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**CONSTRUCTION AND NON-EXCLUSIVE EASEMENT AGREEMENT
(STORM DRAIN AND TEMPORARY GRADING EASEMENT)**

This Construction and Non-Exclusive Easement Agreement (the “**Agreement**”) is made and entered into on _____, 2018 (the “**Effective Date**”), by and between the VENTURA COUNTY TRANSPORTATION COMMISSION, a California public agency (“**VCTC**”), the CITY OF FILLMORE, a California municipal corporation (“**City**”), and HEARTHSTONE MULTI-ASSET ENTITY C, L.P., a California limited partnership, (“**Developer**”), individually Party and collectively Parties, in consideration of the following:

RECITALS

A. VCTC is the owner of a strip of land approximately 100 feet wide which contains the tracks of the Santa Paula Branch Line (“**Branch Line**”), as more fully described on Exhibit A attached hereto (“**VCTC Property**”).

B. Developer is the owner of the real property comprised of approximately 158 acres in the City of Fillmore, California legally described on Exhibit B attached hereto (the “**Phase 2 Property**”) located adjacent to the VCTC Property, upon which Developer is entitled to construct a residential master planned community approved by City commonly known as Heritage Valley Parks (“**Project**”) and proposes the sale of individual units to members of the home buying public (“**Homeowner(s)**”). Nothing in this Agreement is intended to affect the continuing validity of the entitlements approved by City for the Project.

C. In 2007 and 2008, Developer’s predecessor-in-interest with respect to the Phase 2 Property, Griffin Industries, Inc. (“**Griffin**”), constructed a levy along the southern and eastern portions of the Phase 2 Property and carried out dewatering to protect the Phase 2 Property and its future inhabitants from flooding of the Santa Clara River. In 2009, Developer and City raised the berm underlying the railroad tracks on the VCTC Property, installed an 18-inch pipe lying between the berm and Highway 126 that is west of the levee (“**18-Inch Pipe**”), and extended the north/south portion of the levee to the raised berm for the purpose of providing protection to the Phase 2 Property and its future inhabitants and meeting requirements for issuance of a letter of map revision from FEMA for the Phase 2 Property and the Project (“**LOMR**”) as established by the conditional

letter of map revision from FEMA for the Phase 2 Property issued on September 27, 2007 for Pole Creek (Case No. 07-09-0300R) and issued on April 30, 2007 for the Santa Clara River (Case No. 06-09-BB70R).

D. Developer, Griffin, City and VCTC were previously involved in litigation with Alfred and Teresa Beserra (“**Beserras**”) and California Watercress, Inc. (“**CW**”), which, among other things, involved a claim by the Beserras and CW that work done in connection with the development of Developer’s property caused flooding on the property denominated Ventura County Assessor’s Parcel Number 041026061-5 (“**Beserra Property**”). As part of a settlement agreement between VCTC, the Beserras and CW, VCTC agreed to and did install two 36-inch pipes west of the levee which together with the above-referenced 18-Inch Pipe are collectively referred to herein as “**Temporary Drainage Facilities**”) in the berm underlying the railroad tracks on the VCTC Property to allow water to drain from the Beserra Property onto the Phase 2 Property. The VCTC/Beserra/CW settlement agreement specified the temporary nature of the Temporary Drainage Facilities and stated that the installation of the Temporary Drainage Facilities was not intended to replace or otherwise alter the drainage plan previously approved for the development of the Phase 2 Property.

E. The California Department of Fish and Wildlife (“**CDFW**”), which has acquired the Beserra Property, has consented to the removal of the Temporary Drainage Facilities, as indicated in the correspondence attached as Exhibit C hereto.

F. In order to obtain the LOMR, Developer has requested the right to fill the Temporary Drainage Facilities with concrete to permanently seal them and has requested that VCTC agree to maintain the levy as further set forth in Section 20. VCTC has agreed to allow Developer to carry out the permanent seal of the Temporary Drainage Facilities following replacement with a permanent drainage culvert and other drainage improvements in the Approved Plans (as defined below) for the work as shown in Exhibits D-1 and F-1.

G. In addition, VCTC and Developer are entering into this Agreement to set forth the terms and conditions upon which Developer is authorized to perform the following work (collectively, the “**Work**”):

1. construct and install a permanent reinforced concrete drainage culvert (without gates or valves to restrict flow), conduits and related improvements in substantial conformity with the approved plans and specifications for such work listed in Exhibit D-1 and any improvements incidental thereto (“**Drainage Structures**”) to carry runoff and drainage flows and allow the diversion of flows from the Phase 2 Property across the VCTC Property under the berm in the location legally described and depicted on Exhibit D, and which shall, upon completion thereof, negate the need for the Temporary Drainage Facilities;

2. upon completion of the permanent drainage culvert, as demonstrated by a document showing that a final inspection has been conducted and approved by either City or the County of Ventura (“**County**”), as the case may be, remove and/or fill the Temporary Drainage Facilities in a manner that permits issuance of the LOMR which shall be carried out in substantial conformity with the approved plans for such work summarized in Exhibit D-1;

3. grade and place compacted fill on the VCTC Property in the location legally described and depicted on Exhibit F to facilitate the construction of a sound wall on the Phase 2 Property and which shall be constructed in substantial conformity with the approved plans for such work summarized in Exhibit F-1 ("**Grading Work**"); and

4. perform all other work reasonably necessary to carry out the foregoing.

Prior to the execution of this Agreement, VCTC and City have reviewed and approved the plans for the Work. The approved plans for the Work, summarized in Exhibits D-1 and F-1 (individually and collectively, "**Approved Plans**"). The term Approved Plans shall also include any modifications to the Approved Plans attached hereto which are approved by VCTC in accordance with Section 1 and, where applicable, by City in accordance with Sections 2 and 5. VCTC acknowledges that the Drainage Structures described in the Approved Plans attached as Exhibits D-1 and F-1 are compatible with and would not conflict with construction by VCTC of its proposed future trail improvements.

H. VCTC has agreed to grant Developer and its successors and assigns the following easements upon the VCTC Property: (a) a temporary, non-exclusive, transferable easement for grading and installation of compacted fill appurtenant to the Phase 2 Property (as further defined in Section 5, the "**Grading Easement**"), and (b) a transferable, non-exclusive easement in gross to construct, maintain, operate, repair and replace the Drainage Structures (as further defined in Section 2, the "**Storm Drain Easement**" and collectively with the Grading Easement, the "**Easements**") on the conditions, including indemnities, set forth below. The portions of the VCTC Property upon which the Easements are granted as depicted in Exhibits D and F, are referred to herein as the "**Easement Areas**". Any transfer of such easements under (a) or (b) is subject to Section 16.

I. Upon completion of the components of the Work associated therewith and approval by City or County as necessary, Developer intends to assign to City, or, if elected by City, to a stormwater district or other appropriate district formed by City ("**City District**"), in accordance with the procedures outlined in Section 16, this Easement Agreement and the Storm Drain Easement together with the improvements constructed in connection therewith. Once an assignment has taken place, assignee shall be responsible for operation and maintenance of the Work at its sole cost and expense, and VCTC will look to the applicable assignee (as defined in Section 16 (Assignment)) with respect to this Agreement to satisfy the obligations originally imposed on Developer under this Agreement.

J. Concurrently with its request for the Easements and approvals in this Agreement, Developer has requested from VCTC the right to install and obtain easements for construction, maintenance, and operation of the following additional improvements: (a) an at-grade public vehicular (including automotive and bicycle) and pedestrian crossing of the railroad tracks and related crossing-gates and signals ("**Rail Crossing**"), each of which will require approval of the California Public Utilities Commission ("**CPUC**"), and (b) typical wet and dry in-tract utilities, including, but not limited to, electrical, gas, water, reclaimed water, sewer, telephone and cable utilities and other utilities reasonably necessary or required by City or other utility purveyors to be installed in connection with the development of the Phase 2 Property and the Project, and

including, without limitation, conduit and an electrical connection for signal cable under the railroad crossing pavement for purposes of operation of the signal at the Rail Crossing per utility plans approved by Caltrans over and under the Rail Crossing (“**Utilities**”). In connection with that request, Developer has submitted an application to CPUC. Both parties acknowledge that CPUC approval of the plans and the location of the proposed Rail Crossing are required before VCTC can consider granting an easement for the construction, operation and maintenance of the Rail Crossing and Utilities pursuant to a separate easement agreement, but the Parties agree that provided CPUC approval is granted to the Approved Plans (as the same may be modified pursuant to Section 1), the easement agreement with respect to the Rail Crossing and Utilities shall be substantially in the form and content of the instrument attached to this Agreement as Exhibit G.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and the following mutual promises and agreements, VCTC and Developer do hereby agree as follows:

1. **Approval of Plans.** VCTC and City have previously reviewed and approved the plans for the Work, which plans are referenced on Exhibits D-1 and F-1 to this Agreement. Developer shall have the right to construct the Work contemplated by this Agreement on the Easement Areas in accordance with the Approved Plans. Under no circumstances will VCTC be obligated to contribute any funds for the construction of the Work. The Work shall be constructed in substantial conformity with the Approved Plans together with such modifications as may be required by City and/or County, as applicable, to the extent it has authority over the components of the Work, and any other governmental agency with authority over specific components of the Work. Further, Developer understands and agrees that with respect to any modifications requested to the Approved Plans, VCTC will not approve any plans and specifications for the Drainage Structures that would utilize the existing railroad berm to direct drainage. Developer agrees that it shall reimburse VCTC for internal staff costs and third party engineering and legal costs incurred by VCTC in connection with VCTC’s review and approval of plans and specifications of any requested modifications to the Approved Plans for the Work. VCTC acknowledges and agrees that: (a) modifications to the Approved Plans in connection with the Drainage Structures may require County approval and (b) Developer may request modifications to the Drainage Structures as reasonably necessary or required to address issues with drainage arising after construction of the permanent Drainage Structures, and (c) VCTC will not unreasonably withhold, delay or condition its consent to modifications requested by such governmental agencies pursuant to clause (a) or Developer pursuant to clause (b) of this Section 1, provided that an engineer or construction rail facilities expert provides a written statement to VCTC that states that the requested modifications would not: (i) impair the existing railroad berm, (ii) increase VCTC’s maintenance responsibilities of the existing railroad berm, (iii) impair VCTC’s utilization of the VCTC Property, or (iv) expand the Easement Areas. Developer further agrees that it shall be solely responsible for any and all additional costs associated with such requested modifications. Developer further agrees that it shall be solely responsible for any and all additional costs associated with such requested modifications.

2. **Drainage Structures.** VCTC hereby grants the Developer a non-exclusive surface and subsurface easement in gross in the location legally described and depicted on Exhibit D,

which shall be transferable by Developer as further set forth in Section 16, solely for the purpose of constructing, in substantial conformity with the Approved Plans as summarized in Exhibit D-1 for the Drainage Structures, and installing, inspecting, operating, using, maintaining, repairing and replacing the Drainage Structures to carry runoff and drainage flows from the Phase 2 Property and its surrounding watershed to nearby storm channels for the benefit of the Project and the Phase 2 Property (the “**Storm Drain Easement**”). Developer shall construct, maintain and operate the Drainage Structures in substantial conformity with the Approved Plans for the Drainage Structures approved by the County and any other governmental agency with authority over the Drainage Structures. Upon the completion of the Drainage Structures, Developer intends to assign the Storm Drain Easement to City or a City District in accordance with Section 16 for the operation and maintenance (including any future repairs and replacement) of the Drainage Structures. City shall accept the assignment of the Drainage Structures and the Storm Drain Easement pursuant to the conditions of approval for the Phase 2 Property set forth in Tentative Tract Map 5520 (Heritage Valley Parks Specific Plan Phase 2) or shall cause a City District to accept the assignment. If City determines that the Drainage Structures are not built in substantial conformance with the Approved Plans (as the same may be modified pursuant to Section 1, Developer shall make any and all corrections reasonably requested by City to allow City or such City District to accept the assignment.

Developer (and then City or such City District, as applicable, after accepting the assignment) shall be solely responsible for constructing, maintaining and operating the Drainage Structures in substantial conformity with the Approved Plans (as the same may be modified pursuant to Section 1) and in a good and safe condition. Under no circumstances shall VCTC be responsible for constructing, maintaining or operating the Drainage Structures. Developer (and then City or City District, as applicable, after accepting the assignment) shall inspect and maintain the Drainage Structures on a regular basis, not less than four (4) times per year, to prevent any backups and to ensure the Drainage Structures are in good condition and that there is proper flow of water within the Drainage Structures, with one of the required inspections to take place in August of every year with all maintenance identified by that inspection completed by October 1st in advance of the rainy season; provided that, following assignment of this Storm Drain Easement and the Drainage Structures to City or City District, as applicable, maintenance of the Drainage Structures shall be performed by City or City District, as applicable, in accordance with its normal maintenance schedule for City or City-District owned drainage facilities.

Except in emergency situations, Developer or any assignee shall, prior to the commencement of any maintenance of the Drainage Structure within twenty (20) feet of VCTC's property, submit to VCTC plans setting out the method and manner of the work to be done. Developer shall not proceed with the maintenance work until such plans have been approved, in writing, by VCTC and any other required government agency and VCTC has granted Developer a right of entry for such maintenance activities. When performing any maintenance, Developer, at its sole cost and expense, shall perform such work as VCTC, in its sole determination, determines necessary to protect VCTC rail lines. If an emergency should arise requiring immediate attention, Developer shall provide as much notice as practicable before Developer commences any maintenance work and shall only perform work necessary to address the immediate emergency situation. In such situation, Developer shall take all commercially reasonable steps necessary to protect VCTC rail lines. All of the foregoing rights and operation and maintenance obligations of

the Developer under this Section 2 shall be the sole and exclusive rights and obligations of City or City District, as applicable, upon acceptance by the City of the Drainage Structures and assignment by Developer and assumption by the City or City District, as applicable, of the obligations of the Developer in accordance with Section 16, and effective upon such assignment and assumption Developer shall be automatically released from such obligations as further set forth in Section 16.

Developer and any assignee understands that there are active train operations on the Branch Line and acknowledges that any construction, operation and maintenance activities occurring on or near the Branch Line must be: (1) coordinated with the train operator so trains will not be unreasonably out of service Monday through Friday and will not be out of service on Saturday or Sunday except in the event that emergency repairs are necessary, and (2) must be undertaken in compliance with all applicable regulations governing rail lines, including regulations promulgated by the CPUC and the Federal Railroad Administration.

3. **Additional Drainage.** VCTC hereby authorizes Developer to fill the Temporary Drainage Facilities upon completion by Developer of the Drainage Structures, as demonstrated by a document showing that a final inspection has been conducted and approved by either City or the County, and as authorized by CDFW in correspondence attached as Exhibit C. The right of Developer to fill the Temporary Drainage Facilities and the obligations of VCTC set forth in Section 20 shall continue in perpetuity, notwithstanding the termination of this Agreement, upon completion by Developer and approval by City or County of the permanent drainage culvert and provision by Developer to VCTC of the documentation described in the first sentence of this Section 3, Developer shall have the right to carry out the Work described in this Section 3 pursuant to the Construction Easement.

4. **Future Agreement regarding Rail Crossing and Utilities.** Both parties acknowledge that CPUC approval of the plans and the location of the proposed Rail Crossing are required before VCTC can consider granting an easement for the construction, operation and maintenance of the proposed Rail Crossing and Utilities substantially in the form of the Construction and Non-Exclusive Easement Agreement (Rail Crossing and Utilities) attached as Exhibit G (“**Rail Crossing and Utilities Agreement**”), which VCTC has reviewed and provided staff approval of the plans submitted by Developer to VCTC with respect to such improvements. Nonetheless, VCTC has advised Developer that it will not formally consider Developer’s request with respect to the Rail Crossing and Utilities Agreement until CPUC has considered and approved Developer’s request. The draft Rail Crossing and Utilities Agreement in Exhibit G shall not be considered by VCTC unless and until CPUC approval has been obtained. VCTC recognizes that time is of the essence once CPUC approval has been received as approvals issued by CPUC have limited terms. Accordingly, VCTC hereby agrees that promptly following CPUC approval of the Rail Crossing, VCTC and Developer shall determine whether the CPUC approval is consistent with the plans and specifications submitted by Developer to VCTC for the Rail Crossing and Utilities and if the approval is consistent, VCTC shall place the Rail Crossing and Utilities Agreement on the agenda for consideration by the VCTC Board of Directors no later than at the second regularly scheduled Board meeting occurring following the date of the CPUC approval. If the CPUC approval requires relocation of the Rail Crossing or Utilities, Developer shall revise the plans and specifications referenced in the Rail Crossing and Utilities Agreement and shall submit the revised documents to VCTC. VCTC shall cooperate with Developer by promptly reviewing

any revised plans and specifications submitted by Developer. Upon approval of such plans and specifications by VCTC, Developer shall cause the exhibits to the Rail Crossing and Utilities Agreement to be revised to reflect the approved plans and specifications, and VCTC shall place the Rail Crossing and Utilities Agreement, as so revised, on the agenda for consideration by the VCTC Board of Directors no later than at the second regularly scheduled Board meeting occurring following the date of the VCTC approval of the revised plans and specifications.

5. **Grading Easement.** VCTC hereby grants to Developer a non-exclusive easement appurtenant to the Phase 2 Property solely for the term set forth in Section 6 for the purpose of performing grading and compaction of fill by Developer upon the VCTC Property (“**Grading Easement**”) in the locations legally described and depicted on Exhibit F (the “**Grading Easement Area**”), in connection with Developer’s construction, installation, inspection, operation, use and maintenance of a sound wall barrier on the Phase 2 Property for the benefit of the Project and the Phase 2 Property. The initial grading and compaction of fill under the Grading Easement shall take place during the period set forth in Section 6. Provided that the compaction and fill are carried out during such time period, the Grading Easement includes the right of Developer and its successors and assigns to inspect, maintain, repair and replace such fill in connection with the maintenance, repair and replacement by Developer of the sound wall barrier. Developer and VCTC acknowledge and agree that the sound wall barrier itself must be entirely constructed on the Phase 2 Property and no portion of it may be located in the Grading Easement Area nor any other area of the VCTC Property. Developer shall conduct all grading and install the compacted fill in substantial conformity with the Approved Plans as summarized in Exhibit F-1 and approved by City, the County, VCTC and any other governmental agency with authority over the grading and compacted fill. Developer shall be solely responsible for carrying out the grading and installing the compacted fill in substantial conformity with the Approved Plans and in a good and safe condition. Under no circumstances shall VCTC be responsible for carrying out the grading or installing the compacted fill. Upon completion of the grading and installation of the compacted fill, Developer shall provide VCTC with a final compaction report within thirty (30) days. Prior to commencement of the Grading Work, Developer shall submit to VCTC a copy of all final Approved Plans, permits and authorizations, as applicable, from any governmental agency with approval authority over the Work and, if applicable, the Lessee and train operator.

