

## AGREEMENT FOR PURCHASE AND SALE OF AN EASEMENT

This agreement for purchase and sale of an easement ("Agreement") is made and entered into this 5<sup>th</sup> day of December, 2006 ("Effective Date") by and between PW BOULDER, LLC, a California limited liability company ("Grantor") and the City of Redlands, a municipal corporation ("Grantee"). Grantor and Grantee are each sometimes individually referred to herein as a "Party" and collectively as the "Parties."

### RECITALS

A. Grantor owns certain real property located at 620 Alabama Street, Redlands, California, bearing County of San Bernardino Assessor's Parcel No. 0292-182-11 (the "Property").

B. Grantee desires to purchase a permanent easement in a portion of the Property and Grantor desires to sell and convey an easement in a portion of the Property as described in Exhibit "A" and depicted in Exhibit "B," both of which are attached hereto (the "Easement").

C. The Parties desire by this Agreement to provide the terms and conditions for the purchase and sale of the Easement.

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

### AGREEMENT

#### 1. PURCHASE.

Grantee shall buy and Grantor shall sell and convey the Easement, for the purchase price and upon the terms and conditions hereinafter set forth.

#### 2. ESCROW.

Within ten (10) days of the Effective Date of this Agreement, Grantee shall open an escrow (the "Escrow") with First American Title Company (the "Escrow Holder") for the purpose of consummating the purchase and sale of the Easement. The Parties shall execute and deliver to Escrow Holder such escrow instructions prepared by Escrow Holder as may be required to consummate this transaction. Any such instructions shall not conflict with, amend or supersede any provision of this Agreement. If there is any inconsistency between such instructions and this Agreement, this Agreement shall control unless the Parties agree in writing otherwise. The Escrow Instructions shall include the following terms and conditions of sale:

##### 2.1 Purchase Price.

The total purchase price for the Easement shall be the sum of Thirty-Five Thousand Six Hundred Dollars (\$35,600) (the "Purchase Price"), which shall be paid by Grantee to Grantor through Escrow Holder in cash at Close of Escrow.

## 2.2 Close of Escrow.

Escrow shall close on or before ninety (90) days following the Effective Date of this Agreement (the "Close of Escrow"). If the Escrow is not in a condition to close by the Close of Escrow, any Party who is not then in default may, in writing, demand the return of its money and/or documents. Thereupon, subject to the provisions of Section 3 hereof, all obligations and liabilities of the Parties under this Agreement shall cease and terminate. If no such demand is made, the City Manager of Grantee may, by written instrument to Escrow, authorize an extension of the Escrow. Escrow shall be closed as soon as possible.

## 2.3 Condition of Title to the Easement.

Grantor shall convey title to the Easement to Grantee as evidenced by a CLTA Standard Form Policy or Binder of Title Insurance ("Title Policy") issued by a title insurance company to be selected by Grantee in an amount equal to the Purchase Price. The Title Policy shall show as exceptions with respect to the Easement only matters approved in writing by Grantee. Any exceptions to title representing monetary liens or encumbrances are hereby disapproved by Grantee, and Escrow Holder is hereby authorized and instructed to cause the reconveyance, partial reconveyance or subordination, as the case may be, of any such monetary exceptions to Grantee's title to the Easement at or prior to the Close of Escrow.

## 2.4 Escrow and Closing Costs.

Grantee shall pay the cost of the Title Policy, all Escrow fees (including reconveyance fees, trustee's fees or forwarding fees for any partial reconveyance or subordination of a deed of trust or mortgage), and all recording costs incurred herein. All Parties acknowledge that Grantee is exempt from payment of documentary transfer taxes.

