buyer reasonably determines within the Due Diligence Period that the condition of title or the condition of the Property is not satisfactory for any reason, Buyer may elect to terminate this Agreement by promptly notifying the Seller and Escrow/Title Company in writing of its decision to terminate.

D. Access to Property.

(i) Seller hereby grants to Buyer and any of Buyer’s consultants a right of entry to the Property at reasonable times for the purpose of conducting soils and geological investigation and tests for toxic or hazardous substances and other contamination. Buyer may perform such tests either before or after the opening of Escrow as part of an environmental site assessment or in accordance with the Comprehensive, Environmental Response, Compensation and Liability Act (42 USC 9601 *et seq.*). With respect to such entry and investigation, Buyer shall be responsible for all costs and expenses associated with the inspection and such other cost as may be related thereto.

(ii) Buyer and its agents, employees, or contractors shall have the right, from the date Escrow is open until the Closing Date, to contact any federal, state, or local governmental authority or agency to investigate any matters relating to the Property. Seller agrees to cooperate reasonably with Buyer and its agents, employees, or contractors in the inspection of the Property

E. Representations and Warranties. Each of the representations and warranties by Seller contained in Section 6.1 was true and correct in all material respects as of the date made and continues to be true and correct in all material respects as of the Close of Escrow.

F. Delivery of Close of Escrow Documents. Execution, delivery and acknowledgement as appropriate by Seller of the Close of Escrow documents set forth in Section 4.1.B(i).

G. No Material Change. No material change in the status of the use, title, occupancy or physical condition of the Property, unless caused by Buyer or its agents, shall have occurred with respect to the Property prior to Close of Escrow that has not been approved in writing by Buyer, which approval can be withheld in Buyer’s sole discretion. Additionally, Seller shall (i) maintain its existing insurance policies in full force and effect; (ii) provide prompt written notice to Buyer of any casualty or condemnation affecting any portion of the Property after the date of



this Agreement; (iii) deliver to Buyer, promptly after receipt by Seller, copies of all notices of violation issued by any governmental authority with respect to the Property received by Seller after the date of this Agreement; (iv) advise Buyer promptly of any litigation, arbitration or other judicial or administrative proceeding which concerns or affects the Property; and (v) comply in material respects with the requirements of all contracts, licenses, permits, approvals, guaranties and warranties.

H. Seller Performance. Seller shall have performed each and every undertaking, covenant and agreement required to be performed by Seller under this Agreement prior to or at the Close of Escrow.

### **3.3 Conditions to Seller's Obligations.**

A. Delivery of Purchase Price. Buyer shall have deposited the Purchase Price and Buyer's share of costs described in Section 4.2.A(ii) below with Escrow/Title Company.

B. Representations and Warranties. Each of the representations and warranties by Buyer contained in Section 6.2 below shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Close of Escrow.

C. Delivery of Close of Escrow Documents. Execution, delivery and acknowledgement as appropriate by Buyer of the Close of Escrow documents set forth in Section 4.1B(ii).

D. Buyer Performance. Buyer shall have performed each and every undertaking, covenant and agreement required to be performed by Buyer under this Agreement prior to or at the Close of Escrow.

**3.4 Failure of Conditions.** The failure of Seller or Buyer to satisfy any of the conditions precedent contained in this Article III within the times specified in this Agreement shall constitute a default hereunder and unless such conditions are waived or the time for satisfaction extended by the party to whose benefit the conditions run, the party to whose benefit the conditions run shall have the right to terminate this Agreement by delivering written notice to the other party and Escrow/Title Company.

## **ARTICLE IV CLOSE OF ESCROW**

**4.1 Close of Escrow.** The purchase and sale of the Property shall be consummated on or prior to the Closing Date in accordance with the following:

A. Time. When Escrow/Title Company is in a position to issue the Title Policy and all required documents and funds have been deposited with Escrow/Title Company, and Buyer and Seller have advised the Escrow/Title Company in writing that the Conditions of Close of Escrow set forth herein have been satisfied or waived, Escrow/Title Company shall immediately close Escrow as provided below.