VCTC acknowledges that Developer intends to sell homes, and such sale may include sale of portions of the sound wall to individual Homeowners or to a Homeowners’ association. Alternatively, Developer may convey the sound wall to City or a City District upon completion. Therefore, from and after the date upon which Developer enters into the first sales agreement or conveyance agreement conveying any portion of the sound wall or the property upon which the sound wall is located to a Homeowner, Homeowners’ association, City or a City District (“**Conveyance Date**”), VCTC agrees that, except in the case of an emergency, it shall not alter, modify or remove the compacted fill upon the VCTC Property except in a manner that will not undermine stability of the sound wall or alternatively, VCTC shall provide alternative means of support for the sound wall. Prior to the Conveyance Date, VCTC shall have the right to alter, modify or remove the compacted fill upon the VCTC Property provided that VCTC provides Developer with reasonable advance written notice and coordinate with Developer in order to diminish the impact to the sound wall.

Upon the termination of the Grading Easement, any and all interest in the VCTC Property conveyed by the Grading Easement shall automatically revert to VCTC or its assigns and successors, without the necessity of any further action to effect such reversion and Developer shall, upon VCTC's request, restore the Grading Easement area, excepting the Grading Work remaining permitted by this Agreement, to as near a condition as existing prior to the performance of the Work as is reasonably practicable.

6. **Temporary Nature of Grading Easement.** The Grading Easement effective as of the Effective Date shall terminate upon the earlier of (a) three (3) years from the Effective Date of this Agreement, or, if an extension is granted as set forth below, upon such later termination date or (b) acceptance by the City of the Drainage Structures. Developer has the option to request a two (2) year extension of the term if Developer had commenced construction and proceeds with the Grading Work prior to the termination of the initial three (3) year term. To request the extension, Developer must notify VCTC in writing prior to the expiration of the initial term of its desire to extend the term, if VCTC finds there is a reasonable basis for granting the extension, VCTC will notify Developer in writing of its approval of the extension. For avoidance of doubt, the terms of this Section 6 shall not apply to the Storm Drain Easement.

7. **Active Train Operations.** Developer or any assignee understands that there are active train operations on the Branch Line and acknowledges that its plan, schematics and resulting improvements occurring on or near the Branch Line and any construction activities occurring on or near the Branch Line must be (1) coordinated with the train operator so trains will not be unreasonably out of service Monday through Friday and will not be out of service on Saturday or Sunday except in the event that emergency repairs are necessary, and (2) undertaken by Developer in compliance with all applicable regulations governing rail lines, including regulations promulgated by the CPUC and the Federal Railroad Administration. Developer shall provide the train operator a minimum of seven (7) days advance notice of any Developer or Developer's contractor's activities within the rail right of way and shall take reasonable actions to prevent any disruption to normal train operations.

Developer shall prepare and include in covenants, conditions, and restrictions running with the land for any residential property sold or rented a written disclosure that homes on the Phase 2 Property may be subject to noise and vibration from the active train operations on the Branch Line.

8. **Relocation/Modification.**

8.1 **Relocation.** Subject to the requirements established in this Agreement for notification and coordination, if, in VCTC's sole determination, the location of the Storm Drain Easement or configuration of any of the Drainage Structures interfere or inhibit any of VCTC's operations, Developer shall within ninety (90) days after prior written notice from VCTC and the grant of the New Easement or such additional time as is commercially reasonable for such relocation (the "**Relocation Period**") relocate such Drainage Structures to a different location approved by VCTC at Developer's sole cost and expense. Upon VCTC's determination that such relocation is necessary, VCTC shall grant to Developer a new non-exclusive easement to install and maintain the relocated Drainage Structures on the same terms and conditions as the Storm Drain Easement provided for by this Agreement ("**New Easement**"). VCTC and Developer agree

that upon completion of the new storm drain facilities, and approval of such relocated facilities by VCTC and appropriate regulatory agencies, Developer and VCTC shall terminate the previous Storm Drain Easement and such Storm Drain Easement shall be quitclaimed from Developer to VCTC without expense to VCTC, and any and all interest in VCTC's property conveyed to Developer in the previous Storm Drain Easement shall automatically revert to VCTC or its assigns and successors, without the necessity of any further action to effect such reversion. Notwithstanding the foregoing, VCTC shall only require relocation of the Storm Drain Easement or reconfiguration of any of the Drainage Structures in connection with work carried out in furtherance of a project necessary to fulfill the mission of the VCTC as that mission is set forth in the Ventura-Santa Clarita Rail Corridor Study adopted in 1993; Santa Paula Branch Line Master Plan adopted in 1996; Ventura Rail Right-of-Way Restoration Study adopted in 1998; Santa Paula Branch Line Management and Capital Needs Assessment adopted in 1999; Santa Paula Branch Line Master Plan Environmental Impact Report adopted in 2000; Santa Paula Branch Line Recreational Trail Master Plan adopted in 2000; Santa Paula Branch Line Rail Corridor Study adopted in 2006; and Fillmore and Western Railroad Regional Hydrology and Hydrologic Study adopted in 2012; or any amendments thereto as adopted by VCTC.

In the event that Developer fails to relocate the Drainage Structures within a reasonable amount of time after notice from VCTC, VCTC may relocate the Drainage Structures and the cost and expense of such relocation shall be payable by Developer.

8.2 **Modification.** In the event that VCTC desires to make a temporary or permanent modification to the Drainage Structures under circumstances not covered in Section 8.1, VCTC shall provide Developer and City (or City District, if applicable) a minimum of thirty (30) days prior written notice for modifications to the Drainage Structures. In the event of an emergency situation, VCTC may make immediate modifications to the Drainage Structures without providing prior written notice to Developer or City or City District, as applicable, however, VCTC will provide notice of such immediate modifications to such entities as soon as reasonably practicable after such modifications have been made. In the event that modifications contemplated by this Section are necessary for VCTC's use and enjoyment of its property and arise from direct conflicts between use of the VCTC Property for purposes set forth in the Ventura-Santa Clarita Rail Corridor Study adopted in 1993; Santa Paula Branch Line Master Plan adopted in 1996; Ventura Rail Right-of-Way Restoration Study adopted in 1998; Santa Paula Branch Line Management and Capital Needs Assessment adopted in 1999; Santa Paula Branch Line Master Plan Environmental Impact Report adopted in 2000; Santa Paula Branch Line Recreational Trail Master Plan adopted in 2000; Santa Paula Branch Line Rail Corridor Study adopted in 2006; and Fillmore and Western Railroad Regional Hydrology and Hydrologic Study adopted in 2012; or any amendments thereto approved by VCTC and the construction, maintenance and use of the Drainage Structures, the cost and expense of such modifications shall be payable by Developer.

8.3 **Meet and Confer.** Within thirty (30) calendar days following any non-emergency notification from VCTC pursuant to Sections 8.1 or 8.2, VCTC and Developer shall meet and confer in order to discuss the scope and extent of modifications requested by VCTC, to seek to determine the least impactful means of making such modifications and to establish a reasonable time frame for performance of such work.

8.4 **Effect of Assignment.** All of the foregoing rights and obligations of the Developer in this Section 8 shall be the sole and exclusive rights and obligations of City, or City District, as applicable, after assignment of this Agreement and acceptance of the Drainage Structures and assumption of this Agreement by the City or City District, as applicable, in accordance with Section 16 and effective upon such assignment and assumption Developer shall be automatically released from such obligations as further set forth in Section 16.

9. **Other Third Party and Governmental Approvals.** Nothing in this Section 9 shall be interpreted as limiting or diminishing VCTC's right of review and final approval of the location, construction, maintenance and operation of the Drainage Structures or the Grading Work in an accordance with the Approved Plans. Provided that the Developer (1) names VCTC as co-obligee with City on a performance bond satisfactory to VCTC for the faithful performance of the Work in the amount equal to the cost of the Work; and (2) provides a payment bond satisfactory to VCTC securing the claims of persons employed by Developer and the claims of persons who furnish materials, supplies or equipment used or consumed by Developer in the performance of the Work in the amount equal to the cost of the Work, then VCTC agrees that upon issuance of all required governmental approvals required to proceed with any element of the Work, Developer may commence construction of the element of the Work so approved. Upon completion of the Drainage Structures, Developer may assign the Storm Drain Easement and Drainage Structures pursuant to Section 16, without requirement to obtain the approval of governmental authorities which lack jurisdiction over the completed portions of the Work. Further, VCTC acknowledges and agrees to allow the various agencies to provide their oversight and approval without the need to involve other agencies who lack jurisdiction over the relevant element.

10. **Prior Rights.** Except as expressly provided herein, VCTC reserves and retains all property rights in and to Easements, including, without limitation, the non-exclusive rights to use any Easement for any purpose whatsoever. It is expressly understood that such use by VCTC, includes use of the Easement(s) for pedestrian, bicycle, rail or transportation purposes and such use shall not be deemed to interfere with rights granted to Developer in this Agreement. Developer may not use the Easements in any manner which hinders, obstructs, blocks, encroaches upon, or interferes with the VCTC's use of the Easements without the prior written consent of VCTC. It is expressly understood that VCTC may grant other individuals or entities the right to use the same real property as covered by the Easements without the consent of Developer so long as such use does not unreasonably interfere in a material manner with the rights granted to Developer in this Agreement.

11. **No Warranties: AS-IS Condition.** Developer agrees that it is accepting the Easements without any warranty or representation by VCTC whatsoever, in their "AS-IS", "WHERE-IS", "WITH ALL FAULTS" condition and subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting the Easements and/or affecting access thereto.

12. **Payment.** In consideration of the Easements granted by VCTC under this Agreement and the agreement of VCTC set forth in Section 20, within thirty (30) days of the

Effective Date of this Agreement, Developer shall (a) pay to VCTC the sum of Twenty Five Thousand Three Hundred Fifty Nine Dollars (\$25,359) for the Easements granted by this Agreement, which amount comprises the fair market value, determined by appraisal, of the Easements and the agreement of VCTC set forth in Section 20 and (b) reimburse VCTC for all reasonable third party costs associated with preparation of this easement agreement and VCTC's review and approval of plans and specifications for the Work incurred to the Effective Date of this Agreement and for which invoices or invoice summaries have been provided to Developer by VCTC as of the Effective Date.

13. **Insurance Requirements.** Before beginning any work or activities under this Agreement, Developer (and any assignee under Section 16), at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for as long as the Easements remain in existence.

13.1 **Workers' Compensation.** Developer shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance ("**Workers Compensation Policy**") for any and all persons employed directly or indirectly by Developer with limits of not less than one million dollars (\$1,000,000) per accident.

13.2 **Commercial General and Automobile Liability Insurance.**

13.2.1 **Commercial General Insurance.** Developer shall maintain commercial general liability insurance, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations or activities of Developer. The policy shall provide a minimum limit of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on "an occurrence" basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than one hundred thousand dollars (\$100,000). No endorsement shall be attached limiting the coverage.

13.2.2 **Automobile Liability.** Developer shall maintain automobile liability insurance form CA 0001 (current edition) covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle pursuant to this Agreement, whether or not owned by the Developer, on or off the VCTC Property. The policy shall provide a minimum limit of one million dollars (\$1,000,000) per each accident, with a self-insured retention or deductible of no more than one hundred thousand dollars (\$100,000). This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

13.2.3 **Railroad Protective Liability.** Developer shall maintain railroad protective liability (RPL) coverage for liability it may incur because of work done on or near the railroad's right-of-way by hired contractors and/or third parties within 50 feet of the VCTC Property. This policy shall provide a minimum limit of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.

13.2.4 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

13.3 **All Policies Requirements.**

13.3.1 **Verification of Coverage.** Prior to beginning any work or activities under this Agreement, Developer shall provide VCTC with (a) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (b) policy endorsements to the policies referenced in Section 13.2 adding VCTC, its officers, agents, and employees as additional insureds and declaring such insurance primary in regard to work performed pursuant to this Agreement.

13.3.2 **Notice of Reduction in or Cancellation of Coverage.** Developer shall provide at least thirty (30) days prior written notice to VCTC of any reduction in scope or amount, cancellation, or modification adverse to VCTC of the policies referenced in this Section 13.

13.3.3 **Higher Limits.** If Developer maintains higher limits than the minimums specified herein, VCTC shall be entitled to coverage for the higher limits maintained by the Developer.

13.4 **Waiver of Subrogation.** Developer agrees to waive subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of VCTC for all work performed by Developer, its employees, agents and contractors.

13.5 **Developer's Obligation.** Developer shall be solely responsible for ensuring that all equipment, vehicles and other items utilized or operated in the performance of any activities pursuant to this Agreement are and remain covered by the policies referenced in this Section 13. Developer shall also ensure that all workers involved in the performance of this Agreement are properly classified as employees, agents or independent contractors and are and remain covered by the Workers' Compensation Policy.

13.6 **Self-Insured Retention.** If any of the insurance policies required under this Agreement includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement so as to not prevent any of the Parties from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

14. **Indemnification.** Developer (and following assignment, each assignee of Developer) shall indemnify, defend with counsel acceptable to VCTC, and hold harmless VCTC, its officers, officials, employees and agents (the "**VCTC Parties**"), subject to the additional

limitations set forth in Section 15, from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense, including without limitation, reasonable attorney's fees and costs of litigation (each and collectively, "**Losses and Liabilities**") to the extent resulting from or arising in connection with the construction, maintenance or operation of the Work, including, but not limited to, flooding of any kind caused by increased runoffs and drainage flows from the Phase 2 Property, Beserra Property, or associated improvements, provided that in no event shall Developer or any assignee of Developer be responsible (and such indemnity shall not apply) to the extent that any such Losses and Liabilities are caused by (i) the gross negligence or willful misconduct of VCTC or any VCTC Parties, or (ii) the breach by VCTC of any of its obligations under this Agreement. Developer's obligations under this Section 14 shall survive termination of this Agreement and the Easements, provided that the foregoing obligations of the Developer in this Section 14 shall become the sole and exclusive obligations of the assignee pursuant to Section 16 as to each Easement and related improvements (and as to all provisions of this Agreement applicable thereto) for which the assignee accepts the assignment under Section 16, with respect to Losses and Liabilities arising from and after the effective date of such assignment and assumption. Developer shall with respect to all Easements and improvements so assigned and assumed or addressed in a new agreement, automatically be released from its obligations under this Agreement arising from and after the date of such assignment including, without limitation, from the provisions of this Section 14. In light of Developer's indemnity for Losses and Liabilities as set forth in this Section, in no event shall VCTC have the right to settle any claim or legal action, including without limitation, any litigation or administrative proceeding, or agree to payment with respect to any Losses and Liabilities without the prior written consent of Developer, which consent shall not be unreasonably withheld.

15. **Hazardous Material Indemnification**. To the fullest extent permitted by law, Developer, for itself and on behalf of its successors and assigns, and subject to the additional limitations set forth in this Section 15, shall and hereby agrees to defend, hold harmless, and indemnify the VCTC Parties from and against any and all Losses and Liabilities (as defined above in Section 14) including bodily injury or property damage resulting from the discovery, presence, release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination by Developer or its contractors or agents associated with the Work and/or its use of the Easements during the period of construction of the Work, including all Losses and Liabilities arising out of, or related to, any violation by Developer or its contractors or agents on, upon or within the Easement Areas of any applicable Environmental Law. Notwithstanding the prior sentence, Sections 14 and 15 shall not apply to any Losses and Liabilities that VCTC may incur by reason of Contamination that migrates, through no fault of the Developer or its successors and assigns, to the Easement Areas from other real property not owned by Developer or VCTC (the "**Migrated Contamination**") after completion of the Work or Contamination resulting from the acts or omissions of VCTC after the Effective Date (the "**VCTC Contamination**") or to any discovery or presence of Migrated Contamination on, upon or within the Easement Areas that is not identified during the period of construction of the Work, but shall apply to any Losses and Liabilities that result from the exacerbation of any such Migrated Contamination or VCTC Contamination by Developer or its contractors or agents during the period of construction of the Work and after Developer has knowledge of the existence of such Contamination. As of the Effective Date, VCTC has no record of the existence of any Contamination on or under the Easement Areas. In addition, following completion of the Work, Developer shall conduct soil

testing of the portions of the VCTC Property subject to the Easements in order to determine whether any release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination by Developer or its contractors or agents associated with the Work occurred. Prior to commencing such soil testing, Developer shall provide a work plan for the testing that shall be subject to review and approval by VCTC and City each in its reasonable discretion. VCTC and City shall have fifteen (15) working days to review and either approve or submit comments on the work plan. If VCTC or City submit comments, VCTC or City shall have an additional ten (10) working days to review the revised work plan. VCTC and City shall have the right to approve the consultant selected to prepare the work plan and to conduct the testing, which approval shall not be unreasonably withheld. The results of the soil tests shall be promptly provided to VCTC and City, and each shall, within fifteen (15) working days after receipt, review and either confirm that the tests were carried out in accordance with the approved work plan, approve any variations, or request performance of additional testing work to conform the testing to the original work plan or to further address any Hazardous Materials discovered. If any additional testing work is requested by either VCTC or the City, Developer shall promptly conduct such additional testing work and shall submit such results to VCTC and City for further review and to determine whether the tests were carried out in conformance with approved work plan.

Notwithstanding the foregoing, in no event shall Developer or any assignee of Developer be responsible (and such indemnity shall not apply) to the extent that any such Losses and Liabilities are caused by (i) the gross negligence or willful misconduct of VCTC or any VCTC Parties, or (ii) the breach by VCTC of any of its obligations under this Agreement. All of the foregoing obligations of the Developer in this Section 15 shall be the sole and exclusive obligations of the assignee if the assignee accepts the assignment of the applicable Easements under Section 16 and from and after the effective date of such assignment and assumption Developer shall automatically be released from its obligations under this Agreement arising from and after the date of such transfer including without limitation from the provisions of this Section 15. In light of Developer's indemnity for Losses and Liabilities as set forth in this Section 15, in no event shall VCTC have the right to settle any claim or legal action, including without limitation, any litigation or administrative proceeding, or agree to payment with respect to any Losses and Liabilities without the prior written consent of Developer, which consent shall not be unreasonably withheld.

For the purposes of this Section 15 the following definitions shall apply:

(a) **“Contamination”** means the presence of any chemical, compound, material, substance, or other matter that (i) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance, or waste, or other injurious or potentially injurious material, whether injurious itself or in combination with other materials, (ii) is controlled, designated in or governed by any Environmental Law, or (iii) gives rise to any reporting, notice, or publication requirements or remediation obligation under any applicable Environmental Law; and.

(b) **“Environmental Law”** means any applicable federal, state, local or tribal statute, law, rule, regulation, ordinance, or any governmental, administrative, or judicial order, decree, directive, or decision, or any other requirement of any governmental authority, pertaining

to the protection of the environmental or health and safety that may now be in effect or which may be enacted, adopted, or made effective at a future date.

