AGREEMENT FOR CONVEYANCE

OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS

BY AND BETWEEN

CALMAT CO., a Delaware corporation

AND

CITY OF FONTANA,
a California municipal corporation, as Buyer

AGREEMENT FOR CONVEYANCE OF REAL PROPERTY
AND JOINT ESCROW INSTRUCTIONS

This Agreement for Conveyance of Real Property and Joint Escrow Instructions ("**Agreement**") is entered into as of _____, 2023 ("**Effective Date**"), by and between the City of Fontana, a California municipal corporation ("**City**"), and CALMAT CO., a Delaware corporation ("**Seller**"), with reference to the Recitals set forth below. This Agreement shall also constitute the joint escrow instructions of City and Seller to Chicago Title Insurance Company ("**Escrow Holder**"). Seller and City are sometimes hereinafter referred to individually as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Seller owns various parcels of land located in the City ("**Land**"), as more particularly described on **Exhibit "A"**, attached hereto and made a part hereof.

B. City, in conjunction with others, wishes to develop, construct and operate facilities on a portion of the Land that will provide services to disadvantaged individuals in the community. To that end, City has an interest in acquiring by gift from Seller a portion of the Land, consisting of approximately 3.6 acres of land bordered on the north by Arrow Route and on the east by Tokay Avenue ("**Subject Property**"), as further depicted on **Exhibit "B"**.

C. Seller is willing to convey the Subject Property to City, conditioned on (1) City obtaining the final and non-appealable entitlements, including the rezoning described below ("**City Project Entitlements**"), that it requires to develop the Subject Property for the intended purposes ("**City Project**"), (2) Seller approving (in Seller's reasonable discretion) the scope and effect of the City Project Entitlements, (3) City preparing engineering plans and construction drawings sufficient to construct the City Project, (4) City providing evidence that it has the funding required to carry out the City Project, and (5) City providing assurances which are acceptable to Seller, in its reasonable discretion, that City is prepared to immediately commence construction of the City Project on conveyance of the Subject Land to City.

D. Prior to conveying the Subject Property, Seller intends to pursue a Lot Line Adjustment and a recordable certificate of compliance, certifying that the Subject Property is a legal parcel under the Subdivision Map Act ("**Lot Line Adjustment**").

E. The Land is currently zoned as "OS-N: Open Space – Natural." In order to facilitate the City Project, and as part of the City Project Entitlements, City desires to rezone the Land from OS-N: Open Space – Natural to "M-1: Light Industrial."

F. The Parties desire to enter into this Agreement to document the transaction contemplated herein between Seller and City based on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, City and Seller hereby agree as follows:

AGREEMENT

1. Conveyance of the **Subject Property**. Seller hereby agrees to grant and convey to City, and City hereby agrees to accept from Seller, the Subject Property, which shall include the following:

1.1 Real Property. That certain land located in the City, and more particularly depicted on **Exhibit "B"** attached hereto and made a part hereof, together with any and all easements, rights-of-way, privileges, rights and appurtenances, benefiting, appertaining or belonging to such land, including, without limitation, any and all streets and roads (whether opened or proposed) abutting the **Subject Property** and/or oil, gas or other minerals laying under the Subject Property (collectively, the "**Real Property**");

1.2 Intentionally Deleted.

1.3 Intangible Property. All of Seller's right, title and interest in, to and arising out of, the **Real Property** and/or development entitlements related to the **Real Property**, including, but not limited to, all applications, reports, studies, permits, licenses, plans, maps, site plans, drawings, specifications, surveys, consultant work product, warranties, guaranties, agreements, contracts, development agreements, utility rights, development rights, approvals, entitlements, indemnities, claims, third party claims (including claims against previous owners or developers of the Real Property, any contractors, subcontractors, consultants or other suppliers of materials or services with respect to the Real Property), actions or defenses, prepaid development fees, credits, deposits, sewer credits, rights of reimbursement, governmental permits, certifications, licenses, variances, specific plan amendments, general plan amendments, maps, negative declarations, environmental impact reports, CEQA findings and determinations, will serve letters and all similar rights specifically related to the **Real Property** and which are severable form the adjacent portions of the Land, whether granted by governmental or quasi-governmental authorities or private persons or entities (collectively, the "**Intangible Property**").

All references to the Subject Property shall be deemed to include the Real Property and the Intangible Property. City shall not assume any liabilities or obligations relating to the Subject Property unless expressly provided in this Agreement.

2. Consideration.

2.1 Intentionally Deleted.

2.2 Specific Consideration.

2.2.1 Entitlement Processing. As consideration for Seller's covenants and representations in this Agreement, City agrees to: (1) process the City Project Entitlements on or before the Closing, (2) prepare, at its sole cost and expense, any CEQA analysis required for the City Project Entitlements, and (3) pay, at its sole cost and expense, any City processing fee, including any costs related to such analysis as may be needed in connection with processing the City Project Entitlements. Notwithstanding the foregoing, Seller shall be responsible, at no cost to Seller, to sign any entitlement applications, authorizations, or other documents as may be required by City in order to process the City Project Entitlements, and otherwise reasonably

cooperate with City's staff to facilitate the processing of the City Project Entitlements. The Parties affirmatively agree that the City cannot bind itself or otherwise pre-commit to approving the City Project Entitlements, and in the event of City's refusal or failure to grant the City Project Entitlements, such refusal or failure shall not be a breach of this Agreement. Accordingly, City's obligations with regard to the City Project Entitlements shall solely be to process the City Project Entitlements, which may result in approval, conditional approval, or denial. However, and pursuant to Paragraph 5.3.1, the approval of the City Project Entitlements prior to Closing shall be a condition precedent to Seller's obligation to convey the Subject Property to City.

2.2.2 Seller's Discretionary Review. Seller shall have the right to review and approve (in Seller's reasonable discretion) the scope and effect of the City Project Entitlements, including the legal description of the Land proposed to be rezoned. Seller shall review and approve or disapprove the City Project Entitlements within thirty (30) days after City delivers a complete application to Seller.

2.3 Independent Consideration. A sum of ONE HUNDRED DOLLARS AND ZERO CENTS ($100.00) ("**Independent Consideration**") shall be deposited by City with Escrow Holder and be non-refundable to City under any circumstances as independent consideration for the rights extended to City under this Agreement. The Independent Consideration shall be released to Seller immediately following Buyer's deposit of the Independent Consideration into Escrow. The Independent Consideration shall paid by City.

3. Title.

3.1 Preliminary Title Report. Seller shall order from Cheryl Ynez (cheryl.ynez@ctt.com) of Chicago Title Insurance Company ("**Title Company**"), for delivery to City and Seller within thirty (30) days after the Effective Date, a current preliminary title report pertaining to the Real Property, together with complete and legible copies of all documents relating to the title exceptions and other matters referred to in such preliminary title report and a color-coded map plotting all easements referenced in such preliminary title report (collectively, the "**Preliminary Title Report**").

3.2 Survey. City may obtain an ALTA survey for the Subject Property (the "**Survey**") prepared by an engineer selected by City in its sole discretion, provided that City shall pay for the cost of such Survey.