## 2.5 Investigations.

Prior to the Close of Escrow, Grantee may, at its option, conduct, at Grantee's expense, any and all investigations, inspections, surveys and tests of the Property including, without limitation, soils, groundwater, wells, percolation, geology, environmental, drainage, engineering and utilities investigations, inspections, surveys and tests, which Grantee determines, in its sole discretion, are required to ascertain the suitability of the Easement for Grantee's intended use. If Grantee determines that the Easement is not suitable for its intended use, Grantee may terminate this Agreement as provided in Section 2.2 hereof. Grantor hereby grants to Grantee, and Grantee's employees, representatives, agents and independent contractors, a license to enter the Property for purposes of conducting such investigations, inspections, surveys and tests. Grantee shall repair any damage to the Property resulting from such investigations, inspections, surveys and tests conducted by Grantee or Grantee's employees, representatives, agents or independent contractors. Grantee's approval of any of such investigations, inspections, surveys or tests shall not alter or diminish Grantor's representations or warranties under this Agreement, and Grantor acknowledges and agrees that Grantee is relying upon Grantor's representations and warranties made herein, unless such representation or warranty is specifically waived in whole or in part by Grantor.

2.6 Deposit of Funds and Documents.

A. Prior to Close of Escrow, Grantee shall deposit into Escrow (i) all Escrow and Closing Costs as described above; (ii) the Purchase Price to be paid to Grantor through Escrow; and (iii) such other documentation as is necessary to close Escrow in conformance herewith.

B. Prior to the Close of Escrow, Grantor shall deposit into Escrow (i) the properly executed Grant of Easement Deed conveying the Easement, a copy of which is attached to this Agreement as Exhibit "C," and (ii) such other documents and sums, if any, as are necessary to close Escrow in conformance herewith.

2.7 Grantee's Conditions Precedent to Close of Escrow.

The Close of Escrow is subject to the following conditions:

(a) All representations and warranties of Grantor set forth in this Agreement shall be true and correct as of the Close of Escrow; and

(b) Grantor shall timely perform all obligations required by the terms of this Agreement to be performed by it.

2.8 Grantor's Conditions Precedent to Close of Escrow.

For the benefit of Grantor, the Close of Escrow shall be conditioned upon the timely performance by Grantee of all obligations required of Grantee by the terms of this Agreement.

3. POSSESSION OF EASEMENT.

Grantee may take possession of the Easement and begin construction of the works of improvement thereon as of the Effective Date of this Agreement, prior to the Close of Escrow; if Escrow should not close for any reason, or under the conditions specified in Section 2.2 or in Section 7 hereof, Grantee shall have the right to continue in possession and construct the works of improvement, and the purchase price and terms shall be determined by agreement of the Parties, or absent an agreement, by a form of arbitration agreed to by the Parties, or if they cannot so agree, then Grantee may in its sole discretion, initiate an action in eminent domain in which the issue will be to determine the amount of compensation to be paid.

4. REPRESENTATIONS AND WARRANTIES OF GRANTOR.

Grantor makes the following representations and warranties, each of which shall survive the Close of Escrow:

(a) Grantor holds title to an indefeasible estate in fee simple in the Property. Grantor is the sole owner of the Property and has good, absolute and marketable title to the Property and has full power and authority to own and sell and convey the Easement over, under and/or through the Property to Grantee and to enter into and perform its obligations pursuant to this Agreement;

(b) The execution and delivery of this Agreement by Grantor, Grantor's performance hereunder, and the consummation of this transaction will not constitute a violation of any order or decree or result in the breach of any contract or agreement to which Grantor is a Party, or by which Grantor is bound;

(c) Grantor shall not enter into any agreements or undertake any new obligations prior to Close of Escrow which will in any way burden, encumber or otherwise affect the Property without the prior written consent of Grantee;

(d) To Grantor's knowledge, no litigation and no governmental, administrative or regulatory act or proceeding regarding the environmental, health and safety aspects of the Property is pending, proposed or threatened;