16. **Assignment.** Developer may assign this Agreement and all of its rights and obligations under this Agreement or may assign any one or more of the Easements and all of its rights and obligations under this Agreement pertaining to the assigned Easement with the prior written consent of VCTC. VCTC consent shall be granted with respect to any assignment to City or any City District following review and confirmation by the VCTC executive director or his or her designee, in his or her reasonable discretion, that the form of the assignment is consistent with the terms required by this Agreement. With respect to any other assignment, VCTC shall have the right, prior to approval of an assignment, to confirm that the potential assignee, in the sole determination of VCTC, has the financial capabilities to perform all such construction, maintenance, operation, insurance, and indemnification obligations required by this Agreement and that the form of the assignment is consistent with the terms required by this Agreement. Unless otherwise agreed by VCTC, in its sole discretion, all assignments shall be memorialized through execution of an Assignment Agreement substantially in the form of the agreement attached hereto as Exhibit H. Developer shall require any assignee, as a condition of any assignment with respect to this Agreement, to assume in writing all of the duties and obligations under this Agreement with respect to the subject Easement(s) assigned. Upon the assignment to and assumption by the City or City District and upon the consent of VCTC to the assignment as required by this Section 16, Developer shall cease to have any further obligations or liabilities under this Agreement and the assignee shall assume and be solely responsible and liable to VCTC for all such obligations and liabilities arising from and after the date of the assignment.

Notwithstanding anything above, except with respect to assignment to City or a City District, VCTC shall have the right to withhold its consent if it determines that any potential assignee does not have the financial capability to perform and/or does not maintain reserves sufficient to allow it to carry out all assigned construction, maintenance, operation and indemnification obligations under this Agreement.

Notwithstanding any other provision of this Agreement, (1) until such time as City or a City District, as applicable, has accepted the assignment by Developer and assumed the obligations of Developer under this Agreement with respect to the Storm Drain Easement, City (or any City District) shall have no obligations under this Agreement and (2) City's execution and acknowledgment of this Agreement is provided solely to indicate that (a) City approves the form and substance of this Agreement; (b) City shall accept the assignment of the Drainage Structures and the Storm Drain Easement pursuant to the conditions of approval for the Phase 2 Property set forth in Tentative Tract Map 5520 (Heritage Valley Parks Specific Plan Phase 2) or shall cause a City District to accept the assignment pursuant to such conditions of approval; and (c) upon acceptance of assignment of this Agreement by City (or any City District), the rights and obligations related to such assignment will be subject to the terms and conditions set forth in this Agreement.

17. **Binding on Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of Developer and VCTC, and each of their heirs, executors, administrators,

successors in interest, and assigns, except that Developer may not transfer or assign this Agreement or any the Easements created hereunder except as provided for in Section 16 of this Agreement.

18. **Events of Default; Remedies.** An event of default (“**Event of Default**”) under this Agreement shall occur if either Party fails to comply with any of the covenants or obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice thereof (or fails to commence to cure such default within such thirty (30) day period and thereafter fails to proceed with due diligence to cure such default).

The Parties agree that upon the occurrence of an Event of Default hereunder, VCTC may pursue all remedies at law or in equity. It is expressly understood by the Parties that such remedies shall include VCTC’s right, in its sole discretion, to terminate the Easement(s) of the defaulting Developer or assignee and to require the defaulting Developer or assignee to quitclaim one or more of its Easements to VCTC and comply with the requirements of this Section 18 only as and to the extent such termination is as a result of a Termination Default (as defined below) by Developer or such assignee. If VCTC exercises its right to terminate pursuant to this Section 18, the affected Easement(s) shall be quitclaimed from Developer or the applicable assignee to VCTC without expense to VCTC, and any and all interest in the VCTC Property conveyed to Developer or any assignee of Developer in the Easement(s) shall automatically revert to VCTC or its assigns and successors, without the necessity of any further action to effect such reversion. All Easements not so terminated shall remain in full force and effect unless or until terminated in accordance with this Agreement. The Parties further agree that upon an Event of Default by VCTC, Developer’s or any assignee’s sole remedy is to require specific performance by VCTC of VCTC’s obligations under this Agreement.

For the purposes of this Section 18 the term “Termination Default” shall mean an Event of Default that: (1) was material and would, if remaining uncured, compromise or threaten the physical stability of the rail line, the berm underlying the rail line or related transportation infrastructure; (2) involves Developer’s or assignee’s failure to fulfill the obligations set forth in Sections 8.1 (Relocation) and 8.2 (Modification); Section 12 (Payment); Section 13 (Insurance); Section 14 (Indemnification); Section 15 (Hazardous Material Indemnification) and Section 19 (Temporary Drainage Facility Waiver).

19. **Temporary Drainage Facilities Waiver.** In exchange for the grant by VCTC to Developer of the Storm Drain Easement and the right to seal the Temporary Drainage Facilities and to construct the Drainage Structures, Developer, on behalf of itself, its successors and assigns and persons or entities purchasing real property within the Phase 2 Property, waives any rights it may have to file claims against VCTC, its officers, employees and agency or complain of water being discharged onto its property from the Beserra Property through the Temporary Drainage Facilities. In the event that persons or entities purchasing property within Phase 2 or the Beserra Property file a claim against VCTC for water being discharged onto their property from the Beserra Property through the Temporary Drainage Facilities, VCTC shall tender such claim to Developer and Developer shall defend, indemnify and hold harmless VCTC in connection with any such claim; provided that in light of Developer’s indemnity set forth in this Section 19 in no event shall VCTC have the right to settle any claim or legal action, including without limitation, any litigation

20. **Berm and Levy Protection to Comply With LOMR.** Within the Berm Area depicted on Exhibit E (“**Berm Area**”), VCTC shall provide reasonable advance written notice to the Developer or any assignee of Developer of any action that would conflict with, modify, affect or undermine the Drainage Structures, the berm or the levy or that would affect the ability of Developer to comply with the CLOMR or cause or result in a violation of the LOMR or a flood risk on the Developer Property, including without limitation installing, removing or modifying any drainage in the berm or entering into any new agreement or modifying any agreement existing as of the Effective Date affecting the Beserra Property or the Phase 2 Property. If VCTC proposes to undertake any work within the Berm Area or enter into any new agreement or modify any agreement existing as of the Effective Date affecting the Beserra Property or the Phase 2 Property without the prior written consent of Developer, then VCTC shall have confirmed, as a condition to proceeding with such work or entering into or modifying such Agreement, that such action shall not violate the terms of the CLOMR or LOMR, as applicable, or shall have obtained a revision of the CLOMR or LOMR as applicable providing equivalent protection to the Phase 2 Property as the then-existing CLOMR or LOMR, as applicable. In the event VCTC obtains a revision to the LOMR, VCTC shall carry out all work required by any then issued conditional letter of map revision in order to obtain the associated final letter of map revision providing equivalent protection to the Phase 2 Property as the then-existing CLOMR or LOMR, as applicable. The provisions of this Section 20 shall survive the termination of this Agreement for the benefit of VCTC, Developer, Hearthstone Multi-Asset Entity C, L.P. (whether or not it is has assigned its rights under this Agreement), and each of their respective successors and assigns owning all or any portion of the Phase 2 Property.

VCTC: Ventura County Transportation Commission
Attn: Executive Director

950 County Square Drive, Suite 207
Ventura, CA 93003
dkettle@goventura.org

Developer: Hearthstone Multi-Asset Entity C, L.P.
 Attn: Dennis Bush
 26300 La Alameda, Suite 230
 Mission Viejo, CA 92691
 dbush@hearthstone.com
 facsimile: (818) 826-5949

With a copy to: Steven C. Porath
 Senior Vice President – General Counsel
 24151 Ventura Blvd.
 Calabasas, CA 91302
 sporath@hearthstone.com
 facsimile: (818) 826-5955

22. **Force Majeure.** The time within which the Developer or VCTC shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed from so doing by certain causes beyond its control, including, and limited to, to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; natural disasters; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation due to no fault of the Party; unusually severe weather; inability to secure or delays in securing labor, fuels, materials, services or tools despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor); the reasonably unforeseeable physical conditions associated with the presence of Contamination on the VCTC Property; third party litigation seeking to restrain, enjoin, challenge or delay approval of this Agreement or the approvals of VCTC required under this Agreement; or injunctions issued by any court of competent jurisdiction; wide-spread economic dislocation or duress. The Party claiming such extension of time to perform ("**First Party**") shall send written notice of the claimed extension to the other Party within thirty (30) days from the date of the First Party's determination that the event or cause of the delay is a matter subject to extension for Force Majeure under this provision.

23. **Runs with the Land; Benefited Parties.** All of the agreements, rights, covenants, conditions, restrictions and grants of easements contained in this Agreement shall run with the land (as defined in California Civil Code Sections 1460 and 1462) and each and every portion thereof and shall be binding upon VCTC and its successors and assigns owning all or any portion of the VCTC Property, whether by operation of law or in any other manner whatsoever and shall continue to be imposed upon such property and each portion thereof as a servitude in favor of, as to the appurtenant Easements granted hereby, the Phase 2 Property and Developer and its successors and assigns owning all or any portion of the Phase 2 Property, and as to all other agreements, rights,

covenants, conditions, restrictions and grants of easements in this Agreement, Developer and its successors and permitted assigns. Despite any provision to the contrary in this Agreement, all references in this Agreement to Developer, VCTC, any assignee or any other person or entity shall be deemed to refer to each such person or entity's successors or assigns. The successors or assigns of each such person or entity, as the owners of any portion of the property affected by this Agreement or any Easement granted hereby, are bound and benefited as applicable by this Agreement. Notwithstanding the foregoing, in no event shall this Agreement impose any obligations upon or grant any rights to any Homeowner except receipt of notice of railroad operations pursuant to Section 7 herein.

24. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of California. Venue for any dispute or claim arising out of or in connection with this Agreement shall lie in the County.

25. **No Waiver.** No delay on the part of any Party in exercising any right or remedy under this Agreement or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy.

26. **Modifications and Amendments.** This Agreement may be amended or modified only by a written instrument recorded in the Official Records that is executed and acknowledged by VCTC and by Developer or its successors or permitted assignees. Notwithstanding any other provision of this Agreement, the consent of Homeowners or, unless a Homeowners' association is the owner of any easement granted hereby, any Homeowners' association, shall not be required in connection with any amendment, termination or modification of this Agreement.

27. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement.

28. **Attorneys' Fees.** In any action or proceeding arising from or relating to this Agreement commenced by a Party hereto, the prevailing Party shall be entitled to recover its reasonable attorneys' fees in addition to any other costs, interest and damages permitted by law.

29. **Exhibits; Recitals.** Unless otherwise indicated, references in this Agreement to Sections, paragraphs, clauses and exhibits are to the same contained in or attached to this Agreement and all exhibits referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section. The Recitals set forth above are incorporated into this Agreements as though fully set forth in this Section.

Exhibit A	Legal Description of VCTC Property
Exhibit B	Legal Description of Phase 2 Property
Exhibit C	California Department of Fish and Wildlife Consent Letter
Exhibit D	Legal Description of Storm Drain Easement
Exhibit D-1	Index Sheet for Drainage Structure Plans
Exhibit E	Depiction of Berm Area
Exhibit F	Legal Description of Grading Easement
Exhibit F-1	Index Sheet for Grading Plans

Exhibit G Rail Crossing and Utilities Easement Agreement
Exhibit H Form of Assignment and Assumption Agreement

{Signatures on the following page}

IN WITNESS WHEREOF, VCTC and Developer have executed this Agreement as of the date first set forth above.

Dated: _____ 2018

VCTC:

THE VENTURA COUNTY
TRANSPORTATION COMMISSION

BY: _____
Darren M. Kettle
Executive Director

Approved as to Form

BY: _____
Steve Mattas
General Counsel

Accepted and Agreed
by the City of Fillmore:
CITY OF FILLMORE

BY: _____
Mayor

Approved as to Form

BY: _____
City Attorney

{Signatures continue on following page}

Dated: _____ 2018 DEVELOPER:

HEARTHSTONE MULTI-ASSET ENTITY C, L.P., a
California limited partnership

By: HHPIII GP, LLC, a California limited liability company
General Partner

By: _____
Steven C. Porath, its Authorized Person

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

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

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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

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

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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT A
Legal Description of VCTC Property

EXHIBIT A
VENTURA COUNTY TRANSPORTATION COMMISSION LAND

THAT PORTION OF THAT 100 FOOT WIDE STRIP OF LAND PART IN THE CITY OF FILLMORE, PART IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, SHOWN AND LABELED "SOUTHERN PACIFIC RAILROAD" ON THE MAP OF TRACT No. 5390 FILED IN BOOK 153, PAGES 84 THROUGH 99, INCLUSIVE, OF MISCELLANEOUS RECORDS (MAPS) IN THE OFFICE OF THE COUNTY RECORDER OF VENTURA COUNTY

SAID LAND IS NOW UNDER THE JURISDICTION OF VENTURA COUNTY TRANSPORTATION COMMISSION.

EXHIBIT A

S'LY LINE OF PARCEL 2 IN DEED
TO STATE OF CALIFORNIA 507 O.R. 473

P.O.B.

STATE ROUTE 126

NE'LY & SW'LY LINE OF VENTURA COUNTY
TRANSPORTATION COMMISSION
SANTA PAULA BRANCH LINE
FORMERLY AS SOUTHERN PACIFIC LINE
NO. 5390 153 MR 84-99
AS SHOWN ON TRACT RAILROAD

LOT 11 & 12 OF TRACT NO. 5390 153 MR 84-99
ORIGINALLY BEING A PORTION OF CIENEGA
FILLMORE SUBDIVISION OF SESPE RANCHO
3 M.R. 5

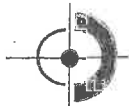


SCALE: 1"=200'



■ AREA OF DESCRIPTION
DESCRIBED IN EXHIBIT A
ATTACHED HERETO AND
MADE A PART HEREOF

NW'LY CORNER PARCEL 2
PARCEL MAP 14 P.M. 49 &
PARCEL 1 OF 4135 O.R. 534



VTNWest

VTNWest, Inc. • 9255 Deering Ave., Suite 200
Chatsworth, CA 91311-5804
818-993-8740 • 818-993-8750 fax

EXHIBIT A

PLAT TO ACCOMPANY LEGAL DESCRIPTION

VTNLGL# 18-04

EXHIBIT B
Legal Description of Phase 2 Property

EXHIBIT B

PHASE 2 PROPERTY

PARCEL 1:

PARCEL 1A: (APN: 054-0-010-125; 054-0-010-135; 054-0-010-145; 054-0-010-155; 054-0-010-165; 054-0-010-175; 054-0-010-185; 054-0-010-195; 054-0-010-205)

LOTS 8 THROUGH 16, INCLUSIVE, OF TRACT NO. 5390, IN THE CITY OF FILLMORE, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 153, PAGES 84 THROUGH 99, INCLUSIVE OF MISCELLANEOUS RECORDS (MAPS) IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPT AN UNDIVIDED 20% INTEREST IN ALL OIL, GAS AND OTHER MINERAL RIGHTS (EXCLUDING GRAVEL) IN SAID LAND, AS GRANTED TO JOHN E. RHODES, ET AL., IN DEED RECORDED APRIL 07, 1964 IN BOOK 2516, PAGE 115 OF OFFICIAL RECORDS.

EXCEPT THEREFROM THAT PORTION OF LOT 16 OF SAID TRACT CONVEYED TO THE CITY OF FILLMORE, A MUNICIPAL CORPORATION, BY DEED RECORDED SEPTEMBER 17, 2004 AS INSTRUMENT NO. 20040917-0253690 OF OFFICIAL RECORDS.
(AFFECTS: PORTIONS OF LOTS 8 THROUGH 16)

ALSO EXCEPT ALL OIL, GAS, GRAVEL AND OTHER MINERAL RIGHTS IN SAID LAND AS

EXCEPTED IN THE DEED FROM JOHN E. RHODES TO MCNAB ESTATE COMPANY IN DEED RECORDED APRIL 08, 1964 IN BOOK 2518, PAGE 170 OF OFFICIAL RECORDS.
(AFFECTS: PORTIONS OF LOTS 8 THROUGH 16)

ALSO EXCEPT AN UNDIVIDED 40% INTEREST IN AND TO ALL OIL, GAS, HYDROCARBON AND MINERALS OF EVERY KIND LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, RIGHT OF SURFACE ENTRY AS GRANTED TO PATRICIA W. HEATH, ET AL., IN DEED RECORDED NOVEMBER 22, 1967 IN BOOK 3226, PAGE 579 OF OFFICIAL RECORDS.
(AFFECTS: PORTIONS OF LOTS 8 THROUGH 16)

ALSO EXCEPT FROM A PORTION OF SAID LAND ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, ALL OTHER MINERALS IN, UNDER OR THAT MAY BE TAKEN FROM SAID LAND, TOGETHER WITH THE SOLE AND EXCLUSIVE PERPETUAL RIGHT TO EXPLORE FOR, PRODUCE, EXTRACT, TAKE AND REMOVE SAID SUBSTANCES (AND WATER FOR SUCH OPERATIONS ON SAID LAND), FROM AND TO STORE THE SAME UPON THE SAID LAND, TOGETHER WITH THE RIGHT TO CONSTRUCT, ERECT, MAINTAIN, OPERATE, USE, REPAIR, AND REPLACE THEREON AND REMOVE THEREFROM ALL DERRICKS, TANKS, MACHINERY, BUILDINGS AND EQUIPMENT AND STRUCTURES WHICH MAY BE REASONABLE, NECESSARY OR CONVENIENT FOR SUCH PURPOSES, TOGETHER WITH THE RIGHT OF WAY FOR PASSAGE OVER, UPON AND ACROSS AND INGRESS AND EGRESS TO AND FROM SAID LAND, AND FOR PIPELINES, TELEPHONE AND POWER LINES IN CONNECTION WITH SAID OPERATIONS ON SAID LAND OR ELSEWHERE, AS RESERVED BY THE TEXAS COMPANY, A CORPORATION, IN DEED RECORDED DECEMBER 03, 1948 IN BOOK 849, PAGE 225 OF OFFICIAL RECORDS.
(AFFECTS: A PORTION OF LOT 16)

ALSO EXCEPT THEREFROM ANY REMAINING INTEREST IN AND TO ALL OIL, GAS, HYDROCARBONS AND MINERALS OF EVERY KIND LYING MORE THAN 500 FEET BELOW THE SURFACE OF SAID LAND, WITHOUT, HOWEVER, THE RIGHT OF SURFACE ENTRY, AS

RESERVED BY ANITA SCHEUER, EXECUTOR, BY DEED RECORDED SEPTEMBER 17, 2004 AS INSTRUMENT NO. 20040917-253691 OF OFFICIAL RECORDS.
(AFFECTS: A PORTION OF LOTS 12 AND 13)

PARCEL 1B: (APN: 054-0-010-265)

THAT PORTION OF LOT 16 OF SAID TRACT NO. 5390, AS CONVEYED TO THE CITY OF FILLMORE, A MUNICIPAL CORPORATION, BY DEED RECORDED SEPTEMBER 17, 2004 AS INSTRUMENT NO. 20040917- 0253690 OF OFFICIAL RECORDS AND AS MORE PARTICULARLY DESCRIBED THEREIN.