3.3 Title and Survey Exceptions. On or before the date that is thirty (30) days following City's receipt of the Preliminary Title Report, City shall notify Seller in writing ("**Title Objection Notice**") of any title exceptions identified in the Preliminary Title Report and/or Survey that City disapproves in its sole discretion ("**Title Objections**"). Subject to Section 3.4 below, any exception shown on the Preliminary Title Report that is not listed as a Title Objection in City's Title Objection Notice will be deemed approved by City and shall constitute a "**Permitted Exception**" hereunder. City and Seller hereby agree that all non-delinquent property taxes and assessments as of the Closing shall be deemed a Permitted Exception. Notwithstanding anything to the contrary contained in this Agreement, City hereby disapproves all deeds of trust, delinquent taxes and assessments and other monetary liens affecting the Land (other than liens for non-delinquent property taxes and assessments as described above) and Seller hereby

covenants to cause all such disapproved liens to be satisfied at Seller's sole cost and expense (including all prepayment penalties and charges) before or concurrently with the Closing from sales proceeds or otherwise. If City fails to timely provide a Title Objection Notice, such failure shall be deemed an election by City to approve all title exceptions identified in the Preliminary Title Report. Seller shall have a period of ten (10) business days following its receipt of the Title Objection Notice within which to notify City in writing ("**Title Objection Response**") of its agreement to remove, alter, modify or otherwise mitigate to the satisfaction of City and Title Company any Title Objection, in Seller's sole discretion. Seller's failure to timely provide a Title Objection Response will be deemed an election by Seller to not cure the Title Objections prior to the Closing. In the event that pursuant to Seller's Title Objection Response Seller is not willing to remove, alter, modify or otherwise mitigate to the satisfaction of City and Title Company any Title Objection, City shall elect, prior to the expiration of the date that is ten (10) business days after City's receipt of the Title Objection Response, to either (i) waive its disapproval of such exception, in which case such exception shall then be deemed to be a Permitted Exception, or (ii) terminate its obligation to acquire the Subject Property. City's failure to give such notice shall be deemed an election to terminate its obligation to acquire the Subject Property. In the event City elects or is deemed to have elected to terminate its obligation to acquire the Subject Property in accordance with this Section, City's obligation to acquire, and Seller's obligation to convey, the Subject Property shall terminate, and neither Party shall have any further rights or obligations to the other except as otherwise provided in this Agreement.

3.4 Additional Exceptions. In the event of any supplement to or update of the Preliminary Title Report, or if the Survey discloses additional title exceptions (other than any resulting from City's activities on the Real Property), City shall have an additional ten (10) day period following City's receipt of such supplement or update to approve or disapprove such item in its sole discretion. Seller shall have a period of ten (10) days following Seller's receipt of such disapproval to notify City in writing of its agreement to remove, alter, modify or otherwise mitigate to the satisfaction of City and Title Company such disapproval, in Seller's sole discretion. Seller's failure to timely provide a response will be deemed an election by Seller to not cure such disapproval prior to the Closing. In the event that Seller is not willing to remove, alter, modify or otherwise mitigate to the satisfaction of City and Title Company such disapproval, City shall elect, prior to the expiration of the date that is ten (10) days after City's receipt of the Seller's response, to either (i) waive its disapproval of such exception, in which case such exception shall then be deemed to be a Permitted Exception, or (ii) terminate its obligation to acquire the Subject Property**.** If necessary, the Closing Date (defined below) will be extended on a day for day basis in order to complete the forgoing process.

4. Due Diligence Investigations.

Physical Inspections. Subject to compliance with the terms and conditions set forth below, from the Effective Date until the Closing, City and City's agents, employees, contractors, consultants and representatives (collectively, "**City's Agents**") shall be entitled to enter onto the **Subject Property** to perform a complete review of the Subject Property and all matters related to the Subject Property as City determines is necessary in City's sole discretion and to perform any inspections, investigations, and tests of the Subject Property, including but not limited to, geotechnical soil borings, test pits, physical inspections and other environmental tests

of the Subject Property, all at City's sole cost and expense. In connection with City's or City's Agents' entry on the Subject Property City shall comply with all of the following:

(a) City shall keep the Subject Property free and clear of all liens arising out of City's and City's Agents' activities conducted upon the Subject Property. City shall indemnify, defend and hold Seller and the Subject Property free and harmless of and from all costs, expenses, damages, claims, liabilities, attorneys' fees and costs or charges arising out of, or in any way connected with, the entry upon the Subject Property by City and City's Agents, but excluding any latent defects or hazardous materials discovered by City during its investigation of the Subject Property, unless exacerbated as a result of City's activity on or related to the Subject Property.

(b) City or City's Agents prior to entering the Subject Property shall provide Seller with a certificate of general liability insurance, or equivalent instrument, with a combined single limit of liability not less than One Million Dollars ($1,000,000.00).

(c) City, at City's sole cost, shall repair all damage or injury caused by City or City's Agents in connection with any such inspection or entry and shall return the Subject Property to the condition existing prior to such entry, but excluding any latent defects or hazardous materials discovered by City during its investigation of the Subject Property.

(d) City shall conduct any such inspections at reasonable hours and at times mutually acceptable to Buyer and Seller.

(e) At least two (2) business days prior to any entry onto the Subject Property, City shall deliver to Seller written notice specifying the day and time of entry and generally describing the scope of the Inspections to be completed. Seller may, in its sole discretion, accompany City during any entry.

(f) City shall not conduct any invasive testing, groundwater sampling or soil boring without first providing Seller a complete copy of City's proposed work plan and without obtaining Seller's express prior written consent (to be provided or withheld in Seller's reasonable discretion).

(g) Seller shall make reasonable efforts to provide to City any report in its possession regarding the environmental condition of the Real Property, within thirty (30) days following the Effective Date.

4.1 Intentionally Deleted.

4.2 Due Diligence Period; City's Right to Terminate. City shall have the absolute right, during the period commencing on the Effective Date and expiring at 5:00 p.m. California time on the ninetieth (90th) day thereafter (the "**Due Diligence Period**"), to elect to approve or disapprove, in City's sole discretion, the suitability of the Subject Property for City's intended purposes. In the event City (for any reason or no reason) disapproves the Subject Property, City may terminate its obligation to acquire the Subject Property by delivering written notice ("**Disapproval Notice**") of its disapproval of the Subject Property to Seller at any time prior to the expiration of the Due Diligence Period. In the event City elects to terminate its obligation to acquire the Subject Property in accordance with this Section, City's obligation to

acquire, and Seller's obligation to convey, the Subject Property shall terminate, and neither Party shall have any further rights or obligations to the other except as otherwise provided in this Agreement. In the event that City elects in its sole discretion to approve all matters relating to the Subject Property, then prior to the expiration of the Due Diligence Period, City shall deliver written notice ("**Approval Notice**") of its approval of the Subject Property to Seller. If City fails to deliver a Disapproval Notice or an Approval Notice to Seller prior to the expiration of the Due Diligence Period, City shall be deemed to have delivered an Approval Notice.

4.3 Acknowledgement. City acknowledges that the Subject Property was formerly used as a sand and gravel mine and that the current physical condition of the Subject Property may reflect the prior use of the Subject Property for such purposes. City further acknowledges that this Agreement affords City access to **the Subject Property** to complete its own investigation concerning the physical condition of the Subject Property. City represents to Seller that, prior to the expiration of the Due Diligence Period, City will have made all inquiries, inspections, tests, audits, studies and analyses that it deems necessary or desirable in connection with purchasing the Subject Property, and will have approved the results thereof (including, without limitation, engineering tests, environmental assessments, economic feasibility studies, land use and development entitlements and restrictions, soils and geologic reports and tests and inquiries of governmental authorities, and matters related to the drainage of storm water from the Subject Property) prior to the waiver or satisfaction of the contingencies set forth in Sections 3 and 4 (the "**Contingencie**s"). City hereby acknowledges that it is relying solely on its own inspections, tests, audits, studies and investigations conducted in connection with, and upon City's own judgment and verified information with respect to, acquiring the Subject Property, and is not relying on any representation or statement of Seller or any materials, data or other information supplied by Seller. Without limiting the generality of any other provision of this Agreement, upon the satisfaction or waiver of the Contingencies, City agrees that: (a) City shall be deemed to have accepted all risk associated with all defects, adverse physical characteristics and existing environmental conditions related to the Subject Property that may or may not have been revealed by City's investigation and any environmental report, including such defects and conditions, if any, that cannot be observed by casual inspection; and (b) as between Seller and City, City shall be deemed to have accepted all costs and liabilities associated in any way with the physical and environmental condition of the Subject Property (*i.e.*, Seller will have no obligation to repair, correct or compensate City for any condition of the Subject Property, including defects in the Improvements, noncompliance with applicable laws and regulations, whether or not such condition of the Subject Property was disclosed by City's due diligence).