(e) According to Grantor's knowledge, the Property is not in violation of any federal, state or local statute, regulation or ordinance relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater conditions underlying the Property which could affect the Easement or its use, and neither Grantor nor any other person or predecessor in interest has used, generated, manufactured, stored or disposed of on, under or about the Property, or transported to or from the Property, any flammable materials, explosives, radioactive materials, hazardous or contaminated materials or substances, toxic or noxious materials, substances or related materials or substances ("Hazardous Materials"). For the purpose of this Section, Hazardous Materials shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. sections 9601, et seq; the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801, et seq; the Resource Conservation and Recovery Act, 42 U.S.C. sections 6901, et seq; the Federal Water Pollution Control Act, 33 U.S.C. sections 1317, et seq; sections 25115, 25117, 25122.7, 25140, 25249.5, 25249.8, 25281, 25316 or 25501 of the California Health and Safety Code; or any substances so defined or stated in any of the regulations adopted and publications promulgated pursuant to said laws as they may be amended from time to time;

(f) In the event Grantee discovers Hazardous Materials, contaminated soil and/or water in, on or under the Property, Grantor shall be solely responsible for the removal and disposal of any and all such Hazardous Materials, contaminated soil and/or water;

(g) In the event Grantor fails to remove said Hazardous Materials, contaminated soil and/or water, Grantee or its designee shall have the right to remove and dispose of said Hazardous Materials, contaminated soil and/or water at Grantor's sole cost and expense. Grantor shall immediately reimburse Grantee for costs and expenses incurred by Grantee for the removal and disposal of any Hazardous Materials, contaminated soil and/or water upon receipt of a bill or invoices therefor. Grantor shall defend, indemnify and hold Grantee, its elected officials, officers, employees, consultants and agents, harmless from any and all liability, costs, fines, penalties, charges and/or claims of any kind whatsoever related to the existence and removal of any Hazardous Materials, contaminated soil and/or water; and

(h) Grantor has and shall have paid before Close of Escrow any and all current and past due taxes, assessments, penalties and interest levied and assessed against the Property. If not paid

prior to Close of Escrow, Grantor hereby authorizes Escrow Holder to disburse to the taxing authority from funds otherwise due to Grantor an amount sufficient to discharge said taxes, assessments, penalties and interest. Unless the Easement is assessed separately, Grantor shall also keep current, year-by-year, all taxes, assessments, penalties and interest levied and assessed against the Easement and the larger Property of which it is a part.

These representations and warranties shall survive the Close of Escrow.

5. REPRESENTATIONS AND WARRANTIES OF GRANTEE.

A. Grantee shall repair and restore any improvements or land (other than the Easement and any improvements located thereon) belonging to Grantor that may be damaged by Grantee or Grantee's contractor during construction of the works of improvement for which the Easement is conveyed, or, at Grantee's option, pay to Grantor the market value of such improvements, provided that this Section shall not be construed to require Grantee to pay for the use for which the Easement is intended.

B. Grantee shall save harmless and indemnify Grantor against any and all claims, demands, suits, judgments, expenses and costs on account of injury to, or death of, persons, or loss of, or damage to, property of others incurred during or proximately caused by acts or omissions of Grantee or Grantee's contractor in the performance of any work by Grantee or Grantee's contractor to construct the works of improvement for which the Easement is conveyed.

6. ACKNOWLEDGMENT OF FULL BENEFITS AND RELEASE.

A. By execution of this Agreement, Grantor, on behalf of itself and its respective successors and assigns, hereby acknowledges that this Agreement provides full payment for the acquisition of the Easement by Grantee, and Grantor hereby expressly and unconditionally waives any and all claims for damages, relocation assistance benefits, severance damages, interest, loss of goodwill, claims for inverse condemnation or unreasonable pre-condemnation conduct, or any other compensation or benefits, other than as already expressly provided for in this Agreement, it being understood that this is a complete and full settlement of all acquisition claims, liabilities or benefits of any type or nature whatsoever relating to or in connection with Grantee's acquisition of the Easement.