B. Close of Escrow Documents.

(i) Seller. No later than the day prior to the Closing Date, Seller shall duly execute and acknowledge as appropriate and deliver to Escrow/Title Company the following:

(a) A grant deed ("Grant Deed") conveying the Property to Buyer in the form attached to this Agreement as Exhibit A;

(b) A Non-foreign Entity Affidavit ("Affidavit"), in such form prescribed by Escrow; and

(c) Such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Seller under this Agreement and to issue the Title Policy.

The obligations of Seller to deliver documents and instruments into Escrow in accordance with this Section 4.1.B(i) are separate, independent covenants of Seller and shall not be conditioned upon Buyer's deliveries in accordance with Section 4.1.B(ii).

(ii) Buyer. No later than the day prior to the Closing Date, Buyer shall duly execute and acknowledge as appropriate and deliver to the Escrow/Title Company the following:

(a) The Purchase Price, along with Buyer's share of any costs and expenses to be paid to or through Escrow/Title Company;

(b) A Certificate of Acceptance in the form of Attachment No. 2 to Exhibit A.

(c) A Change of Ownership Statement, as required by Escrow/Title Company; and

(d) Such documents and instruments as Escrow/Title Company may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Buyer under this Agreement and to issue the Title Policy.

The obligations of Buyer to deliver funds, documents and instruments into Escrow under this Section 4.1.B(ii) shall be separate, independent covenants of Buyer and shall not be conditioned upon Seller's deliveries in accordance with Section 4.1.B(i).

C. Close of Escrow Procedure. At such time as the Escrow/Title Company has received all of the items specified in Section 4.1.B, and at such time as Escrow/Title Company is prepared to issue the Title Policy in accordance with Section 3.2.A, Buyer and Seller hereby authorize and instruct Escrow/Title Company to: (i) cause Escrow/Title Company to record the Grant Deed and issue the Title Policy to Buyer; (ii) pay any applicable recordation fees and transfer taxes; (iii) compute pro-rations relating to the Property for the accounts of Seller and Buyer; (iv) pay to Seller an amount equal to the Purchase Price, less any pro-rations chargeable to Seller and any amounts payable by Seller to Escrow/Title Company for its services and

expenditures in connection with this Agreement; (v) pay to Buyer the balance of the funds then held by Escrow/Title Company, less any prorations chargeable to Buyer and any amounts payable by Buyer to Escrow/Title Company for its services and expenditures in connection with this Agreement; and (vi) deliver to Buyer and Seller conformed copies of the Grant Deed showing the recording information.

#### **4.2 Fees; Expenses; Prorations.**

##### **A. Fees, Expenses, Transfer Taxes.**

(i) Seller. Seller shall pay or satisfy, as applicable: (a) the prorations as provided in Section 4.2.B and 4.2.C; and (b) any other fees and charges and expenditures authorized by Seller.

(ii) Buyer. Buyer shall pay or satisfy, as applicable: (a) the Escrow fees; (b) the cost of the Title Policy; (c) all documentary transfer taxes imposed in connection with the recording of the Grant Deed; (d) the cost of recording the Grant Deed and all other documents recorded at the Close of Escrow; (e) the prorations as provided in Section 4.2.B and 4.2.C; and (f) any other customary fees and charges and expenditures authorized by Buyer.

B. Real Property Taxes and Assessments. All real property taxes and assessments for the fiscal years of the taxing and assessing authorities in which the Close of Escrow occurs shall be prorated on the basis of a three hundred sixty-five (365) day year at the Close of Escrow with appropriate debits and credits to the accounts of Buyer and Seller so that Seller shall be responsible for paying all of the same, to the extent duly allocable to the period ending on the day immediately prior to the Close of Escrow and Buyer shall be responsible for paying all of the same (if any shall be due), to the extent duly allocable to the period commencing upon the Close of Escrow.

C. Commissions. Buyer and Seller represent and warrant to each other that no person or entity may claim or is entitled to a real estate commission, finder's fees or any similar payments with respect to this Agreement or the sale of the Property. Buyer and Seller shall each protect, defend, indemnify and hold the other harmless from and against all such claims for real estate commissions, finder's fees or any similar payments with respect to the sale of the Property in accordance with this Agreement.