5. Conditions Precedent. The following shall be the conditions precedent to the Parties' obligations to consummate the conveyance transaction contemplated herein:

5.1 Conditions to City's Obligations. City's obligations hereunder, including, but not limited to, its obligation to consummate the conveyance transaction provided for herein, are subject to the satisfaction, in City's sole discretion, of each of the following conditions, each of which is for the sole benefit of City and may only be waived by City in writing:

5.1.1 Owner's Policy. Title Company shall be irrevocably committed to issue, at the Closing, its standard coverage owner's title insurance policy, and provided City provides the Survey to the Title Company (in a form that meets the Title Company's reasonable

requirements), its extended coverage ALTA Owner's Title Insurance Policy (2006 Form) in a form satisfactory to City, with liability selected by City and agreed to by Title Company, showing fee title to the Subject Property vested in City, free and clear of any and all tenancies and/or rights of third parties affecting all or any portion of the Subject Property, subject only to the Permitted Exceptions (the "**Owner's Policy**").

5.1.2 Due Performance. Seller shall not be in default under this Agreement, and shall have duly performed each and every covenant, undertaking and agreement to be performed by it prior to the Closing.

5.1.3 Seller's Representations and Warranties. Each representation and warranty made in this Agreement by Seller shall be true and correct at the time as of which the same is made and as of the Closing.

5.1.4 Intentionally Deleted.

5.1.5 Intentionally Deleted.

5.1.6 Intentionally Deleted.

5.1.7 Seller Deliveries. Seller shall have delivered to Escrow Holder the items described in Section 7 hereof.

5.1.8 No Pending Action. There shall exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, against the Seller that would materially and adversely affect the Seller's ability to unconditionally perform its obligations under this Agreement; and there shall exist no pending or threatened action, suit or proceeding with respect to the Seller before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby.

5.1.9 Intentionally Deleted.

5.1.10 Removal of Personal Property. All items of personal property, if any, shall have been removed from the Subject Property.

5.2 City's Waiver of Conditions. City may at any time or times on or before the Closing, at its sole election, waive any of the conditions precedent to City's obligations under Section 5.1 or otherwise and consummate the conveyance, but any such waiver shall be effective only if contained in a writing signed by City and delivered to Seller. In the event any of the conditions precedent for the benefit of City that are contained in this Agreement are not completely fulfilled and satisfied, then in addition to any other rights or remedies City may have, City may terminate its obligation to acquire the Subject Property. In the event City elects to terminate its obligation to acquire the Subject Property in accordance with this Section, City's obligation to acquire, and Seller's obligation to convey, the Subject Property shall terminate, and neither Party shall have any further rights or obligations to the other except as otherwise provided in this Agreement.

5.3 Conditions to Seller's Obligations. Seller's obligations hereunder, including, but not limited to, its obligation to consummate the transaction provided for herein, are subject to the satisfaction, in Seller's sole discretion, of each of the following conditions, each of which is for the sole benefit of Seller and may be waived by Seller in writing:

5.3.1 Grant of Entitlements. Prior to the Closing, City shall have granted the City Project Entitlements, and they shall have become final and non-appealable. As further explained in Section 2.2, this Agreement does not require the City to grant the City Project Entitlements, but the grant of City Project Entitlements shall be a condition precedent to Seller's obligations hereunder, and if the City Project Entitlements are not granted, Seller shall have no obligation to convey the Subject Property to City.

5.3.2 Lot Line Adjustment. Prior to the Closing, Seller shall have processed and received approval from City of the Lot Line Adjustment to create a separate legal parcel under the Subdivision Map Act for the Subject Property. All Seller's costs associated with the Lot Line Adjustment are subject to reimbursement by City at the Closing ("**LLA Reimbursement**"). The LLA Reimbursement shall not exceed Ten Thousand Dollars ($10,000.00).

5.3.3 City Deliveries. City shall have delivered to Escrow Holder the items required to be delivered by City pursuant to Section 8 hereof.

5.3.4 Due Performance. City shall not be in default under this Agreement and shall have duly performed each and every covenant, undertaking and agreement to be performed by it prior to the Closing hereunder.

5.3.5 City's Representations and Warranties. Each representation and warranty made in this Agreement by City shall be true and correct at the time as of which the same is made and as of the Closing.

6. Covenants During Escrow. From the Effective Date until the earlier of the Closing or the termination by City or Seller of its obligation to complete the transfer of the Subject Property, City and Seller, as applicable, covenant and agree to the following:

6.1 Operation of the Subject Property Prior to Closing.

6.1.1 Affirmative Covenants. Seller shall (i) pay all taxes and assessments with respect to the Subject Property prior to delinquency, (ii) maintain property and liability insurance related to the Real Property at the level and with the insurance companies that Seller currently maintains, and (iii) Pursue diligently and in good faith City's approval of the Lot Line Adjustment. Without limiting the generality of the foregoing, Seller shall file the application for approval of the Lot Line Adjustment within ninety (90) days after the Effective Date.

6.1.2 Negative Covenants. Seller shall not, except as otherwise specifically permitted or required pursuant to this Agreement, or as otherwise agreed or permitted by City in writing in City's sole discretion, (i) grant, create or allow the creation of any easement, right-of-way, encumbrance, lien, restriction, right of occupancy or assessment affecting the Subject Property or otherwise cause or permit any other change to the state of title with respect to

the Subject Property, (ii) amend, extend or otherwise modify the terms of any existing lease, easement, right-of-way, encumbrance, lien, restriction or assessment that affects the Subject Property; or (iii) sell, transfer or otherwise convey or terminate, amend or otherwise modify any Intangible Property.

6.2 Termination of Leases. If any lease, licenses or occupancy rights exist with respect to the Subject Property, Seller hereby covenants at its sole cost and expense to terminate any such leases, licenses or rights so that Seller can deliver exclusive possession of the Subject Property to City at Closing free of any lease, license or occupancy rights.

6.3 Additional Seller Disclosures. Seller shall promptly advise City in writing of any material adverse change in the condition of any of the Subject Property, the occurrence of any event or the discovery of any fact which would render any representation or warranty of Seller to City in this Agreement untrue or materially misleading, and any written notice or other communication from the City, or any other governmental or quasi-governmental entities or agencies with jurisdiction over the Subject Property or operations thereon (any of the foregoing, a "**Governmental Authority**," and collectively, the "**Governmental Authorities**") or third person alleging that the consent of such third person is or may be required in connection with the transactions contemplated by this Agreement.

6.4 Additional City Disclosures. City shall promptly advise Seller in writing of the occurrence of any event or the discovery of any fact which would render any representation or warranty of City to Seller in this Agreement untrue or materially misleading, and any written notice or other communication from the Seller, or any Governmental Authorities or third person alleging that the consent of such third person is or may be required in connection with the transactions contemplated by this Agreement.

6.5 Seller Contracts. The parties acknowledge that Seller is a party to an agreement with City to sell City right of way at the corner of Arrow and Tokay.

6.6 City Covenant. City shall diligently and in good faith pursue approval by City of the City Project Entitlements.

7. Seller's Closing Deliveries. Seller shall deliver or cause to be delivered to Escrow Holder the following items:

7.1 Within ten (10) days after City has approved the Lot Line Adjustment, one (1) fully-executed and acknowledged grant deed conveying the Real Property in the form attached hereto as **Exhibit "C"** and containing the legal description of the Subject Property approved through the Lot Line Adjustment ("**Grant Deed**") with all documentary transfer tax information disclosed on a separate declaration, which shall be affixed to the Grant Deed by the Escrow Holder after recordation thereof;

7.2 Not less than one (1) business day prior to the Closing, a Certificate of Non-Foreign Status duly executed by Seller certifying that Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended, together with the equivalent California form (Form 593-C) confirming that Seller is not subject to any

withholdings pursuant to the California Revenue & Taxation Code (collectively, the "**Non-Foreign Affidavits**");

7.3 Within ten (10) days after City has approved the Lot Line Adjustment, evidence that Seller has obtained approval from City of the Lot Line Adjustment creating the Subject Property as a separate legal parcel.

7.4 Not less than one (1) business day prior to the Closing, any other document, instrument or agreement necessary to consummate the transactions contemplated herein reasonably requested by City or Escrow Holder.