PARCEL 2:

PARCEL 2A: (APN: 054-0-010-225)

THAT PORTION OF LOT 17 OF TRACT NO. 5390, IN THE CITY OF FILLMORE, COUNTY OF VENTURA, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 153, PAGES 84 THROUGH 99, INCLUSIVE OF MISCELLANEOUS RECORDS (MAPS) IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AS CONVEYED TO THE OPEN SPACE LAND PRESERVE FOUNDATION, A CALIFORNIA NONPROFIT PUBLIC BENEFIT CORPORATION, IN DEED RECORDED JANUARY 04, 2005 AS INSTRUMENT NO. 2005-0001632 OF OFFICIAL RECORDS. EXCEPT THEREFROM ANY PORTION OF SAID LOT CONVEYED TO THE CITY OF FILLMORE, A MUNICIPAL CORPORATION, BY DEED RECORDED SEPTEMBER 17, 2004 AS INSTRUMENT NO. 20040917-0253690 OF OFFICIAL RECORDS.

PARCEL 2B: (APN: 054-0-010-215)

THAT PORTION OF LOT 17 OF SAID TRACT NO. 5390, AS CONVEYED TO THE CITY OF FILLMORE, A MUNICIPAL CORPORATION, BY DEED RECORDED SEPTEMBER 17, 2004 AS INSTRUMENT NO. 20040917-0253690 OF OFFICIAL RECORDS AND AS MORE PARTICULARLY DESCRIBED THEREIN.

PARCEL 3: (APN: 054-0-010-320)

A PART OF THE RANCH SESPE, DESIGNATED AND DELINEATED AS CIENEGA UPON THE MAP OF THE FILLMORE SUBDIVISION OF THE SESPE RANCHO, IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, RECORDED IN BOOK 3, PAGE 5 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A 1 INCH PIPE SET AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF THAT CERTAIN PUBLIC ROAD 60 FEET WIDE EXTENDING FROM THE CITY OF FILLMORE, TO THE TOWN OF PIRU, KNOWN AS AND CALLED TELEGRAPH ROAD, WITH THE NORTHEASTERLY LINE OF THE RIGHT OF WAY 100 FEET WIDE OF THE SOUTHERN PACIFIC RAILROAD; THENCE FROM SAID POINT OF BEGINNING:

1ST: SOUTH 76°17' EAST 390 FEET ALONG THE SAID SOUTH LINE OF TELEGRAPH ROAD TO A 1 INCH IRON PIPE; THENCE AT RIGHT ANGLES;

2ND: SOUTH 13°41' WEST 209.08 FEET TO A 1 INCH IRON PIPE SET IN THE SAID NORTHEASTERLY LINE OF THE RIGHT OF WAY OF THE SOUTHERN PACIFIC RAILROAD; THENCE ALONG SAID NORTHEASTERLY LINE;








3RD: NORTHWESTERLY 445.60 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF LYING NORTHERLY OF THE SOUTHERLY BOUNDARY OF THOSE CERTAIN PARCELS OF LAND CONVEYED TO THE STATE OF CALIFORNIA BY DEEDS RECORDED JUNE 05, 1937 IN BOOK 522, PAGE 280 AND RECORDED OCTOBER 20, 1993 AS INSTRUMENT NO. 93-197600, BOTH OF OFFICIAL RECORDS.

PARCEL 4: (APN: 054-0-010-335)

THAT PORTION OF LAND IN THE COUNTY OF VENTURA, STATE OF CALIFORNIA, DESCRIBED IN "EXHIBIT G" IN THE DEED RECORDED OCTOBER 30, 2000 AS INSTRUMENT NO. 2000-0170919-00 OF OFFICIAL RECORDS OF SAID COUNTY, DESCRIBED AS FOLLOWS: BEGINNING AT THE INTERSECTION OF THE SOUTHERLY LINE OF LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 24, 1994 AS INSTRUMENT NO. 94-

031648 OF OFFICIAL RECORDS WITH THE WESTERLY LINE OF THE LAND DESCRIBED IN THE
HEREIN ABOVE REFERENCED "EXHIBIT G" HAVING A BEARING OF NORTH 13°43'48" EAST IN
SAID DEED AND A BEARING OF NORTH 14°13'46" EAST FOR THE PURPOSE OF THIS
DESCRIPTION; THENCE ALONG SAID WESTERLY LINE,
1ST: SOUTH 14°13'46" WEST 169.57 FEET TO A POINT OF INTERSECTION WITH THE NORTHERLY
LINE
OF THE RIGHT OF WAY 100 FEET IN WIDTH OF THE SOUTHERN PACIFIC RAILROAD
COMPANY, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS
OF 2814.84 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 37°39'24" EAST; THENCE
ALONG SAID NORTHERLY LINE AND SAID CURVE,
2ND: SOUTHEASTERLY THROUGH A CENTRAL ANGLE OF 8°14'44", A LENGTH OF 405.08 FEET;
THENCE LEAVING SAID NORTHERLY LINE AND SAID CURVE,
3RD: NORTH 17°38'58" EAST 271.88 FEET TO THE SOUTHERLY LINE OF THE HEREIN ABOVE
REFERENCED LAND OF THE STATE OF CALIFORNIA; THENCE ALONG SAID NORTHERLY
LINE,
4TH: NORTH 71°10'47" WEST 399.48 FEET TO THE POINT OF BEGINNING.

-  - TR 5520-1
-  - TR 5520-2
-  - TR 5520-3
-  - TR 5520-4
-  - TR 5520-5
-  - TR 5520-6
-  - TR 5520-7

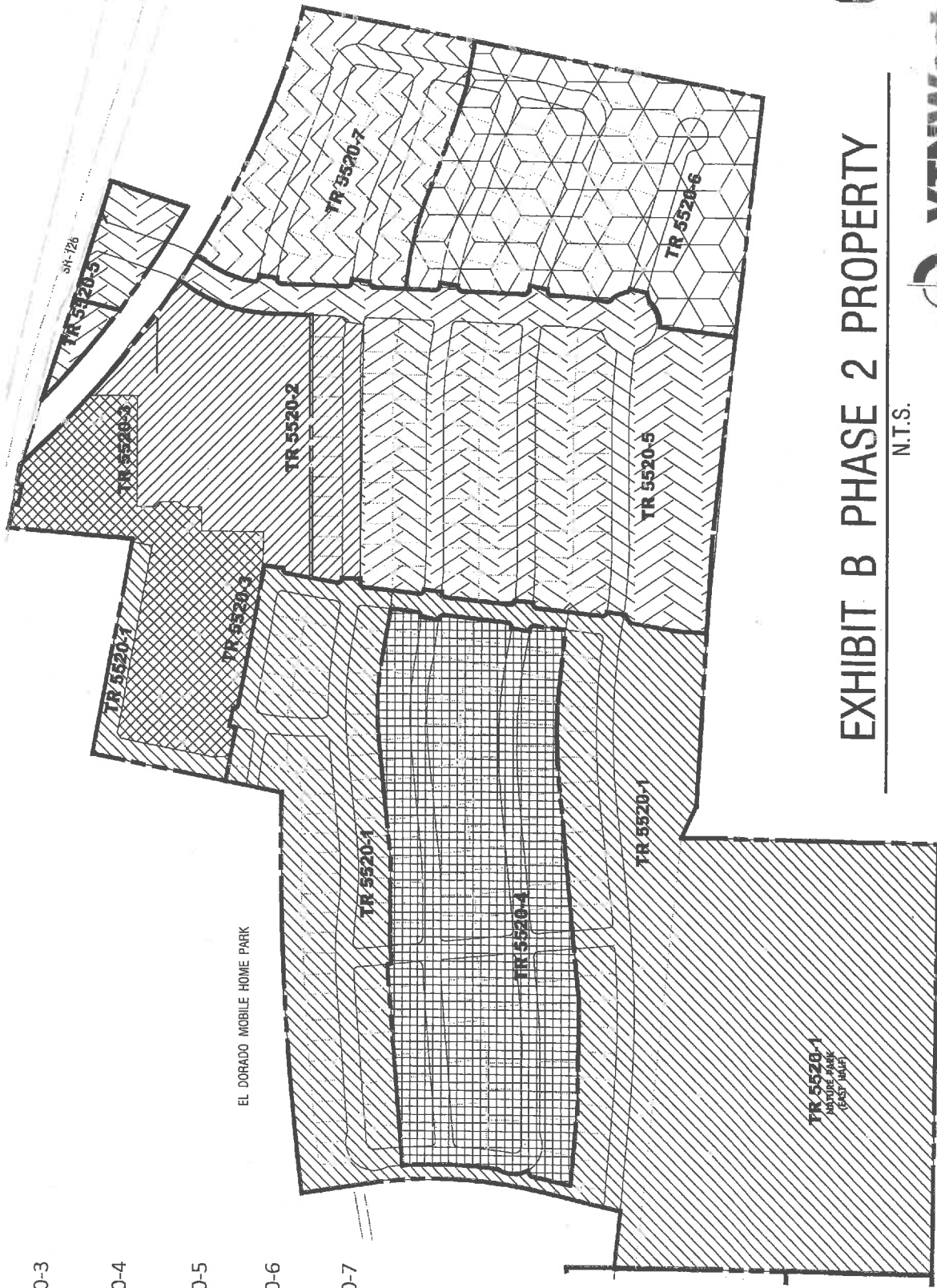


EXHIBIT B PHASE 2 PROPERTY

N.T.S.



VTNWest

VTNWest, Inc. • 9255 Deering Ave., Suite 200
Chatsworth, CA 91311-5804
818-993-8740 • 818-993-8750 fax



EXHIBIT C
California Department of Fish and Wildlife Consent Letter



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, CA 92123
www.wildlife.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



October 18, 2018

Darren Kettle
Executive Director
Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003

Mr. Kettle,

The California Department of Fish and Wildlife ("Department") has reviewed plans provided by Hearthstone Multi-Asset Entity C, L.P. ("Hearthstone") regarding its proposed development and associated improvements of real property located in the City of Fillmore as part of a residential master planned community commonly known as the Heritage Valley Parks ("Phase 2 Property"). Hearthstone's Project is located adjacent to property owned by Ventura County Transportation Commission ("VCTC"), specifically a 100-foot wide strip of land that contains the railroad tracks for the Santa Paula Branch Line.

Developer has proposed completion of a stormwater conveyance structure as shown in the attached plans prepared by VTN West Inc. Department engineers have reviewed the plans and agree that the new box culvert will offset the abandonment of the three pipe culverts, and should not result in higher water levels on the Department's property.

Developer specifically proposes to close two 36-inch pipes and an 18-inch pipe lying west of the levee in the berm which transports water from the Cienega Springs (formerly known as Becerra) Property (Ventura County APN 041026061-5) now owned by the Department onto Phase 2 Property currently owned by Hearthstone. The proposed pipe closure lies beneath the VCTC railroad tracks.

Upon completion of the stormwater conveyance structure as proposed by Developer and approval of final inspection by the City of Fillmore or the County of Ventura, as applicable, the Department hereby consents to allow Developer to fill the two 36-inch pipes and 18-inch pipe with concrete to permanently seal the drainage pipes. The Department concurs with Hearthstone regarding permanent closure of these pipes following replacement with a permanent drainage culvert and other drainage improvements to be installed by Hearthstone in the berm.

Darren Kettle, Executive Director
Ventura County Transportation Commission
October 17, 2018
Page 2

If you have any questions about this request, please contact Tim Dillingham at (858) 627-3939 or email at tim.dillingham@wildlife.ca.gov.

Sincerely,

Mayfield,
Rick@Wildlife

Digitally signed by Mayfield, Rick@Wildlife
DN: DC=Gov, DC=Ca, DC=Dfg, DC=AD, OU=DFG Divisions, OU=(5) SCR, OU=Users, CN="Mayfield, Rick@Wildlife"
Reason: I am the author of this document
Location:
Date: 2018-10-18 10:52:10
Foxit PhantomPDF Version: 9.0.1

Rick Mayfield
Environmental Program Manager
Lands and Wildlife Program
South Coast Region

cc:

Dennis Bush, Hearthstone Multi-Asset Entity C, L.P.

EXHIBIT D

Legal Description of Storm Drain Easement Area

EXHIBIT D

STORM DRAIN EASEMENT

VENTURA COUNTY TRANSPORTATION COMMISSION

SANTA PAULA BRANCH LINE

THAT PORTION OF THE VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, 100.00 FEET WIDE, AS SHOWN ON THE MAP OF TRACT NO. 5390 IN THE CITY OF FILLMORE, COUNTY OF VENTURA, STATE OF CALIFORNIA AS PER THE MAP RECORDED IN BOOK 153, PAGES 84 THROUGH 99, INCLUSIVE OF MISCELLANEOUS RECORDS (MAPS), RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION, SANTA PAULA BRANCH LINE, BEING A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2914.84 FEET, SAID POINT BEING MEASURED ALONG SAID CURVED LINE THROUGH A CENTRAL ANGLE OF 12°54'04" A LENGTH OF 656.33 FEET FROM ITS NORTHWESTERLY TERMINUS, SAID POINT OF COMMENCEMENT BEING A POINT ON A CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 400.00 FEET, A RADIAL LINE TO SAID BEGINNING POINT BEARS SOUTH 61°06'58" EAST; THENCE,

1. NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 11°14'04", A LENGTH OF 78.43 FEET; THENCE TANGENT TO SAID CURVE,
2. NORTH 17°38'58" EAST 23.73 FEET TO A POINT IN SAID NORTHEASTERLY LINE OF THE VENTURA COUNTY TRANSPORTATION COMMISSION, SANTA PAULA BRANCH LINE, 100.00 FEET WIDE, BEING A CURVED LINE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2814.84 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 33°23'37" WEST; THENCE, ALONG THE ARC OF SAID LAST CURVE,
3. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 01°03'37", A LENGTH OF 52.09 FEET TO A POINT IN A LINE MEASURED NORTHWESTERLY 50.00 FEET, PARALLEL WITH AND PERPENDICULAR TO SAID HEREIN ABOVE COURSE NO. 2, SAID POINT BEING THE **TRUE POINT OF BEGINNING** FOR THIS DESCRIPTION; THENCE, CONTINUING ALONG THE ARC OF SAID LAST CURVE,
4. NORTHWESTERLY THROUGH A CENTRAL ANGLE OF 02°52'14", A LENGTH OF 141.03 FEET; THENCE LEAVING SAID NORTHEASTERLY LINE OF THE VENTURA COUNTY TRANSPORTATION COMMISSION, SANTA PAULA BRANCH LINE AND ALONG A LINE RADIAL FROM SAID LAST CURVE,
5. SOUTH 37°19'28" WEST 100.00 FEET TO SAID SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION, SANTA PAULA BRANCH LINE, SAID LAST COURSE BEING RADIAL FROM SAID CURVE; THENCE ALONG SAID LINE AND THE ARC OF SAID CURVE,

DECEMBER 27, 2016

W.O. 6383-008

VTNLGL #16-13

EXHIBIT D

6. SOUTHWESTERTLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}38'55''$, A LENGTH OF 33.00 FEET TO A LINE MEASURED SOUTHEASTERLY, PARALLEL WITH AND PERPENDICULAR TO SAID HEREIN ABOVE COURSE NO. 5; THENCE ALONG SAID PARALLEL LINE,
7. NORTH $37^{\circ}19'28''$ EAST 67.15 FEET; THENCE,
8. NORTH $82^{\circ}19'28''$ EAST 25.63 FEET TO A POINT ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2829.84 FEET BEING PARALLEL WITH AND CONCENTRIC TO SAID HEREIN ABOVE COURSE NO. 4, A RADIAL LINE TO SAID POINT BEARS SOUTH $36^{\circ}17'21''$ WEST; THENCE ALONG THE ARC OF SAID CONCENTRIC CURVED LINE,
9. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF $01^{\circ}55'38''$, A LENGTH OF 95.18 FEET TO ITS INTERSECTION WITH SAID PARALLEL LINE CITED HEREIN ABOVE IN COURSE NO. 2; THENCE ALONG SAID PARALLEL LINE,
10. NORTH $17^{\circ}38'58''$ EAST 15.67 FEET TO THE TRUE POINT OF BEGINNING.

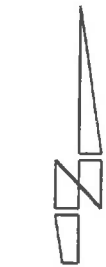
CONTAINING APPROXIMATELY 5122 SQUARE FEET

EXHIBIT D

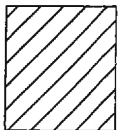
STATE ROUTE 126

SANTA PAULA BRANCH LINE

T.P.O.B.



SCALE: 1"=60'



• AREA OF DESCRIPTION
DESCRIBED IN EXHIBIT A
ATTACHED HERETO AND
MADE A PART HEREOF



VTNWest

VTNWest, Inc. • 9255 Deering Ave., Suite 200
Chatsworth, CA 91311-5804
818-993-8740 • 818-993-8750 fax

PLAT TO ACCOMPANY LEGAL DESCRIPTION

EXHIBIT D

VTNLGL# 16-13

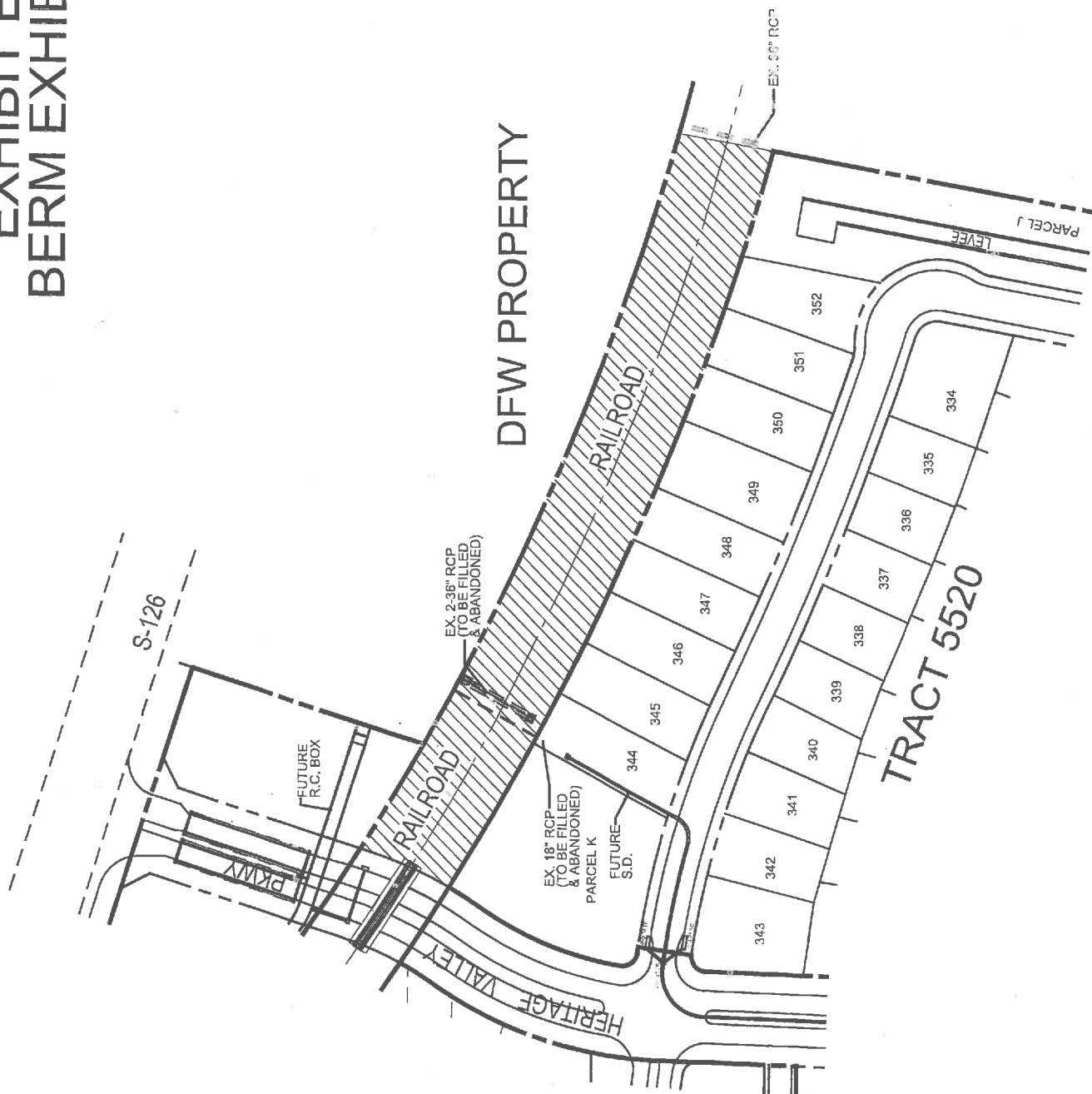
...\\304lg002-EX-D.dgn 8/7/2018 6:32:09 AM

EXHIBIT D-1

Index Sheet for Drainage Structure Plans

EXHIBIT E
Depiction of Berm Area

EXHIBIT E BERM EXHIBIT



N.T.S.

