

PURCHASE AND SALE AND GRANT OF EASEMENTS AGREEMENT, AND ESCROW  
INSTRUCTIONS

This Purchase and Sale and Grant of Easements Agreement, and Escrow Instructions ("Agreement") is made and entered into by and among Property One, LLC ("Buyer"), NYS, LLC ("NYS") and the City of Redlands ("Seller") this 17th day of November, 2009 ("Effective Date"). Buyer, NYS and Seller are sometimes individually referred to herein as a "Party" and, collectively, as the "Parties."

In consideration of the mutual promises contained herein, the Parties agree as follows:

AGREEMENT

ARTICLE I PURCHASE AND SALE

Section 1.1 Purchase and Sale of Property. Seller is the owner of certain real property located in the City of Redlands designated as County of San Bernardino Assessor's Parcel No. 0171-171-007 (the "Property"). On all of the terms, covenants and conditions contained in this Agreement, Seller agrees to sell the Property to Buyer, and Buyer agrees to buy a portion of the Property consisting of approximately 4,364 square feet, which is more particularly described in the Grant Deed attached hereto as Exhibit "A" and incorporated herein by reference.

Section 1.2 Purchase Price. The purchase price for the Property ("Purchase Price") is Thirty-Five Thousand Eight Hundred Seventy Dollars (\$35,870).

Section 1.3 Payment of the Purchase Price. Buyer shall pay the Purchase Price to Seller in cash upon "Close of Escrow" as defined herein.

ARTICLE II GRANT OF EASEMENTS

Section 2.1 Seller's Grant of Access Easements. Seller is the owner of certain real property located in the City of Redlands designated as County of San Bernardino Assessor's Parcels No. 0171-171-07 over which Buyer seeks easements for ingress and egress purposes to the Property (the "Access Easements"). For no cost, Seller shall grant the Access Easements to Buyer in substantially the forms attached hereto as Exhibits "B" and "C."

Section 2.2 Buyer's and NYS' Grant of Access/Construction Easement. NYS and Buyer shall grant to Seller an easement for the general purposes of Seller's accessing, constructing,

operating, maintaining and replacing Seller's water well facilities and appurtenances located adjacent to the Property (the "Access/Construction Easement"). For no cost, NYS and Buyer shall grant the Access/Construction Easement to Seller; substantially the form attached hereto as Exhibit "D."

### ARTICLE III ESCROW

Section 3.1 Escrow, Escrow Holder, and Opening of Escrow. Within ten (10) business days of the Effective Date of this Agreement, Buyer shall open an escrow to facilitate the transaction contemplated by this Agreement ("Escrow") with First American Title Company ("Escrow Holder") at the address specified in Section 9.6. Delivery by Buyer to Escrow of a fully-executed original or counterpart original of this Agreement shall constitute the opening of Escrow ("Opening of Escrow"). This Agreement shall constitute escrow instructions ("Escrow Instructions") to Escrow Holder. The Parties shall execute such additional Escrow Instructions consistent with the provisions of this Agreement that are mutually acceptable to the Parties or that may be required by Escrow Holder. Escrow Holder's general provisions ("Standard Escrow Instructions") shall also constitute Escrow Instructions for purposes of this Agreement. As between the Parties, Buyer and Seller agree that if there is any conflict between the terms of this Agreement and the Standard Escrow Instructions, this Agreement shall control.

Section 3.2 Close of Escrow. Subject to the conditions set forth in Section 3.8, Escrow shall close on the date that fee title to the Property is conveyed from Seller to Buyer as contemplated by this Agreement and evidenced by the recording of a grant deed for the Property (Close of Escrow). Unless otherwise extended by written amendment to this Agreement, Close of Escrow shall occur on or before December 31, 2009, after all conditions precedent to Close of Escrow have been satisfied or waived.

Section 3.3 Preliminary and Supplemental Title Reports. Escrow Holder shall deliver to Buyer, within ten (10) business days after the Opening of Escrow, a Preliminary Title Report covering the Property issued by Commonwealth Land Title Company ("Title Insurer"). The Preliminary Title Report shall be accompanied by complete copies of all underlying documents referred to in the Preliminary Title Report as evidencing exceptions to title (collectively "PTR").