8. City's Closing Deliveries. Not less than one (1) business day prior to the Closing, City shall deliver to Escrow Holder any documents, instruments or agreements necessary to consummate the transactions contemplated herein reasonably requested by Seller or Escrow Holder.

9. Escrow and Closing.

9.1 Escrow Instructions. When this Agreement or counterparts hereof shall have been executed by Seller and City and delivered to Escrow Holder, it shall constitute Escrow Holder's escrow instructions. Any standard form escrow instructions submitted by Escrow Holder or any other clarification or addition to the instructions contained herein shall, when executed by City and Seller, constitute additional escrow instructions. In the event of any conflict between such additional instructions and this Agreement, the terms of this Agreement shall prevail.

9.2 Closing. The "**Closing**" or "**Closing Date**" means the date on which the Grant Deed conveying title to the Subject Property to City is recorded. The Closing shall occur within thirty (30) days of the date upon which the City Project Entitlements are approved and become final and non-appealable, or such later date as extended by mutual written agreement of the Parties. City shall provide notice to Seller and Escrow Holder not less than fourteen (14) days in advance of the Closing at which time each of the Parties shall deposit any portion of their estimated pro-rata share of estimated closing costs with Escrow Holder not previously deposited. Provided that Escrow Holder shall not have received written notice in a timely manner from City or Seller of the failure of any condition to the Closing or of the termination of the Escrow, and if and when City and Seller have deposited into Escrow the funds and documents required by this Agreement, and Title Company is irrevocably committed to issue the Owner's Policy concurrently with the Closing, Escrow Holder shall:

9.2.1 Record Documents. Cause the Grant Deed to be recorded in the Official Records of the County in which the Subject Property is located;

9.2.2 Deliver to City. Immediately upon the recording of the Grant Deed, deliver to City: (i) a conformed copy of the Grant Deed; (ii) the Non-Foreign Affidavit; (iii) any funds deposited by City in excess of the amount required to be paid by City hereunder; and (iv) the Owner's Policy issued by Title Company.

9.2.3 Deliver to Seller. Immediately upon the recording of the Grant Deed, deliver to Seller the LLA Reimbursement, after satisfying the closing costs, prorations and adjustments to be paid by City pursuant to this Agreement.

9.2.4 Outside Closing Date. In the event the City Project Entitlements and the Lot Line Adjustment have not been completed before the first anniversary of the Effective Date, Seller shall have the right to terminate this Agreement, and in that event, neither Seller nor City shall have further rights or obligations under this Agreement, except for those which expressly survive the termination of this Agreement.

9.3 Real Estate Reporting Person. Escrow Holder is hereby instructed to comply with all applicable Federal, state, and local reporting and withholding requirements relating to the close of this transaction. Escrow Holder is hereby designated the "real estate reporting person" for purposes of Section 6045 of Title 26 of the United States Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Escrow Holder shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Escrow Holder shall, in addition to complying with any applicable state and local requirements, file Form 1099 information return and send the statement to Seller as required under the aforementioned statute and regulation.

10. Closing Costs. City shall pay all closing costs including (i) Escrow Holder's escrow fee; (ii) any charges for title coverage and any additional title endorsements requested by City; (iii) all of the city, county and/or other documentary transfer stamps, taxes and/or fees; and (iv) the cost of recording the Grant Deed. City shall pay for all of Title Company's charges for endorsements to the Owner's Policy required to cure Title Objections that Seller has agreed to cure pursuant to Section 3 hereof. All other closing costs and charges shall be paid by City. The foregoing provisions of this Section notwithstanding, should the obligations of City to acquire, and Seller to convey, the Subject Property be terminated in accordance with this Agreement, City shall pay the cost of the escrow cancellation fees and other amounts due Escrow Holder and the Title Company; provided, however, that should this Escrow be terminated as a result of Seller default, Seller shall pay the cancellation fees and other amounts due Escrow Holder and Title Company. City and Seller shall each pay their own attorneys' fees in connection with the preparation and negotiation of this Agreement and in connection with the consummation of the transactions contemplated hereby.

11. Prorations. All non-delinquent taxes and assessments applicable to the Subject Property, including, without limitation, all property taxes and assessments shall be prorated as of the Closing on the basis of the actual number of days of the month that have elapsed as of the Closing and based upon a three hundred sixty-five (365) day year. With respect to prorations related to real property taxes and assessments, the basis for said proration shall be the amount shown for real property taxes and assessments in the most recent installment for the fiscal year in which the Closing occurs. If no installment for the fiscal year in which Closing occurs is available, City and Seller shall reasonably estimate such installment which shall be used to prorate taxes and assessments. No adjustment shall be made for any change in the real property taxes and assessments occurring by virtue of the conveyance of the Subject Property to City. The amount of such prorations shall be subject to adjustment in cash after the Closing outside of Escrow as and when complete and accurate information becomes available, if such information is not available

on the Closing Date. Seller and City agree to cooperate and use their best efforts to make such adjustments prior to ninety (90) days after the Closing.

12. Representations and Warranties.

12.1 Representations and Warranties of Seller. Seller, to Seller's actual knowledge without investigation, hereby makes the following representations and warranties to City (which City is relying upon), which representations are true in all respects as of the date hereof and as of the Closing. Seller's actual knowledge shall mean the actual knowledge of Michael Linton without investigation (and by making such representation Mr. Linton undertakes no personal liability).

12.1.1 Due Authorization. Seller is a corporation duly formed under the laws of the State of Delaware, is in good standing, and has been qualified to do business in the State of California. The execution, delivery and performance of this Agreement by Seller have been duly authorized by the requisite action on the part of Seller, and no other authorization or consent is required therefor. No approvals, authorizations or consents of any public body or any other person or entity (except for those already obtained) are necessary in connection with this Agreement or the transactions contemplated hereby. This Agreement constitutes the legal, valid, and binding obligation of Seller, and is enforceable in accordance with its terms against Seller, subject only to applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws or equitable principles affecting or limiting rights of contracting parties generally.

12.1.2 Intentionally Deleted.

12.1.3 Eminent Domain. To Seller's actual knowledge, there are no existing, proposed, threatened or contemplated eminent domain proceedings that would affect the Subject Property in any way whatsoever.

12.1.4 Litigation. There is no adverse claim, litigation or administrative proceeding or investigation pending or, to the Seller's knowledge, threatened, that does or will affect Seller's ability to perform its obligations under this Agreement.

12.1.5 Intentionally Deleted.

12.1.6 Intentionally Deleted.

12.1.7 Defaults. Seller is not in default under, nor has Seller received, any notice that any event has occurred which with the giving of notice or the passage of time, or both, would constitute a default under, any agreement, obligation, liability, covenant, condition, restriction, easement, encumbrance or any entitlement or governmental approval or requirement pertaining to any of the Subject Property.

12.1.8 Hazardous Materials. Seller has not received notice that any hazardous materials exist on or under the Subject Property.

12.1.9 Bankruptcy. No attachments or execution proceedings and no assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other

proceedings are pending or threatened against Seller or concerning all or part of the Subject Property, nor are any of such proceedings contemplated by Seller, nor has Seller ever been a debtor under any case commenced under the United States Bankruptcy Code.

12.1.10 Other Matters. There are (i) no agreements, written or oral, under which Seller is or could become obligated to sell, convey, transfer or lease the Subject Property, or any portion thereof or any right, title or interest therein, to a third party subject to the Permitted Exceptions, (ii) no liens, easements, encumbrances, prescriptive rights, contracts or other agreements for services, supplies or materials which may affect title to or use of the Subject Property after the Closing; (iii) no adverse or other parties in possession of all or any portion of the Subject Property and no party other than Seller and City has any right thereto or to the use of the Subject Property; (iv) no encroachments of improvements from the Subject Property onto the Subject Property of others or by others onto the Subject Property and (v) no moratoriums, initiatives or legislation affecting the Subject Property (and Seller has not received any notice of any being contemplated).

12.1.11 Intentionally Deleted.

12.1.12 Intentionally Deleted.

12.1.13 Intentionally Deleted.

12.1.14 Agreements Affecting the Real Property**.** Except as shown in the Preliminary Title Report, there are no commitments to or agreements with any federal, state, or local governmental agencies, public utilities, predecessor owners, adjacent landowners or other parties affecting the Real Property, which would impose any improvement, financial or other, obligations on City.

