

RESOLUTION 20-01
OF THE BOARD OF DIRECTORS OF HELIX WATER DISTRICT
ACCEPTING THE OFFER TO PURCHASE THE SURPLUS LOT IN UNINCORPORATED LAKESIDE,
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ASSESSOR PARCEL NUMBER 395-080-42 AND
APPROVING RELATED PURCHASE AND SALE AGREEMENT WITH LONNY R. STEPHENS

WHEREAS, Helix Water District acquired the .36-acre property, assessor parcel number 395-080-42, located in unincorporated Lakeside, county of San Diego, on December 12, 1966.

WHEREAS, on April 17, 2019, the property was declared surplus by the board and pursuant to Government Code §54220 *et seq.*, staff notified various government agencies that the property was available for purchase as surplus property and provided public agencies with a period of 60 days to reply with any interest in purchasing the property. No agencies expressed interest and the property has since been considered cleared for sale by the district to private parties; and

WHEREAS, with no interested government agencies, staff began marketing the property on June 27, 2019 and received a written offer to purchase the lot at the appraised purchase price of \$110,000; and

WHEREAS, the district desires to accept the offer from Lonny R. Stephens, as described in the purchase and sale agreement (Exhibit A).

NOW, THEREFORE, BE IT RESOLVED, ORDERED AND DETERMINED by the Helix Water District Board of Directors as follows:

1. **Recitals**. The recitals above are true and correct.
2. **Approval**. The board hereby approves the sale of the property in unincorporated Lakeside, county of San Diego, state of California, assessor parcel number 395-080-42 to Lonny R. Stephens for valuable consideration and approves the related purchase and sale agreement. The board hereby finds that the sale of the property to Lonny R. Stephens is in the best interest of the district for the above stated reasons.
3. **Signature Authority**. The general manager, or designee, is authorized to take any and all actions necessary to facilitate the purposes of this Resolution including, without limitation, execution of the purchase and sale agreement and any documents required for recording in the recorder's office for the county of San Diego.
4. **CEQA**. The board finds that the approval of this resolution is not subject to the California Environmental Quality Act under Title 14 of the California Code of Regulations, Section 15312 (Class 12, sale of surplus properties). Further, pursuant to sections 15060(c)(2), the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.
5. **Effective Date**. This resolution shall take effect upon adoption by the Helix Water District Board of Directors.

PASSED, ADOPTED AND APPROVED this 15th day of January 2020, by the following vote:

AYES: Gracyk, Verbeke, Scalzitti, Hedberg, McMillan

NOES: None

ABSENT: None



Mark Gracyk, President

ATTEST:



Sandra L. Janzen, Secretary of the Board



PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THE HELIX WATER DISTRICT

"Seller"

and

Lonny R. Stephens

"Buyer"

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS ("Agreement") is entered into as of Jan. 15, 2020 between THE HELIX WATER DISTRICT ("Seller"), and LONNY R. STEPHENS ("Buyer") (collectively, "the Parties"). This Agreement constitutes (i) a contract of purchase-and-sale, and (ii) escrow instructions to COMMONWEALTH LAND TITLE ("Escrow Holder"), whose consent appears at the end of this Agreement.

ARTICLE 1 RECITALS

- 1.1 **The Property.** Seller owns that certain real property in the unincorporated area of Lakeside, County of San Diego, described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property").
- 1.2 **Purchase and Sale.** Seller desires to sell the Property to Buyer, and Buyer desires to purchase the Property from Seller, on the terms and conditions set forth below.