### **ARTICLE V BREACH**

**5.1 General.** If either party breaches its obligations under this Agreement prior to the Close of Escrow, then the other party may, without terminating this Agreement, suspend performance by giving written notice to the other party until such breach is cured by the other party. Except for Seller's and Buyer's respective delivery obligations under Article IV, including, without limitation, Buyer's delivery to the Escrow/Title Company of the Cash Portion of the Purchase Price, neither party shall be in default under this Agreement unless it fails to cure a breach of such party's obligations under this Agreement within five (5) business days after receipt of written notice of such breach from the non-breaching party. Nothing contained in this Agreement

is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default.

**5.2 Termination.** If either party breaches any of its obligations under this Agreement prior to the Close of Escrow and fails to cure such breach within twenty-four (24) hours after receipt of written notice from the other party, then the non-defaulting party may terminate this Agreement by written notice to the defaulting party and to the Escrow/Title Company. Termination of this Agreement shall be without prejudice as to whatever legal rights the party may have against the other arising out of this Agreement. If neither party has fully complied with the provisions of Escrow and notice has not been delivered pursuant to Section 5.1, then Escrow/Title Company shall proceed with the Close of Escrow as soon as possible.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

**6.1 Seller's Representations and Warranties.** In consideration of Buyer's entering into this Agreement and as an inducement to Buyer to purchase the Property, Seller makes the following covenants, representations and warranties, each of which is material and is being relied upon by Buyer (and the continued truth and accuracy of which shall constitute a condition precedent to Buyer's obligations hereunder):

A. Authority. Seller has the full power and authority to sell the Property, and this Agreement has been duly and validly authorized, executed and delivered by Seller and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Seller.

B. Encumbrances. Seller is the owner of the fee interest in the Property free and clear of all liens, encumbrances and other matters other than those set forth in the Title Policy and the Property is not subject to any outstanding contract of sale, right of first refusal or purchase option, in favor of any person or entity, except Buyer. Seller will not sell, lease, sublease, assign, mortgage or otherwise encumber the Property without Buyer's prior written approval, which may be withheld in Buyer's sole discretion.

C. No Breach. There are no contracts or agreements relating to the leasing, operation and maintenance of the Property which will be effective as to the Property following the Close of Escrow. There are no agreements, rights or agreements under which any third person or party has any right or option to purchase the Property. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, subject only to the applicable bankruptcy, insolvency, reorganization, moratorium laws or similar laws or equitable principles effecting or limiting the rights of contracting parties generally. To Seller's knowledge, neither the execution and delivery of this Agreement and the documents referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation of the transactions herein contemplated, nor compliance with the terms of this Agreement and the documents reference herein, result in the breach of any terms, conditions or provisions of, or constitute a default under, any bond, note, or other evidence of indebtedness or any contract, indenture, mortgage, deed of trust, loan,



partnership agreement, lease, or other agreements or instruments to which Seller is a party or effecting the Property.

D. Litigation. There are no suits, claims, foreclosure proceedings, property tax protests, zoning or other administrative proceedings that are pending or, to the best of Seller's knowledge, threatened with respect to or in any manner affecting the Property.

E. Due Diligence. Seller has delivered to Buyer complete legible copies of all the material documents pursuant to Section 3.2.C concerning the Property in Seller's possession or under its control.

F. Environmental Laws.

(i) To the best of Seller's knowledge, Seller has not received written notice from any governmental authority that the Property or the use or operation thereof are in violation of any Environmental Laws, no such written notice has been issued and no violation of any Environmental Laws has occurred. To best of Seller's knowledge, no part of the Property has ever been used by any person or entity to refine, produce, use, store, handle, transfer, process, transport or dispose of any Hazardous Substances.

(ii) For purposes of this Agreement, the following definitions apply:

"Environmental Laws" means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as defined subsequently in this Agreement), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property), occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C.A. §§ 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) and the Solid Waste Disposal Act [42 U.S.C.A. §§ 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) [33 U.S.C.A. §§ 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 U.S.C.A. §§ 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 U.S.C.A. §§ 5101 et seq.]; the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) [7 U.S.C.A. §§ 136 et seq.]; the Clean Air Act (CAA) [42 U.S.C.A. §§ 7401 et seq.]; the Safe Drinking Water Act (SDWA) [42 U.S.C.A. §§ 300f et seq.]; the Surface Mining Control and Reclamation Act of 1977 (SMCRA) [30 U.S.C.A. §§ 1201 et seq.]; the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA or EPCRTKA) [42 U.S.C.A. §§ 11001 et seq.]; the Occupational Safety and Health Act of 1970 (OSHA) [29 U.S.C.A. §§ 655, 657]; the California laws regarding the underground storage of hazardous substances [H & S C §§ 25280 et seq.]; the Hazardous Substance Account Act [H & S C §§ 25300 et seq.]; the California laws regarding hazardous waste control [H & S C §§ 25100 et seq.]; the Safe Drinking Water and Toxic Enforcement Act of 1986 [H & S C §§ 25249.5 et seq.]; the Porter-Cologne Water Quality Control Act [Wat C §§ 13000 et seq.], and any amendments of or regulations promulgated under the statutes cited above and any other federal,

state, or local law, statute, ordinance, or regulation now in effect that pertains to occupational health or industrial hygiene, and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Property, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

(iii) “Hazardous Substances” includes without limitation (a) those substances included within the definitions of “hazardous substance,” “hazardous waste,” “hazardous material,” “toxic substance,” “solid waste,” or “pollutant or contaminant” in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law; (b) those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302]; (c) other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (d) any material, waste, or substance that is: a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 U.S.C.A. § 1321 or listed pursuant to 33 U.S.C.A. § 1317, a flammable explosive, or a radioactive material.

G. Representations. All representations and warranties of Seller set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

**6.2 Buyer’s Representations, Warranties and Covenants.** In consideration of Seller entering into this Agreement and as an inducement to Seller to sell the Property to Buyer, Buyer makes the following representations, warranties and covenants, each of which is material and is being relied upon by Seller (the continued truth and accuracy of which shall constitute a condition precedent to Seller’s obligations hereunder):

A. Authority. Buyer has the full power and authority to buy the Property, and this Agreement has been duly and validly authorized, executed and delivered by Buyer and no other authorization or third party consent is requisite to the valid and binding execution, delivery and performance of this Agreement by Buyer.

B. Representations. All representations and warranties of Buyer set forth in this Agreement shall be true on and as of the Close of Escrow as if those representations and warranties were made on and as of such time.

## ARTICLE VII CONDEMNATION, DAMAGE AND DESTRUCTION

**7.1 Condemnation.** If, between the date of this Agreement and the Closing Date, condemnation or eminent domain proceedings affecting any portions of the Property are initiated or are threatened to be initiated by any entity other than Buyer, then, Buyer shall have the right to either: (i) affirm this Agreement, which shall remain in full force and effect without any diminution of the Purchase Price and Seller shall assign to Buyer upon the Closing Date all of Seller’s rights to any condemnation awards by depositing an assignment of said award with the Escrow/Title Company; or (ii) subject to and conditioned on Buyer’s compliance with the

remaining provisions of this Section 7.1, terminate this Agreement and neither party shall have any further obligations or liabilities to each other, except that Buyer's indemnity obligations under this Agreement shall survive any such termination. Buyer shall not propose, institute, cooperate with or permit any condemnation of all or any part of the Property prior to the Close of Escrow.

**7.2 Damage and Destruction.** If, between the date of this Agreement and the Closing Date, any portion of the Property is materially damaged or destroyed, then Buyer shall have the option by written notice to Seller to: (i) terminate this Agreement and Buyer shall have no obligation to purchase the Property and Seller shall have no obligation to sell the Property to or (ii) affirm this Agreement, which shall remain in full force and effect without delaying the Close of Escrow and without diminution of the Purchase Price.

## **ARTICLE VIII MISCELLANEOUS**

**8.1 No Foreign Investors.** Seller warrants and represents to Buyer that Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). Seller shall execute and deliver to Buyer at the Close of Escrow the Affidavit in in such form as provide by Escrow certifying the representations and warranties made pursuant to this Section.

**8.2 Attorneys' Fees.** If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including but not limited to actual attorneys' fees (including the allocated costs of in-house counsel), witness fees' and court costs. The phrase "prevailing party" as used in this Section shall mean the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise. The terms of this Section shall survive the Close of Escrow and shall not be merged with the Grant Deed.