12.1.15 Intentionally Deleted.

12.1.16 Intentionally Deleted.

12.1.17 Access. There are no facts or conditions which would prevent legal access to and from the Subject Property on existing highways and roads subject to the Permitted Exceptions and the Survey.

12.1.18 Offsite Improvements. Except as otherwise set forth herein, there are no requirements imposed against the Subject Property imposing any obligations on the owner thereof to construct any offsite improvements as a condition to the development of the Subject Property or otherwise.

12.1.19 Foreign Person. Seller warrants that no individual or entity which, under the terms of this Agreement, will transfer United States Real Property Interests, as defined in Section 897(c) of the Internal Revenue Code, is a "foreign person" with the meaning of Section 1445(f) of the Internal Revenue Code. Seller agrees to execute and deliver through escrow, prior to the Closing, any affidavit required by City verifying the warranty specified in this paragraph.

12.1.20 Intentionally Deleted.

12.1.21 Anti-Money Laundering. Seller is in compliance with the requirements of Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 23, 2001) (the "**Order**") and other similar requirements contained in the rules and regulations of the Office of Foreign Assets Control, Department of the Treasury ("**OFAC**") and in any enabling legislation or other Executive Orders or regulations in respect thereof (the Order and such other rules, regulations, legislation, or orders are collectively called the "**Orders**").

12.1.22 Prohibited Transactions. Seller (a) is not listed on the "Specially Designated Nationals and Blocked Persons List" maintained by OFAC pursuant to the Order and/or on any other list of terrorists or terrorist organizations maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Orders (such lists are collectively referred to as the "**Lists**"); (b) is not a person who has been determined by competent authority to be subject to the prohibitions contained in the Orders; or (c) is not or has not engaged in any dealings or transactions with any entity prohibited by any Orders or Lists from engaging in such dealing or transaction, including any political units or subdivision of the entity (each a "**Forbidden Entity**").

12.2 Representations and Warranties of City. City, to City's actual knowledge without investigation, hereby makes the representations and warranties set forth in this Section for the benefit of Seller and its successors and assigns. City shall notify Seller in writing immediately if City becomes aware that any representation or warranty has become untrue or misleading in light of information obtained by City after the Effective Date. City's actual knowledge shall mean the actual knowledge of Phillip Burum without investigation (and by making such representation Mr. Burum undertakes no personal liability).

12.2.1 Authority. City is a California municipal corporation and has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by City has been duly authorized.

12.2.2 No Conflict. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereunder on the part of City do not and will not violate any applicable law, ordinance, statute, rule, regulation, order, decree or judgment, conflict with or result in the breach of any terms or provisions of, or constitute a default under, or result in the creation or imposition of any lien, charge, or encumbrance upon any of the property or assets of City by reason of the terms of any contract, mortgage, lien, lease, agreement, indenture, instrument or judgment to which City is a part or which is or purports to be binding upon City or which otherwise affects City, which will not be discharged, assumed or released at the Closing.

12.2.3 Litigation. There are no claims, actions, suits or proceeding continuing, pending or to City's actual knowledge, threatened, which would materially adversely affect City or this transaction.

12.2.4 Effect of Representations and Warranties. Each representation and warranty in this Section 12.2: (1) is material and being relied upon by Seller; (2) is true in all respects as of the Effective Date; (3) must be true in all respects on the Closing Date; and (4) shall

survive the termination of this Agreement and/or the Closing Date for a period of three (3) months and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

12.3 Survival of Representations. The express representations and warranties made in this Agreement shall survive the Closing for a period of six (6) months and shall not merge into any instrument or conveyance delivered at the Closing.

12.4 Remedies and Cure Rights. Seller shall give City immediate written notice of any representations or warranties of Seller that become untrue during the term of this Agreement. In the event that, prior to the Closing, City has actual knowledge of any breach by Seller of any representation or warranty under this Agreement (which representation Seller has not intentionally caused to become untrue and was true when made on the Effective Date), then (a) prior to the Closing, City may elect (as its sole right and remedy) not to consummate the Closing and, instead, elect to terminate this Agreement; and (b) if, notwithstanding City having actual knowledge of such breach prior to Closing, the Closing occurs then, after such Closing, City shall have no right or remedy against Seller on account of such breach. In the event that City elects to terminate this Agreement pursuant to the preceding sentence, City shall be required to first deliver a written notice to Seller which shall set forth the nature of the breach. Seller shall then have the right to elect, by delivery of written notice to City not later than three (3) business days following receipt of City's termination notice, to extend the Closing for a period of thirty (30) days to enable Seller to cure said breach. In the event that Seller fails to timely send a cure notice or actually fails to timely cure such breach to City's satisfaction, this Agreement shall be deemed terminated as of the expiration of the thirtieth (30th) day following City's termination notice. Notwithstanding the foregoing or anything herein to the contrary, in the event that Seller causes a representation to become untrue and was true when made on the Effective Date or a Seller representation was untrue when made on the Effective Date, City shall have all rights and remedies available at law or in equity as a result of such breach.

13. As-Is Conveyance. CITY IS ACQUIRING THE SUBJECT PROPERTY "AS IS," "WHERE IS," "WITH ALL FAULTS," AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, OF ANY KIND WHATSOEVER, BY SELLER, ITS AGENTS, BROKERS, CONSULTANTS, COUNSEL, PARENTS, EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, OR ANY OTHER PERSON. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER EXPRESSLY DISCLAIMS AND NEGATES, AS TO THE SUBJECT PROPERTY: (A) ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY; (B) ANY IMPLIED OR EXPRESS WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (C) ANY IMPLIED OR EXPRESS WARRANTY OF CONFORMITY TO MODELS OR SAMPLES OF MATERIALS; AND (D) ANY IMPLIED OR EXPRESS WARRANTY WITH RESPECT TO (i) THE CONDITION OF THE SUBJECT PROPERTY, (ii) THE COMPLETENESS OR ACCURACY OF ANY DOCUMENTS DELIVERED TO CITY BY SELLER, INCLUDING WITHOUT LIMITATION THE ACREAGE OF THE SUBJECT PROPERTY, OR (iii) THE SUBJECT PROPERTY'S COMPLIANCE WITH ANY ZONING OR OTHER APPLICABLE RULES, REGULATIONS, LAWS OR STATUTES, OR THE USES PERMITTED ON, THE

DEVELOPMENT REQUIREMENTS FOR, OR ANY OTHER MATTER OR THING RELATING TO THE SUBJECT PROPERTY OR ANY PORTION THEREOF.

Initials: _____ _____
Seller City

Buyer acknowledges that, to the extent required to be operative, the disclaimers of warranties contained in this Section 13 are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation or order. This Section 13 shall survive the termination of this Agreement and/or the Closing Date and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

14. Release. Without limiting the foregoing, as a continuing obligation surviving the Closing and the conveyance of the Subject Property by Grant Deed, and except for any representations, warranties or covenants made by Seller hereunder, City shall, from and after the Closing, release Seller and Seller's "Releasees" (as hereinafter defined) from any and all claims, actions, losses, liabilities, damages, demands, costs and expenses of every nature and character, including, without limitation, actual attorneys' fees, charges and costs, and any other liability whatsoever, whether known or unknown, foreseen or unforeseen (collectively, for purposes of this Section 14, "Costs"), that arise in whole or in part out of or in connection with, or that relate to (a) the physical, environmental and legal condition of the Subject Property or any portion thereof, or (b) any breach or default by City of the restrictions contained in the Grant Deed, excluding, however, any Costs to the extent arising out of or in connection with, or that relate to a breach by Seller of its representations, warranties and covenants in this Agreement, Seller's willful misconduct or fraud, and any post-Closing adjustments to prorations. In no event shall City's release of Seller as provided above create any obligation of City to indemnify Seller, except as otherwise expressly stated herein. As used herein, Seller's "Releasees" shall be Seller and the successors and assigns of Seller, the officers, directors, agents, employees, attorneys and shareholders of Seller, and the parents, subsidiaries and affiliated companies of Seller and its successors and assigns, and their respective officers, directors, agents, employees, attorneys, shareholders, subsidiary and affiliated companies, and each of them. Without limiting the foregoing, from and after the execution of this Agreement, the provisions of this Section 14 shall continue to be effective with respect to each Releasee irrespective of whether thereafter such Releasee assigns or has purported to assign or otherwise dispose of its interest or any portion of its interest, under this Agreement, or in the Subject Property. This Section 14 shall survive the Closing.