B. This Agreement arose out of Grantee's efforts to acquire the Easement through its municipal authority. The Parties agree that this Agreement is a settlement of claims in order to avoid litigation and shall not in any manner be construed as an admission of the fair market value of the Easement or of the Property or of liability by any Party to this Agreement. Grantor, on behalf of itself and its successors and assigns, hereby fully releases Grantee, its successors, agents, representatives, and assigns, and all other persons and associations, known or unknown, from all claims and causes of action by reason of any damage which has been sustained, or may be sustained, as a result of Grantee's efforts to acquire the Easement or to construct works of improvement thereon, or any preliminary steps thereto, except as set forth in Section 5 above. Grantor further releases and agrees to hold Grantee harmless from any and all claims by reason of any leasehold interest in the Property. This release shall survive the Close of Escrow.

C. Grantor expressly waives the rights afforded to Grantor under Civil Code section 1542 which provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

7. REMEDIES

If Grantor defaults under this Agreement, then Grantee may, at Grantee's option, terminate the Escrow or initiate an action for specific performance of this Agreement, or pursue any other rights or remedies that Grantee may have at law or in equity. If Grantee defaults under this Agreement, then Grantor may, at Grantor's option, terminate the Escrow or pursue any rights or remedies that Grantor may have at law or in equity.

8. MISCELLANEOUS.

A. Notice. Any notice to be given or other document or documents to be delivered to either Party by the other hereunder may be delivered in person or may be deposited in the United States Mail in the State of California, duly registered or certified, with postage prepaid, and addressed as follows:

Grantor: Dr. Jeffrey Phillips  
PW Boulder, LLC  
614 Alabama Street  
Redlands, CA 92373

Grantee: City of Redlands  
PO Box 3005  
Redlands, CA 92373  
Attn: City Manager

Any Party hereto may, from time to time, by written notice to the other Party, designate a different address, which shall be substituted for the one specified above. Any notice or other documents sent by registered or certified mail as aforesaid shall be deemed to have been effectively served or delivered at the expiration of twenty-four (24) hours following the deposit of said notice or other documents in the United States mail.

B. Time of Essence. Time is of the essence with respect to each and every provision hereof.

C. Assignment. Neither this Agreement, nor any interest herein, shall be assignable by any Party without prior written consent of the other Party.

D. Governing Law. All questions with respect to this Agreement, and the rights and liabilities of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of California.

E. Inurement. This Agreement shall inure to the benefit of, and shall be binding upon, the assigns, successors in interest, personal representatives, estates, heirs and legatees of each of the Parties.

F. Attorneys' Fees. If any action, arbitration or other proceeding is brought for the interpretation or enforcement of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with the Agreement, the successful or prevailing Party shall be entitled to recover actual attorneys' fees and other costs it incurs in that action or proceeding, in addition to any other relief to which it may be entitled, including fees for any in-house counsel of the Parties.

G. Entire Agreement. This Agreement contains the entire Agreement of the Parties, and supersedes any prior written or oral agreements between them concerning the subject matter contained herein. There are no representations, agreements, arrangements, or understandings, oral or written, between the Parties relating to the subject matter contained in this Agreement which are not fully expressed herein.

H. Additional Documents. The Parties agree to execute any and all additional documents and instruments necessary to carry out the terms of this Agreement.

I. No Admissions. This Agreement is a compromise and settlement of outstanding claims between the Parties relating to Grantee's acquisition of the Easement and shall never be treated as an admission by either Party to the Agreement for any purpose in any judicial, arbitration or administrative proceeding between the Parties. This paragraph shall not apply to any claim that one may have against the other for breach of any provision or covenant of this Agreement.

J. No Merger. All representations, warranties, acknowledgments, releases, covenants and obligations contained in this Agreement shall survive delivery and recordation of the permanent easement.