ARTICLE 2 DEFINITIONS

Unless the content otherwise indicates, the following shall have the meanings as set forth in this Article:

- 2.1 **"Acceptance of this Agreement"** means the date first set forth above, whether or not this Agreement is actually signed by the parties on an earlier or later date.
- 2.2 **"Business Day"** means any weekday on which District is open to conduct regular business functions with District personnel.
- 2.3 **"Cash"** means (i) currency; (ii) a check or checks currently dated, or money order currently dated, payable to Escrow Holder; (iii) funds wire-transferred or otherwise deposited into Escrow Holder's account at Escrow Holder's direction.
- 2.4 **"Close of Escrow"** means the date the Seller's grant deed is filed with the county of San Diego for recording in the official records of the county.
- 2.5 **"Closing Date"** shall be the date scheduled for Close of Escrow, and unless otherwise agreed to in writing by Seller and Buyer or as otherwise set forth in this Agreement, the Closing Date shall be on or before **ninety (90) days** following the Opening of Escrow, as defined in Section 2.14 below.
- 2.6 **"County"** means the County of San Diego.
- 2.7 **"Deposit"** means the **TWO THOUSAND DOLLARS (\$2,000)** deposit to be made by Buyer in accordance with Section 3.1 below.

2.8 "**District**" means the HELIX WATER DISTRICT, an irrigation district organized and operating under the California Irrigation District Law, Water Code Section 20500 et seq.

2.9 "**Due Diligence Materials**" shall mean those materials, if any, described in **Exhibit B** attached hereto, as well as such other materials relating to the Property heretofore or hereafter delivered by Seller or any of its employees, agents or consultants to Buyer.

2.10 "**Escrow Holder**" means Commonwealth Land Title.

2.11 "**Feasibility**" means any/all activities Buyer deems necessary to satisfy Buyer that the property is suitable for Buyer's intended use and that the purchase is within Buyer's means to obtain funding and complete the transaction.

2.12 "**Feasibility Period**" means the period commencing upon the Opening of Escrow and expiring **thirty (30) days** thereafter.

2.13 "**General and special real estate taxes**" means all non-delinquent taxes and charges of the type customarily evidenced by a secured tax bill issued by the Tax Collector of the County, including, but not limited to, amounts allocated to (i) County or City general governmental purposes, (ii) bonded indebtedness of the County or City, (iii) bonded or other indebtedness and operating expenses of any school, college, sewer, water, irrigation, hospital, library, utility, county service, community facilities district or other district, and (iv) any other lawful purpose. The Parties acknowledge that prior to the Close of Escrow the Property may not be subject to general and special real estate taxes because the Property is owned by a public entity, but such fact shall not be construed to release or relieve Buyer from the obligation to assume responsibility for general and special real estate taxes as of the Close of Escrow.

2.14 "**Loan Contingency Period**" means the period commencing upon Opening of Escrow and expiring on the Closing Date.

2.15 "**Opening of Escrow**" means the date of, and act of, Escrow Holder signing the "Consent of Escrow Holder" attached to this Agreement.

2.16 "**Property**" means the real property consisting of an approximately 15,681 square-foot lot located in unincorporated Lakeside, within the County of San Diego, California (APN: 395-080-42), described in **Exhibit A** attached hereto.

2.17 "**Purchase Price**" means the purchase price in the amount of **ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000.00)** for the Property.

2.18 "**State**" means the state of California.

2.19 "**Telecopy**" means telecopier, facsimile, or other similar means of transmission of documentation, including e-mail transmission of PDF files bearing, where required, appropriate signatures.

2.20 **“Third Person”** means any person that is not a Party; an affiliate of a Party; or an elected official, officer, director, manager, shareholder, member, principal, partner, employee or agent of a Party.

2.21 **“Title Insurer” or “Title Company”** means Commonwealth Land Title.

ARTICLE 3 PURCHASE PRICE

3.1 **Deposit.** Concurrently with the opening of escrow, Buyer shall deliver to Escrow Holder the deposit sum of **TWO THOUSAND DOLLARS (\$2,000)** (the "Deposit"). The Deposit shall become nonrefundable as of the expiration of the Feasibility Period or any approved extension and shall be held by Escrow Holder until the transaction is either terminated or until Close Date. Buyer shall execute and deliver to Escrow Holder such instructions as may be requested by Escrow Holder to cause the Deposit to be released to Seller in a timely manner. The Deposit shall be credited to the Purchase Price upon Close of Escrow. If Buyer terminates this Agreement prior to the expiration of the Feasibility Period, then the Deposit shall be returned to Buyer. Escrow shall be opened by the parties within five (5) days of the Acceptance of this Agreement.