Section 3.4 Review of Title Documents. Buyer shall have ten (10) business days following receipt of the PTR within which to notify Seller, in writing, of Buyer's disapproval of any exception to title disclosed in the PTR. In the event the PTR is supplemented ("Supplemental PTR") by the Title Insurer, Buyer shall have five (5) business days after its receipt by Buyer of such Supplemental PTR, within which to approve or disapprove any new matters disclosed in the Supplemental PTR. In

the event Buyer disapproves a matter disclosed in the Title Documents that Seller declines to cure and that Buyer declines to waive, the Escrow shall be cancelled with respect to the Property upon written notice by either Party to the Escrow Holder and the other Party. Upon any such cancellation of Escrow, each Party shall pay one-half of the Escrow cancellation charges.

Section 3.5 Condition of Title. All matters contained in the PTR that are not disapproved by Buyer prior to the end of the period referred to in Section 3.4 shall be deemed to be permitted exceptions ("Permitted Exceptions"). Seller shall convey the Property to Buyer in fee simple title, which shall be, except for the Permitted Exceptions, free and clear of all leases, tenancies, rentals, mortgages, liens, charges, encumbrances, encroachments, easements, conditions, exceptions, assessments, taxes and other defects in title.

Section 3.6 Obligations of NYS and Buyer. In addition to performance by Buyer of all obligations of Buyer contained in this Agreement, on or before one (1) business day prior to Close of Escrow, Buyer shall deposit into Escrow (i) the Purchase Price for the Property; (ii) the Access/Construction Easement substantially in the form attached hereto as Exhibit "D," properly executed by NYS and Buyer and recordable; and (iii) all other sums and documents reasonably required of Buyer by Escrow Holder to the Close of Escrow.

Section 3.7 Obligations of Seller. In addition to fulfilling any other obligations of Seller contained in this Agreement, on or before one (1) business day prior to Close of Escrow, Seller shall deposit into Escrow (i) a Grant Deed to the Property, substantially in the form attached hereto as Exhibit "A," and (ii) the Access Easements, substantially in the forms attached hereto as Exhibits "B" and "C," all properly executed by Seller and recordable, and (iii) any documents reasonably required of Seller by Escrow Holder to carry out Close of Escrow.

Section 3.8 Conditions Precedent to Close of Escrow. Seller's obligation to convey the Property and Buyer's obligation to purchase the Property are subject to the satisfaction (or written waiver by the benefitting Party) of the following conditions precedent:

- (a) Escrow has not been canceled and/or this Agreement has not been terminated pursuant to Sections 3.4, 3.9 or 4.2;
- (b) Title Insurer is prepared to issue the policy of title insurance described in Section 3.13.

Section 3.9 Conditions Regarding Close of Escrow. In the event that any condition precedent to Close of Escrow referred to in Section 3.8 is neither satisfied nor waived in writing by the Party benefitting from the condition, such condition shall be deemed to have failed and Escrow shall terminate with respect to the Property. If either Party is at fault for cancellation of Escrow

pursuant to this Section, including because the Party failed to act when or in the manner required pursuant to this Agreement, or because the Party acted in any such manner that impeded satisfaction of any condition precedent specified in Section 3.8, that Party shall be responsible for paying all Escrow cancellation costs. If the Escrow is terminated pursuant to this Section for any reason that is not the fault of a Party, the Buyer shall bear the Escrow cancellation costs.

Section 3.10 Taxes and Assessments. Prior to or concurrent with Close of Escrow, Seller shall pay, cancel or terminate all prior current taxes, including special taxes assessments and improvement fees or charges levied on or against the Property.

Section 3.11 Payment of Costs. The costs associated with this transaction shall be paid as follows:

- (a) Buyer shall pay an amount equal to the cost of obtaining a standard form CLTA title insurance policy covering the Property in the amount of the Purchase Price including the cost of the PTR;
- (b) Buyer shall pay all costs of Escrow, including the Escrow Holder's escrow fee;
- (c) Buyer shall pay the cost of documentary transfer taxes, if any, in connection with the recordation of the grant deed.