Effective as of the Closing Date, City, on behalf of itself and its affiliated successors and assigns, hereby accepts the above-mentioned risks and agrees that the aforesaid release shall apply to all unknown or unanticipated results of the transactions and occurrences described above, as well as those known and anticipated, and upon advice of legal counsel, City, on behalf of itself and its affiliated successors and assigns, hereby waives any and all rights under California Civil Code §1542, which Section has been duly explained to City by its counsel, and which reads as follows:

> "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH 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 MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

_____ _____

Seller's initials City's initials

Without limiting the generality of the foregoing, Seller shall have no liability to City with respect to the physical, environmental and legal condition of the Subject Property under common law, or any federal, state or local law or regulation, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended, and the California Health and Safety Code. City hereby releases and waives any and all claims that City has or may have against Seller under any of the foregoing laws.

15. Further Assurances. Seller will, whenever and as often as it shall be requested by City, and City will, whenever and as often as it shall be requested by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents, and any and all such further instruments and documents as may be reasonably necessary, expedient or proper in order to complete any and all conveyances, transfers, sales and assignments herein provided, and to do any and all other acts and to execute, acknowledge and deliver any and all documents as so reasonably requested in order to carry out the intent and purpose of this Agreement, including without limitation, execution of any easement agreements with adjacent real property owners reasonably necessary for the development of the Subject Property.

16. Default, Remedies, Defense of Agreement.

16.1 City Default. In the event of a default by City under this Agreement, Seller shall have the right to terminate this Agreement. In the event Seller elects to terminate its obligation to convey the Subject Property in accordance with this Section, City's obligation to acquire, and Seller's obligation to convey, the Subject Property shall terminate, and neither Party shall have any further rights or obligations to the other except as otherwise provided in this Agreement.

16.2 Seller Default. In the event of a default by Seller under this Agreement, City shall have the right to specific performance; provided, however, that City files an action in the appropriate court for specific performance within thirty (30) days' notice of Seller default and City waives all other legal and equitable remedies against Seller.

16.3 Notice and Cure. Notwithstanding anything contained in this Agreement to the contrary, if a party is in breach under this Agreement ("**Defaulting Party**") the other Party shall have no right to terminate this Agreement or pursue any other remedy for such default unless such default remains uncured by 5:00 p.m. California time on the date that is three (3) business days after the Defaulting Party's receipt of written notice of such breach or default from such other Party. This provision shall not apply to breaches of representations and warranties by Seller to the extent encompassed by Section 12.4 herein.

17. Miscellaneous Provisions.

17.1 Governing Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of California. If any legal action is necessary to enforce the terms and conditions of this Agreement, the Parties agree that a court of competent jurisdiction in San Bernardino County shall be the sole venue and jurisdiction for the bringing of such action.

17.2 Assignments. Seller may not assign this Agreement or any of its rights or obligations hereunder (including, without limitation, its rights and duties of performance) to any third party or entity without the prior written consent of City. This Agreement will be binding upon and inure to the benefit of each of the Parties hereto and, except as otherwise provided herein, their respective legal successors and permitted assigns.

17.3 Severability. If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

17.4 Exhibits and Recitals. The Recitals and Exhibits to this Agreement are incorporated by this reference as though fully set forth herein.

17.5 No Waiver. The waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement nor shall it be considered a waiver by such Party of any other covenant, condition or promise hereunder. The waiver by either or both Parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this Agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

17.6 Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural numbers shall each be deemed to include the other whenever the context indicates. This Agreement shall be construed as a whole and in accordance with its fair meaning, the captions being for convenience only and not intended to fully describe or define the provisions in the portions of the Agreement to which they pertain. Each Party hereto, and counsel for each Party hereto, has reviewed and revised this Agreement, and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation or construction of this Agreement. This document shall, in all respects, be governed by the laws of the State of California applicable to agreements executed and to be wholly performed within the State of California. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation contrary to which the Parties have no legal right to contract, the latter shall prevail but the provision of this document that is affected shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law.

17.7 Merger/Integration. The Parties intend this Section to be a conclusive recital of fact pursuant to Section 622 of the California Evidence Code. This Agreement and the Exhibits attached hereto supersede any prior agreement, oral or written, and contain the entire agreement between the Parties on the subject matter hereof. This Agreement (including the Exhibits attached hereto) is intended to be a final expression of the agreement of the Parties and is an integrated agreement within the meaning of Section 1856 of the California Code of Civil Procedure. No subsequent agreement, representation or promise made by either Party hereto, or by or to any employee, officer, agent or representative of either Party shall be of any effect unless it is in writing and executed by the Party to be bound thereby. There are no contemporaneous separate written or oral agreements between the Parties in any way related to the subject matter of this Agreement.

17.8 Counterparts. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart. The parties may also deliver executed copies of this Agreement to each other by facsimile or electronic mail, which facsimile or electronic mail signatures shall be binding. Any facsimile or electronic mail delivery of signatures shall be followed by the delivery of executed originals.

17.9 Amendments. This Agreement may only be amended by mutual written agreement signed by the Parties. The City Manager shall have the authority to agree to and execute any amendment which the City Manager determines will not result in a substantial change to the terms and conditions of this Agreement, including but not limited to approving extensions of the Closing.

17.10 Survival. All covenants, agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement, the Closing, the recording of the Grant Deed conveying the Subject Property to City and all deliveries contemplated herein.

17.11 Computation of Periods. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and State and National holidays, unless the period of time specifies "**business days**", in which case such period of time shall exclude Saturdays, Sundays and State and National holidays; provided that if the date or last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or on any State and National holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday or State and National holiday. For purposes of this Agreement, the phrase "**State and National holiday**" shall refer to any day in which the Escrow Holder, Title Company and/or the Office of the County Recorder for the County of San Bernardino is/are closed for business.

17.12 Exclusive Agreement. This Agreement is an exclusive arrangement between the Parties and, after execution, neither Seller nor its agents, affiliates, or employees shall negotiate or otherwise deal in the sale or conveyance of the Subject Property with anyone other than City until this Agreement is terminated in accordance with its terms.

17.13 INDEPENDENT COUNSEL. EACH PARTY TO THIS AGREEMENT ADMITS, ACKNOWLEDGES AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY TO CONSULT WITH AND BE REPRESENTED BY INDEPENDENT COUNSEL OF SUCH PARTIES' CHOICE IN CONNECTION WITH THE NEGOTIATION, EXECUTION AND AMENDMENT OF THIS AGREEMENT. EACH PARTY FURTHER ADMITS, ACKNOWLEDGES AND REPRESENTS THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR STATEMENT MADE BY ANY OF THE ATTORNEYS AND REPRESENTATIVES OF THE OTHER PARTY WITH REGARD TO THE SUBJECT MATTER, BASIS, OR EFFECT OF THIS AGREEMENT.

17.14 No Obligation to Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the Parties hereto, to any person or entity other than each other.

17.15 Legal Fees. If either City or Seller brings any action, arbitration or suit against the other for any matter relating to or arising out of this Agreement, then the prevailing party in such action or dispute, whether by final judgment or settlement, shall be entitled to recover from the other party all costs and expenses of suit, including actual attorneys' fees and expert witness fees, provided, however, that the attorneys' fees awarded pursuant to this Section shall not exceed the hourly rate paid by City for legal services multiplied by the reasonable number of hours spent by the prevailing Party in the conduct of the litigation. Any judgment or order entered in any final judgment shall contain a specific provision providing for the recovery of all costs and expenses of suit, including actual attorneys' fees incurred in enforcing, perfecting and executing such judgment.