3.2 **Purchase Price.** Seller agrees to sell and Buyer agrees to buy the Property for the Purchase Price of **ONE HUNDRED TEN THOUSAND DOLLARS (\$110,000.00)**.

3.3 **Payment of Purchase Price.** Buyer shall deposit with Escrow Holder, at least one Business Day before the Closing Date, the sum of **ONE HUNDRED EIGHT THOUSAND DOLLARS (\$108,000)**, which represents the Purchase Price, less the Deposit.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 **Feasibility Conditions Precedent In Favor of Buyer.** Buyer's obligation to purchase the Property is subject to, in Buyer's sole discretion, the condition of the Property and all matters relating thereto and the feasibility of using the Property for Buyer's purposes, as further described below. Unless this Agreement is earlier terminated, Buyer shall have until the expiration of the Feasibility Period to conduct and approve all of its investigations and studies, including, but not limited to: investigating the feasibility of operating Buyer's proposed project; the probability of obtaining any necessary licenses or permits; the Title Report described in **Article 7** below; the suitability of the site for Buyer's use; the environmental condition of the Property and surrounding properties; federal, State, County and City fees, policies and regulations; planning, zoning and other land use considerations and requirements; and economic feasibility studies and all related matters.

4.2 **Satisfaction or Waiver of Feasibility.** If Buyer disapproves any matter relating to the Property, Buyer's sole recourse shall be to terminate this Agreement by delivery of written notice thereof to Seller and Escrow Holder before the expiration of the Feasibility Period. If,

for any reason, Buyer fails to deliver, within the Feasibility Period, written notice to Seller and Escrow Holder of Buyer's election to terminate this Agreement, then Buyer shall, except as otherwise expressly provided herein, be obligated to proceed with the purchase of the Property. Should this Agreement be terminated by Buyer within the Feasibility Period, then Buyer and Seller shall each execute escrow cancellation instructions whereby Buyer and Seller terminate this Agreement and release one another and Escrow Holder from any obligations under this Agreement with respect to the Property, except those indemnity and corrective obligations of Buyer relating to Buyer's inspection of the Property and any other agreements expressly intended to survive such termination. If Buyer terminates this Agreement prior to the expiration of the Feasibility Period, Buyer's Deposit shall be promptly returned to Buyer following the execution of the escrow cancellation instructions described above and the return by Buyer to Seller of the Due Diligence Materials.

4.3 Loan Contingency in Favor of Buyer. After expiration of the Feasibility Period, Buyer may terminate this Agreement only if Buyer is unable to secure financing for the purchase of the Property within the Loan Contingency Period. Should this Agreement be terminated by Buyer within the Loan Contingency Period, then Buyer and Seller shall each execute escrow cancellation instructions whereby Buyer and Seller terminate this Agreement and release one another and Escrow Holder from any obligations under this Agreement with respect to the Property, except those indemnity and corrective obligations of Buyer relating to Buyer's inspection of the Property and any other agreements expressly intended to survive such termination. If Buyer terminates this Agreement following expiration of the Feasibility Period, Buyer's Deposit shall be non-refundable and shall be transferred to Seller.