EXHIBIT F
Legal Description of Grading Easement

EXHIBIT F
GRADING EASEMENT

VENTURA COUNTY TRANSPORTATION COMMISSION

SANTA PAULA BRANCH LINE

THAT PORTION OF THE VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, 100.00 FEET WIDE, AS SHOWN ON THE MAP OF TRACT NO. 5390 IN THE CITY OF FILLMORE, COUNTY OF VENTURA, STATE OF CALIFORNIA AS PER THE MAP RECORDED IN BOOK 153, PAGES 84 THROUGH 99, INCLUSIVE OF MISCELANEOUS RECORDS (MAPS), RECORDS OF SAID COUNTY DESCRIBED AS FOLLOWS:

PARCEL F-1

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION, SANTA PAULA BRANCH LINE, DISTANT THEREON 8.16 FEET SOUTHEASTERLY FROM THE NORTHWESTERLY TERMINUS OF THAT LINE SHOWN AS HAVING A BEARING OF NORTH 43°12'09" WEST AND A DISTANCE OF 63.49 FEET ON SAID MAP OF TRACT NO. 5390; THENCE, CONTINUING SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE BY THE FOLLOWING 6 COURSES,

1. SOUTH 43°12'09" EAST 55.33 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 11509.13 FEET; THENCE ALONG THE ARC OF SAID CURVE,
2. SOUTHEASTERLY, THROUGH A CENTAL ANGLE OF 00°09'00", A LENGTH OF 30.13 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 5779.57 FEET; THENCE ALONG THE ARC OF SAID CURVE,
3. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 00°18'00", A LENGTH OF 30.26 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 3869.70 FEET; THENCE, ALONG THE ARC OF SAID CURVE,
4. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 00°27'00", A LENGTH OF 30.39 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2914.84 FEET; THENCE ALONG THE ARC OF SAID CURVE,
5. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 29°21'17, A LENGTH OF 1493.39 FEET THENCE LEAVING SAID SOUTHWESTERLY LINE AND ALONG A LINE RADIAL TO SAID CURVE,
6. NORTH 16°32'34" EAST 38.00 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2876.84 FEET, SAID CURVED LINE BEING MEASURED 38.00 FEET NORTHEASTERLTY AND CONCENTRIC WITH SAID LAST 2914.84 FOOT RADIUS CURVE; THENCE ALONG THE ARC OF SAID CURVE,
7. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 14°47'42", A LENGTH OF 742.86 FEET; THENCE LEAVING SAID CURVED LINE,

EXHIBIT F

8. NORTH 23°22'44" EAST 27.26 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2894.84 FEET, SAID CURVE BEING MEASURED 35.00 FEET SOUTHWESTERLY AND CONCENTRAIC WITH THE NORTHEASTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, 100.00 FEET WIDE, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 31°24'49" WEST; THENCE ALONG THE ARC OF SAID CURVE,
9. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 02°00'08" A LENGTH OF 99.59 FEET; THENCE ALONG A LINE RADIAL TO SAID CURVE,
10. NORTH 29°24'40" EAST 35.00 FEET TO A POINT IN SAID NORTHEASTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, 100.00 FEET WIDE, SAID POINT BEING ON A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2814.84 FEET, SAID LAST COURSE BEING RADIAL TO SAID CURVE; THENCE ALONG SAID NORTHEASTERLY CURVED LINE AND THE ARC OF SAID CURVE,
11. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF 15°48'10", A LENGTH OF 776.36 FEET; THENCE, LEAVING SAID CURVED LINE,
12. NORTH 72°12'41" WEST 10.82 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2819.84 FEET, SAID CURVE BEING MEASURED 5.00 FEET SOUTHWESTERLY AND CONCENTERIC WITH SAID NORTHEASTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 45°24'33" WEST; THENCE ALONG THE ARC OF SAID CURVE,
13. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 07°26'57", A LENGTH OF 366.61 FEET; THENCE, LEAVING SAID CURVED LINE,
14. SOUTH 37°57'36" WEST 12.00 FEET; THENCE
15. SOUTH 13°39'31" EAST 25.66 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2847.74 FEET, SAID CURVE BEING MEASURED 33.00 FEET SOUTHWESTERLY AND CONCENTERIC WITH SAID NORTHEASTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 37°33'19" WEST; THENCE, ALONG THE ARC OF SAID CURVE,
16. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF 02°56'41", A LENGTH OF 146.36 FEET; THENCE LEAVING SAID CURVED LINE,
17. SOUTH 19°09'52" WEST 33.19 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2879.84 FEET, SAID CURVE BEING MEASURED 35.00 FEET NORTHEASTERLY AND CONCENTERIC WITH SAID SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE, A RADIAL LINE TO THE BEGINNING OF SAID CURVE BEARS SOUTH 34°26'06" WEST; THENCE THE ARC OF SAID CURVE AND THE FOLLOWING 3 CURVES, ALL BEING MEASURED 35.00 FEET NORTHEASTERLY AND

EXHIBIT F

CONCENTERIC WITH SAID SOUTHWESTERLY LINE OF SAID VENTURA COUNTY TRANSPORTATION COMMISSION SANTA PAULA BRANCH LINE

18. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $11^{\circ}27'45''$, A LENGTH OF 576.14 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 3834.70 FEET; THENCE ALONG THE ARC OF SAID CURVE,
19. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}27'00''$, A LENGTH OF 30.12 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 5744.57 FEET; THENCE ALONG THE ARC OF SAID CURVE,
20. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}18'00''$, A LENGTH OF 30.08 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 11474.13 FEET; THENCE ALONG THE ARC OF SAID CURVE,
21. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}07'47''$, A LENGTH OF 26.01 FEET; THENCE LEAVING SAID CURVED LINE,
22. NORTH $73^{\circ}43'34''$ WEST 68.91 FEET TO THE POINT OF BEGINNING FOR PARCEL G-1.

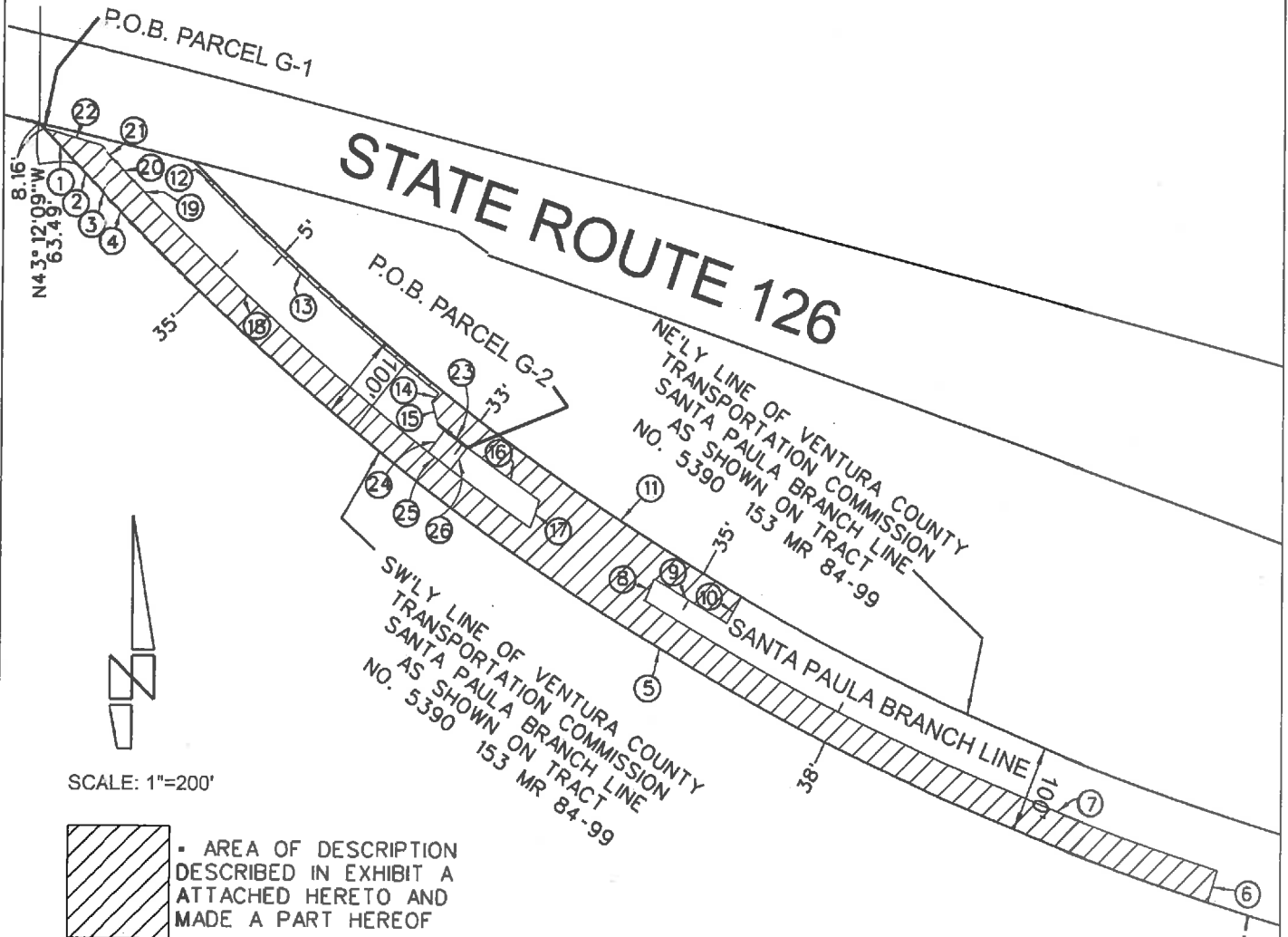
PARCEL F-2

BEGINNING AT A POINT DISTANT NORTHWESTERLY ALONG THAT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 2847.84 FEET CITED HEREIN ABOVE IN COURSE NO. 15, SAID BEGINNING POINT BEING MEASURED ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF $02^{\circ}02'59''$ AND A LENGTH OF 101.88 FEET; THENCE, CONTINUING ALONG THE ARC OF SAID CURVE,

23. NORTHWESTERLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}39'50''$, A LENGTH OF 33.00 FEET; THENCE LEAVING SAID CURVE ALONG A RADIAL LINE FROM SAID CURVE,
24. SOUTH $37^{\circ}19'28''$ WEST 32.00 FEET TO A POINT IN THE HEREIN ABOVE CITED COURSE NO. 18, BEING A CURVE COANCAVE NORTHEASTERLY HAVING A RADIUS OF 2879.84 FEET; THENCE, ALONG THE ARC OF SAID COURSE,
25. SOUTHEASTERLY, THROUGH A CENTRAL ANGLE OF $00^{\circ}39'24''$, A LENGTH OF 33.00 FEET; THENCE, LEAVING SAID CURVE,
26. NORTH $37^{\circ}19'28''$ EAST 32.00 FEET TO THE POING OF BEGINNING FOR PARCLE G-2.

CONTAINING APPROXIMATELY 80129 SQUARE FEET

EXHIBIT F



VTNWest

VTNWest, Inc. • 9255 Deering Ave., Suite 200
Chatsworth, CA 91311-5804
818-993-8740 • 818-993-8750 fax

EXHIBIT F

VTNLGL# 16-14

PLAT TO ACCOMPANY LEGAL DESCRIPTION

...\\304lg003-EX-D&F&G&H-Const.dgn 8/7/2018 7:12:47 AM

EXHIBIT F-1
Index Sheet for Grading Plans

EXHIBIT G
Rail Crossing and Utilities Easement Agreement

**Recording Requested by
and When Recorded, return to:**

Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003
ATTN: Executive Director

Exempt from Recording Fees Per
Government Code §6103

SPACE ABOVE THIS LINE RESERVED
FOR RECORDER'S USE

**CONSTRUCTION AND NON-EXCLUSIVE EASEMENT AGREEMENT
(RAIL CROSSING AND UTILITIES)**

This Construction and Non-Exclusive Easement Agreement (the “**Agreement**”) is made and entered into on _____, 2018 (the “**Effective Date**”), by and between the VENTURA COUNTY TRANSPORTATION COMMISSION, a California public agency (“**VCTC**”), the CITY OF FILLMORE, a California municipal corporation (“**City**”), and HEARTHSTONE MULTI-ASSET ENTITY C, L.P., a California limited partnership, (“**Developer**”), individually Party and collectively Parties, in consideration of the following:

RECITALS

A. VCTC is the owner of a strip of land approximately 100 feet wide which contains the tracks of the Santa Paula Branch Line (“**Branch Line**”), as more fully described on Exhibit A attached hereto (“**VCTC Property**”).

B. Developer is the owner of the real property comprised of approximately 158 acres in the City of Fillmore, California legally described on Exhibit B attached hereto (the “**Phase 2 Property**”) located adjacent to the VCTC Property, upon which Developer is entitled to construct a residential master planned community approved by City commonly known as Heritage Valley Parks (“**Project**”) and proposes the sale of individual units to members of the home buying public (“**Homeowner(s)**”). The Project includes the construction of a roadway and utilities, as further described below, that will require construction across the VCTC Property. Nothing in this Agreement is intended to affect the continuing validity of the entitlements approved by City for the Project.

C. VCTC and Developer are entering into this Agreement to set forth the terms and conditions upon which Developer is authorized to perform the following work (collectively, the “**Work**”):

1. construct and maintain an at-grade public vehicular (including automotive and bicycle) and pedestrian crossing of the railroad tracks and related crossing-gates and signals,

if any, and other improvements incidental thereto, in the location shown on Exhibit C (“**Rail Crossing**”) in substantial conformity with the Approved Plans for such work summarized in Exhibit C-1, as the same may be modified as further described in Section 1, which have been approved by California Public Utilities Commission (“CPUC”) and which will require approval of the rail line operator;

2. install typical wet and dry in-tract utilities, including, but not limited to, electrical, gas, water, reclaimed water, sewer, telephone and cable utilities and other utilities reasonably necessary or required by City or other Utilities Purveyors to be installed in connection with the development of residential uses on the Phase 2 Property, and including, without limitation, conduit and an electrical connection for signal cable under the railroad crossing pavement for purposes of operation of the signal at the Rail Crossing per utility plans approved by Caltrans, and in each case including other improvements incidental thereto (“**Utilities**”) over and under the Rail Crossing, in the location legally described and depicted on Exhibit E, which shall be constructed in substantial conformity with the Approved Plans for such work summarized in Exhibit E-1, as the same may be modified as further described in Section 1; and

3. perform all other work reasonably necessary to carry out the foregoing.

Prior to the execution of this Agreement, VCTC and City and the County of Ventura (“**County**”), have reviewed and approved the plans for the Work. The approved plans for the Work, summarized in Exhibits C-1 and E-1, are referred to herein individually and collectively, as the “**Approved Plans**”. The term Approved Plans shall also include any modifications to the Approved Plans attached hereto which are approved by VCTC in accordance with Section 1 and, where applicable, by City and County in accordance with Sections 3 and 4.

D. VCTC has agreed to grant Developer and its successors and assigns the following easements upon the VCTC Property: (a) a transferable, non-exclusive, temporary construction easement appurtenant to the Phase 2 Property (as further defined in Section 2, the “**Temporary Construction Easement**”) and (b) two transferable non-exclusive easements in gross to maintain, operate, repair and replace the Rail Crossing and for the other purposes set forth in and as further defined in Section 4, the “**Rail Crossing Easement**”) and the Utilities (for the other purposes set forth in and as further defined in Section 6, the “**Utilities Easements**”); and collectively with the Temporary Construction Easement, and the Rail Crossing Easement, the “**Easements**”) on the conditions, including indemnities, set forth below. The portions of the VCTC Property upon which the Easements are granted as depicted in Exhibits C and E, are referred to herein as the “**Easement Areas**”. Any transfer of such easements under (a) or (b) is subject to Section 16.

E. Upon completion of the components of the Work associated therewith and approval by City, and County, if necessary, Developer intends to assign (i) the Rail Crossing, the Rail Crossing Easement, the Water-Related Utilities (as defined below) and the Utilities Easements for the Water-Related Utilities in each case together with the improvements constructed in connection therewith and all other rights and obligations under this Easement Agreement related thereto to City or to a City District (as defined below), in accordance with the procedures outlined in Section 16, and (ii) to assign to the appropriate public or private Utilities Purveyors (each a “**Utility**”

Purveyor” and collectively, the “**Utilities Purveyors**”) the Utilities Easements for all Utilities other than the Water-Related Utilities, together with the improvements constructed in connection therewith and all other rights and obligations under this Easement Agreement related thereto, or to cause such Utilities Purveyors to enter into new easement agreements with VCTC for such Utilities. Once an assignment has taken place with respect to the Rail Crossing Easement or the Utilities Easements or a new easement agreement has been entered into by VCTC and a Utility Purveyor, the assignee shall be responsible for operation and maintenance of the particular Rail Crossing Easement or Utilities Easement and the associated Rail Crossing and Utilities thereon, as applicable, at its sole cost and expense, and VCTC will look to the applicable assignee (as defined in Section 16 (Assignment)) with respect to this Agreement to satisfy the obligations originally imposed on Developer under this Agreement with respect to such Easement and improvements and, with respect to Utilities governed by new easement agreements, this Agreement shall terminate.

F. If the “**Water-Related Utilities**”, comprising the utilities for the provision of water, sewer, stormwater, and reclaimed water services and the Rail Crossing are constructed in substantial conformity with the Approved Plans, Developer intends to assign those facilities to City in accordance with Section 16 or will cause the assignment of this Easement Agreement to and annexation of such facilities by a lighting and landscaping district, stormwater district or other appropriate district formed by City (“**City District**”).