Section 3.12 Brokerage Fees. The Parties agree that Buyer is solely responsible for any fees and commissions relating to brokerage fees.

Section 3.13 Title Policy. Escrow Holder shall deliver to Buyer, through Escrow, a CLTA owner's policy of title insurance insuring Buyer's fee ownership of the Property, subject only to the usual printed title company exceptions and the Permitted Exceptions, in amounts equal to the Purchase Price, issued by Title Insurer and dated as of Close of Escrow.

Section 3.14 Execution of Other Documents; Compliance with Regulations. The Parties shall do such other things and shall execute all documents which are reasonably necessary for Close of Escrow to occur. Furthermore, the Parties shall comply at their own expense with all applicable laws required for Close of Escrow to occur including, but not limited to, any required filings with governmental authorities.

Section 3.15 Recording of Documents and Delivery of Funds. Upon receipt of the funds and instruments described in this Article, and upon the satisfaction or waiver of the conditions precedent to Close of Escrow referred to in this Article, Escrow Holder shall cause the grant deed and other documents specified in this Agreement to be recorded in the official records of the County of San Bernardino. Upon Close of Escrow, Escrow Holder shall deliver conformed copies of the grant deed

and all other appropriate documents to Buyer.

Section 3.16 Escrow Cancellation Charges. Notwithstanding any other provision of this Agreement to the contrary, in the event that Close of Escrow fails to occur as result of the default of a Party, the defaulting party ("Defaulting Party") shall be liable for all Escrow cancellation charges. In the event that Close of Escrow fails to occur for any other reason, Buyer and Seller shall each be responsible for and shall pay one-half of all Escrow cancellation charges unless specified otherwise in this Agreement.

#### ARTICLE IV FEASIBILITY, DUE DILIGENCE AND INSPECTIONS

Section 4.1 Feasibility, Due Diligence, and Inspections. Buyer shall have thirty (30) business days from the Effective Date of this Agreement to complete its due diligence ("Due Diligence Period"). After providing Seller with at least twenty-four (24) hours written notice, Buyer and its consultants, agents, contractors and employees ("Buyer's Agents") shall have the opportunity during the Due Diligence Period to enter the Property during regular business hours, or as reasonably necessary, to make visual inspections of the Property.

Section 4.2 Consequences of Feasibility and Due Diligence Inspection. If Buyer fails to disapprove, in writing, of the physical or environmental condition of the Property prior to the end of the Due Diligence Period, or any extension thereto, Buyer shall be deemed to have approved the physical and environmental condition of the Property. Buyer shall notify Seller in writing if Buyer disapproves the physical or environmental condition of the Property as a result of any visual inspection conducted pursuant to Section 4.1. In such event, within fifteen (15) business days after receipt of any such notification, Seller may either: (i) cancel the Escrow with respect to the Property by delivering written notice to Buyer and Escrow Holder; or (ii) give written notice to Buyer that Seller intends to remove or abate the condition prior to Close of Escrow ("Abatement Option"). If Seller elects to exercise the Abatement Option, Seller shall do so at its own cost and expense prior to Close of Escrow, or after Close of Escrow pursuant to a separate written agreement with Buyer.

Section 4.3 Right to Observe Inspections. Seller may be present and may observe any visual inspections conducted by Buyer or Buyer's consultants.

Section 4.4 Repair of the Property. If Escrow is cancelled with respect to the Property, Buyer shall promptly repair any damage it has caused to the Property.

Section 4.5 License for Buyer Inspections. As consideration to Buyer, Seller hereby grants a non-exclusive license to Buyer to enable Buyer to conduct Buyer's due diligence activities as to its

proposed use of the Property ("Buyer License"). The Buyer License shall include, but is not limited to, allowing Buyer to enter, cross over, on, along, through and across the Property to make its visual inspections. The Buyer License is granted subject to any covenants, restrictions, reservations, rights-of-way and encumbrances of record.