K. Broker. Grantor and Grantee each represent and warrant to the other that no broker, agent or finder has been engaged by it in connection with the transaction contemplated by this Agreement and that all negotiations relative to these instructions and this transaction have been carried out by such Party directly with the other Party without the intervention of any person in such a manner as to give rise to any valid claim against either of the Parties for a broker's commission, finder's fee or other like payment. Each of the Parties shall indemnify and defend the other Party and hold it harmless from any and all loss, damage, liability or expense, including costs and reasonable attorneys' fees, which the other Party may incur or sustain by reason of or in connection with any misrepresentation or breach of warranty by the indemnifying Party with respect to the foregoing.

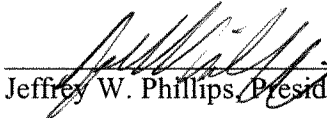
L. Counterparts. This Agreement may be signed in counterpart or duplicate copies, and any signed counterpart or duplicate copy shall be equivalent to a signed original for all purposes.

EXECUTED on the date or dates set forth below.

DATED: 10.8.06

Grantor:

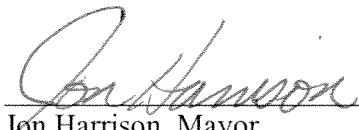
PW BOULDER, LLC, a California limited liability company

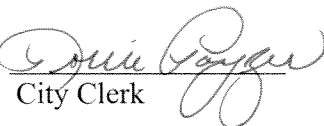
By:   
Jeffrey W. Phillips, President

DATED: December 5, 2006

Grantee:

CITY OF REDLANDS

By:   
Jon Harrison, Mayor

Attest:   
City Clerk



# EXHIBIT A

## LEGAL DESCRIPTION EASEMENT ACQUISITION, PARCEL P

REAL PROPERTY IN THE CITY OF REDLANDS, COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THAT PORTION OF THE WEST ONE-HALF OF THE NORTH ONE-HALF OF LOT OR BLOCK 19 OF THE BARTON RANCH, IN THE CITY OF REDLANDS, IN THE COUNTY OF SAN BERNARDINO, STATE OF CALIFORNIA, AS PER PLAT RECORDED IN BOOK 6, PAGE(S) 19 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

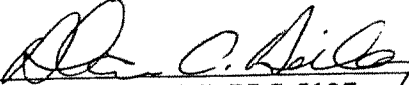
COMMENCING AT THE INTERSECTION OF THE EAST LINE OF ALABAMA STREET AND THE SOUTH LINE OF COLTON AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON SAID PLAT; THENCE SOUTH 1 DEG. 00' 10" EAST 9.95 FEET ALONG SAID EAST LINE OF ALABAMA STREET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF CALIFORNIA STATE HIGHWAY NO. 99; THENCE CONTINUING ALONG SAID EAST LINE OF ALABAMA STREET, SOUTH 1 DEG. 00' 10" EAST 250.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE FROM SAID TRUE POINT OF BEGINNING, PARALLEL WITH SAID SOUTH LINE OF COLTON AVENUE, NORTH 89 DEG. 35' 20" EAST 200 FEET; THENCE PARALLEL WITH SAID EAST LINE OF ALABAMA STREET SOUTH 1 DEG. 00' 10" EAST 100 FEET; THENCE PARALLEL WITH SAID SOUTH LINE OF COLTON AVENUE, SOUTH 89 DEG. 35' 20" WEST 200 FEET TO AFORESAID EAST LINE OF ALABAMA STREET; THENCE NORTH 1 DEG. 00' 10" WEST 100 FEET TO THE TRUE POINT OF BEGINNING.

SAID PORTION BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF THE HEREINABOVE DESCRIBED LAND; THENCE SOUTH 89°43'46" EAST ALONG THE NORTHERLY LINE OF SAID DESCRIBED LAND, A DISTANCE OF 18.38 FEET; THENCE SOUTH 01°41'54" WEST, A DISTANCE OF 100.01 FEET, TO THE SOUTHERLY LINE OF SAID DESCRIBED LAND; THENCE NORTH 89°43'46" WEST ALONG SAID SOUTHERLY LINE, A DISTANCE OF 13.67 FEET, TO THE SOUTHWEST CORNER OF SAID DESCRIBED LAND; THENCE NORTH 01°00'10" WEST ALONG THE WESTERLY LINE OF SAID DESCRIBED LAND, A DISTANCE OF 100.00 FEET, TO THE POINT OF BEGINNING.