AGREEMENT

Now, therefore, in consideration of the foregoing recitals and the following mutual promises and agreements, VCTC and Developer do hereby agree as follows:

1. **Approval of Plans.** Developer shall have the right to construct the Work contemplated by this Agreement on the Easement Areas in accordance with the Approved Plans. Under no circumstances will VCTC be obligated to contribute any funds for the construction of the Work. The Work shall be constructed in substantial conformity with the Approved Plans together with such modifications as may be required by City and/or County, as applicable, to the extent it has authority over the components of the Work, and any other governmental agency with authority over specific components of the Work. Developer understands that there are active train operations on the Branch Line and acknowledges that its plan, schematics and resulting improvements occurring on or near the Branch Line must be (1) coordinated with the train operator so trains will not be unreasonably out of service Monday through Friday and will not be out of service on Saturday or Sunday except in the event that emergency repairs are necessary and (2) undertaken by Developer in compliance with all applicable regulations governing rail lines, including regulations promulgated by the CPUC and the Federal Railroad Administration. Developer understands and agrees that with respect to any modifications requested to the Approved Plans, VCTC will approve plans and specifications for the Rail Crossing that contain improvements necessary for the vehicular and pedestrian Rail Crossing and Utilities, including any plans and specifications that include decorative features in connection therewith. Further, Developer understands and agrees that with respect to any modifications requested to the

Approved Plans, VCTC will not approve any plans and specifications for the Rail Crossing that would utilize the existing railroad berm to direct drainage. Developer agrees that it shall reimburse the VCTC for internal staff costs and third-party engineering and legal costs incurred by VCTC in connection with VCTC's review and approval of plans and specifications of any requested modifications to the Approved Plans for the Work.

VCTC acknowledges and agrees that (a) modifications to the Approved Plans in connection with the Rail Crossing may be required if requested by CPUC or any other governmental entity with jurisdiction, (b) Developer may request modifications to the Rail Crossing as reasonably necessary or required to address issues arising after construction and (c) VCTC will not unreasonably withhold, delay or condition its consent to modifications requested by such governmental agencies pursuant to clause (a) or Developer pursuant to clause (b) of this Section 1, provided that an engineer or construction rail facilities expert provides a written statement to VCTC that states that the requested modifications would not (1) impair the existing railroad berm, (2) increase VCTC's maintenance responsibilities of the existing railroad berm, (3) impair VCTC's or its contractor's utilization of the VCTC Property, or (4) expand the Easement Areas. Developer further agrees that it shall be solely responsible for any and all additional costs associated with such requested modifications. For avoidance of doubt, the Parties agree that the installation of signals at the Rail Crossing, as approved by VCTC, Caltrans and CPUC as necessary, shall not be an impairment of VCTC's or its contractor's utilization of the VCTC Property.

2. **Temporary Construction Easement for Work.** VCTC, as the owner of the VCTC Property, hereby grants to Developer, as the owner of the Phase 2 Property a temporary non-exclusive easement appurtenant to the Phase 2 Property to facilitate the construction of the Work upon the VCTC Property, including all access roads thereon ("**Construction Easement**"), at the locations legally described and depicted on Exhibit D ("**Construction Easement Area**"). The Construction Easement shall be used solely for the purpose of constructing the Work and may not be used for any other purpose. Developer shall construct the Work in substantial conformity with the Approved Plans. With respect to the Rail Crossing and Water-Related Utilities Easements granted hereby, the Construction Easement shall terminate upon the earlier of (a) three (3) years from the Effective Date of this Agreement or, if an extension is granted as set forth below, upon such later termination date or (b) acceptance by the City of the Rail Crossing and Water-Related Utilities. With respect to the Other Utilities Easement granted hereby, the Construction Easement shall terminate upon the earlier of (a) three (3) years from the Effective Date of this Agreement or, if an extension is granted as set forth below, upon such later termination date, or (b) assignment and assumption (or entry into new easement agreements) with all Utility Purveyors, as further described in Section 16. Developer has the option to request a two (2) year extension of the term if (a) Developer had commenced construction and proceeds with the Work prior to the termination of the initial three (3) year term, or (b) as to any component of the Work for which CPUC permits are required as a condition to commencement, such CPUC permits had not been granted by the date that is two (2) years and nine (9) months following the Effective Date. To request the extension, Developer must notify VCTC in writing prior to the expiration of the initial term of its desire to extend the term, if VCTC finds there is a reasonable basis for granting the extension,

VCTC will notify Developer in writing of its approval of the extension. Upon the termination of this Construction Easement, any and all interest in the VCTC Property conveyed by this Construction Easement shall automatically revert to VCTC or its assigns and successors, without the necessity of any further action to effect such reversion and Developer shall, upon VCTC's request, return the Construction Easement Area, excepting the Work remaining permitted by this Agreement, to as near a condition as existing prior to the performance of the Work as is reasonably practicable. Prior to commencement of the Work, Developer shall submit to VCTC a copy of all final Approved Plans, permits and authorizations, as applicable, from any governmental agency with approval authority over the Work and, if applicable, the train operator.

3. **Coordination and Compliance with Rail Line Regulations.** Developer understands that there are active train operations on the Branch Line and acknowledges that any construction, operation and maintenance activities occurring on or near the Branch Line must be (1) coordinated with the train operator so trains will not be unreasonably out of service Monday through Friday and will not be out of service on Saturday or Sunday except in the event that emergency repairs are necessary, and (2) undertaken in compliance with all applicable regulations governing rail lines, including regulations promulgated by the CPUC and the Federal Railroad Administration. Developer shall provide the train operator a minimum of seven (7) days advance notice of any Developer or Developer's contractor's activities within the rail right of way and shall take reasonable actions to prevent any disruption to normal train operations.

Developer shall prepare and include in covenants, conditions, and restrictions running with the land for any residential property sold or rented a written disclosure that homes on the Phase 2 Property may be subject to noise and vibration from the active train operations on the Branch Line.

4. **Rail Crossing Easement.** Subject to the restrictions set forth in Sections 2, 3, 4, and 5, VCTC hereby grants Developer a non-exclusive surface easement in gross, which shall be transferable by Developer as further set forth in Section 16, solely for the purpose of constructing the Rail Crossing as summarized in Exhibit C-1, and installing, inspecting, operating, using, maintaining, repairing and replacing a public pedestrian and vehicular road crossing over and across the VCTC Property and the Branch Line in the location legally described and depicted on Exhibit C for the benefit of the Project and the Phase 2 Property (the "**Rail Crossing Easement**"). Subject to VCTC's right of approval as set forth in Section 1, Developer shall construct, maintain and operate the Rail Crossing in substantial conformity with the Approved Plans as the same may be modified at the request of the CPUC or any other governmental agency with authority over the Rail Crossing, as further described in Section 1, provided that an engineer or construction rail facilities expert provides a written statement to VCTC that states that the requested modifications requested by the CPUC or other governmental agency would not: (1) impair the existing railroad berm, (2) increase VCTC's maintenance responsibilities of the existing railroad berm, (3) impair VCTC's or its contractor's utilization of the VCTC Property, or (4) expand the Easement Areas. Developer further agrees that it shall be solely responsible for any and all additional costs associated with such requested modifications. Upon the completion of the Rail Crossing, if the Rail Crossing is constructed in substantial

conformance with the Approved Plans, as the same may be modified by request of Developer pursuant to Section (1)(b) above (which modifications shall be subject to review and approval by City and VCTC), then Developer intends to assign the Rail Crossing and the Rail Crossing Easement to City in accordance with Section 16 for City's operation and maintenance (including any future repairs and replacement) of the Rail Crossing. City shall accept the assignment of the Rail Crossing and the Rail Crossing Easement pursuant to the conditions of approval for the Phase 2 Property set forth in Tentative Tract Map 5520 (Heritage Valley Parks Specific Plan Phase 2) or shall cause a City District to accept the assignment. If City determines that the Rail Crossing is not built in substantial conformance with the Approved Plans, Developer shall make any and all corrections reasonably requested by City to allow City to accept the assignment.

5. **Maintenance of Rail Crossing Easement.** Developer (and then City after accepting the assignment) shall be responsible for maintaining the Rail Crossing in a manner that conforms to all applicable rules, regulations and laws regarding rail crossings during the term of this Rail Crossing Easement. Notwithstanding the maintenance obligations of Developer (and City after accepting the assignment) outlined above, VCTC shall perform all rail maintenance and repairs to the Rail Crossing between lines two (2) feet outside of the rails of each track in accordance with CPUC General Order 72-B. Except in emergency situations, Developer shall, prior to the commencement of any maintenance of the Rail Crossing on, over or under the Branch Line, submit to VCTC plans setting out the method and manner of the work to be done. Developer shall not proceed with the maintenance work until such plans have been approved, in writing, by VCTC and any other required government agency and VCTC has granted Developer a right of entry for such maintenance activities. When performing any maintenance, repairs or reconstruction, Developer, at its sole cost and expense, shall perform such work that VCTC, in its sole determination, determines necessary to protect VCTC rail lines. If an emergency should arise requiring immediate attention, Developer shall provide as much notice as practicable before Developer commences any maintenance work and shall only perform work necessary to address the immediate emergency situation. In such situation, Developer shall take all commercially reasonable steps necessary to protect VCTC rail lines. In the event that Developer fails or is not permitted to perform the maintenance contemplated by this Section 5 due to regulatory requirements, VCTC or the rail operator may undertake such maintenance and charge Developer (and then City after accepting the assignment) for the cost of such maintenance.

All of the rights and operation and maintenance obligations of Developer under Sections 4 and 5 shall be the sole and exclusive rights and obligations of City upon acceptance by the City of the Rail Crossing and assignment by Developer and assumption by the City of the obligations of Developer under this Agreement related to the Rail Crossing Easement and Rail Crossing in accordance with Section 16, and, effective upon such assignment and assumption, Developer shall be automatically released from such obligations as further set forth in Section 16.

6. **Utilities Easements.** Subject to the restrictions set forth in Sections 2, 6 and 7 VCTC hereby grants Developer a non-exclusive surface and subsurface easement in gross, which shall be transferable by Developer as further set forth in Section 16, solely for the purpose of

constructing, in substantial conformity with the Approved Plans as summarized in Exhibit E-1 for the Utilities, and installing, inspecting, operating, using, maintaining, repairing and replacing the Utilities and any pipelines, conduit and appurtenances incidental to such Utilities, upon the VCTC Property and Branch Line at the locations legally described and depicted on Exhibit E to the extent necessary to serve the Phase 2 Property and the Project for the benefit of the Project and the Phase 2 Property (“**Utilities Easements**”). Utilities which may be constructed in the Utilities Easements include, at the election of Developer, stormwater, water, sewer, electric, gas, communication and cable television and other similar Utilities serving residential uses. Upon the completion of the Utilities and approval by City and any applicable Utility Purveyor Developer intends to assign the Water-Related Utilities to City or a City District identified by City and the remainder of the Utilities to an applicable Utility Purveyor in accordance with Section 16 for such entity or entities’ operation and maintenance of the assigned Utilities.

If the Water-Related Utilities are constructed in substantial conformance with the Approved Plans, as the same may be modified by request of Developer pursuant to Section (1)(b) above (which modifications shall be subject to review and approval by City and VCTC, which approval shall not be unreasonably withheld, conditioned or delayed), then Developer intends to assign to City or a City District the Water-Related Utilities and the associated Utilities Easements in accordance with Section 16. City shall accept the assignment of the Water-Related Utilities and the related Utilities Easements pursuant to the conditions of approval for the Phase 2 Property set forth in Tentative Tract Map 5520 (Heritage Valley Parks Specific Plan Phase 2) or shall cause a City District to accept the assignment.

7. **Maintenance of Utilities.** Developer (and then City or a City District, as applicable, after accepting the assignment) shall be responsible for maintaining the Water-Related Utilities and Developer (and then the applicable Utilities Purveyors, after accepting the assignment) shall be responsible for maintaining all other Utilities, each in a manner that conforms to all applicable rules, regulations and laws regarding each such utility. VCTC shall execute documents reasonably required by City, a City District or Utility Purveyor to accept the Utilities for maintenance at no cost, **expense** or liability to VCTC. Developer (and then City, City District or Utility Purveyor accepting the assignment) shall construct, maintain, use, operate, repair and replace the Utilities in substantial conformity with the Approved Plans. Under no circumstances shall VCTC be responsible for constructing, maintaining or operating the Utilities. Except in emergency situations, Developer shall, prior to the commencement of any maintenance of the Utilities within twenty (20) feet of the VCTC Property, submit to VCTC plans setting out the method and manner of the work to be done. Developer shall not proceed with the maintenance work until such plans have been approved, in writing, by VCTC and any other required government agency and VCTC has granted Developer a right of entry for such maintenance activities. When performing any maintenance, repairs or reconstruction, Developer, at its sole cost and expense, shall perform such work as VCTC, in its sole determination, determines necessary to protect VCTC rail lines. If an emergency should arise requiring immediate attention, Developer shall provide as much notice as practicable to VCTC and any rail operator operating on the rail line before Developer commences any maintenance work and shall only perform work necessary

to address the immediate emergency situation. In such situation, Developer shall take all commercially reasonable steps necessary to protect VCTC rail lines.

All of the rights and operation and maintenance obligations of Developer under Sections 6 and 7 with respect to the Water-Related Utilities shall be the sole and exclusive rights and obligations of City or City District, as applicable, upon acceptance of the Water-Related Utilities by City or City District, as applicable, and assignment by Developer and assumption by City or City District of the obligations of Developer under this Agreement related to the Water-Related Utilities and associated Utilities Easement(s) in accordance with Section 16, and, effective upon such assignment and assumption, Developer shall be automatically released from such obligations as further set forth in Section 16.

All of the rights and operation and maintenance obligations of Developer under Sections 6 and 7 with respect to the Other Utilities shall be the sole and exclusive rights and obligations of the applicable Utility Purveyor upon assignment by Developer and assumption by a Utility Purveyor of the obligations of Developer under this Agreement related to the Other Utilities, or any thereof, and associated Utilities Easement(s) in accordance with Section 16, and Developer shall, effective upon such assignment and assumption, automatically be released from such obligations as further set forth in Section 16 and provided further that if any Utility Purveyor enters into a separate easement agreement with VCTC as to any of the Other Utilities, this Agreement and the obligations of Developer under Sections 6 and 7 with respect to such Other Utilities shall terminate effective upon execution of the separate easement agreement.

Developer intends to assign to City or a City District the Water-Related Utilities, provided that the Water-Related Utilities are constructed in substantial conformance with the Approved Plans, as the same may be modified in accordance with this Agreement. If City determines that the Water-Related Utilities are not built in substantial conformance with the Approved Plans, Developer shall make any and all corrections reasonably requested by City to allow City or a City District, as applicable, to accept the assignment.

8. Relocation/Modification.

8.1 **Relocation.** Subject to the requirements established in this Agreement for notification and coordination, if, in VCTC's sole determination, the location of the Easements or configuration of any of the Work, interfere or inhibit any of VCTC's operations, Developer shall within ninety (90) days after prior written notice from VCTC and the grant of the New Easement or such additional time as is commercially reasonable for such relocation (the "**Relocation Period**") relocate such Rail Crossing and/or Utilities, as applicable, to a different location approved by VCTC at Developer's sole cost and expense. Upon VCTC's determination that such relocation is necessary, VCTC shall grant to Developer a new non-exclusive easement to install and maintain the relocated facilities on the same terms and conditions as the previous Easement(s) provided for by this Agreement ("**New Easement**"). VCTC and Developer agree that upon completion of the new relocated facilities, and approval of such relocated facilities by VCTC and appropriate regulatory agencies, Developer and VCTC shall terminate the previous Easement(s)

and such Easement(s) shall be quitclaimed from Developer to VCTC without expense to VCTC, and any and all interest in the VCTC Property conveyed to Developer in the previous Easement(s) shall automatically revert to VCTC or its assigns and successors, without the necessity of any further action to effect such reversion. Notwithstanding the foregoing, VCTC shall only require relocation of the Rail Crossing and Rail Crossing Easement, Utilities and Utilities Easement in connection with work carried out in furtherance of a project necessary to fulfill the mission of the VCTC as that mission is set forth in the Ventura-Santa Clarita Rail Corridor Study adopted in 1993; Santa Paula Branch Line Master Plan adopted in 1996; Ventura Rail Right-of-Way Restoration Study adopted in 1998; Santa Paula Branch Line Management and Capital Needs Assessment adopted in 1999; Santa Paula Branch Line Master Plan Environmental Impact Report adopted in 2000; Santa Paula Branch Line Recreational Trail Master Plan adopted in 2000; Santa Paula Branch Line Rail Corridor Study adopted in 2006; and Fillmore and Western Railroad Regional Hydrology and Hydrologic Study adopted in 2012; or any amendments thereto as adopted by VCTC.

In the event that Developer fails to relocate the Work within a reasonable amount of time after notice from VCTC, VCTC may relocate the Work and the cost and expense of such relocation shall be payable by Developer.

8.2 **Modification.** In the event that VCTC desires to make a temporary or permanent modification to the Rail Crossing or Utilities under circumstances not covered in Section 8.1, VCTC shall provide Developer and City (or a City District, if applicable) a minimum of thirty (30) days prior written notice for modifications to the Rail Crossing, and a minimum of thirty (30) days prior written notice to Developer, City (or a City District, if applicable) and/or Utility Purveyor for modifications to the Utilities, Notwithstanding the foregoing sentence, in the event of an emergency situation, VCTC may make immediate modifications to the Rail Crossing and/or Utilities without providing prior written notice to Developer, City (or a City District, if applicable), or Utility Purveyor. However, VCTC will provide notice of such immediate modifications to Developer, City (or a City District, if applicable) and Utility Purveyor as soon as reasonably practicable after such modifications have been made. In the event that modifications contemplated by this Section are necessary for VCTC's use and enjoyment of its property and arise from direct conflicts between the Rail Crossing or Utilities and the use of the VCTC Property for purposes as set forth in the Ventura-Santa Clarita Rail Corridor Study adopted in 1993; Santa Paula Branch Line Master Plan adopted in 1996; Ventura Rail Right-of-Way Restoration Study adopted in 1998; Santa Paula Branch Line Management and Capital Needs Assessment adopted in 1999; Santa Paula Branch Line Master Plan Environmental Impact Report adopted in 2000; Santa Paula Branch Line Recreational Trail Master Plan adopted in 2000; Santa Paula Branch Line Rail Corridor Study adopted in 2006; and Fillmore and Western Railroad Regional Hydrology and Hydrologic Study adopted in 2012; or any amendments thereto as adopted by VCTC and the construction, maintenance and use of the Rail Crossing or Utilities, the cost and expense of such modifications shall be payable by Developer.

8.3 **Meet and Confer.** Within thirty (30) calendar days following any non-emergency notification from VCTC pursuant to Sections 8.1 or 8.2, VCTC and Developer shall meet and confer in order to discuss the scope and extent of modifications requested by VCTC, to

seek to determine the least impactful means of making such modifications and to establish a reasonable time frame for performance of such work.