#### ARTICLE V SELLER'S REPRESENTATIONS AND WARRANTIES

Section 5.1 Seller is selling the Property in "As-Is" condition. Except as otherwise expressly provided in this Agreement, Seller hereby disclaims all warranties of any kind or nature whatsoever, whether expressed or implied, including but not limited to warranties with respect to either of the Property, or its condition or suitability for Buyer's intended use.

#### ARTICLE VI BUYER'S REPRESENTATIONS AND WARRANTIES

Section 6.1 In addition to any other representations and warranties made by Buyer pursuant to this Agreement, Buyer warrants and represents that the following facts are true and correct as of the date Buyer executes this Agreement, and the truth and accuracy of such representations and warranties shall constitute a condition to Close of Escrow. As used in this Agreement, the phrase "to Buyer's knowledge" shall be limited to the actual knowledge of the signatories to this Agreement on behalf of Buyer and any constructive knowledge imparted to it as a result of any report, study or other documentation in Buyer's possession.

(a) To Buyer's knowledge, neither this Agreement, nor any action required hereunder, violates or shall violate any contract, agreement or instrument to which Buyer is a party. No other person or entity is required to consent to, acknowledge, or execute this Agreement in order to validate its execution by Buyer or to permit the consummation of the transactions contemplated herein.

(b) To Buyer's knowledge, Buyer, subject to the provisions of this Agreement, has the full right and authority to enter into this Agreement and consummate the transactions contemplated herein, and each person signing this Agreement on behalf of Buyer is authorized to do so.

(c) To Buyer's knowledge, except as set forth in this Agreement, there is no existing state of facts or circumstances, or any condition or event, that would preclude Buyer from fulfilling its obligations under this Agreement.

## ARTICLE VII INSURANCE AND INDEMNIFICATION

Section 7.1 Indemnification by Buyer. Buyer shall indemnify, defend and hold harmless Seller from any loss of or damage to the Property, or injury or death of any person whomsoever, including attorneys' fees and costs, arising from the activities caused in whole or in part by any intentional or negligent act of Buyer or Buyer's Agents, or by any act or omission of Buyer or Buyer's Agents in the exercise of rights pursuant to the Buyer License.

## ARTICLE VIII DISPUTES AND DEFAULT

Section 8.1 Governing Law. This Agreement shall be governed by and construed in accordance with California law.

Section 8.2 Interpretation of Agreement. The headings set forth in this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions contained herein.

Section 8.3 Attorneys' Fees. In any action between Buyer and Seller seeking enforcement or interpretation of any provision of this Agreement or in connection with the purchase of the Property, the prevailing Party in such action shall be awarded its reasonable costs and expenses incurred by, including, but not limited to, reasonable attorneys' fees, (including in-house counsel fees of a Party) disbursements, and court costs, in addition to any damages, injunctive, or other relief awarded, and, without limitation, attorneys' fees, disbursements, and court costs, incurred in any post judgment proceedings to collect or enforce any judgment.

Section 8.4 Default. Time is of the essence in this Agreement, and if either Party defaults on its obligations hereunder, then the other Party ("Non-Defaulting Party") may initiate termination of this Agreement by notice in writing to the Defaulting Party and Escrow Holder. If the Defaulting Party has not fully cured the default within thirty (30) business days after receipt of such written notice, the Non-Defaulting Party may instruct Escrow Holder to cancel the Escrow, and the Non-Defaulting Party shall thereupon be released from its obligations under this Agreement. If said Default is not cured within the foregoing thirty (30) business day period, it is hereby mutually agreed that Escrow shall be immediately cancelled and the full deposit (less any escrow, title, or other applicable fees) shall be released to Seller and there will be no further liability from the Parties herein.

## ARTICLE IX MISCELLANEOUS PROVISIONS

Section 9.1 Entire Agreement and Amendment. This Agreement fully and completely expresses the entire agreement between the Parties hereto with respect to the subject matter hereof. Any amendment to this Agreement shall be in writing and approved by the City Council of Seller; provided, however, that an amendment to this Agreement solely for the purpose of extending the Close of Escrow may be approved in writing by the City Manager of Seller.

