

**AGREEMENT FOR PURCHASE AND SALE OF PROPERTY  
AND ESCROW INSTRUCTIONS  
Veterans Boulevard Overcrossing  
Project No. PW00669**

**Lennar Fresno Inc.** hereinafter called the "Seller," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described property is being purchased for a street easement on the following terms and conditions:

1. All that real property which is the subject of this Agreement, and which is hereinafter for convenience referred to as the "subject property," is presently in fee simple title to that certain parcel of land situated in the City of Fresno, County of Fresno, State of California, more particularly described as Assessors' Parcel Number 504-091-21S. Further the "subject property," to be acquired as a permanent Street easement consists of 19,552 square feet and is depicted on Exhibit "A" & "B: and 17,062 square feet permanent Trail easement and is depicted on Exhibit "C" & "D" and made part of this agreement.

2. The purchase price for the subject property shall be the sum of ONE HUNDRED THOUSAND SEVEN HUNDRED AND 00/100 DOLLARS (\$100,700.00) as just compensation therefor,

3. Sellers acknowledge that the City has the power to acquire the subject property for public purposes by eminent domain. If title does not pass to the City within the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the net sum payable to Sellers hereunder shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Sellers waive all other defenses in said proceeding.

4. It is agreed and confirmed by the City and the Seller that notwithstanding other provisions in this Agreement, the right of possession and use of the subject property by the City, including the right to remove and dispose of improvements

**EXHIBIT "A"**

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APN 504-091-21S (portion)  
Street easement

**PARCEL 1**

A portion of Lot 294 of J.C. Forkner Fig Gardens Subdivision No. 3, according to the map thereof recorded in Volume 8 of Plats at Page 79, Fresno County Records, situated in the southeast quarter of the northeast quarter of Section 4, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, more particularly described as follows:

COMMENCING at the northeast corner of the southeast quarter of the northeast quarter of said Section 4; thence S 89°39'24" W, along the north line of said southeast quarter, a distance of 64.32 feet to the northwest corner of the northerly part of that portion of Veterans Boulevard previously dedicated for public street purposes by that Deed of Easement recorded May 7, 2009, as Document No. 2009-0062623, Official Records of Fresno County; thence S 18°07'51" W, along the westerly boundary of said portion of Veterans Blvd and the southerly prolongation thereof, parallel with and 54.33' feet westerly of the centerline of Veterans Boulevard as shown on said Document No. 2009-0062623, a distance of 36.90 feet to the north line of said Lot 294 and the TRUE POINT OF BEGINNING of this description; thence continuing S 18°07'51" W, along the westerly boundary of the southerly part of said portion of Veterans Boulevard, parallel with and 54.33' feet westerly of said centerline, a distance of 10.76 feet; thence S 3°40'14" E, continuing along said westerly boundary, a distance of 43.96 feet; thence S 18°07'51" W, continuing along said westerly boundary, parallel with and 38.00 feet westerly of said centerline, a distance of 596.47 feet to the south line of said Lot 294; thence S 89°38'46" W, along said south line, a distance of 30.58 feet; thence N 18°07'51" E, parallel with and 67.00 feet westerly of said centerline, a distance of 566.76 feet; thence N 8°10'06" E, a distance of 40.46 feet; thence N 18°07'51" E, parallel with and 74.00 feet westerly of said centerline, a distance of 44.56 feet to the north line of said Lot 294; thence N 89°39'24" E, along last said north line, parallel with and 35.00 feet south of the north line of the southeast quarter of the northeast quarter of said Section 4, a distance of 20.74 feet to the TRUE POINT OF BEGINNING.

Contains an area of 18,858 square feet, more or less.

2015-069  
15-A-9164  
PWF 11738

within the subject property shall commence on the close of escrow controlling this transaction or November 11, 2016, whichever occurs first.

5. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record upon review and approval of an updated title report.

6. The sale shall be completed through an external escrow to be opened at Fidelity National Title Company, 7485 North Palm Avenue #106, Fresno, CA 93711. Escrow Number FFOM-2011505129-BW. Phone number is 559-431-8050. Bernadette Watson will be handling your escrow. Said escrow shall be opened upon the following terms and conditions, and the Sellers and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sums specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefore.
- b. Payment of said sums, less Seller's cost to clear title, if any, may be made to Sellers only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for: The City may require a partial subordination in order to obtain title insurance before close of escrow.
- c. It is understood that Sellers shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.

- d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Sellers will pay any cost to convey the title to the subject property in the condition described in 6.b above.
- e. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

7. Miscellaneous Provisions:

- a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.

- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

8. Environmental Indemnity Seller shall indemnify, hold harmless, and defend the Buyer, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, Buyer, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before Closing. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state or local law whether statutory or common law, ordinance, or regulation. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Buyer, the Seller, at Seller's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph. Seller's obligations under this indemnity shall survive the close of escrow and the recording of the grant deed.

9. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred and twenty (120 days) from the date hereof, and that upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the purchase and sale of subject property binding upon Sellers and City, their heirs, executors, administrators, successors in interest, and assigns.

10. It is understood and agreed between the parties that Sellers wish to donate the remainder 2.14 acres to the City valued at \$ 308,000 to develop a new trailhead as part of the Veterans Boulevard project.

This Agreement is executed by the City of Fresno by and through the Assistant Public Works Director or his designee of said City pursuant to authority granted by the Council of the City of Fresno on

**SELLERS:**

**Lennar Fresno Inc., a California Corporation**

**RECOMMENDED FOR APPROVAL:**

BY: Cathy Rodriguez  
Cathy Rodriguez  
Senior Real Estate Agent  
Date 9/29/16

BY: Craig L. Hansen  
Craig L. Hansen  
Supervising Real Estate Agent  
Date 10/3/2016

**SELLER'S SIGNATURE:**

BY: Mike Miller  
Mike Miller, Vice President  
Date 9-29-16

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

**CITY OF FRESNO**

Date \_\_\_\_\_

Scott Mozier, Director  
Department of Public Works

**Address of Sellers:**

8080 N. Palm Avenue #101  
Fresno, CA 93711  
Phone # 559-437-4201

Address of City:  
City of Fresno  
Public Works Department  
2600 Fresno Street, Room 4019  
Fresno, CA 93721-3623

**APPROVED AS TO FORM:**  
**DOUGLAS T. SLOAN**  
City Attorney

By: Bill Miller 10/12/16  
Deputy

**ATTEST:**  
**YVONNE SPENCE, CMC**  
City Clerk

By \_\_\_\_\_  
Deputy  
APN 504-091-21S