**8.3 Notices.** All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery or e-mail (with hard copy to follow the next business day by overnight mail), by nationally recognized overnight mail carrier such as FedEx or delivered in person to the following street addresses:

SELLER:	Liberty Founders LLC 7777 Center Avenue #230 Huntington Beach, CA 92647 Attn: Steven P. Semingson Telephone: (714) 230-8000 E-Mail: SPSemingson@Civicpartners.com
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BUYER: City of Lake Elsinore  
130 S. Main Street  
Lake Elsinore, CA 92530  
Attn: Jason Simpson, City Manager  
Telephone: (951) 674-3124  
E-Mail: jsimpson@lake-elsinore.org

With a copy to: Leibold McClendon & Mann PC  
9841 Irvine Center Drive, Suite 230  
Irvine, CA 92618  
Attention: Barbara Leibold  
Telephone: (949) 585-6300 ext. 101  
E-Mail: barbara@ceqa.com.com

Escrow/Title Company: First American Title Insurance Company  
43620 Ridge Park Drive, Suite 200  
Temecula, CA 92590  
Attention: Debra Fritz  
Telephone: (951) 296-2948  
E-Mail: dfritz@firstam.com

All notices shall be effective upon the earlier of personal delivery or receipt of a facsimile confirmation statement, if sent by facsimile, or receipt of confirmation of delivery, if delivered by e-mail or a nationally recognized overnight mail carrier. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

**8.4 Cooperation.** Buyer and Seller shall reasonably cooperate with the other in connection with the requirements imposed by this Agreement and agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary in accordance with the intent of the parties as evidenced by this Agreement, provided such documents do not create any additional liability or expense for such party not contemplated by this Agreement.

**8.5 Survival.** Buyer's and Seller's representations, warranties and obligations under this Agreement shall survive the Close of Escrow and shall not be merged into or defeated by the execution, delivery or recordation of the Grant Deed given in connection with this Agreement.

**8.6 Interpretation.** This Agreement shall be construed and enforced in accordance with the laws of the State of California as applicable to contracts entered into in California among parties doing business therein. This Agreement contains the entire agreement between the parties respecting the purchase and sale of the Property and supersedes all prior negotiations, discussions, understandings and agreements, both oral and written, between the parties with respect to such matters. This Agreement shall not be effective between the parties until the date this Agreement is executed and delivered into Escrow by both Seller and Buyer. This Agreement may not be modified or amended in any way except by a writing executed by both Buyer and Seller. The section headings of this Agreement are for convenience only and are not to be construed as part of



this Agreement and do not in any way amplify or define the terms, conditions, and covenants of this Agreement and shall not be used in construction or interpretation of this Agreement. There are no third-party beneficiaries to this Agreement. Unless the context otherwise indicates, whenever used in this Agreement, the word “party” or “parties” means Buyer or Seller or both, as the context may require. Time is of the essence in the performance of each term of this Agreement.

**8.7 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefits of the successors and assigns of the parties to this Agreement. In no event shall Buyer have any right to delay or postpone the Close of Escrow to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance.

**8.8 Severability.** If any term or provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

**8.9 Dates.** Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on Saturday, Sunday or legal holiday under the laws of the State of California, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

**8.10 Counterparts.** This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same or original counterpart.

**8.11 No Assumption of Seller’s Liabilities.** Buyer is acquiring only the Property from Seller and is not the successor of Seller. Except only for the obligations accruing after the Closing Date or assumed in writing by Buyer, Buyer does not assume or agree to pay, or indemnify Seller or any person or entity against any liability, obligation or expense of Seller or relating to the Property.

**8.12 Limitation of Liability.** No advisor, trustee, director, officer, partner, member, employee, beneficiary, shareholder, participant or agent of or in Seller or Buyer shall have any personal liability, directly or indirectly, under or in connection with this Agreement or any agreement made or entered into under or pursuant to the provisions of this Agreement, or any amendment or amendments to any of the foregoing made at any time or times, heretofore or hereafter. The terms of this Section survive the Close of Escrow or termination of this Agreement.

**8.13 Indemnification; Limitation on Damages.** Seller hereby agrees to indemnify, defend and hold Buyer harmless from and against any claims, damages, demands, liabilities, losses, judgments, expenses and attorneys’ fees and/or costs resulting from any material breach of this Agreement by Seller, including, without limitation, the falsity of any representation or warranty made by Seller contained in this Agreement. Neither Buyer nor Seller shall in any event be entitled to, and each hereby waives, any right to seek consequential damages of any kind or nature from the other party arising out of or in connection with this Agreement.