Section 9.2 Waiver. The failure of either Party at any time to require performance by the other Party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter. The waiver of any breach of any provision of this Agreement by Buyer or Seller shall not be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

Section 9.3 Representation by Independent Counsel. Buyer and Seller agree and acknowledge that they have been represented by independent legal counsel of their own choice throughout all negotiations preceding the execution of this Agreement, and that they have executed this Agreement with the consent of, and upon the advice of, their own legal counsel.

Section 9.4 Not for Benefit of Third Parties. This Agreement and every provision hereof is for the exclusive benefit of the Parties to this Agreement and not for the benefit of any third party.

Section 9.5 Assignment. This Agreement shall be binding upon the Parties hereto and their respective heirs, successors, representatives and assigns.

Section 9.6 Notices. All notices, demands and other communications given or required to be given pursuant to this Agreement shall be in writing, duly addressed as indicated below, and given by personal delivery, registered or certified mail (postage prepaid and return receipt requested), Federal Express or other reliable private express delivery, or by facsimile transmission (with original to follow via first-class U.S. Mail). Such notices, demands or other communications shall be deemed received: (i) immediately upon delivery if personally delivered or sent by facsimile transmission; or (ii) after three business days if given or sent by any other approved method specified above. Any Party specified below may, for purposes of this Agreement, change its name, address, facsimile number or person to whom attention should be directed by giving notice in the manner specified in this Section. Notices, demands and communications shall be duly addressed as follows:



To NYS and Buyer:

Attention: Laura Dangermond  
Member Trustee  
Property One LLC  
P.O. Box 7555  
Redlands, CA 92375  
To Seller:

Attention: City Manager  
City of Redlands  
P.O. Box 3005  
Redlands, CA 92373  
(909) 798-7510

To Escrow Company:

First American Title Co.  
323 Court St  
P.O. Box 6327  
San Bernardino, CA 92401

Section 9.7 Severability. If any article, section, subsection, paragraph, sentence, clause or phrase contained in this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by a court of competent jurisdiction to be illegal, null or void or against public policy, the remaining articles, sections, subsections, paragraphs, sentences, clauses or phrases contained in this Agreement shall not be affected thereby.

Section 9.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.

IN WITNESS OF THE FOREGOING, the undersigned execute this Agreement on behalf of Buyer and Seller.

PROPERTY ONE, LLC

\_\_\_\_\_  
By: Laura Dangermond, Member Trustee

Date: \_\_\_\_\_, 2009

NYS, LLC

\_\_\_\_\_  
By: Laura Dangermond, Member Trustee

Date: \_\_\_\_\_, 2009

CITY OF REDLANDS

\_\_\_\_\_  
Jon Harrison, Mayor

Date: \_\_\_\_\_, 2009

ATTEST:

\_\_\_\_\_  
Lorrie Poyzer, City Clerk

Recording Requested By  
and When Recorded Mail to:

City Clerk  
City of Redlands  
P.O. Box 3005  
Redlands, CA 92373

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GRANT DEED

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the City of Redlands ("Grantor"), a municipal corporation organized and existing pursuant to California law, hereby grants to Property One ("Grantee"), that certain real property located in the County of San Bernardino, State of California, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference.

IN WITNESS WHEREOF, this instrument is executed as of this \_\_\_ day of \_\_\_\_\_, 2009 by:

GRANTOR:  
CITY OF REDLANDS

By: \_\_\_\_\_  
Jon Harrison, Mayor

ATTEST

\_\_\_\_\_  
Lorrie Poyzer, City Clerk

## Exhibit "A"

### LEGAL DESCRIPTION

Parcel A - Portion of 0174-281-26 (42,689 sq. feet)

Parcel B - Portion of 0174-281-28 (3,390 sq. feet)

Parcel C - Portion of 0174-281-24 (2,442 sq. feet)