ARTICLE 5 RIGHT TO ENTER ONTO THE PROPERTY

5.1 Limit on Escrow Holder's Responsibility. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

5.2 Right to Enter the Property. Buyer and its employees, agents and independent contractors may, prior to the Close of Escrow, reasonably go upon the Property to, at Buyer's sole cost, inspect, survey and test the Property and other similarly related activities. Buyer will indemnify, defend and hold Seller harmless from any claim, loss, cost, damage, liability, lien, action or judgment (including, without limitation, Seller's reasonable attorneys' fees and court costs) arising in connection with the acts or omissions of Buyer or any its employees, agents or independent contractors. Termination of this Agreement will not terminate Buyer's obligations hereunder. Should Buyer's right to purchase the Property terminate, Buyer will, immediately after such termination, at Buyer's sole cost, return the Property to its physical condition immediately before such damage as caused by entering the Property for inspection purposes, or as close thereto as reasonably possible. Buyer agrees to give Seller at least one (1) Business Day prior written notice before entering the Property when the purpose of such entry is to conduct an environmental or hazardous materials survey or study. Buyer shall not conduct any borings or other invasive testing on or about the Property without first obtaining the prior

written consent of Seller, which consent shall not be unreasonably withheld; provided, however, that Buyer shall provide Seller with copies of all tests and reports received by Buyer in connection therewith and Buyer shall return the Property to its former condition at the conclusion of such tests and borings.

5.3 **Due Diligence Materials.** Within five (5) Business Days of the Opening of Escrow, Seller shall deliver to Buyer those certain documents and materials, if any, shown on **Exhibit B** attached hereto. Buyer acknowledges and agrees that such Due Diligence Materials, including the preliminary title report once available, have been prepared by third parties or are based on information provided by third parties, and Seller does not warrant the accuracy or completeness of such information contained therein. If this Agreement is terminated for any reason, Buyer shall return all Due Diligence Materials, and any copies thereof, to Seller.

ARTICLE 6 DELIVERIES TO ESCROW HOLDER

Each party will deliver to Escrow Holder in a timely manner those documents, funds and other items required to close escrow by the Closing Date.

ARTICLE 7 TITLE POLICY

7.1 **Buyer's Title Policy.** As a condition to Buyer's obligation to close escrow, the Title Insurer shall, at the Close of Escrow, provide to Buyer, or commit to provide to Buyer following the Close of Escrow, at Seller's expense, a CLTA Standard Owners Policy of Title Insurance, or its general equivalent (the "Title Policy"), with liability in the amount of the Purchase Price, insuring that fee title to the Property vests in Buyer subject only to:

(a) All standard exceptions and exclusions from coverage set forth in the Title Policy.

(b) All of the scheduled exceptions set forth in Title Insurer's preliminary title report to be delivered by Title Insurer to Buyer within ten (10) days following the Opening of Escrow (the "Title Report") excluding only any mortgages and deeds of trust encumbering the Property and listed in the Title Report, and excluding any items that Seller may agree in writing to remove prior to the Close of Escrow. Buyer acknowledges and agrees that Seller shall have no obligation to remove any such title exceptions (other than the mortgages and deeds of trust referred to above) and Buyer's sole recourse in the event Buyer disapproves any exception to title shall be to terminate this Agreement prior to the expiration of the Feasibility Period. Seller shall request the Title Insurer to provide to Buyer copies of all available recorded exceptions to title and to plot such recorded easements as are capable of being so plotted.

(c) General and special real estate taxes and assessments which are, as of the close of this escrow, not delinquent and supplemental taxes, if any, assessed pursuant to California Revenue and Taxation Code Section 75 et seq.

- (d) The Deed of Trust.
- (e) Any lien or other encumbrance voluntarily imposed by Buyer.

Close of Escrow is conditional on issuance of the Title Policy subject only to the items set forth in (a) through (e) above and Escrow Holder shall immediately report to the parties any additional title items. Any title exceptions revealed in a supplemental title report delivered to Buyer following the expiration of the Feasibility Period and not set forth in (a) through (e) above (but not including zoning, governmental regulations or any governmental restrictions or conditions) which might in any manner materially adversely affect Buyer's ability to use the property shall entitle Buyer, as its sole remedy, the right to terminate this Agreement, provided Buyer delivers written notice of such termination to Seller and Escrow Holder within ten (10) days of the date Buyer first learns of such additional title exception(s). Failure of Buyer to so deliver notice of termination within such ten (10) day period shall constitute Buyer's approval of such additional exception(s) and agreement to accept title subject to such encumbrances. Buyer shall not have the right to terminate this Agreement if Seller notifies Buyer that such additional exception(s) shall be removed on or before the Close of Escrow.