SAID DESCRIPTION CONTAINS 1,602 SQUARE FEET.

HILLWIG-GOODROW, LLC  
PREPARED UNDER THE SUPERVISION OF:

  
ALAN C. HILLWIG, PLS 5137  
DATE: Nov. 1, 2005



COLTON

AVENUE

REDLANDS BOULEVARD

S01°00'01"E  
9.95'

41.25'

P.O.C.

APN NO.  
292-157-31

APN NO.  
292-157-06

STREET

40'

60'

APN NO.292-182-32

N01°00'10"W 100.10'

S01°00'10"E 250.00'

ALABAMA

POINT OF  
BEGINNING

S89°43'46"E  
18.38'

APN NO.292-182-11

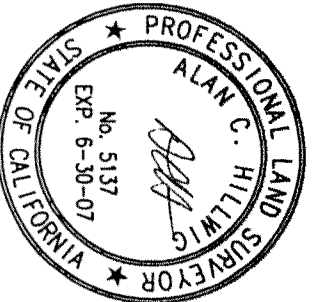
N01°00'10"W 100.00'

S01°41'54"W 100.01'

N89°43'46"W  
13.67'



EXHIBIT "B"



ACQUISITION P  
APN NO. 292-182-11

PREPARED FOR PARSONS BRINCKERHOFF

THIS PLAT IS SOLELY AN AID IN LOCATING  
THE PARCEL(S) DESCRIBED IN THE  
ATTACHED DOCUMENT. IT IS NOT A PART  
OF THE WRITTEN DESCRIPTION THEREIN.

PREPARED BY:

DATE: Nov. 1, 2005

PAR:

P.N.#317-01

PREPARED BY: H-G, LLC

SCALE: 1"=60'

DATE: SEPTEMBER 2005

SHEET 1 OF 1



# First American Title Company

2 First American Way • Santa Ana, CA 92707

## Buyer's Estimated Settlement Statement

**Property:** 620 Alabama Street, Redlands, CA

**File No:** OSA-2638328

**Officer:** Robert Benavente/EDR

**New Loan No:**

**Settlement Date:**

**Disbursement Date:** 03/05/2007

**Print Date:** 4/18/2007, 11:09 AM

**Buyer:** City of Redlands

**Address:** Attn: Tom Fujiwara, PO Box 3005, Redlands, CA 92373

**Seller:** PW Boulder, LLC

**Address:** Attn: Dr. Jeffrey Phillips, 614 Alabama Street, Redlands, CA 92373

| Charge Description                                                   | Buyer Charge | Buyer Credit |
|----------------------------------------------------------------------|--------------|--------------|
| <b>Consideration:</b>                                                | 35,600.00    |              |
| Total Consideration                                                  |              |              |
| <b>Title/Escrow Charges to:</b>                                      | 550.00       |              |
| Escrow Fee - First American Title Company                            | 370.00       |              |
| ALTA Owner w/Reg Exc 10-17-92 1402.92 - First American Title Company |              | 36,520.00    |
| Cash (X From) ( To) Borrower                                         |              |              |
|                                                                      | 36,520.00    | 36,520.00    |
| <b>Totals</b>                                                        |              |              |

Notice - This Estimated Settlement Statement is subject to changes, corrections or additions at the time of final computation of the Settlement Statement.

### BUYER(S):

City of Redlands, a municipal corporation

  
By: Its, Authorized Signer  
Jon Harrison, Mayor

Attest:   
Lorrie Poyzer, City Clerk