8.4 **Effect of Assignment.** All of the rights and obligations of Developer under this Section 8 shall be the sole and exclusive rights and obligations of City or City District, as applicable, upon acceptance of the Rail Crossing and Water-Related Utilities by City or City District, as applicable, and assignment by Developer and assumption by City or City District, as applicable, of the obligations of Developer under this Agreement with respect to such improvements and associated Easements in accordance with Section 16, and, effective upon such assignment and assumption, Developer shall be automatically released from such obligations as further set forth in Section 16. All of the rights and obligations of Developer under this Section 8 shall be the sole and exclusive rights and obligations of a Utility Purveyor upon assignment by Developer and assumption by such Utility Purveyor of the obligations of Developer under this Agreement with respect to such Other Utilities and associated Utilities Easement(s) in accordance with Section 16, and, effective upon such assignment and assumption, Developer shall be automatically released from such obligations as further set forth in Section 16, and provided further that if any Utility Purveyor enters into a separate easement agreement with VCTC as to any of the Other Utilities, this Agreement and the obligations of Developer under Section 8 with respect to such Other Utilities and associated Utilities Easements shall terminate effective upon execution of the separate easement agreement.

9. **Other Third Party and Governmental Approvals.** Developer or any assignee of Developer at its sole cost and expense shall be responsible for obtaining approvals for the Work, and VCTC will use commercially reasonable efforts to obtain the consent of the train operator, to the extent required by the Approved Plans, the Work and the Easements. VCTC will not object to Developer's seeking the railroad tracks crossing approval from the CPUC. Nothing in this Section 9 shall be interpreted as limiting or diminishing VCTC's right of review and final approval of the location, construction, maintenance and operation of the Rail Crossing, Utilities or other Work in an accordance with the Approved Plans. Provided that Developer (1) names VCTC as co-obligee with City on a performance bond satisfactory to VCTC for the faithful performance of the Work in the amount equal to the cost of the Work; and (2) provides a payment bond satisfactory to VCTC securing the claims of persons employed by Developer and the claims of persons who furnish materials, supplies or equipment used or consumed by Developer in the performance of the Work in the amount equal to the cost of the Work, then VCTC agrees that upon issuance of all required governmental approvals required to proceed with any element of the Work, Developer may commence construction of the element of the Work so approved. Upon completion of the Rail Crossing or Utilities, or any of them, Developer may assign the applicable Easement(s) and related facilities pursuant to Section 16, without requirement to obtain the approval of governmental authorities which lack jurisdiction over the completed portions of the Work. Further, VCTC acknowledges and agrees to allow the various agencies to provide their oversight and approval without the need to involve other agencies who lack jurisdiction over the relevant element.

10. **Prior Rights.** Except as expressly provided herein, VCTC reserves and retains all

property rights in and to Easements, including, without limitation, the non-exclusive rights to use any Easement for any purpose whatsoever. It is expressly understood that such use by VCTC, includes use of the Easement(s) for pedestrian, bicycle, rail or transportation purposes and such use shall not be deemed to interfere with rights granted to Developer in this Agreement. Developer may not use the Easements in any manner which hinders, obstructs, blocks, encroaches upon, or interferes with the VCTC's use of the Easements without the prior written consent of VCTC. It is expressly understood that VCTC may grant other individuals or entities the right to use the same real property as covered by the Easements without the consent of Developer so long as such use does not unreasonably interfere in a material manner with the rights granted to Developer in this Agreement.

11. **No Warranties: AS-IS Condition.** Developer agrees that it is accepting the Easements without any warranty or representation by VCTC whatsoever, in their “**AS-IS**”, “**WHERE-IS**”, “**WITH ALL FAULTS**” condition and subject to all valid and existing licenses, leases, grants, exceptions, encumbrances, title defects, matters of record, reservations and conditions affecting the Easements and/or affecting access thereto.

12. **Payment.** In consideration of the Easements granted by VCTC under this Agreement, within thirty (30) days of the Effective Date of this Agreement, Developer (a) shall pay to VCTC the sum of Ten Thousand Six Hundred and Seventy Five Dollars (\$10,675) for the Easements granted by this Agreement, which amount comprises the fair market value of the Easements as determined by appraisal, and (b) Developer shall reimburse VCTC for all reasonable third party costs associated with VCTC's, preparation of this easement agreement and review and approval of plans and specifications for the Work incurred to the Effective Date of this Agreement and for which invoices or invoice summaries have been provided to Developer by VCTC as of the Effective Date.

13. **Insurance Requirements.** Before beginning any work or activities under this Agreement, Developer (and any assignee under Section 16), at its own cost and expense, shall procure the types and amounts of insurance listed below and shall maintain the types and amounts of insurance listed below for as long as the Easements remain in existence.

13.1 **Workers' Compensation.** Developer shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance (“**Workers Compensation Policy**”) for any and all persons employed directly or indirectly by Developer with limits of not less than one million dollars (\$1,000,000) per accident.

13.2 **Commercial General and Automobile Liability Insurance.**

13.2.1 **Commercial General Insurance.** Developer shall maintain commercial general liability insurance, including products liability, covering any loss or liability, including the cost of defense of any action, for bodily injury, death, personal injury and broad form property damage which may arise out of the operations or activities of Developer. The policy shall provide a minimum limit of one million dollars (\$1,000,000) per occurrence and two million

dollars (\$2,000,000) in the aggregate. Commercial general coverage shall be at least as broad as ISO Commercial General Liability form CG 0001 (current edition) on “an occurrence” basis covering comprehensive General Liability, with a self-insured retention or deductible of no more than one hundred thousand dollars (\$100,000). No endorsement shall be attached limiting the coverage.

13.2.2 **Automobile Liability.** Developer shall maintain automobile liability insurance form CA 0001 (current edition) covering any loss or liability, including the cost of defense of any action, arising from the operation, maintenance or use of any vehicle pursuant to this Agreement, whether or not owned by Developer, on or off the VCTC Property. The policy shall provide a minimum limit of one million dollars (\$1,000,000) per each accident, with a self-insured retention or deductible of no more than one hundred thousand dollars (\$100,000). This insurance shall provide contractual liability covering all motor vehicles and mobile equipment to the extent coverage may be excluded from general liability insurance.

13.2.3 **Railroad Protective Liability.** Developer shall maintain railroad protective liability (RPL) coverage for liability it may incur because of work done on or near the railroad’s right-of-way by hired contractors and/or third parties within 50 feet of the VCTC Property. This policy shall provide a minimum limit of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate.

13.2.4 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies as long as in combination the limits equal or exceed those stated.

13.3 **All Policies Requirements.**

13.3.1 **Verification of Coverage.** Prior to beginning any work or activities under this Agreement, Developer shall provide VCTC with (a) a Certificate of Insurance that demonstrates compliance with all applicable insurance provisions contained herein and (b) policy endorsements to the policies referenced in Section 13.2 adding VCTC, its officers, agents, and employees as additional insureds and declaring such insurance primary in regard to work performed pursuant to this Agreement.

13.3.2 **Notice of Reduction in or Cancellation of Coverage.** Developer shall provide at least thirty (30) days prior written notice to VCTC of any reduction in scope or amount, cancellation, or modification adverse to VCTC of the policies referenced in this Section 13.

13.3.3 **Higher Limits.** If Developer maintains higher limits than the minimums specified herein, VCTC shall be entitled to coverage for the higher limits maintained by Developer.

13.4 **Waiver of Subrogation.** Developer agrees to waive subrogation which any insurer of Developer may acquire from Developer by virtue of the payment of any loss. Developer agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The

Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of VCTC for all work performed by Developer, its employees, agents and contractors.

13.5 **Developer's Obligation.** Developer shall be solely responsible for ensuring that all equipment, vehicles and other items utilized or operated in the performance of any activities pursuant to this Agreement are and remain covered by the policies referenced in this Section 13. Developer shall also ensure that all workers involved in the performance of this Agreement are properly classified as employees, agents or independent contractors and are and remain covered by the Workers' Compensation Policy.

13.6 **Self-Insured Retention.** If any of the insurance policies required under this Agreement includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers, do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this Agreement so as to not prevent any of the Parties from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability.

14. **Indemnification.** Developer (and following assignment, each assignee of Developer) shall indemnify, defend with counsel acceptable to VCTC, and hold harmless VCTC, its officers, officials, employees and agents (the "**VCTC Parties**"), subject to the additional limitations set forth in Section 15, from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense, including without limitation, reasonable attorney's fees and costs of litigation (each and collectively, "**Losses and Liabilities**") to the extent resulting from or arising in connection with the construction, maintenance or operation of the Work, including, but not limited to, flooding of any kind caused by increased runoffs and drainage flows from the Phase 2 Property, property denominated Ventura County Assessor's Parcel Number 041026061-5 ("**Beserra Property**"), or associated improvements, provided that in no event shall Developer or any assignee of Developer be responsible (and such indemnity shall not apply): (a) to the extent that any such Losses and Liabilities are caused by (i) the gross negligence or willful misconduct of VCTC or any VCTC Parties, (ii) the breach by VCTC of any of its obligations under this Agreement or (b) to any claims caused by or arising out of the action or inaction of VCTC with respect to the rail maintenance and repairs between lines two (2) feet outside of the rails of each track in accordance with CPUC General Order 72-B conducted by the VCTC Parties. Developer's obligations under this Section 14 shall survive termination of this Agreement and the Easements, provided that the foregoing obligations of Developer in this Section 14 shall become the sole and exclusive obligations of the assignee pursuant to Section 16 as to each Easement and related improvements (and as to all provisions of this Agreement applicable thereto) for which the assignee accepts the assignment under Section 16, with respect to Losses and Liabilities arising from and after the effective date of such assignment and assumption or, if applicable, arising from and after the effective date of any new agreement between VCTC and any person covering the subject matter of this Agreement or any Easement, and Developer shall with respect to all Easements and

improvements so assigned and assumed or addressed in a new agreement, automatically be released from its obligations under this Agreement arising from and after the date of such assignment including, without limitation, from the provisions of this Section 14. In light of Developer's indemnity for Losses and Liabilities as set forth in this Section, in no event shall VCTC have the right to settle any claim or legal action, including without limitation, any litigation or administrative proceeding, or agree to payment with respect to any Losses and Liabilities without the prior written consent of Developer, which consent shall not be unreasonably withheld.

VCTC, as to its maintenance activities for the rail maintenance and repairs to the Rail Crossing between lines two (2) feet outside of the rails of each track in accordance with CPUC General Order 72-B conducted by the VCTC Parties, shall indemnify, defend and hold harmless City, its officers, officials, employees, representatives and agents (collectively, "**City Parties**") from and against any and all Losses and Liabilities to the extent resulting from or arising in connection with such maintenance activities pursuant to General Order 72-B, except to the extent caused by the gross negligence, willful misconduct, or criminal violation of City or any City parties. In the event that VCTC no longer has jurisdiction or ownership over the VCTC Property, VCTC's indemnification obligations articulated above shall terminate one year from the date that VCTC ceased to have jurisdiction or ownership over said property.

15. **Hazardous Material Indemnification.** To the fullest extent permitted by law, Developer, for itself and on behalf of its successors and assigns, and subject to the additional limitations set forth in this Section 15, shall and hereby agrees to defend, hold harmless, and indemnify the VCTC Parties from and against any and all Losses and Liabilities (as defined above in Section 14) including bodily injury or property damage resulting from the discovery, presence, release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination by Developer or its contractors or agents associated with the Work and/or its use of the Easements during the period of construction of the Work, including all Losses and Liabilities arising out of, or related to, any violation by Developer or its contractors or agents on, upon or within the Easement Areas of any applicable Environmental Law. Notwithstanding the prior sentence, Sections 14 and 15 shall not apply to any Losses and Liabilities that VCTC may incur by reason of Contamination that migrates, through no fault of Developer or its successors and assigns, to the Easement Areas from other real property not owned by Developer or VCTC (the "**Migrated Contamination**") after completion of the Work, or Contamination resulting from the acts or omissions of VCTC after the Effective Date (the "**VCTC Contamination**") or to any discovery or presence of Migrated Contamination on, upon or within the Easement Areas that is not identified during the period of construction of the Work, but shall apply to any Losses and Liabilities that result from the exacerbation of any such Migrated Contamination or VCTC Contamination by Developer or its contractors or agents after Developer has knowledge of the existence of such Contamination. As of the Effective Date, VCTC has no record of the existence of any Contamination on or under the Easement Areas. In addition, following completion of the Work, Developer shall conduct soil testing of the portions of the VCTC Property subject to the Easements in order to determine whether any release, use, exacerbation, discharge, storage, generation, manufacture or disposal of any Contamination by Developer or its contractors or

agents associated with the Work occurred. Prior to commencing such soil testing, Developer shall provide a work plan for the testing that shall be subject to review and approval by VCTC and City each in its reasonable discretion. VCTC and City shall have fifteen (15) working days to review and either approve or submit comments on the work plan. If VCTC or City submit comments, VCTC or City shall have an additional ten (10) working days to review the revised work plan. VCTC and City shall have the right to approve the consultant selected to prepare the work plan and to conduct the testing, which approval shall not be unreasonably withheld. The results of the soil tests shall be promptly provided to VCTC and City, and each shall, within fifteen (15) working days after receipt, review and either confirm that the tests were carried out in accordance with the approved work plan, approve any variations, or request performance of additional testing work to conform the testing to the original work plan or to further address any Hazardous Materials discovered. If any additional testing work is requested by either VCTC or the City, Developer shall promptly conduct such additional testing work and shall submit such results to VCTC and City for further review and to determine whether the tests were carried out in conformance with approved work plan.

Notwithstanding the foregoing, in no event shall Developer or any assignee of Developer be responsible (and such indemnity shall not apply): (a) to the extent that any such Losses and Liabilities are caused by (i) the gross negligence or willful misconduct of VCTC or any VCTC Parties, or (ii) the breach by VCTC of any of its obligations under this Agreement or (b) to any claims caused by or arising out of the action or inaction of VCTC with respect to the rail maintenance and repairs to the Rail Crossing between lines two (2) feet outside of the rails of each track in accordance with CPUC General Order 72-B conducted by the VCTC Parties. All of the foregoing obligations of the Developer in this Section 15 shall be the sole and exclusive obligations of the assignee if the assignee accepts the assignment of the applicable Easements under Section 16 and from and after the effective date of such assignment and assumption Developer shall automatically be released from its obligations under this Agreement arising from and after the date of such transfer including without limitation from the provisions of this Section 15. In light of Developer's indemnity for Losses and Liabilities as set forth in this Section, in no event shall VCTC have the right to settle any claim or legal action, including without limitation, any litigation or administrative proceeding, or agree to payment with respect to any Losses and Liabilities without the prior written consent of Developer, which consent shall not be unreasonably withheld.

For the purposes of this Section 15 the following definitions shall apply:

(x) **“Contamination”** means the presence of any chemical, compound, material, substance, or other matter that (i) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance, or waste, or other injurious or potentially injurious material, whether injurious itself or in combination with other materials, (ii) is controlled, designated in or governed by any Environmental Law, or (iii) gives rise to any reporting, notice, or publication requirements or remediation obligation under any applicable Environmental Law;

(y) **“Environmental Law”** means any applicable federal, state, local or tribal statute, law, rule, regulation, ordinance, or any governmental, administrative, or judicial order,

decree, directive, or decision, or any other requirement of any governmental authority, pertaining to the protection of the environmental or health and safety that may now be in effect or which may be enacted, adopted, or made effective at a future date;

16. **Assignment.** Developer may assign this Agreement and all of its rights and obligations under this Agreement or may assign any one or more of the Easements and all of its rights and obligations under this Agreement pertaining to the assigned Easement with the prior written consent of VCTC. VCTC consent shall be granted with respect to any assignment to City, any City District or any other Utility Purveyor following review and confirmation by the VCTC executive director or his or her designee, in his or her reasonable discretion, that the form of the assignment is consistent with the terms required by this Agreement and without any further right of review or consent. With respect to any other assignment, VCTC shall have the right, prior to approval of an assignment, to confirm that the potential assignee, in the sole determination of VCTC, has the financial capabilities to perform all such construction, maintenance, operation, insurance, and indemnification obligations required by this Agreement and that the form of the assignment is consistent with the terms required by this Agreement. Unless otherwise agreed by VCTC, in its sole discretion, all assignments shall be memorialized through execution of an Assignment Agreement substantially in the form of the agreement attached hereto as Exhibit F. Pursuant to the requirements of this Section 16, Developer may assign this Agreement: (a) as to the Rail Crossing and Rail Crossing Easement, to City or a City District, and (b) as to the Utilities Easements and the Utilities, to City, a City District or any applicable Utility Purveyor. Developer shall require any assignee, as a condition of any assignment with respect to this Agreement, to assume in writing all of the duties and obligations under this Agreement with respect to the subject Easement(s) assigned.

In addition, following construction of the Work, any Utility Purveyor (including gas, electricity, telephone, cable or similar utility services) to which Developer intends to assign this Agreement shall have the right, with Developer's consent, to instead negotiate and enter into a new easement agreement with VCTC to replace the Utilities Easement granted by this Agreement for the utility service to be provided by such Utility Purveyor utilizing a standard form or similar form of easement agreement. Upon successful negotiation, execution and delivery of such new easement agreement by VCTC and the private Utility Purveyor, Developer shall have the right to partially terminate this Agreement solely as to the portion of the Utilities Easements and related Utilities improvements pertaining to the utility service and easement provided by the new easement agreement, and in such event, this Agreement shall terminate solely with respect thereto. In such event, Developer shall cease to have any further obligations or liabilities under this Agreement with regard to the portion of the Utilities Easements and related Utilities improvements so terminated, and the Utility Purveyor shall be solely responsible and liable to VCTC for all such obligations and liabilities as and to the extent set forth in the new utility easement agreement.

Upon the assignment by Developer and the assumption by the assignee of any one or more of the Easements and all the applicable duties and obligations under this Agreement pertaining thereto, and upon the consent of VCTC to the assignment as required by this Section 16, Developer shall cease to have any further obligations or liabilities under this Agreement and the assignee shall

assume and be solely responsible and liable to VCTC for all such obligations and liabilities arising from and after the date of the assignment.

Notwithstanding anything above, except with respect to assignment to City or a City District, VCTC shall have the right to withhold its consent if it determines that any potential assignee does not have the financial capability to perform and/or does not maintain reserves sufficient to allow it to carry out all assigned construction, maintenance, operation and indemnification obligations under this Agreement.

Notwithstanding any other provision of this Agreement, (1) until such time as City or City District, as applicable, has accepted the assignment by Developer and assumed the obligations of Developer under this Agreement with respect to either the Rail Crossing Easement or any of the Utilities Easements, City (or any City District) shall have no obligations under this Agreement and (2) City's execution and acknowledgment of this Agreement is provided solely to indicate that (a) City approves the form and substance of this Agreement; (b) City shall accept the assignment of the Rail Crossing and Rail Crossing Easement and Water-Related Utilities and associated Utilities Easements pursuant to the conditions of approval for the Phase 2 Property set forth in Tentative Tract Map 5520 (Heritage Valley Parks Specific Plan Phase 2) or shall cause a City District to accept the assignment pursuant to such conditions of approval; and (c) upon acceptance of assignment of the Rail Crossing Easement and the Rail Crossing, and upon acceptance of assignment of the Utilities Easement with respect to the Water-Related Utilities, by City (or any City District) the rights and obligations related to such assignments will be subject to the terms and conditions set forth in this Agreement.