17.16 Brokers. City and Seller each represent and warrant that no broker, salesman or finder has been engaged by it in connection with any of the transactions contemplated by this Agreement or, to its knowledge, is in any way connected with any of such transactions. In the event of any other claim for broker's, consultant's or finder's fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then City shall indemnify, save harmless and defend Seller from and against such claim if it shall be based upon any statement, representation or agreement made by City; and Seller shall indemnify, save harmless and defend City from and against such claim if it shall be based upon any statement, representation or agreement made by Seller.

17.17 Notices. All notices, demands, requests, instructions or other documents (each of which is herein called a "**Notice**") under this Agreement by either Party shall be (i) hand delivered, (ii) sent by United States first class mail, certified or express, postage prepaid and return receipt requested, (iii) sent by a nationally recognized overnight courier services such as Federal Express or U.P.S., (iv) sent by facsimile transmission or electronic mail, provided if delivered by facsimile or electronic mail, then the same shall be followed the same day by delivery through one of the methods set forth in (i), (ii) or (ii) above, in each case addressed to the Parties as follows:

If to Seller, to:	Calmat Co. c/o Vulcan Materials Company, West Region Attention: Legal Department 500 N. Brand Boulevard, Suite 500 Glendale, CA 91203 Facsimile: (602) 253-1026 E-Mail: reardonm@vmcmail.com
With a copy to:	Mack A. Anderson, Esq. FENNEMORE LLP 550 E. Hospitality Lane, Suite 350 San Bernardino, CA 92408 Telephone: (909) 890-4499 E-Mail: manderson@fennemorelaw.com
If to City, to:	City of Fontana 8353 Sierra Avenue Fontana, CA 92335 Attention: City Manager Telephone: (909) 350-7653 E-Mail: mballantyne@fontana.org
With a copy to:	Rutan & Tucker, LLP 18575 Jamboree Road, 9th Floor Irvine, California 92612 Attention: Jennifer Farrell. Telephone No.: (714) 338-1884 Facsimile: (714) 546-9035 E-Mail: jfarrell@rutan.com
If to Escrow Holder:	Chicago Title Insurance Company 725 South Figueroa Street, Suite 200 Los Angeles, CA 90017 Attention: Terri Gervasi Telephone: (213) 488-4379 E-Mail: terri.gervasi@ctt.com

Notices, demands, and request served in the above manner shall be considered sufficiently given or served for all purposes under this Agreement at the time of actual delivery to the addresses shown above during normal business hours, or otherwise the next business day. The addresses and addressees, for the purpose of this Section, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written Notice of change is received, the last address and addressee stated by written Notice, or provided herein if no such written Notice of change has been received, shall be deemed to continue in effect for all purposes hereunder. City and Seller hereby agree that notices may be given hereunder by the Parties' respective counsel and that, if any communication is to be given hereunder by City's or Seller's

counsel, such counsel may communicate directly with all principals as required to comply with the provisions of this Section.

17.18 Incorporation by Reference. The Recitals in this Agreement are material and are incorporated by reference as though fully set forth herein.

17.19 Exhibits. On approval of the Lot Line Adjustment creating the Subject Property as a separate legal parcel, City and Seller shall augment Exhibit B by initialing and attaching the approved legal description of the Subject Property to this Agreement.

[Signature page follows.]

IN WITNESS WHEREOF, Seller and City have executed this Agreement as of the Effective Date.

SELLER:

CALMAT CO., a Delaware corporation

By:_____
Name:_____
Title:_____

CITY:

CITY OF FONTANA,
a California municipal corporation

By:_____
Name: Matt Ballantyne, City Manager

ATTEST:

_____
Germaine McClellan Key, City Clerk

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

_____
Jennifer Farrell, Assistant City Attorney

CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Holder under said Agreement, (iii) to make all filings required under Section 6045 of the Internal Revenue Code of 1986, as amended, and (iv) be bound by said Agreement in the performance of its duties as Escrow Holder; provided, however, the undersigned shall have no obligations, liability or responsibility under (a) this consent or otherwise, unless and until said Agreement, fully signed by the Parties, has been delivered to the undersigned, or (b) any amendment to said Agreement unless and until the same is delivered to the undersigned.

Date of Opening of Escrow: _____

CHICAGO TITLE INSURANCE COMPANY,
a California corporation

By:_____

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

That certain real property located in the City of Fontana, County of San Bernardino, State of California, and more particularly depicted and described as follows:

Parcel 1

LOT 226, ETIWANDA VINEYARDS, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

EXCEPTING THEREFROM THE SOUTH 50 FEET.

THE AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP, AND TO THE SOUTHERLY LINE OF ARROWHEAD AVE. AS SHOWN ON SAID MAP.

Parcel 2

THE WEST 264 FEET OF THE EAST 396 FEET OF LOT 195, ETIWANDA VINEYARDS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

THE AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

Parcel 3

LOTS 207, 210, AND 223 OF ETIWANDA VINEYARDS TRACT, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

THE AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

Parcel 4

LOT 194, ETIWANDA VINEYARDS TRACT, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

THE AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

Parcel 6

THE EAST 132 FEET OF LOT 195, ETIWANDA VINEYARD TRACT, AS PER PLAT RECORDED IN BOOK 17 OF MAPS, PAGES 29 AND 30, RECORDS OF SAID COUNTY.

THE AREAS AND DISTANCES OF THE ABOVE DESCRIBED PROPERTY ARE COMPUTED TO THE CENTERS OF THE ADJOINING STREETS SHOWN ON SAID MAP.