7.2 **ALTA Extended Policy.** Buyer may, at Buyer's option, direct Escrow Holder to procure an ALTA owner's extended coverage policy of title insurance from Title Insurer, provided Close of Escrow would not be thereby prevented or delayed beyond the Closing Date. Buyer, and not Seller, shall be responsible to pay any added premium or other costs of such additional coverage. Buyer, and not Seller, shall be responsible to provide and pay the costs of any survey required for the ALTA policy or such endorsements. Buyer shall have no right to condition its obligations under this Agreement on its approval of a survey following the expiration of the Feasibility Period.

ARTICLE 8 PRORATIONS, FEES, COSTS AND REIMBURSEMENTS

8.1 **Seller's Charges.** Seller shall pay (i) any documentary transfer tax imposed by the County, (ii) the CLTA Standard owner's title policy premium or its equivalent (but not the added premium for an extended coverage ALTA policy), (iii) one-half (1/2) of Escrow Holder's fee, and (iv) usual seller's document-drafting and recording charges.

8.2 **Buyer's Charges.** Buyer will pay (i) one-half (1/2) of Escrow Holder's fee, (ii) the extra premium for any ALTA title policy or any added endorsements (ordered by Buyer in the manner permitted by the terms of this Agreement) over and above that of the premium of the CLTA Standard owner's title policy or its equivalent, (iii) the premium for Seller's Title Policy insuring the validity and priority of the lien of the Deed of Trust, and (iv) usual buyer's document-drafting and recording charges.

ARTICLE 9
CLOSE OF ESCROW OR TERMINATION OF AGREEMENT


9.1 **Close of Escrow.** Escrow Holder will close escrow by recording, at the Close of Escrow, the grant deed (which grant deed shall expressly recite that the conveyance is made subject to all encumbrances and other matters affecting title, and shall include the covenants described in Article 11 below), and any such other documents contemplated to be recorded hereunder at the Close of Escrow. Escrow shall close no later than the Closing Date. If Escrow Holder cannot close escrow on or before the Closing Date, it will nevertheless close this escrow when all conditions have been satisfied or waived unless, after the Closing Date and prior to the close of this escrow, Escrow Holder receives a written notice to terminate this escrow from a Party who, at the time the notice is delivered, is not in default under this Agreement. Nothing stated in this Section 9.1 shall be deemed, however, to imply that time is not of the essence of this Agreement.

9.2 **Material Breach.** Time is expressly stated to be of the essence of each and every provision of this Agreement wherein time for performance is set forth. In all other respects, the parties hereto covenant to perform their obligations in an expeditious manner. Failure to comply with this provision shall be a material breach of this Agreement. Nothing stated in this Section 9.2 shall be deemed, however, to imply that no other conduct by the Parties can constitute a material breach of this Agreement, as determined by applicable law.