**8.14 Tax and legal advice.** Seller represents and warrants that the buyer has not provided tax or legal advice to seller in connection with this agreement. Seller further represents

and warrants that they have been advised of their right to legal counsel and tax advice and have either obtained the advice of independent legal counsel or a tax advisor with respect to the terms of this agreement and all attachments hereto and other agreements required hereby, or have knowingly and voluntarily decided not to consult with legal counsel or a tax advisor of his/her choosing.

**8.15 Time of Essence.** Time is expressly made of the essence with respect to the performance by Buyer and Seller of each and every obligation and condition of this Agreement including, without limitation, the Close of Escrow.

**8.16 Exhibits Incorporated by Reference.** All exhibits attached to this Agreement are incorporated in this Agreement by this reference.

**[Signatures on next page]**

**IN WITNESS WHEREOF**, the Buyer and the Seller have signed this Agreement and Escrow Instructions for Purchase and Sale of Real Property on the date set forth below.

**“SELLER”**

**LIBERTY FOUNDERS LLC**

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

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

Its: \_\_\_\_\_

**“BUYER”**

**CITY OF LAKE ELSINORE**, an California  
municipal corporation

Dated: \_\_\_\_\_

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

Jason Simpson, City Manager

**ATTEST:**

\_\_\_\_\_  
Candice Alvarez, MMC, City Clerk

**APPROVED AS TO FORM:**

LEIBOLD McCLENDON & MANN, P.C.

By: \_\_\_\_\_  
Barbara Leibold, City Attorney

**EXHIBIT A**

RECORDING REQUESTED BY, AND  
MAIL TAX STATEMENTS TO:

City Clerk  
CITY OF LAKE ELSINORE  
130 S. Main Street  
Lake Elsinore, CA 92530

114 S. Main Street (APN 371-100-015)  
Lake Elsinore, CA 92530

[Space above this line for Recorder's use only.]

OFFICIAL BUSINESS:  
EXEMPT FROM A RECORDING FEE  
PURSUANT TO GOVERNMENT CODE  
SECTIONS 6103 AND 27383.

THE UNDERSIGNED GRANTOR DECLARES:

DOCUMENTARY TRANSFER TAX IS \$ 0.00 [City of Lake Elsinore is exempt per  
Government Code 6103 and Revenue and Taxation Code 11922]

- ☐ computed on full value of property conveyed, or  
☐ computed on full value less value of liens or encumbrances remaining at time of sale.  
☐ Unincorporated Area

**GRANT DEED**

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
**LIBERTY FOUNDERS LLC** ("Seller"), hereby GRANT(S) to the **CITY OF LAKE  
ELSINORE**, a California municipal corporation, the real property described as:

SEE ATTACHMENT NO. 1  
ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE

**"SELLER"**

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

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



**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

The real property referred to herein is situated in the County of Riverside, City of Lake Elsinore, State of California, and is described as follows:

TO BE INSERTED

[Assessor's Parcel No. 371-100-015]

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ a  
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 of Notary

(Affix seal here)

**ATTACHMENT NO. 2**

**CERTIFICATE OF ACCEPTANCE**

(Government Code Section 27281)

THIS IS TO CERTIFY that the interest in real property conveyed by Grant Deed dated \_\_\_\_\_, 2024 from LIBERTY FOUNDERS LLC, as Grantor, to the CITY OF LAKE ELSINORE, a California municipal corporation, is hereby accepted by the undersigned officer on behalf of the City Council of the City of Lake Elsinore ("City Council") pursuant to authority conferred by Resolution No. 99-17 of the City Council adopted on March 23, 1999 and minute order approval on July 23, 2024 the City of Lake Elsinore consents to recordation thereof by its duly authorized officer.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2024.

CITY OF LAKE ELSINORE,  
a California municipal corporation

By: \_\_\_\_\_  
Jason Simpson, City Manager

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

STATE OF CALIFORNIA )  
 ) §  
County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_ a  
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 of Notary

(Affix seal here)