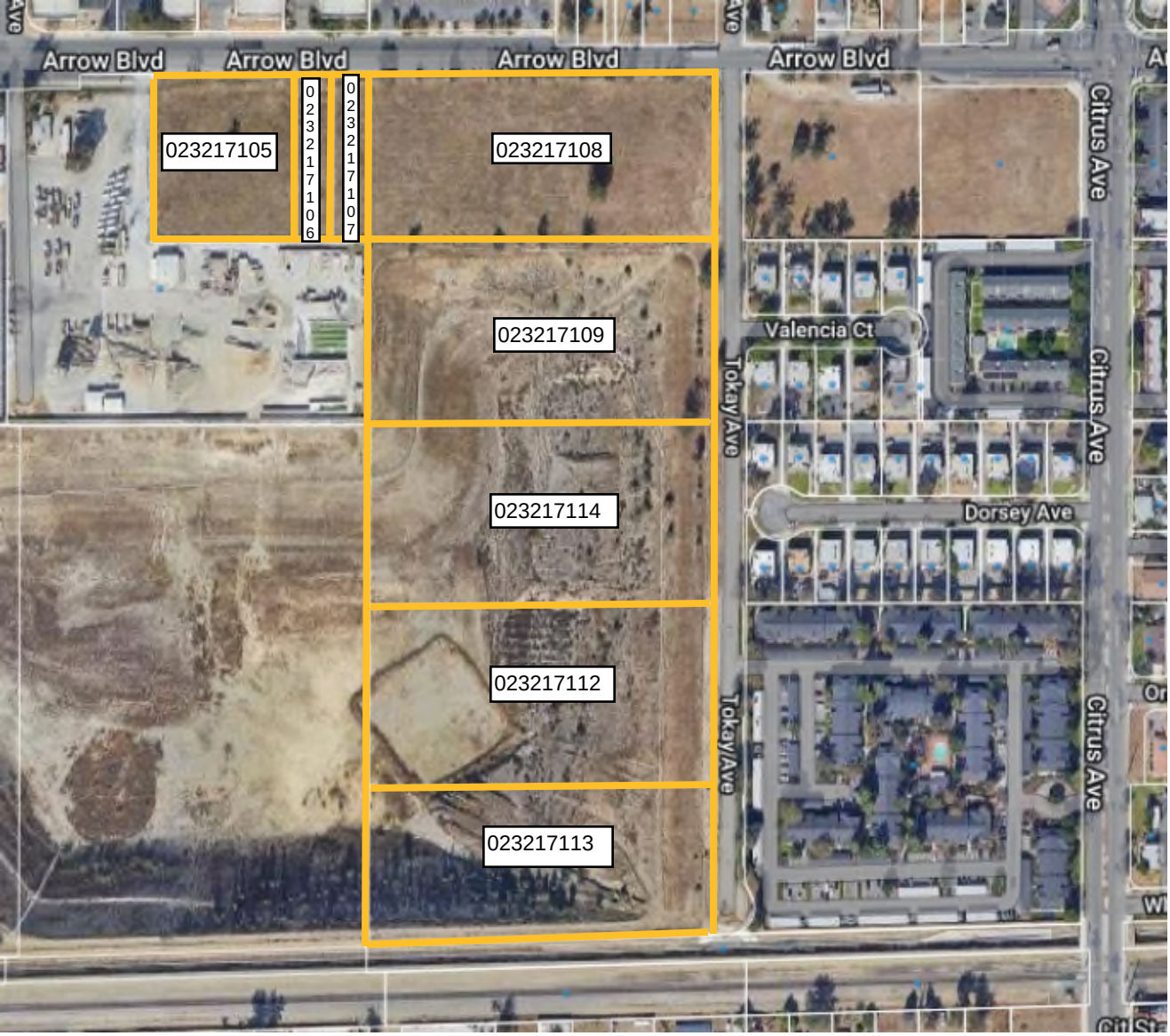

Arrow Blvd
Arrow Blvd
Arrow Blvd
Arrow Blvd
023217105
02321710 6
02321710 7
023217108
023217109
023217114
023217112
023217113
Valencia Ct
Dorsey Ave
Tokay Ave
Tokay Ave
Citrus Ave
Citrus Ave
Citrus Ave

EXHIBIT “B”

DEPICTION AND LEGAL DESCRIPTION OF SUBJECT PROPERTY

That certain real property located in the City of Fontana, County of San Bernardino, State of California, and more particularly depicted and described as follows:

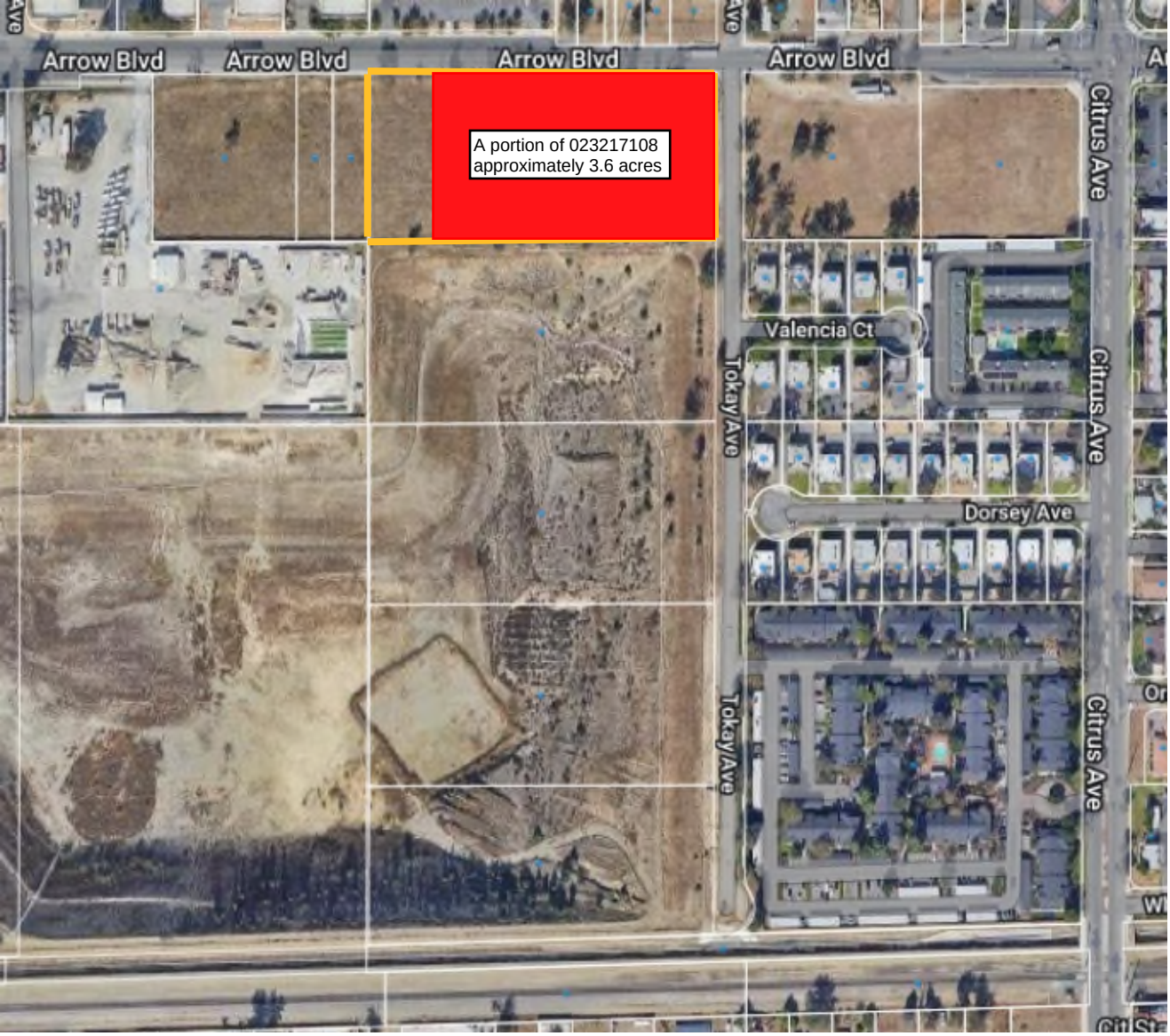

A portion of 023217108
approximately 3.6 acres
Arrow Blvd
Arrow Blvd
Arrow Blvd
Arrow Blvd
Citrus Ave
Valencia Ct
Tokay Ave
Citrus Ave
Dorsey Ave
Tokay Ave
Citrus Ave

EXHIBIT “C”

GRANT DEED

(see attached)

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Fontana
8353 Sierra Avenue
Fontana, CA 92335
Attention: City Manager

(Space Above Line For Recorder's Use Only)
[Exempt from Recorder's fee pursuant to Government Code section 27383]
[Exempt from Documentary Transfer Tax pursuant to Revenue and Taxation Code section 11922]

GRANT DEED

FOR VALUE RECEIVED, CALMAT CO., a Delaware corporation ("**Grantor**") hereby grants to CITY OF FONTANA, a California municipal corporation ("**Grantee**") all that certain real property situated in the County of San Bernardino, State of California, described on **Exhibit "1"** attached hereto ("**Property**"), together with (a) all improvements, if any, owned by Grantor and located on the Property and all fixtures contained in any such improvements, and (b) any and all easements, rights-of-way, privileges, rights and appurtenances benefiting, appertaining or belonging to the Property, including, without limitation, any and all streets and roads (whether opened or proposed) abutting the Property, riparian rights, and/or oil, gas or other minerals laying under the Property.

[Signature page follows.]

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of [**INSERT DATE**].

GRANTOR:

CALMAT CO., a Delaware corporation

By:_____
Name:_____
Title:_____

CERTIFICATE OF ACCEPTANCE

(GOVERNMENT CODE SECTION 27281)

This is to certify that the interest in real property and other interests conveyed by the instrument dated [**INSERT DATE**], from CALMAT CO., a Delaware corporation ("**Grantor**"), to the City of Fontana, a California municipal corporation ("**Grantee**"), is hereby accepted by the undersigned officer and agent of Grantee and Grantee consents to the recording of the Grant Deed.

City of Fontana, a California
municipal corporation

By: _____
Matt Ballantyne, City Manager

Dated: _____

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 San Bernardino)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

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 San Bernardino)

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

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

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "1" TO GRANT DEED

DESCRIPTION OF PROPERTY

That certain real property located in the City of Fontana, County of San Bernardino, State of California, and more particularly described as follows:

[INSERT LEGAL DESCRIPTION OF PROPERTY]

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