9.3 **Liquidated Damages.** BUYER AND SELLER AGREE THAT THE SUM REPRESENTED BY THE DEPOSIT, TWO THOUSAND DOLLARS (\$2,000.00) (THE "LIQUIDATED DAMAGES AMOUNT") IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES IF ESCROW FAILS TO CLOSE DUE TO THE DEFAULT OF BUYER. IN THE EVENT THE CLOSE OF ESCROW DOES NOT OCCUR AS HEREIN PROVIDED BY REASON OF ANY DEFAULT BY BUYER, BUYER AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE, BUYER AND SELLER HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT BUYER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AND SHALL BE AN AMOUNT EQUAL TO THE LIQUIDATED DAMAGES AMOUNT. EXCEPT AS EXPRESSLY PROVIDED ELSEWHERE IN THIS SECTION, SAID AMOUNT SHALL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY BUYER OF ITS OBLIGATION TO PURCHASE THE PROPERTY. UPON SUCH DEFAULT BY BUYER, SELLER'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE TERMINATED AND SELLER SHALL HAVE THE RIGHT TO COLLECT SUCH LIQUIDATED DAMAGES FROM BUYER AND/OR ESCROW HOLDER. IN ADDITION TO SUCH LIQUIDATED DAMAGES, SELLER SHALL BE ENTITLED TO (I) ENFORCE ITS REMEDIES UNDER ANY INDEMNIFICATION CONTAINED IN THIS AGREEMENT, AND (II) COLLECT ANY ATTORNEYS' FEES OR OTHER COSTS INCURRED IN ENFORCING THE PROVISIONS OF THIS PARAGRAPH.



Buyer's Initials



Seller's Initials

ARTICLE 10
ESCROW HOLDER'S GENERAL PROVISIONS

The Parties shall execute Escrow Holder's general escrow instructions so long as the same are consistent with this Agreement. In the case of inconsistencies between this Agreement and Escrow Holder's general escrow instructions, this Agreement shall prevail.

ARTICLE 11
REPRESENTATIONS, WARRANTIES AND FURTHER DISCLOSURES AND AGREEMENTS

11.1 **Limit on Escrow Holder's Responsibility.** Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

11.2 **Basis of Purchase.** Except as set forth in this Agreement, Buyer acknowledges that it is purchasing the Property in reliance solely on (i) Buyer's inspection of the Property, (ii) Buyer's independent verification of the truth of any documents delivered by Seller to Buyer and affirmative statements made by Seller to Buyer concerning the Property and its development, (iii) the opinions and advice concerning the Property and its development of consultants engaged by Buyer and (iv) the covenants, representations and warranties expressly set forth in this Agreement.

11.3 **"As Is" Purchase.** If Buyer does not elect to terminate this Agreement prior to the expiration of Buyer's Feasibility Period described above, Buyer will acquire the Property and all matters relating to the Property, including, without limitation, those listed below, in the present "as is" condition. The matters listed below are:

(a) Soils, Topography, Etc. Soils and geological condition; topography, area and configuration; archeological, prehistoric and historic artifacts, remains and relics; endangered species; or the existence of any hazardous materials or substances on, in, under or about the Property.

(b) Public Services, Etc. Availability of fire and police protection and other public services, as well as the proximity of the Property to existing and future power lines.

(c) Districts. The status, special taxes, and assessments of any and all community facility districts and assessment districts.

(d) Planning, Zoning and Permits. Applicable planning, zoning and subdivision statutes, ordinances, regulations and permits and any violation thereof. Seller has no obligation to approve or grant any applications, permits, or other approvals for Buyer's intended use of the property.

(e) Development Fees. The character and amount of any fee or charge which must be paid by Buyer to further develop the Property.

(f) Easements and Encroachments. Any easement, license or encroachment which is not a matter of public record, whether or not visible upon inspection of the Property.

(g) Natural Hazards. The existence and effect of any natural hazards that may affect or impact the Property, including, without limitation, the location of the Property or any portion thereof in any (i) special flood hazard area designated by the Federal Emergency Management Agency, (ii) an area of potential flooding shown on an inundation map designated pursuant to Section 8589.5 of the California Government Code, (iii) a very high fire severity zone described in Section 51179 of the California Government Code, (iv) a wildland fire area referred to in Section 4136 of the California Public Resources Code, (v) an earthquake fault zone as referred to in Section 2621.9 of the California Public Resources Code, or (vi) a seismic hazard zone as referred in Section 2694 of the California Public Resources Code. Buyer agrees that during the Feasibility Period Buyer shall conduct its own investigation as to the existence of any such hazards and Buyer hereby releases Seller from any liability or responsibility in connection therewith. To the extent Seller provides any additional written disclosure regarding any of the foregoing to Buyer, such disclosure shall not constitute a warranty by Seller as to the accuracy or completeness of such disclosure.