17. **Binding on Successors and Assigns.** This Agreement shall be binding on and inure to the benefit of Developer and VCTC, and each of their heirs, executors, administrators, successors in interest, and assigns, except that Developer may not transfer or assign this Agreement or any the Easements created hereunder except as provided for in Section 16 of this Agreement.

18. **Events of Default; Remedies.** An event of default ("Event of Default") under this Agreement shall occur if either Party fails to comply with any of the covenants or obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice thereof (or fails to commence to cure such default within such thirty (30) day period and thereafter fails to proceed with due diligence to cure such default).

The Parties agree that upon the occurrence of an Event of Default hereunder, VCTC may pursue all remedies at law or in equity. It is expressly understood by the Parties that such remedies shall include VCTC's right, in its sole discretion, to terminate the Easement(s) of the defaulting Developer or assignee and to require the defaulting Developer or assignee to quitclaim one or more of its Easements to VCTC and comply with the requirements of this Section 18 only as and to the extent such termination is as a result of a Termination Default (as defined below) by Developer or such assignee. If VCTC exercises its right to terminate pursuant to this Section 18, the affected Easement(s) shall be quitclaimed from Developer or the applicable assignee to VCTC without expense to VCTC, and any and all interest in the VCTC Property conveyed to Developer or any assignee of Developer in the Easement(s) shall automatically revert to VCTC or its assigns and

successors, without the necessity of any further action to effect such reversion. All Easements not so terminated shall remain in full force and effect unless or until terminated in accordance with this Agreement. The Parties further agree that upon an Event of Default by VCTC, Developer's or any assignee's sole remedy is to require specific performance by VCTC of VCTC's obligations under this Agreement.

Notwithstanding any other provision of this Agreement, from and after the first assignment by Developer of an Easement and/or improvements to an assignee pursuant to Section 16, neither Developer nor any assignee shall be responsible for any act or omission of any other Party to this Agreement, and no action by any Party shall constitute a default of or affect any rights or benefits afforded to any non-defaulting Party(ies) nor shall it subject the non-defaulting Party(ies) to any obligations, liability or responsibility (including any indemnity obligations).

For the purposes of this Section 18, the term "Termination Default" shall mean an Event of Default that: (1) was material and would, if remaining uncured, compromise or threaten the physical stability of the rail line, the berm underlying the rail line or related transportation infrastructure; (2) involves Developer's or assignee's failure to fulfill the obligations set forth in Section 8.1 (Relocation) and Section 8.2 (Modification), Section 12 (Payment); Section 13 (Insurance), Section 14 (Indemnification), and Section 15 (Hazardous Material Indemnification).

19. **Notices.** All notices and other communications required or permitted to be given or delivered hereunder shall be in writing and shall be deemed conclusively to have been duly given (a) when hand delivered; (b) three (3) business days after such notice has been sent by U.S. Postal Service via certified mail, return receipt requested, postage prepaid, and addressed as set forth below; (c) the next business day after such notice has been deposited with an overnight delivery service, postage prepaid, in each case delivered or addressed to the Party to whom notice is being sent as set forth below with next-business-day delivery guaranteed, provided that the sending Party receives a confirmation of delivery from the delivery service provider; or (d) when transmitted if sent by facsimile transmission or email to the fax number or email address set forth below; provided that notices given by facsimile or email shall not be effective unless either (i) a duplicate copy of such notice is promptly sent by any method permitted under this Section 19 other than by facsimile or email (provided that the recipient Party need not receive such duplicate copy prior to any deadline set forth herein); or (ii) the receiving Party delivers a written confirmation of receipt for such notice either by facsimile, email or any other method permitted under this Section. Any notice given by facsimile or email shall be deemed received on the next business day if such notice is received after 5:00 p.m. (recipient's time) or on a non-business day. Unless otherwise provided in writing, all notices hereunder shall be addressed as follows:

VCTC: Ventura County Transportation Commission
Attn: Executive Director
950 County Square Drive, Suite 207
Ventura, CA 93003
dkettle@goventura.org

Developer: Hearthstone Multi-Asset Entity C, L.P.
Attn: Dennis Bush
26300 La Alameda, Suite 230
Mission Viejo, CA 92691
dbush@hearthstone.com
facsimile: (818) 826-5949

With a copy to: Steven C. Porath
Senior Vice President – General Counsel
24151 Ventura Blvd.
Calabasas, CA 91302
sporath@hearthstone.com
facsimile: (818) 826-5955

20. **Force Majeure.** The time within which Developer or VCTC shall be required to perform any act under this Agreement shall be extended by a period of time equal to the number of days during which performance of such act is delayed from so doing by certain causes beyond its control, including, and limited to, to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; natural disasters; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation due to no fault of the Party; unusually severe weather; inability to secure or delays in securing labor, fuels, materials, services or tools despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor; the reasonably unforeseeable physical conditions associated with the presence of Contamination on the VCTC Property; third party litigation seeking to restrain, enjoin, challenge or delay approval of this Agreement or the approvals of VCTC required under this Agreement; or injunctions issued by any court of competent jurisdiction; wide-spread economic dislocation or duress. The Party claiming such extension of time to perform ("**First Party**") shall send written notice of the claimed extension to the other Party within thirty (30) days from the date of the First Party's determination that the event or cause of the delay is a matter subject to extension for Force Majeure under this provision.

21. **Runs with the Land; Benefited Parties.** All of the agreements, rights, covenants, conditions, restrictions and grants of easements contained in this Agreement shall run with the land (as defined in California Civil Code Sections 1460 and 1462) and each and every portion thereof and shall be binding upon VCTC and its successors and assigns owning all or any portion of the VCTC Property, whether by operation of law or in any other manner whatsoever and shall continue

to be imposed upon such property and each portion thereof as a servitude in favor of, as to the appurtenant Easements granted hereby, the Phase 2 Property and Developer and its successors and assigns owning all or any portion of the Phase 2 Property, and as to all other agreements, rights, covenants, conditions, restrictions and grants of easements in this Agreement, Developer and its successors and permitted assigns. Despite any provision to the contrary in this Agreement, all references in this Agreement to Developer, VCTC, any assignee or any other person or entity shall be deemed to refer to each such person or entity's successors or assigns. The successors or assigns of each such person or entity, as the owners of any portion of the property affected by this Agreement or any Easement granted hereby, are bound and benefited as applicable by this Agreement. Notwithstanding the foregoing, in no event shall this Agreement impose any obligations upon or grant any rights to any Homeowner.

22. **Governing Law.** This Agreement shall be interpreted in accordance with the laws of the State of California. Venue for any dispute or claim arising out of or in connection with this Agreement shall lie in the County.

23. **No Waiver.** No delay on the part of any Party in exercising any right or remedy under this Agreement or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy.

24. **Modifications and Amendments.** This Agreement may be amended or modified only by a written instrument recorded in the Official Records that is executed and acknowledged by VCTC and by Developer or its successors or permitted assignees. Notwithstanding any other provision of this Agreement, the consent of Homeowners or, unless a Homeowners' association is the owner of any easement granted hereby, any Homeowners' association, shall not be required in connection with any amendment, termination or modification of this Agreement.

25. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together **shall** constitute one and the same Agreement.

26. **Attorneys' Fees.** In any action or proceeding arising from or relating to this Agreement commenced by a Party hereto, the prevailing Party shall be entitled to recover its reasonable attorneys' fees in addition to any other costs, interest and damages permitted by law.

27. **Exhibits; Recitals.** Unless otherwise indicated, references in this Agreement to Sections, paragraphs, clauses and exhibits are to the same contained in or attached to this Agreement and all exhibits referenced in this Agreement are incorporated in this Agreement by this reference as though fully set forth in this Section. The Recitals set forth above are incorporated into this Agreements as though fully set forth in this Section.

Exhibit A	Legal Description of VCTC Property
Exhibit B	Legal Description of Phase 2 Property
Exhibit C	Legal Description of Rail Crossing Easement
Exhibit C-1	Index Sheet for Rail Crossing Plans

Exhibit D	Legal Description for Temporary Construction Easement
Exhibit E	Legal Description of Utilities Easements
Exhibit E-1	Index Sheet for Plans for Utilities
Exhibit F	Form of Assignment and Assumption Agreement

{Signatures on the following page}

IN WITNESS WHEREOF, VCTC and Developer have executed this Agreement as of the date first set forth above.

Dated: _____ 2018

VCTC:

THE VENTURA COUNTY
TRANSPORTATION COMMISSION

BY: _____
Darren M. Kettle
Executive Director

Approved as to Form

BY: _____
Steve Mattas
General Counsel

Accepted and Agreed
by the City of Fillmore:

CITY OF FILLMORE

BY: _____
Mayor

Approved as to Form

BY: _____
City Attorney

{Signatures continue on following page}

Dated: _____ 2018 DEVELOPER:

HEARTHSTONE MULTI-ASSET ENTITY C, L.P., a
California limited partnership

By: HHPIII GP, LLC, a California limited liability company
General Partner

By: _____
Steven C. Porath, its Authorized Person

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

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

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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

CALIFORNIA ALL PURPOSE ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }
County of _____ }

On _____ before me, _____,
Date (Insert Name and Title of the Officer)

personally appeared _____
Name(s) of Signer(s)

_____ ,

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

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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp above

Signature: _____
Signature of Notary Public

EXHIBIT A
Legal Description of the VCTC Property

EXHIBIT B
Legal Description of Phase 2 Property

EXHIBIT C
Legal Description of Rail Crossing Easement

Exhibit C-1
Index Sheet for Rail Crossing Plans

Exhibit D
Legal Description of Temporary Construction Easement

EXHIBIT E
Legal Description of Utilities Easements Area

EXHIBIT E-1
Index Sheet for Utilities Plans

EXHIBIT F

Form of Assignment and Assumption Agreement

Recording Requested by,
and When Recorded, return to:

Exempt from Recording Fees Per Government
Code §§ 6103

Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003
Attn: Executive Director

SPACE ABOVE THIS LINE RESERVED
FOR RECORDER'S USE

ASSIGNMENT OF NON-EXCLUSIVE EASEMENT AGREEMENT

This Assignment of Non-Exclusive Easement Agreement (the “**Assignment**”) is made and entered to on _____ 201_, (the “**Assignment Date**”) between _____ (“**Assignor**”) and _____ (“**Assignee**”).

RECITALS

A. Assignor is a party to that certain Non-Exclusive Easement Agreement with the Ventura County Transportation Commission, a California public agency (“**VCTC**”) dated _____, 2018 and recorded as Document No. _____ on _____, 2018 in the Ventura County Records (the “**Easement Agreement**”) which concerns the real property identified on Exhibit 1 attached hereto (the “**Property**”).

B. Assignor desires to assign, and Assignee desires to assume, all of the rights and obligations of Assignor *[if limited Easements]: with respect to {specify the Easement(s) and all improvements being conveyed:} under the Easement Agreement and all rights and obligations of Assignor under the Easement Agreement with respect thereto / {if all Easements}: under the Easement Agreement, including without limitation, all Easements and all improvements described therein]* (“**Assigned Property**”), all in accordance with the terms of the Easement Agreement.

Therefore, the Parties agree, effective upon the Assignment Date, as follows:

1. **Assignment of Rights and Obligations.** Assignor hereby transfers, assigns and delivers to Assignee all of Assignor’s rights and obligations with respect to the Assigned Property] including without limitation all obligations of Assignor *[if limited Easements]: with respect to the Assigned Property]* under Section 14, Indemnification, of the Easement Agreement, all in accordance with the terms of Section 16 of the Easement Agreement.

2. **Assumption of Obligations.** Assignee hereby assumes all of Assignor's rights and obligations with respect to the Assigned Property, including without limitation all obligations of Assignor *[if limited Easements]: with respect to the Assigned Property* under Section 14, Indemnification, of the Easement Agreement, all in accordance with the terms of Section 16 of the Easement Agreement.

3. **Further Cooperation.** Assignor shall, at any time and from time to time, upon written request therefor, but at no cost or expense to Assignor, sign and deliver to Assignee, its nominees, successors and/or assigns, any new or confirming instruments and perform any other acts which Assignee, its nominees, successors, and/or assigns may reasonably request to transfer fully to Assignee, its nominees, successors, and/or assigns, all interests of Assignor intended to be transferred and assigned hereby. Assignor shall cooperate with Assignee, at no cost or expense to Assignor, to enforce the rights assigned hereby, including the pursuit of any claims under the Easement Agreement.

4. **Representations and Warranties.** Assignor represents and warrants to Assignee, as of the Assignment Date as follows:

4.1. The Easement Agreement has not been materially amended;

4.2. The Easement Agreement is in full force and effect and has not been terminated by VCTC.

4.3. VCTC is not in material default under the Easement Agreement.

5. **Indemnity.** Assignee hereby agrees to indemnify, protect, defend, assume all responsibility for and hold harmless Assignor and its members, officers, agents, affiliates, employees, contractors, consultants, and representatives with counsel reasonably acceptable to Assignor, from and against any and all Losses and Liabilities arising from or relating to the Assigned Property and/or the subject matter of this Assignment and arising from and after the Assignment Date, including without limitation, Assignee's failure to perform its obligations under, or otherwise comply with, the Easement Agreement.

6. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of all the Parties.

7. **Effectiveness and Amendments.** This Assignment may not be amended except by an agreement in writing signed by the Parties or their respective successors in interest. This Assignment shall be effective on the Assignment Date.

8. **Severability.** Any provision of this Assignment which is proven to be invalid, void, or illegal shall not affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full effect.

9. **Attorneys' Fees.** If any action or proceeding relating to this Assignment brought

by any Party against another Party, inclusive of all appeals of any such actions or proceedings, the prevailing Party shall be entitled to recover, reasonable costs and expenses as determined by the Court, including, without limitation, attorneys' fees, expert witness fees, and court costs, incurred for prosecution, defense, consultation, or advice in such action or proceeding.

{signatures follow on next page}

“Assignor”

“Assignee”

BY: _____
Name:
Title:

BY: _____
Name:
Title:

REVIEWED AND APPROVED:

VENTURA COUNTY TRANSPORTATION
COMMISSION

ATTEST

BY: _____
Darren M. Kettle
Executive Director

BY: _____
Name:
Title:

EXHIBIT 1
Legal Description of Property

EXHIBIT H

Form of Assignment and Assumption Agreement

Recording Requested by,
and When Recorded, return to:

Ventura County Transportation Commission
950 County Square Drive, Suite 207
Ventura, CA 93003
Attn: Executive Director

Exempt from Recording Fees Per
Government Code §§ 6103

SPACE ABOVE THIS LINE RESERVED
FOR RECORDER'S USE

ASSIGNMENT OF NON-EXCLUSIVE EASEMENT AGREEMENT

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RECITALS

A. Assignor is a party to that certain Non-Exclusive Easement Agreement with the Ventura County Transportation Commission, a California public agency (“**VCTC**”) dated _____, 2018 and recorded as Document No. _____ on _____, 2018 in the Ventura County Records (the “**Easement Agreement**”) which concerns the real property identified on Exhibit 1 attached hereto (the “**Property**”).

B. Assignor desires to assign, and Assignee desires to assume, all of the rights and obligations of Assignor of Assignor under the Easement Agreement, including without limitation, the Storm Drain Easement and Drainage Structures (each as defined in the Easement Agreement) (“**Assigned Property**”), all in accordance with the terms of the Easement Agreement.

Therefore, the Parties agree, effective upon the Assignment Date, as follows:

1. **Assignment of Rights and Obligations.** Assignor hereby transfers, assigns and delivers to Assignee all of Assignor’s rights and obligations with respect to the Assigned Property including without limitation all obligations of Assignor under Section 14, Indemnification, and Section 15, Hazardous Material Indemnification, of the Easement Agreement, all in accordance with the terms of Section 16 of the Easement Agreement.

2. **Assumption of Obligations.** Assignee hereby assumes all of Assignor’s rights and obligations with respect to the Assigned Property, including without limitation all obligations of

Assignor under Section 14, Indemnification, and Section 15, Hazardous Materials Indemnification, of the Easement Agreement, all in accordance with the terms of Section 16 of the Easement Agreement.

3. **Further Cooperation.** Assignor shall, at any time and from time to time, upon written request therefor, but at no cost or expense to Assignor, sign and deliver to Assignee, its nominees, successors and/or assigns, any new or confirming instruments and perform any other acts which Assignee, its nominees, successors, and/or assigns may reasonably request to transfer fully to Assignee, its nominees, successors, and/or assigns, all interests of Assignor intended to be transferred and assigned hereby. Assignor shall cooperate with Assignee, at no cost or expense to Assignor, to enforce the rights assigned hereby, including the pursuit of any claims under the Easement Agreement.

4. **Representations and Warranties.** Assignor represents and warrants to Assignee, as of the Assignment Date as follows:

4.1. The Easement Agreement has not been materially amended;

4.2. The Easement Agreement is in full force and effect and has not been terminated by VCTC.

4.3. VCTC is not in material default under the Easement Agreement.

5. **Indemnity.** Assignee hereby agrees to indemnify, protect, defend, assume all responsibility for and hold harmless Assignor and its members, officers, agents, affiliates, employees, contractors, consultants, and representatives with counsel reasonably acceptable to Assignor, from and against any and all Losses and Liabilities arising from or relating to the Assigned Property and/or the subject matter of this Assignment and arising from and after the Assignment Date, including without limitation, Assignee's failure to perform its obligations under, or otherwise comply with, the Easement Agreement.

6. **Successors and Assigns.** This Assignment shall be binding upon and inure to the benefit of the heirs, successors, executors, administrators, and assigns of all the Parties.

7. **Effectiveness and Amendments.** This Assignment may not be amended except by an agreement in writing signed by the Parties or their respective successors in interest. This Assignment shall be effective on the Assignment Date.

8. **Severability.** Any provision of this Assignment which is proven to be invalid, void, or illegal shall not affect, impair, or invalidate any other provision hereof and such other provisions shall remain in full effect.

9. **Attorneys' Fees.** If any action or proceeding relating to this Assignment brought by any Party against another Party, inclusive of all appeals of any such actions or proceedings, the prevailing Party shall be entitled to recover, reasonable costs and expenses as determined by the

Court, including, without limitation, attorneys' fees, expert witness fees, and court costs, incurred for prosecution, defense, consultation, or advice in such action or proceeding.

{signatures follow on next page}

“Assignor”

“Assignee”

BY: _____
Name:
Title:

BY: _____
Name:
Title:

REVIEWED AND APPROVED:

VENTURA COUNTY TRANSPORTATION
COMMISSION

ATTEST

BY: _____
Darren M. Kettle
Executive Director

Name:
Title:

EXHIBIT 1
Legal Description of Property