(h) Other Matters. Any other matter relating to the Property or to the development of the Property, including, but not limited to, value, feasibility, cost, and governmental permissions.

11.4 Brokerage Commissions or Finders' Fees. Buyer and Seller each hereby represent and warrant to the other that neither party has used or retained any broker or finder in connection with this transaction. Buyer and Seller each hereby agree to indemnify, defend and hold the other free and harmless from and against any claim, damage or expense (including, without limitation, expenses for attorneys' fees and court costs) the other party may incur as a result of any inaccuracy in the indemnifying party's representation made pursuant to this Section.

11.5 Validity and Binding Effect. Buyer represents and warrants to Seller that this Agreement has been duly executed and delivered by Buyer, and that the covenants, conditions and agreements contained herein or referred to herein are the legal, valid and binding obligations of Buyer, enforceable in accordance with their respective terms.

11.6 Other Warranties and Representations. Each party warrants to the other that it is authorized to enter into this Agreement. In addition to the foregoing, as of the Acceptance of this Agreement, Seller warrants and represents to Buyer as follows.

(a) Seller's Authority. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement.

(b) Hazardous Materials. Seller represents that the Due Diligence Materials and the other materials disclosed to Buyer set forth all of Seller's actual knowledge regarding the existence of hazardous materials on or beneath the Property.

(c) Litigation. The Parties represent that there is no litigation related to the Property that is pending or threatened by a Third Person.

All of the representations and warranties made by Seller in this **Article 11** are limited to the actual knowledge of Seller without any duty of investigation or inquiry.

ARTICLE 12 ASSIGNMENT

12.1 Limit on Escrow Holder's Responsibility. Escrow Holder shall have no concern with, nor liability nor responsibility for, this Article.

12.2 Assignment by Buyer Must be Approved by Seller. Neither Buyer, nor any person or entity constituting Buyer, nor any assignee of Buyer's or any such person's or entity's rights hereunder, will have the right or power to assign its or their rights hereunder without first having obtained Seller's written approval of any such assignment, which approval may be withheld in Seller's sole discretion. Approval of any one assignment will not constitute a waiver of Seller's right to approve or disapprove any subsequent proposed assignment in its sole discretion.

12.3 Assignor's Obligations. No assignment pursuant to this Article will relieve the assignor of any of its obligations under this Agreement.

ARTICLE 13 GENERAL PROVISIONS

13.1 Gender, Number. Whenever the context requires, the use herein of (i) the neuter gender includes the masculine and the feminine, and (ii) the singular number includes the plural.

13.2 Business Days. If the (i) stated Closing Date, or (ii) last day for performance of an act falls upon a day during which Escrow Holder is not open for business, the Closing Date or such last day, as the case may be, will be the immediately following regular business day of Escrow Holder.

13.3 Calculation of Time Periods. Unless otherwise specified, all references to time periods in this Agreement measured in days shall be to consecutive calendar days, all references to time periods in this Agreement measured in months shall be to consecutive calendar months and all references to time periods in this Agreement measured in years shall be to consecutive calendar years. Any reference to Business Days in this Agreement shall mean consecutive Business Days.

13.4 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting and revision of this Agreement, with advice from legal and other counsel and advisers of their own selection. A word, term or

phrase defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which shall govern all language in this Agreement. The words "include" and "including" in this Agreement shall be construed to be followed by the words: "without limitation." Each collective noun in this Agreement shall be interpreted as if followed by the words "(or any part of it)," except where the context clearly requires otherwise. Every reference to any document, including this Agreement, refers to such document, as modified from time to time (excepting any modification that violates this Agreement), and includes all exhibits, schedules, addenda and riders to such document. The word "or" in this Agreement includes the word "and." Every reference to a law, statute, regulation, order, form or similar governmental requirement refers to each such requirement as amended, modified, renumbered, superseded or succeeded, from time to time.

13.5 Survival of Provisions. The representations, warranties, agreements and indemnities set forth in this Agreement will survive the closing and the execution and delivery of Seller's grant deed and will not be merged in Seller's grant deed.

13.6 Captions. Captions in this agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement.

13.7 Exhibits. All exhibits referred to in this Agreement are attached to, and are a part of, this Agreement.

13.8 Entire Agreement. This Agreement contains the entire agreement between the parties relating to the transaction contemplated hereby and all prior agreements, understandings, representations and statements, oral or written, are merged herein.

13.9 Modifications. No modification, waiver or discharge of this Agreement will be valid unless the same is in writing and signed by the Party against which the enforcement of such modification, waiver or discharge is or may be sought.

13.10 Attorney's Fees and Costs. If either Party commences litigation for the judicial interpretation, reformation, enforcement or rescission of this Agreement, the prevailing party will be entitled to a judgment against the other for an amount equal to reasonable attorneys' fees and costs incurred.

13.11 Successors. All terms of this Agreement will be binding upon and inure to the benefit of the Parties and their respective administrators or executors, successors and assigns; nothing contained in this **Section 13.11** will affect **Article 12**.

13.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

13.13 Applicable Law. This Agreement will be construed and enforced in accordance with the laws of the State of California.

13.14 **Time of Essence.** Time is of the essence for each and every provision of this Agreement in which time is an element.

13.15 **Notices.** Unless otherwise provided herein, all notices, demands or other communications given hereunder will be in writing and will be deemed to have been duly delivered upon personal delivery, or on receipt of the notice via telecopy, or on the second Business Day after deposit with Federal Express or other overnight courier service, or as of the second Business Day after mailing by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Seller: HELIX WATER DISTRICT
 Debbie Lundy/Senior Right of Way Agent
 7811 University Avenue
 La Mesa, CA 91942

Telephone: (619) 667-6268

E-mail: debbie.lundy@helixwater.org

If to Buyer: LONNY R. STEPHENS
 10309 Everell Place
 Santee, CA 92071

Telephone: (619) 322-5834

E-Mail: lrshomes@cox.net

SIGNATURES ON FOLLOWING PAGE(S)

This Purchase Agreement and Escrow Instructions has been executed as of the date set forth at the beginning hereof.

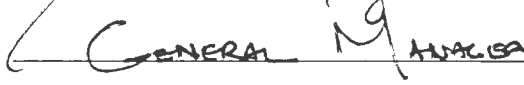
"SELLER"

HELIX WATER DISTRICT

By:



Its:



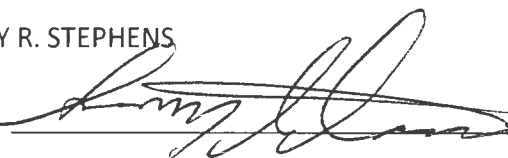
By:

Its:

"BUYER"

LONNY R. STEPHENS

By:



CONSENT OF ESCROW HOLDER

The undersigned Escrow Holder hereby agrees to (i) accept the foregoing Agreement, (ii) be escrow agent under said Agreement, and (iii) be bound by said Agreement in the performance of its duties as escrow agent; 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 accepted by the undersigned in writing.

Dated: _____

COMMONWEALTH LAND TITLE

By: _____
Escrow Officer

Exhibit A

**Description of Property
TO BE PROVIDED BY TITLE COMPANY**

EXHIBIT A

Exhibit B

Due Diligence Materials

1. HWD to stake the property lines and County Flood Control and Helix Water District easements prior to the Feasibility Period commencement date.

EXHIBIT B